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OCC, Consolidated Winners Of Gas Proration Hearing

AZTEC — Judge C. C. McColloh issued an order ruling in favor of the Oil Conservation Commission and Consolidated Oil and Gas Co., at the end of a two-day hearing here Friday on a gas proration order.

The case attracted a great deal of interest among the oil fraternity.

Several oil firms took the case to District Court after objecting to an OCC order which changed the gas proration in the Dakota formation. The change was granted at the request of Consolidated. There are about 1,000 Dakota wells in this area.

Judge McCulloh said he felt the OCC order was supported by substantial evidence. The 1½ days of testimony centered around transcripts from the OCC hearing.

Eleven attorneys participated in or were observers at the hearing.

Plaintiffs in the case were El Paso Natural Gas Co., Sunset International, Pan American and Southwest Production.

CHAMBERS OF
C. C. McCULLOH
JUDGE, DIV. 1

State of New Mexico
Eleventh Judicial District Court
Aztec

June 28, 1966

TELEPHONE 334-6151

Mr. Jason W. Kellahin
Attorney at Law
P.O. Box 1769
Santa Fe, New Mexico

Re: El Paso Natural Gas Company, et al., vs. Oil Conservation Commission, et al, No. 11685, San Juan County.

Dear Jason:

The Judgment upon Mandate in the above-entitled cause has been signed by me and filed with the Clerk as of the above date.

Very truly yours,

C. C. McCULLOH
District Judge

CCM:vf

cc: Oil Conservation Commission
Att: Mr. Hatch
Mr. Ross L. Malone
Seth, Montgomery, Federici & Andrews
Att: Mr. William R. Federici

KELLAHIN AND FOX
ATTORNEYS AT LAW
54½ EAST SAN FRANCISCO STREET
POST OFFICE BOX 1769
SANTA FE, NEW MEXICO 87501

JASON W. KELLAHIN
ROBERT E. FOX

TELEPHONE 982-4315
AREA CODE 505

June 27, 1966

Honorable C. C. McCulloh
District Judge
Eleventh Judicial District
San Juan County
Aztec, New Mexico

Re: El Paso Natural Gas Company, et al., vs. Oil Conservation Commission, et al., No. 11,685, District Court, San Juan County.

Dear Judge McCulloh:

Enclosed is a form of judgment on the mandate in connection with the above-captioned case which has been approved as to form by all the counsel of record in the case. If this judgment meets with your approval, I would appreciate your advising me as to the date it is entered.

Very truly yours,

KELLAHIN & FOX

Jason W. Kellahin

jwk/mas
enclosure
cc: Oil Conservation Commission
Attention: Mr. Hatch
Mr Jim Durrett
Mr. T. P. Stockmar
Mr. Ross L. Malone
Seth, Montgomery, Federici & Andr

RHODES AND McCALLISTER
ATTORNEYS AT LAW

JERRY P. RHODES
ORVILLE C. McCALLISTER, JR.

619 SIMMS BUILDING
ALBUQUERQUE, NEW MEXICO 87101
TELEPHONE 243-9746

June 13, 1966

Mr. George M. Hatch
General Counsel
New Mexico Oil Conservation Commission
Box 2088
Santa Fe, New Mexico 87501

Re: El Paso Natural Gas Company, et al
vs. Oil Conservation Commission, et al
No. 7727

Dear George:

I am enclosing a copy of the Supreme Court opinion and mandate in the above case. I thought you might like to keep these in the Commission file.

Very truly yours,

Rhodes, McCallister & Durrett

By J. M. Durrett, Jr.

JMD:ab
encl.

KELLAHIN AND FOX
ATTORNEYS AT LAW

JASON W. KELLAHIN
ROBERT E. FOX

54½ EAST SAN FRANCISCO STREET
POST OFFICE BOX 1713
SANTA FE, NEW MEXICO

TELEPHONES
983-9396
982-2991

July 14, 1965

Mr. T. P. Stockmar
Holme, Roberts, More & Owen
1700 Broadway
Denver, Colorado

COPY

Dear Ted:

Jim Durrett brought over a copy of a Texas prorationing case which I believe will be very helpful to us when the oral argument is held on the Basin-Dakota appeal.

The case citation is:

Pikens, et al., v. Railroad Commission, et al.
387 S. W. 2d 35
21 Oil & Gas Reporter 644

Jim will be in Denver for the Rocky Mountain Mineral Law Institute, and he will probably discuss this case with you.

We haven't heard anything on a hearing date, and I am sure it will not be before fall.

With best regards,

Very truly yours,

KELLAHIN & FOX

Jason W. Kellahin

jwk/mas
cc: Mr. J. M. Durrett

ATTORNEYS AT LAW
ATWOOD & MALONE
LAWYERS

JEFF D. ATWOOD (1883-1960)
ROSS L. MALONE
CHARLES F. MALONE
RUSSELL D. MANN
PAUL A. COOTER
BOB F. TURNER

ROBERT A. JOHNSON
JOHN W. BASSETT, JR.

P. O. DRAWER 700
TELEPHONE 505 622-6221
SECURITY NATIONAL BANK BUILDING
ROSWELL, NEW MEXICO
88201

April 21, 1965

Mr. Lowell C. Green
Clerk of the Supreme Court
Supreme Court Building
Santa Fe, New Mexico

Re: El Paso Natural Gas Company, et al. v.
Oil Conservation Commission, et al.
No. 7727

Dear Mr. Green:

We enclose herewith five copies of the Reply Brief of Appellants for filing in the above styled and numbered cause.

With a copy of this letter we are forwarding copies of the enclosed Reply Brief to all opposing counsel of record.

Very truly yours,

Ross L. Malone

Ross L. Malone

RLM:d
Enclosures
cc: J. M. Durett, Jr., Esquire
Booker Kelly, Esquire
Jason W. Kellahin, Esquire
Garrett Whitworth, Esquire
Kent B. Hampton, Esquire
Ted P. Stockmar, Esquire
J. K. Smith, Esquire
William R. Federici, Esquire
Wilbur W. Heard, Esquire

J. O. SETH (1883-1963)

A. K. MONTGOMERY
WM. FEDERICI
FRANK ANDREWS
FRED C. HANNAHS
RICHARD S. MORRIS

JOHN G. JASPER
SUMNER G. BUELL

SETH, MONTGOMERY, FEDERICI & ANDREWS
ATTORNEYS AND COUNSELORS AT LAW
350 EAST PALACE AVENUE
SANTA FE, NEW MEXICO 87501

POST OFFICE BOX 2307
AREA CODE 505
TELEPHONE 982-3876

March 12, 1965

Mr. Garrett C. Whitworth
El Paso Natural Gas Company
Post Office Box 1492
El Paso, Texas

Mr. Jason W. Kellahin
Post Office Box 1769
Santa Fe, New Mexico

Mr. William B. Kelly
Gilbert, White & Gilbert
Bishop Building
Santa Fe, New Mexico

Mr. James M. Durrett
Attorney
Oil Conservation Commission
State Land Office
Santa Fe, New Mexico

Mr. Kent B. Hampton
Marathon Oil Company
P. O. Box 120
Casper, Wyoming

Mr. Ross Malone
P. O. Box 700
Roswell, New Mexico

Re: El Paso Natural Gas Company et al vs. Oil Conservation Commission, N. 7727, New Mexico Supreme Court.

Gentlemen:

Enclosed is copy of motion granting an extension of time until April 12, 1965 within which to file Reply Brief in the above-entitled cause.

Sincerely yours,

WRF:dd
Enclosure

OIL CONSERVATION COMMISSION
P. O. BOX 871
SANTA FE, NEW MEXICO

LEGAL DIVISION
PHONE 827-2741

February 22, 1965

VIA AIR MAIL
SPECIAL DELIVERY

Mr. Ted P. Stockmar
Attorney at Law
1700 Broadway
Denver, Colorado 80202

Dear Ted:

I am returning the draft of the Basin-Dakota brief with corrections indicated thereon. I also am enclosing two insertions that Jason left with me.

We do feel that we need a separate page entitled "The Points Relied on to Sustain the Trial Court's Decision" and that this page should contain our Points I through V just as they are set out under Argument and Authorities on our index.

I have checked the references to the hearing transcripts and apparently your page numbers are correct. I have corrected all references to the hearing transcripts on pages 33 through 35 and have supplied references at the bottom of page 26. You may want to recheck these references.

I feel that the only real weak part of the brief is our answer to their complaint that we used current deliverabilities and initial reserves. As I have indicated on page 35 of the brief, we will probably have to strike some of our language in view of the statements that Trueblood made. We probably should add two or three paragraphs to emphasize the fact that use of

 February 22, 1965

Mr. Ted P. Stockmar
Attorney at Law

current reserves would have made little or no difference. I will try to work something out along this line and forward it to you tomorrow. Also you may have some ideas concerning this problem.

I also am enclosing five original certifications of Order No. R-2259-B which can be attached to the four copies to be filed with the Court and one copy to be served. Additional copies can be made from the 8½ x 11 certification which is enclosed and these can be attached to the remaining briefs along with reproduced copies of the order. I am enclosing four copies of Order No. R-2259-B for your use for reproduction purposes.

Best personal regards.

Very truly yours,

J. M. DURRETT, Jr.
Attorney

JMD/esr
Enclosures

cc: Mr. Jason W. Kellahin
Attorney at Law
P. O. Box 1769
Santa Fe, New Mexico

HOLME, ROBERTS, MORE & OWEN

J. CHURCHILL OWEN
PETER H. HOLME, JR.
JOHN M. DICKSON
TED P. STOCKMAR
DONALD C. McKINLAY
KEITH ANDERSON
JOHN N. STULL
LUCIUS E. WOODS
JOSEPH W. MORRISEY, JR.
KENNETH R. WHITING
A. EDGAR BENTON
JAMES E. BYE
JAMES C. OWEN, JR.
RICHARD G. WOHLGENANT
RICHARD L. SCHREPFERMAN
RICHARD P. MATSCH
PAUL D. HOLLEMAN

EDWARD M. HEPPENSTALL
ROGER C. COHEN
DONALD K. BAIN
THOMAS C. SEAWELL
MERRICK S. WING
FREDERICK D. GREEN
HARRY CLAYTON COOK, JR.
PHILIP C. WILCOX, JR.
G. KEVIN CONWICK
MARTIN B. DICKINSON, JR.
BRUCE REED KNAPP

1700 BROADWAY-DENVER, COLORADO 80202

AREA CODE 303 - 292-3800

FEB 17 1965

February 16, 1965

Jason Kellahin, Esq.
Kellahin & Fox
P. O. Box 1769
Santa Fe, New Mexico

J. M. Durrett, Jr., Esq.
c/o Oil Conservation Commission
Mabry Hall
Santa Fe, New Mexico

Gentlemen:

Enclosed to each of you is a retyping of the Basin-Dakota brief which it is hoped is complete enough so that final comments are in order.

As you know, we do not have a copy of the transcript here, and therefore will have to rely upon you to fill in all transcript references. We will prepare the Table of Authorities when we are sure that we have finished with our legal citations. Please advise if we need a separate page of what might be called "Points Relied Upon for Upholding the Decision of the District Court."

Jason will note that Point V, as now written, is basically a paraphrasing of our Point VIII in the trial court brief. I put this in so that we would have a more expanded version to work from.

I enjoyed working with you over the weekend. I think the work was most productive.

Best personal regards.

Very truly yours,

HOLME, ROBERTS, MORE & OWEN

By Ted

TPS:B
Encl.

COPY

KELLAHIN AND FOX
ATTORNEYS AT LAW
54½ EAST SAN FRANCISCO STREET
POST OFFICE BOX 1769
SANTA FE, NEW MEXICO 87501

JASON W. KELLAHIN
ROBERT E. FOX

TELEPHONES
983-9396
982-2991

January 19, 1965

Mr. T. P. Stockmar
Holme, Roberts, More & Owen
1700 Broadway
Denver, Colorado

Mr. James M. Durrett
Oil Conservation Commission
P. O. Box 2088
Santa Fe, New Mexico

Mr. Garrett C. Whitworth
El Paso Natural Gas Company
P. O. Box 1492
El Paso, Texas

Mr. Kent B. Hampton
Marathon Oil Company
P. O. Box 120
Casper, Wyoming

Mr. William B. Kelly
Gilbert, White & Gilbert
Bishop Building
Santa Fe, New Mexico

Mr. Ross Malone
Atwood & Malone
P. O. Drawer 700
Roswell, New Mexico

Mr. William R. Federici
Seth, Montgomery, Federici & Andrews
P. O. Box 2307
Santa Fe, New Mexico

COPY

Re: El Paso Natural Gas Co., et al., vs. Oil Conservation Commission, et al., No. 7727, Supreme Court of the State of New Mexico.

Gentlemen:

Enclosed is a copy of order approving extention of time to March 1, 1965, to file answer brief in the above appeal.

Very truly yours,

KELLAHIN & FOX

Jason W. Kellahin

JWK/mas
enclosure

Copy of order handed to Mr. Durrett January 19, 1965. Order was signed January 19, 1965 by Chief Justice David W. Carmody January 19, 1965.

ATWOOD & MALONE
LAWYERS

JEFF D. ATWOOD (1883-1960)
ROSS L. MALONE
CHARLES F. MALONE
RUSSELL D. MANN
PAUL A. COOTER
BOB F. TURNER

ROBERT A. JOHNSON
JOHN W. BASSETT, JR.

P. O. DRAWER 700
TELEPHONE 505 622-6221
SECURITY NATIONAL BANK BUILDING
ROSWELL, NEW MEXICO
88201

December 31, 1964

Lowell C. Green, Esquire
Clerk of the Supreme Court
Supreme Court Building
Santa Fe, New Mexico

Re: El Paso Natural Gas Company, et al., v.
Oil Conservation Commission, et al.,
No. 7727

Dear Mr. Green:

We enclose herewith 5 copies of Brief-In-Chief of Appellants for filing in the above styled and numbered cause.

With a copy of this letter we are forwarding copies of the enclosed Brief to all opposing counsel of record.

Very truly yours,

Ross L. Malone

RLM:d
Enclosures
cc: J. M. Durett, Jr., Esquire
Booker Kelly, Esquire
Jason W. Kellahin, Esquire
Garrett Whitworth, Esquire
Kent B. Hampton, Esquire
Ted P. Stockmar, Esquire
J. K. Smith, Esquire
William R. Federici, Esquire

SETH, MONTGOMERY, FEDERICI & ANDREWS
ATTORNEYS AND COUNSELLORS AT
P. O. BOX 828
SANTA FE, NEW MEXICO

23-7

October 15, 1964

Mr. Garrett C. Whitworth
Attorney
El Paso Natural Gas Co.
El Paso, Texas 79999

Re: El Paso Natural Gas Company vs.
Oil Conservation Commission

Dear Garrett:

I am enclosing a copy of order approving extention of time to file our brief in chief in the above matter.

Very truly yours,

Wm Federici

WRP:mf
Encl.

cc: Mr. Kent B. Hampton, Division Attorney, Marathon Oil Company, P.O. Box 120, Casper, Wyoming
Mr. Ross Malone, Attorney at Law, P.O. Drawer 700, Roswell, New Mexico
Mr. Jason Kellahin, Attorney at Law, 54½ E. San Francisco, Santa Fe, New Mexico

C
C
F
Y

SETH, MONTGOMERY, FEDERICI & ANDREWS
ATTORNEYS AND COUNSELLORS AT
P. O. BOX 828
SANTA FE, NEW MEXICO

October 15, 1964

Mr. Garrett C. Whitworth
Attorney
El Paso Natural Gas Co.
El Paso, Texas 79999

Re: El Paso Natural Gas Company vs.
Oil Conservation Commission

Dear Garrett:

I am enclosing a copy of order approving extention of time to file our brief in chief in the above matter.

Very truly yours,

Wm Federici

WRF:mf
Encl.

cc: Mr. Kent B. Hampton, Division Attorney, Marathon Oil Company, P.O. Box 120, Casper, Wyoming
Mr. Ross Malone, Attorney at Law, P.O. Drawer 700, Roswell, New Mexico
Mr. Jason Kellahin, Attorney at Law, 54½ E. San Francisco, Santa Fe, New Mexico

COPY

OIL CONSERVATION COMMISSION
P. O. BOX 871
SANTA FE, NEW MEXICO

September 22, 1964

COPY

Mr. Wm. F. Federici
Attorney at Law
350 East Palace Avenue
Santa Fe, New Mexico

Re: El Paso Natural Gas Company vs.
Oil Conservation Commission.
Correction of Preliminary Transcript.

Dear Mr. Federici:

Mr. Kellahin and I have examined the preliminary transcript for the Respondents and we are agreeable to the corrections and additions set out in your letter of September 16, 1964. In addition, we would suggest the following:

(1) Mr. Kellahin's statement at page 151 should read as follows:

> "MR. KELLAHIN: Yes, I agree with Mr. Malone's request a ruling be withheld. Exhibits 1 through 9 have been objected to and the record shows 1 and 2 were not objected to."

(2) In paragraph 6, at page 124, "docieted" should read "docketed."

I am enclosing the preliminary transcript herewith.

Very truly yours,

J. M. DURRETT, Jr.
Attorney

JMD/esr
Enclosure

cc: Miss Vastie Fowler
District Court Reporter
San Juan County Courthouse
Aztec, New Mexico

Mr. Jason Kellahin
Attorney at Law
P. O. Box 1769
Santa Fe, New Mexico

J. O. SETH (1883-1963)

A. K. MONTGOMERY
WM. FEDERICI
FRANK ANDREWS
FRED C. HANNAHS
RICHARD S. MORRIS
JOHN G. JASPER

SETH, MONTGOMERY, FEDERICI & ANDREWS
ATTORNEYS AND COUNSELORS AT LAW
350 EAST PALACE AVENUE
SANTA FE, NEW MEXICO 87501

POST OFFICE BOX 2307
AREA CODE 505
TELEPHONE 982-3876

September 16, 1964

Mr. Jason Kellahin
Attorney at Law
54½ E. San Francisco Street
Santa Fe, New Mexico

Re: El Paso Natural Gas Company vs.
Oil Conservation Commission.
Correction of Preliminary Transcript.

Dear Mr. Kellahin:

I am sorry I have delayed delivering the transcript to you. However, it was delayed in circulation to various attorneys.

After reviewing the proposed transcript I would suggest the following corrections and additions:

1. At pp. 48 through 51 of the transcript appears a letter from Tidewater Oil Company's general attorney to the clerk of the court. Unless this is intended to be a certificate of service the letter and the list attached to it should be deleted from the transcript.

2. At p. 62 and again at p. 96 is a letter from the United States Attorney disclaiming any interest of the United States Geological Survey in this suit. One of these two letters should be deleted from the transcript.

3. At p. 125 in sub-paragraph (1) of paragraph 8, the word "Forty" should be substituted for "Forth."

4. A motion and order should be included in the transcript extending the time for settling the bill of exceptions and extending the time for filing this transcript in the Supreme Court, pursuant to Supreme Court Rule 13(7).

5. At some point in the proceedings petitioners introduced a certified copy of Order No. R-2230-B as photostated from the Commission records showing A. L. Porter's entry across the top of the page. While this matter is covered by the stipulation, I believe

Mr. Jason Kellahin
Santa Fe, New Mexico

September 16, 1964

the order was introduced into evidence and should be included in the transcript.

6. I assume that Vasti is planning to include in the transcript the volume of pleadings introduced into evidence by Jim Durett. We must make sure that this volume of pleadings before the Commission is in the transcript as well as the testimony and exhibits offered to the Commission at the various administrative hearings.

Sincerely yours,

Wm R Federici
ajm

WRF:LHS
Encl.

SETH, MONTGOMERY, FEDERICI & ANDREWS
ATTORNEYS AND COUNSELLORS AT
P. O. BOX 828 230
SANTA FE, NEW MEXICO

August 27, 1964

Mr. Ross L. Malone
Atwood & Malone
Attorneys at Law
P. O. Drawer 700
Roswell, New Mexico

Mr. Jason W. Kellahin
Kellahin and Fox
Attorneys at Law
Post Office Box 1769
Santa Fe, New Mexico

Mr. James M. Durrett
Attorney
Oil Conservation Commission
State Land Office
Santa Fe, New Mexico

Mr. William B. Kelly
Gilbert, White & Gilbert
Attorneys at Law
Bishop Building
Santa Fe, New Mexico

Gentlemen:

Re: El Paso Natural Gas Company et al vs. Oil Conservation Commission et al, No. 11685 District Court, San Juan County.

Enclosed is photocopy of Judge McCulloh's Order extending the time within which to file the transcript upon appeal until October 1, 1964.

Sincerely yours,

Bill Federici

WRF:dd
Enclosure

COPY

SETH, MONTGOMERY, FEDERICI & ANDREWS
ATTORNEYS AND COUNSELLORS AT
P. O. BOX 828
SANTA FE, NEW MEXICO

August 25, 1964

Mr. Jason W. Kellahin
Attorney at Law
P.O. Box 1769
Santa Fe, New Mexico

Mr. James M. Durrett, Attorney
Oil Conservation Commission
State Land Office
Santa Fe, New Mexico

Gilbert, White & Gilbert
Attorneys at Law
Bishop Building
Santa Fe, New Mexico

Gentlemen:

Re: El Paso Natural Gas Co., et al vs. Oil Conservation Commission, et al., No. 11685
District Court, San Juan County.

I have received from Vasti Fowler a proposed copy of the transcript to be filed on appeal in the above cause. Since it will take a while to circulate the transcript to counsel for the Petitioners, and also to grant you some time to look it over on behalf of Respondents, I have asked Vasti Fowler, Court Reporter for the District Court, to obtain an additional extension of time of 30 days within which to file the transcript.

Sincerely yours,

Post Montgomery

WRF:mf

COPY

SETH, MONTGOMERY, FEDERICI & A... VS
ATTORNEYS AND COUNSELLORS AT
P. O. BOX 828
SANTA FE, NEW MEXICO

July 28, 1964

Mr. Jason W. Kellahin
Kellahin and Fox
Attorneys at Law
Post Office Box 1769
Santa Fe, New Mexico

Mr. James M. Durrett
Attorney
Oil Conservation Commission
State Land Office
Santa Fe, New Mexico

Gilbert, White & Gilbert
Attorneys at Law
Bishop Building
Santa Fe, New Mexico

Gentlemen:

Re: El Paso Natural Gas Co., et al.,
vs. Oil Conservation Commission,
et al., No. 11685, District Court,
San Juan County.

Enclosed is photocopy of Judge McCulloh's Order extending the time within which to file the transcript upon appeal until September 1, 1964.

Sincerely yours,

Dick Federici

WRF:dd
Enclosure

COPY

SETH, MONTGOMERY, FEDERICI & ANDREWS
ATTORNEYS AND COUNSELLORS AT LAW
P. O. BOX ~~625~~ 2307
SANTA FE, NEW MEXICO

copy for:

July 23, 1964

MR. JAMES M. DURRETT, JR.
OIL CONSERVATION COMMISSION

Mr. Ben Howell
Vice President, El Paso
Natural Gas Company
P. O. Box 1492
El Paso, Texas

Re: El Paso Natural Gas Co., et al.
vs. Oil Conservation Commission,
et al. No. 11685, District Court,
San Juan County, New Mexico

Dear Mr. Howell:

I enclose copy of Order which was forwarded to me by the Clerk of the District Court of San Juan County. Apparently the Court Reporter and Clerk were not able to prepare the remainder of the transcript within the time provided by the rules, and they have obtained, through us, an Order extending the time to September 1, 1964.

With kind regards.

Very truly yours,

Bill Federici

WF:LHS

cc: Mr. Ross Malone
Mr. Kent Hampton

COPY

POTASH COMPANY OF AMERICA
MINE AND REFINERY: P. O. BOX 31 • CARLSBAD, NEW MEXICO • TU 5-2111

July 31, 1964

R. H. BLACKMAN
RESIDENT COUNSEL

J. M. Durrett, Jr., Esq.
Oil Conservation Commission
Santa Fe, New Mexico

Dear Jim:

I enclose page 27 of your brief in the Basin-Dakota case which became detached.

Personal regards,

Cordially,

RHB/b
Enc.

PCA

POTASH COMPANY OF AMERICA

MINE AND REFINERY: P. O. BOX 31 • CARLSBAD, NEW MEXICO • TU 5-2111

July 23, 1964

R. H. BLACKMAN
RESIDENT COUNSEL

J. M. Durrett, Jr., Esq.
Oil Conservation Commission
Santa Fe, New Mexico

Dear Jim:

Thank you so much for the copy of your trial brief in El Paso Natural Gas vs. O.C.C. I have read it with great interest and return it herewith.

Best personal regards,

Cordially,

RHB/b
Enc.

OIL CONSERVATION COMMISSION
P. O. BOX 871
SANTA FE, NEW MEXICO

COPY

July 17, 1964

Mr. Roy H. Blackman
Resident Counsel
Potash Company of America
P. O. Box 31
Carlsbad, New Mexico

Re: El Paso Natural Gas Company v. Oil Conservation Commission, San Juan County No. 11,685

Dear Roy:

In accordance with our telephone conversation, I am enclosing herewith a copy of the Commission's trial brief in the above case. I hope this will be of some assistance to you.

Best personal regards.

Very truly yours,

J. M. DURRETT, Jr.
Attorney

JMD/esr
Enclosure

KELLAHIN AND FOX
ATTORNEYS AT LAW
54½ EAST SAN FRANCISCO STREET
POST OFFICE BOX 1713
SANTA FE, NEW MEXICO

JASON W. KELLAHIN
ROBERT E. FOX

YUcca 3-9396
YUcca 2-2991

--1769

June 3, 1964

Mr. William Federici
Seth, Montgomery, Federici & Andrews
P. O. Box 2307
Santa Fe, New Mexico

Re: El Paso Natural Gas Co., et al.
vs. Oil Conservation Commission,
et al., No. 11685, San Juan
County District Court

Dear Bill:

I am returning herewith the original and three copies of Stipulation which you submitted in the above case. I have not signed the stipulation because I believe the effect of the last paragraph is to settle the bill of exceptions, which is premature. This could, of course, be handled by a stipulation after we have had an opportunity to examine the transcript and record.

At the present time I believe that our stipulation should be confined solely to agreement that the original transcript only of the hearing before the Oil Conservation Commission, with the exhibits and attachments thereto shall be considered by the Court as if the same had been included in the transcript, bill of exceptions and record, as prepared and certified by the clerk of the court. If there are other matters you feel should be included, would you please spell them out specifically, so we will know what we are stipulating to?

With best regards,

Sincerely,

Jason W. Kellahin

JWK:ss
Encls.

COPY

State of New Mexico
Eleventh Judicial District Court
Aztec

CHAMBERS OF
C. C. McCULLOH
JUDGE, DIV. 1

TELEPHONE FE 4-6151

April 2, 1964

Seth, Montgomery, Federici and
Andrews
Attorneys at Law
350 East Palace Avenue
Santa Fe, New Mexico
Att: Mr. Wm. Federici

Verity, Burr, Cooley & Jones
Attorneys at Law
Petroleum Center Building
Farmington, New Mexico
Att: Mr. George L. Verity

Mr. Ross L. Malone
Attorney at Law
P.O. Drawer 700
Roswell, New Mexico

Mr. J. M. Durrett, Jr., Attorney
Oil Conservation Commission
State Land Office Building
Santa Fe, New Mexico

Messrs. Ben R. Howell and
Garrett C. Whitworth
El Paso Natural Gas Company
P.O. Box 1492
El Paso, Texas

Mr. Jason W. Kellahin
Attorney at Law
542 East San Francisco
Santa Fe, New Mexico

Mr. Kent B. Hampton
Marathon Oil Company
P.O. Box 120
Casper, Wyoming

Re: El Paso Natural Gas Company, et al, vs. Oil Conservation Commission of New Mexico, et al, No. 11685, San Juan County.

Gentlemen:

Enclosed herewith is a copy of Decision of the Court and Judgment in the above-entitled cause, which have been filed as of the above date.

Very truly yours

C. C. McCULLOH
District Judge

CCM:vf
Encls.

SETH, MONTGOMERY, FEDERICI & ANDREWS
ATTORNEYS AND COUNSELLORS AT LAW
P. O. BOX [illegible]
SANTA FE, NEW MEXICO

March 31, 1964

VIA: AIR MAIL

The Honorable C. C. McCulloh
District Judge
County Court House
Aztec, New Mexico

Dear Judge McCulloh:

RE: El Paso Natural Gas Company, et al vs. Oil Conservation Commission of New Mexico, et al, No. 11635, District Court of San Juan County, New Mexico

Enclosed is Petitioners Requested Findings of Fact and Conclusions of Law, copies of which are being mailed to all counsel of record.

Should the Court desire a meeting of counsel to discuss any aspect of the Findings of Fact and Conclusions of Law to be adopted by the Court, we will make ourselves available at the convenience of the Court.

Very truly yours,

WF/be
Enclosure

cc: Ross L. Malone
Attorney at Law
P. O. Drawer 700
Roswell, New Mexico

Messrs. Ben R. Howell and Garrett C. Whitworth
El Paso Natural Gas Company
Post Office Box 1492
El Paso, Texas

COPY

cc: Kent B. Hampton
Marathon Oil Company
P.O. Box 120
Casper, Wyoming

George L. Verity
Verity, Burr, Cooley & Jones
Petroleum Center Building
Farmington, New Mexico

J. M. Durrett, Jr.
Attorney at Law
Oil Conservation Commission
State Land Office Bldg.
Santa Fe, New Mexico

Jason W. Kellahin
Kellahin & Fox
54½ E. San Francisco
Santa Fe, New Mexico

OIL CONSERVATION COMMISSION
P. O. BOX 871
SANTA FE, NEW MEXICO

March 31, 1964

COPY

Mr. Booker Kelley
Gilbert, White & Gilbert
Attorneys at Law
P. O. Box 787
Santa Fe, New Mexico

Re: El Paso Natural Gas Company, et al., vs. Oil Conservation Commission, et al., San Juan County, No. 11,685

Dear Booker:

I am enclosing herewith three copies of the Requested Findings of Fact and Conclusions of Law in the above case.

If you need additional copies, please let me know.

Very truly yours,

J. M. DURRETT, Jr.
Attorney

JMD/esr
Enclosures

OIL CONSERVATION COMMISSION
P. O. BOX 871
SANTA FE, NEW MEXICO

March 30, 1964

COPY

Honorable C. C. McCulloh
District Judge
County Courthouse
Aztec, New Mexico

Re: El Paso Natural Gas Company, et al., vs. Oil Conservation Commission, et al., San Juan County, No. 11,685

Dear Judge McCulloh:

I am enclosing herewith the Requested Findings of Fact and Conclusions of Law of Respondents Oil Conservation Commission, Texaco Inc., and Sunray DX Oil Company.

I am today mailing copies of the same to opposing counsel of record and Amicus Curiae.

Very truly yours,

J. M. DURRETT, Jr.
Attorney

JMD/esr
Enclosure

cc: Seth, Montgomery, Federici & Andrews
Santa Fe, New Mexico

Atwood & Malone
Roswell, New Mexico

Verity, Burr, Cooley & Jones
Farmington, New Mexico

Mr. W. A. Kelaher
and Mr. W. B. Kelaher
Albuquerque, New Mexico

OIL CONSERVATION COMMISSION
P. O. BOX 871
SANTA FE, NEW MEXICO

March 12, 1964

VIA AIR MAIL

Mr. Alfred Russell
New York World Telegram and Sun
125 Barclay Street
New York 15, New York

Re: El Paso Natural Gas Company
et al. v. Oil Conservation
Commission of New Mexico
et al.

Dear Mr. Russell:

In accordance with your request during our telephone conversation today, I am enclosing herewith a copy of the Commission's Trial Brief in the above case. Please return the Brief at your earliest convenience as our copies of the same are limited.

If you prepare an article concerning the case, I will be happy to read the same prior to publication if you so desire.

Please call upon us if we can be of further assistance to you.

Very truly yours,

J. M. DURRETT, Jr.
Attorney

JMD/esr
Enclosure

ATWOOD & MALONE
LAWYERS

JEFF D. ATWOOD (1883-1960)
ROSS L. MALONE
CHARLES F. MALONE
RUSSELL D. MANN
PAUL A. COOTER
BOB F. TURNER
ROBERT A. JOHNSON

P. O. DRAWER 700
TELEPHONE 505 622-6221
SECURITY NATIONAL BANK BUILDING
ROSWELL, NEW MEXICO
88201

FEBRUARY
24th
1964

Honorable Clyde C. McCulloh
Judge of the Eleventh Judicial District
Courthouse
Aztec, New Mexico

Re: El Paso Natural Gas Company, et al. v. Oil Conservation Commission of New Mexico, et al.
No. 11685, District Court of San Juan County

Dear Judge McCulloh:

On behalf of the various attorneys for the Petitioners in the above styled and numbered cause, I am enclosing herewith the Brief of Petitioners in support of the points upon which they will rely in this case which is set for trial on the merits on March 5, 1964.

Very truly yours,

Ross L. Malone

for ATWOOD & MALONE

R
L
M

*

v

Encls.

Cc: To all counsel for Petitioners and Respondents, with copy of Brief

GILBERT, WHITE AND GILBERT
ATTORNEYS AND COUNSELORS AT LAW
BISHOP BUILDING
SANTA FE, NEW MEXICO

CARL H. GILBERT (1891-1963)
L. C. WHITE
WILLIAM W. GILBERT
SUMNER S. KOCH
WILLIAM BOOKER KELLY
JOHN F. McCARTHY, JR.

POST OFFICE BOX 787
TELEPHONE 983-4324
(AREA CODE 505)

February 21, 1964

Honorable C. C. McCulloh
District Judge
San Juan County Courthouse
Aztec, New Mexico

Re: El Paso Natural Gas company, et al., vs.
Oil Conservation Commission, et al.
San Juan County No. 11665

Dear Judge McCulloh:

Enclosed please find Statement of Points Relied on by Intervenors, Texaco Inc. and Sunray DX Oil Company.

Copies of same have been forwarded to opposing counsel of record as of this date.

Sincerest regards,

L. C. WHITE

LCW/ab
Encls.

cc w/encl. to:

Mr. W. A. Keleher
Seth, Montgomery, Federici & Andrews
Atwood and Malone
Verity, Burr, Cooley & Jones
New Mexico Oil Conservation Commission, attn: Mr. J. M. Durrett, Jr.
Kellahin and Fox

KELLAHIN AND FOX
ATTORNEYS AT LAW
54½ EAST SAN FRANCISCO STREET
POST OFFICE BOX 1~~718~~ 1792
SANTA FE, NEW MEXICO

JASON W. KELLAHIN
ROBERT E. FOX

YUcca 3-9396
YUcca 2-2991

Feb. 18, 1964

Hon. C. C. McCulloh
District Judge
Eleventh Judicial District
San Juan County Courthouse
Aztec, New Mexico

Re: El Paso Natural Gas Co., et al., vs. Oil Conservation Commission, et al., No. 11,685
San Juan County

Dear Judge McCulloh:

Enclosed is motion of Southern Union Gas Company for leave to intervene in the above case as amicus curiae, together with order granting leaveto intervene.

A copy of this letter, motion and order, have been forwarded this date to opposing counsel of record in the case.

I would very much appreciate your advising me of date of enteryof the motion and order.

Yours very truly,

Jason W. Kellahin

JWK:ss
Encls.

COPY

OIL CONSERVATION COMMISSION
P. O. BOX 871
SANTA FE, NEW MEXICO

February 26, 1964

COPY

AIR MAIL - SPECIAL
DELIVERY

Mr. T. P. Stockmar
Holme, Roberts, More & Owen
Attorneys at Law
1700 Broadway
Denver 2, Colorado

Re: El Paso Natural Gas Company, et al., v. Oil Conservation Commission, et al., San Juan County, No. 11,685

Dear Ted:

I am enclosing herewith a copy of our brief in the above case.

If we are not able to get together before Wednesday, March 4, 1964, I will plan on being with you in Aztec on the night of March 4.

Very truly yours,

J. M. DURRETT, Jr.
Attorney

JMD/esr
Enclosure

AIR MAIL - SPECIAL
DELIVERY

OIL CONSERVATION COMMISSION
P. O. BOX 871
SANTA FE, NEW MEXICO

February 26, 1964

Mr. Emery C. Arnold
Supervisor, District 3
Oil Conservation Commission
1000 Rio Brazos Road
Aztec, New Mexico

Re: El Paso Natural Gas Company, et al., vs. Oil Conservation Commission, et al., San Juan County, No. 11,685

Dear Emery:

I am enclosing herewith a copy of our Trial Brief that we have filed with the Court in the above case. Will you please look this over and jot down any points that you think I might have overlooked or that would be helpful to me in argument to support the points raised in the Brief.

The case will be argued in Aztec on March 5, 1964. I tentatively plan to drive to Aztec on the morning of March 4 and would like to meet with you during the afternoon of March 4 to discuss my argument and the points that should be emphasized.

Very truly yours,

J. M. DURRETT, Jr.
Attorney

JMD/esr
Enclosure

OIL CONSERVATION COMMISSION
P. O. BOX 871
SANTA FE, NEW MEXICO

February 25, 1964

Honorable C. C. McCulloh
District Judge
County Courthouse
Aztec, New Mexico

Re: El Paso Natural Gas Company, et al., vs. Oil Conservation Commission, et al., San Juan County, No. 11,685

Dear Judge McCulloh:

I am enclosing herewith the Trial Brief of Respondents Oil Conservation Commission, Texaco Inc., and Sunray DX Oil Company.

I have mailed copies of the same to opposing counsel and Amicus Curiae on this date.

Very truly yours,

J. M. DURRETT, Jr.
Attorney

JMD/esr
Enclosure

cc: Seth, Montgomery, Federici & Andrews
Santa Fe, New Mexico

Atwood & Malone
Roswell, New Mexico

Verity, Burr, Cooley & Jones
Farmington, New Mexico

Mr. W. A. Keleher
and Mr. W. B. Keleher
Albuquerque, New Mexico

OIL CONSERVATION COMMISSION
P. O. BOX 871
SANTA FE, NEW MEXICO

February 18, 1964

Honorable C. C. McCulloh
District Judge
County Courthouse
Aztec, New Mexico

Re: El Paso Natural Gas Company, et al., vs. Oil Conservation Commission, et al., San Juan County, No. 11,685

Dear Judge McCulloh:

I am enclosing herewith a Statement of Points Relied on by Respondent, Oil Conservation Commission of New Mexico, in the above case.

I have forwarded a copy of the same to the opposing counsel of record on this date.

Very truly yours,

J. M. DURRETT, Jr.
Attorney

JMD/esr
Enclosure

cc: Seth, Montgomery, Federici & Andrews
Santa Fe, New Mexico

Atwood & Malone
Roswell, New Mexico

Verity, Burr, Cooley & Jones
Farmington, New Mexico

Mr. W. A. Keleher
and Mr. W. B. Keleher
Albuquerque, New Mexico

OIL CONSERVATION COMMISSION
P. O. BOX 871
SANTA FE, NEW MEXICO

February 14, 1964

Mr. Fred Young, Attorney
Texas Railroad Commission
Tribune Building
Austin, Texas

Dear Mr. Young:

I have noticed an article on Page 74 of the February 10, 1964, edition of the Oil & Gas Journal concerning a decision on January 31 by District Judge Charles O. Betts. It is my understanding that the Judge dismissed a suit by W. L. Pickens which attacked your allocation formula for the Fairway Field in East Texas.

We presently are defending a suit which attacks the validity of a Commission order establishing a new gas allocation formula for the Basin-Dakota Gas Pool in San Juan County, New Mexico. If Judge Betts entered a written opinion in the Pickens case, I certainly would appreciate a copy of the same. If briefs were filed, a copy of the Texas Railroad Commission's brief would also be extremely helpful to us in preparing our case. If you do not have extra copies of the above documents but could loan us a copy of each for a couple of days, we will be happy to reproduce the documents and return your copies immediately.

Any assistance you can give us will be greatly appreciated.

Very truly yours,

J. M. DURRETT, Jr.
Attorney

JMD/esr

37101

December 16, 1963

Hon. C. C. McCulloh
Judge of the District Court
San Juan County Courthouse
Aztec, N.M.

Re: El Paso Natural Gas Company et al
vs. Oil Conservation Commission et al

Dear Judge McCulloh:

Enclosed please find order prepared by Mr. J. J. Durrett, which has been approved by Mr. Kellahin and this office. Same is forwarded to you for your signature at Mr. Durrett's request.

Yours very truly,

(SIGNED) WILLIAM B. ...

WBK:jm

Enc.

cc: Mr. J. M. Durrett, Jr.

Mr. Jason W. Kellahin

OIL CONSERVATION COMMISSION
P. O. BOX 871
SANTA FE, NEW MEXICO

December 13, 1963

W. A. Keleher, John B. Tittmann
and William B. Keleher
Attorneys at Law
First National Bank Building, West
Albuquerque, New Mexico

Re: El Paso Natural Gas Company, et al.,
v. Oil Conservation Commission, et
al., San Juan County, No. 11,685

Gentlemen:

I have prepared and I am enclosing herewith an original and two copies of an Order denying the Petition to Intervene in the above cause. Mr. Kellahin has approved the Order for Consolidated Oil & Gas, Inc.

If the Order is satisfactory to you, will you please approve the same as to form and forward the original to the Judge for his signature, keeping the copies for your file.

Very truly yours,

J. M. DURRETT, Jr.
Attorney

JMD/esr
Enclosures

cc: Mr. Jason W. Kellahin
Attorney at Law
P. O. Box 1713
Santa Fe, New Mexico

OIL CONSERVATION COMMISSION
P. O. BOX 871
SANTA FE, NEW MEXICO

October 25, 1963

COPY

Honorable C. C. McCulloh
District Judge
County Courthouse
Aztec, New Mexico

Re: El Paso Natural Gas Company et al.
v. Oil Conservation Commission et
al., San Juan County, No. 11685

Dear Judge McCulloh:

We have received a copy of a Petition to Intervene in the above case filed by Pubco Petroleum Corporation. As we wish to oppose this petition, we would appreciate the Court setting this matter for hearing at the Court's convenience.

We estimate that one hour should be sufficient time for argument.

Very truly yours,

J. M. DURRETT, Jr.
Attorney

JMD/esr

cc: Mr. W. A. Keleher
and Mr. W. B. Keleher
Albuquerque, New Mexico

Seth, Montgomery, Federici & Andrews
Santa Fe, New Mexico

Atwood & Malone
Roswell, New Mexico

Verity, Burr, Cooley & Jones
Farmington, New Mexico

Gilbert, White & Gilbert
Santa Fe, New Mexico

KELLAHIN AND FOX
ATTORNEYS AT LAW
JASON W. KELLAHIN
ROBERT E. FOX
500 EAST SAN FRANCISCO STREET
POST OFFICE BOX 1713
SANTA FE, NEW MEXICO 87501
TELEPHONES
983-9396
982-2991

1963 OCT 25 AM 9 30

October 24, 1963

Honorable C. C. McCulloh
District Judge
Eleventh Judicial District
San Juan County Courthouse
Aztec, New Mexico

Re: El Paso Natural Gas Company, et al., vs. Oil Conservation Commission, et al., No. 11685, San Juan County.

COPY

Dear Judge McCulloh:

We have received copy of a petition to intervene in the above captioned case, filed on behalf of Pubco Petroleum Corporation.

As we desire to resist this petition on behalf of Consolidated Oil & Gas, Inc., we request that the matter be set for hearing at the Court's convenience.

Very truly yours,

JASON W. KELLAHIN

jwk:mas
cc - W. A. Keleher, John B. Tittmann & William B. Keleher
J. M. Durrett, Jr., Oil Conservation Commission
Gilbert, White & Gilbert
Seth, Montgomery, Federici & Andrews
Atwood and Malone
Verity, Burr, Cooley & Jones
T. P. Stockman

LAW OFFICES
OF
W. A. KELEHER
A. H. McLEOD
ATTORNEYS AND COUNSELLORS AT LAW
FIRST NATIONAL BANK BUILDING
ALBUQUERQUE, NEW MEXICO 87101

W. A. KELEHER
A. H. McLEOD
T. B. KELEHER
JOHN B. TITTMANN
RUSSELL MOORE
WILLIAM B. KELEHER
MICHAEL L. KELEHER

October 23, 1963

Oil Conservation Commission of New Mexico
Post Office Box 871
Santa Fe, New Mexico

Re: El Paso Natural Gas Co., et al
v. Oil Conservation Commission
of New Mexico, et al-No. 11685

Attention: James M. Durrett, Jr.
Attorney

Gentlemen:

Enclosed please find copy of Petition to Intervene, the original which has been mailed to the Clerk of San Juan District Court for filing in the above matter.

Yours very truly,

William B. Keleher

WBK:cjw

Enclosure

cc: Kellahin & Fox, Attorneys for
Consolidated Oil & Gas, Inc.
Gilbert, White and Gilbert, Attorneys for
Texaco, Inc.
Seth, Montgomery, Federici & Andrews,
Attorneys for El Paso Natural Gas Co.
Atwood and Malone, Attorneys for
Pan American Petroleum Corporation
Kent Hampton, Attorney for
Marathon Oil Company
Verity, Burn, Cooley & Jones, Attorneys for
Southwest Production Company

OIL CONSERVATION COMMISSION
P. O. BOX 871
SANTA FE, NEW MEXICO

COPY

September 25, 1963

Mrs. Virginia A. Kittell
Clerk of the District Court
County Court House
Aztec, New Mexico

Re: El Paso Natural Gas Company, et al., v. Oil Conservation Commission of New Mexico, et al., San Juan County, No. 11,685

Dear Mrs. Kittell:

I am enclosing herewith Entry of Appearance and Answer on behalf of the Oil Conservation Commission for filing in the above case.

Very truly yours,

J. M. DURRETT, Jr.
Special Assistant
Attorney General

JMD/esr
Enclosures

OIL CONSERVATION COMMISSION
P. O. BOX 871
SANTA FE, NEW MEXICO

September 25, 1963

COPY

Mr. Jason W. Kellahin
Kellahin & Fox
Attorneys at Law
P. O. Box 1713
Santa Fe, New Mexico

Re: El Paso Natural Gas Company, et al., v. Oil Conservation Commission of New Mexico, et al., San Juan County, No. 11,685

Dear Mr. Kellahin:

I am enclosing herewith an Entry of Appearance and an Answer to Petition for Review on behalf of Respondent, Oil Conservation Commission of New Mexico.

Very truly yours,

J. M. DURRETT, Jr.
Special Assistant
Attorney General

JMD/esr
Enclosures

OIL CONSERVATION COMMISSION
P. O. BOX 871
SANTA FE, NEW MEXICO

COPY

September 25, 1963

Mr. T. P. Stockmar
Holme, Roberts, More & Owen
Attorneys at Law
1700 Broadway
Denver 2, Colorado

Re: El Paso Natural Gas Company, et al., v. Oil Conservation Commission of New Mexico, et al., San Juan County, No. 11,685

Dear Mr. Stockmar:

I am enclosing herewith an Entry of Appearance and an Answer to Petition for Review on behalf of Respondent, Oil Conservation Commission of New Mexico.

Very truly yours,

J. M. DURRETT, Jr.
Special Assistant
Attorney General

JMD/esr
Enclosures

OIL CONSERVATION COMMISSION
P. O. BOX 871
SANTA FE, NEW MEXICO

September 25, 1963

COPY

Keleher & McLeod
Attorneys at Law
First National Bank Building
Albuquerque, New Mexico

Re: El Paso Natural Gas Company, et al., v. Oil Conservation Commission of New Mexico, et al., San Juan County, No. 11,685

Gentlemen:

I am enclosing herewith an Entry of Appearance and an Answer to Petition for Review on behalf of Respondent, Oil Conservation Commission of New Mexico.

Very truly yours,

J. M. DURRETT, Jr.
Special Assistant
Attorney General

JMD/esr
Enclosures

OIL CONSERVATION COMMISSION
P. O. BOX 871
SANTA FE, NEW MEXICO

COPY

September 25, 1963

Verity, Burr, Cooley & Jones
Attorneys at Law
152 Petroleum Center Building
Farmington, New Mexico

Re: El Paso Natural Gas Company, et al., v. Oil Conservation Commission of New Mexico, et al., San Juan County, No. 11,685

Gentlemen:

I am enclosing herewith an Entry of Appearance and an Answer to Petition for Review on behalf of Respondent, Oil Conservation Commission of New Mexico.

Very truly yours,

J. M. DURRETT, Jr.
Special Assistant
Attorney General

JMD/esr
Enclosures

OIL CONSERVATION COMMISSION
P. O. BOX 871
SANTA FE, NEW MEXICO

September 25, 1963

COPY

Seth, Montgomery, Federici & Andrews
Attorneys at Law
P. O. Box 828
Santa Fe, New Mexico

Re: El Paso Natural Gas Company, et al., v. Oil Conservation Commission of New Mexico, et al., San Juan County, No. 11,685

Gentlemen:

I am enclosing herewith an Entry of Appearance and an Answer to Petition for Review on behalf of Respondent, Oil Conservation Commission of New Mexico.

Very truly yours,

J. M. DURRETT, Jr.
Special Assistant
Attorney General

JMD/esr
Enclosures

OIL CONSERVATION COMMISSION
P. O. BOX 871
SANTA FE, NEW MEXICO

September 25, 1963

COPY

Mr. Ben Howell and
Mr. Garrett C. Whitworth
Attorneys for El Paso Natural Gas Company
P. O. Box 1492
El Paso, Texas

Re: El Paso Natural Gas Company, et al., v. Oil Conservation Commission of New Mexico, et al., San Juan County, No. 11,685

Gentlemen:

I am enclosing herewith an Entry of Appearance and an Answer to Petition for Review on behalf of Respondent, Oil Conservation Commission of New Mexico.

Very truly yours,

J. M. DURRETT, Jr.
Special Assistant
Attorney General

JMD/esr
Enclosures

OIL CONSERVATION COMMISSION
P. O. BOX 871
SANTA FE, NEW MEXICO

September 25, 1963

COPY

Tidewater Oil Company
P. O. Box 1404
Houston 1, Texas

Attention: Mr. Clyde E. Willbern

Re: El Paso Natural Gas Company, et al., v. Oil Conservation Commission of New Mexico, et al., San Juan County, No. 11,685

Gentlemen:

I am enclosing herewith an Entry of Appearance and an Answer to Petition for Review on behalf of Respondent, Oil Conservation Commission of New Mexico.

Very truly yours,

J. M. DURRETT, Jr.
Special Assistant
Attorney General

JMD/esr
Enclosures

OIL CONSERVATION COMMISSION
P. O. BOX 871
SANTA FE, NEW MEXICO

COPY

September 25, 1963

Atwood & Malone
Attorneys at Law
P. O. Drawer 700
Roswell, New Mexico

Re: El Paso Natural Gas Company, et al., v. Oil Conservation Commission of New Mexico, et al., San Juan County, No. 11,685

Gentlemen:

I am enclosing herewith an Entry of Appearance and an Answer to Petition for Review on behalf of Respondent, Oil Conservation Commission of New Mexico.

Very truly yours,

J. M. DURRETT, Jr.
Special Assistant
Attorney General

JMD/esr
Enclosures

State of New Mexico
Eleventh Judicial District Court
Aztec

MAIN OFFICE OCC
1963 SEP 20 PM 1:32

CHAMBERS OF
C. C. McCULLOH
JUDGE, DIV. 1

TELEPHONE FE 4-6151

September 18, 1963

3346151

Oil Conservation Commission
State Capitol
Santa Fe, New Mexico
Att: Mr. J. M. Durrett, Jr.

Keleher and McLeod
Attorneys at Law
First National Bank Building
Albuquerque, New Mexico
Att: Mr. John B. Tittman

Mr. Jason Kellahin
Attorney at Law
P.O. Box 1713
Santa Fe, New Mexico

Verity, Burr, Cooley & Jones
Attorneys at Law
Petroleum Center Building
Farmington, New Mexico
Att: Mr. George Verity

Re: Pubco Petroleum Corporation vs. Oil Conservation Commission, et al, No. 11637, San Juan County,
and
El Paso Natural Gas Company, et al, vs. Oil Conservation Commission, et al, No. 11685, San Juan County.

Gentlemen:

The above-entitled causes have been set for hearing on pending motions at 9:00 A.M., Friday, October 4, 1963, at Aztec.

Very truly yours,

C. C. McCULLOH
District Judge

CCM:vf

Tidewater Oil Company

September 5, 1963

Clerk of the District Court
of San Juan County
County Court House
Aztec, New Mexico

Dear Sir:

Re: El Paso Natural Gas Company, et al., v. Oil Conservation Commission of New Mexico, et al., No. 11,685 District Court of San Juan County, New Mexico

Enclosed please find the Answer of Tidewater Oil Company, one of the named Adverse Parties in the captioned cause, which we would appreciate your filing in this suit.

Very truly yours,

ORIGINAL SIGNED BY:
CLYDE E. WILLBERN

Clyde E. Willbern

JLB:cc
cc: To all parties listed on attached list.

ADDRESS LIST

Anderson, Bruce, Oil & Gas Properties
930 Petroleum Club Building
Denver 2, Colorado

Amerada Petroleum Corporation
P. O. Drawer 601
Durango, Colorado

Beard Oil Company
Cameron Building
2901 Classen Blvd.
Oklahoma City, Oklahoma

Consolidated Oil & Gas, Inc.
P. O. Box 2038
Farmington, New Mexico

Continental Oil Company
P. O. Box 3312
Durango, Colorado

El Paso Natural Gas Company
P. O. Box 1560
Farmington, New Mexico

Humble Oil & Refining Company
P. O. Box 3082
Durango, Colorado

Kimbell, Kay, Oil Company
415 South Behrend Ave.
Farmington, New Mexico

Marathon Oil Company
1211 Main Avenue
Durango, Colorado

Oil Conservation Commission of New Mexico
Santa Fe, New Mexico
Attention Mr. Jack M. Campbell, Chairman
Mr. E. S. Walker, Member
Mr. A. L. Porter, Jr., Member and Secretary

Pan American Petroleum Corporation
P. O. Box 480
Farmington, New Mexico

R & G Drilling Co.
208 West Main
Farmington, New Mexico

Skelly Oil Company
P. O. Drawer 510
Farmington, New Mexico

Southern Union Gas Company
P. O. Box 750
Farmington, New Mexico

Southwest Production Company
Petroleum Club Plaza
Farmington, New Mexico

Sunray Mid-Continent Oil Company
200 Petroleum Club Plaza
Farmington, New Mexico

Sunset International Petroleum Corporation
501 Midland Savings Building
Denver 2, Colorado

Texaco Inc.
P. O. Box 810
Farmington, New Mexico

The Atlantic Refining Company
P. O. Box 2197
Farmington, New Mexico

The Frontier Refining Company
4040 East Louisiana Avenue
Denver, Colorado

The United States Geological Survey
616 South Boston Avenue
Tulsa, Oklahoma

STATE OF NEW MEXICO COUNTY OF SAN JUAN

IN THE DISTRICT COURT

EL PASO NATURAL GAS COMPANY, a corporation, PAN AMERICAN PETROLEUM CORPORATION, a corporation, MARATHON OIL COMPANY, a corporation, SOUTHWEST PRODUCTION COMPANY, a partnership, and SUNSET INTERNATIONAL PETROLEUM CORPORATION, a corporation,

Petitioners,

vs. No. 11,685

OIL CONSERVATION COMMISSION OF NEW MEXICO, JACK M. CAMPBELL, Chairman, E. S. WALKER, Member, A. L. PORTER, JR., Member and Secretary, CONSOLIDATED OIL & GAS, INC., a corporation,

Respondents.

TRIAL BRIEF OF RESPONDENTS

OIL CONSERVATION COMMISSION, TEXACO INC., AND SUNRAY DX OIL COMPANY

J. M. Durrett, Jr.
Special Assistant
Attorney General
Santa Fe, New Mexico

Attorney for Respondent, Oil Conservation Commission

Gilbert, White & Gilbert
Santa Fe, New Mexico

Attorneys for Texaco Inc., and Sunray DX Oil Company

INDEX

TABLE OF AUTHORITIES

CASES

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TREATISES

STATEMENT OF THE CASE

On February 23, 1962, Consolidated Oil & Gas, Inc., filed an application with the New Mexico Oil Conservation Commission seeking the establishment of a gas allocation formula for the Basin-Dakota Gas Pool based 60 percent on acreage and 40 percent on acreage times deliverability. The Commission docketed the case to be heard on March 14, 1962. At the March 14 hearing appearances were entered, preliminary statements were made, and the case was continued to April 18, 1962. (Mar. Tr.)* On April 18 additional appearances were entered, the Commission heard opening statements, heard testimony and received evidence in favor of and in opposition to the application, and heard closing argument of counsel. (Apr. Tr.) On June 7, 1962, the Commission issued Order No. R-2259 which denied the application. Consolidated Oil & Gas, Inc., filed a Petition for Rehearing on June 27, 1962, and on July 7, 1962, the Commission issued Order No. R-2259-A which granted a rehearing limiting the scope of the rehearing to matters concerning recoverable gas reserves in the Basin-Dakota Gas Pool. On August 15, 1962, the rehearing was continued to September 13, 1962. (Aug. Tr.) On September 13 the Commission heard argument on objections to granting of the order for rehearing and on a motion to vacate, and denied the objections and the motion. (Sept. Tr. 1-29). The Commission also heard argument on motions to quash subpoenas duces tecum that had been issued by the Commission and continued the case to the regular November hearing. (Sept. Tr. 29-74). On October 18, 1962, the Commission issued a Ruling On Motions To Quash Subpoenas Duces Tecum. The ruling ordered subpoenaed persons, subject to a determination of custody

*Reference will be made to the transcript of proceedings before the Commission by month of the hearing.

and control, to produce all core analysis reports and all electric and radioactivity logs concerning any and all wells that had been cored in the Basin-Dakota Gas Pool by their respective companies. At the hearing on November 14, 1962, it was stipulated that the Commission's Ruling on Motions to Quash Subpoenas Duces Tecum would be complied with and the case was continued to December 19, 1962. (Nov. Tr.) On December 19 the case was continued to February 14, 1963. (Dec. Tr.) On February 14, 1963, appearances were entered, counsel presented opening statements, the Commission heard testimony and received evidence in support of and in opposition to the application, and counsel presented closing argument. (Feb. Tr.) On July 3, 1963, the Commission issued Order No. R-2259-B, which superseded Order No. R-2259, and established an allocation formula for the Basin-Dakota Gas Pool based 60 percent on acreage and 40 percent on acreage times deliverability. Applications for Rehearing were filed by the Petitioners in this case and on August 1, 1963, the Commission issued Order No. R-2259-C which denied the Applications for Rehearing. Petitions for Review were filed with this Court by El Paso Natural Gas Company, Pan American Petroleum Corporation, Marathon Oil Company, Southwest Production Company, and Sunset International Petroleum Corporation.

STATEMENT OF THE FACTS

On November 4, 1960, the New Mexico Oil Conservation Commission issued Order No. R-1670-C. This order established Special Rules and Regulations for the Basin-Dakota Gas Pool in San Juan, Rio Arriba, and Sandoval Counties, New Mexico, and adopted, by reference, Rule 9(C) of the General Rules applicable to prorated gas pools in Northwest New Mexico as set forth in Order No. R-1670. Rule 9(C) of Order No. R-1670 allocates gas production from prorated gas pools in Northwest New Mexico on

the basis of 25 percent acreage plus 75 percent acreage times deliverability. Until August 1, 1963, the effective date of Order No. R-2259-B, the allocation of the allowable production of gas from the Basin-Dakota Gas Pool was determined by a formula of 25 percent acreage plus 75 percent acreage times deliverability. Since the effective date of Order No. R-2259-B, the allocation of allowable gas production in the Basin-Dakota Gas Pool has been determined by a formula of 60 percent acreage plus 40 percent acreage times deliverability. The validity of Order No. R-2259-B is the subject matter of this appeal.

Order No. R-2259-B granted an application by Consolidated Oil & Gas, Inc., which sought the establishment of an allocation formula for the Basin-Dakota Gas Pool based 60 percent on acreage and 40 percent on acreage times deliverability. Consolidated's application was filed with the Commission on February 23, 1962, and docketed by the Commission as Case No. 2504 to be heard on March 14, 1962. The case was continued to April 18, 1962, and heard by the Commission on that date. (Apr. Tr.) On June 7, 1962, the Commission issued Order No. R-2259 which found that the evidence presented at the hearing of the case concerning recoverable gas reserves in the pool was insufficient to justify any change in the allocation formula and denied the application, retaining jurisdiction for the entry of such further orders as the Commission might deem necessary. On June 27, 1962, Consolidated Oil & Gas, Inc., filed a Petition for Rehearing, and on July 7, 1962, the Commission issued Order No. R-2259-A which found that a rehearing should be granted and that the scope of the rehearing should be limited to matters concerning recoverable gas reserves in the pool. Order No. R-2259-A granted a rehearing, set the same for August 15, 1962, and limited the scope of the rehearing to matters concerning recoverable gas reserves in the Basin-Dakota Gas Pool. The rehearing was subsequently continued

to February 14, 1963. On February 14, 1963, the Commission re-heard Case No. 2504. (Feb. Tr.) On July 3, 1963, the Commission issued Order No. R-2259-B. By Order No. R-2259-B, the Commission superseded Order No. R-2259, which had denied Consolidated's application, and amended the Special Rules and Regulations for the Basin-Dakota Gas Pool as promulgated by Order No. R-1670-C. The new formula allocated the allowable assigned to non-marginal wells in the following manner:

1. Forty percent in the proportion that each well's acreage times deliverability factor bears to the total of the acreage times deliverability factors for all non-marginal wells in the pool.

2. Sixty percent in the proportion that each well's acreage factor bears to the total of the acreage factors for all non-marginal wells in the pool.

In Order No. R-2259-B, the Commission determined, in million cubic feet, the initial recoverable gas reserves underlying each non-marginal tract in the Basin-Dakota Gas Pool. (Finding No. 6). The Commission also determined the total initial recoverable gas reserves in the Basin-Dakota Gas Pool and the amount which was attributed to marginal wells which were permitted to produce at capacity. (Finding No. 5). The percent of total pool reserves attributable to each non-marginal tract in the pool was then determined. (Finding No. 7). The Commission found that it was not practicable to allocate production solely on the basis of each well's percentage of pool reserves because of the continuous fluctuation in reserve computations resulting from new completions in the pool and the re-evaluation of reserves attributed to existing wells. (Finding No. 8). A tract acreage factor for each non-marginal well in the pool and the deliverability for each non-marginal well was determined. (Finding No. 9). The Commission concluded that neither acreage nor deliverability should be used as the sole criterion for allocating production as it found that there was no direct correlation between deliverability and reserves, or acreage and reserves. (Finding No. 10). The

Commission concluded that the most reasonable basis for allocating production in the Basin-Dakota Gas Pool was to determine, for each proposed formula, the percentage of total pool allowable apportioned to each non-marginal tract as compared to its percentage of total pool reserves, and to select the allocation formula that would allow the maximum number of wells in the pool to produce with an ideal ratio of 1.0, or with a ratio of from 0.7 to 1.3, which the Commission found was reasonable due to inherent variance in interpreting and computing reserves. (Finding No. 11). The Commission determined that the number of wells in the pool producing with a desired ratio was affected by the percentage of deliverability and the percentage of acreage included in the formula. (Finding No. 12). The Commission also determined that correlative rights were not being adequately protected under the formula then in effect and concluded that the protection of correlative rights is a necessary adjunct to the prevention of waste, and that waste would result unless the Commission acted to protect correlative rights. (Finding No. 13). The Commission identified each non-marginal well producing with the desired ratio under each formula by an asterisk in Columns G and J of Exhibit A of Order No. R-2259-B. The Commission then found that a comparison of the total number of wells producing with the desired ratio under each formula and the total volume of gas allocated to the wells producing with the desired ratio under each formula established that the proposed formula of 60 percent acreage plus 40 percent acreage times deliverability would more adequately protect correlative rights and prevent waste by permitting more wells to receive their just and equitable share of the gas in the pool. (Finding No. 14). The Commission found that numerous wells in the pool were capable of draining more than their just and equitable share of the gas and concluded that the proposed formula would prevent drainage between producing tracts which was not equalized by counter

drainage. (Finding No. 15). The Commission also concluded that the proposed formula would afford to the owner of each property in the pool the opportunity to use his just and equitable share of the reservoir energy (Finding No. 16) and that Order No. R-1670-C should be amended to provide an allocation formula based 60 percent on acreage and 40 percent on acreage times deliverability. (Finding No. 17).

Following the issuance of Order No. R-2259-B, the Petitioners in this case filed Applications for Rehearing in Case No. 2504. On August 1, 1963, the Commission issued Order No. R-2259-C which found that the Applications for Rehearing did not allege that the applicants for rehearing had new or additional evidence to present, that the Commission had carefully considered the evidence presented in the case and was fully advised in the premises, and that Order No. R-2259-B was proper in all respects. Order No. R-2259-C denied the Applications for Rehearing and this appeal followed.

ARGUMENT AND AUTHORITIES

POINT I

THE ORDER IS PRIMA FACIE VALID AND THE PETITIONERS HAVE THE BURDEN OF ESTABLISHING THAT THE ACTION OF THE COMMISSION WAS FRAUDULENT, ARBITRARY OR CAPRICIOUS, THAT THE ORDER WAS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE, OR THAT THE COMMISSION DID NOT ACT WITHIN THE SCOPE OF ITS AUTHORITY.

The Court's attention is called to Section 65-3-22, NMSA, 1953 Comp., which provides that, on appeal, "The commission 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 Commission." The Legislature has specifically delegated to the Commission the duty of prorating

or distributing the allowable production from prorated gas pools upon a reasonable basis and recognizing correlative rights. Section 65-3-13(c), NMSA, 1953 Comp. The Commission purported to follow the legislative mandate by the issuance of Order No. R-2259-B. As the Court cannot substitute its discretion for that of the Commission, the presumption of the validity of the Commission's order prevails and cannot be overcome unless Petitioners clearly show that the Commission acted fraudulently, arbitrarily or capriciously, that the order was not supported by substantial evidence, or that the Commission did not act within the scope of its authority. Johnson v. Sanchez, 67 N.M. 41, 351 P.2d 449 (1960); Continental Oil Company et al. v. Oil Conservation Commission et al., 70 N.M. 310, 373 P.2d 809 (1962). Petitioners have alleged that Orders No. R-2259-B and No. 2259-C are erroneous in many respects. We submit that these orders are not erroneous and that a mere showing that the orders were erroneous would not overcome the presumption of the validity of the orders. In order to set the Commission's action aside, the Petitioners must clearly show that the action of the Commission was fraudulent, arbitrary or capricious, that the order was not supported by substantial evidence, or that the Commission did not act within the scope of its authority. Plummer v. Johnson and Continental Oil Company et al. v. Oil Conservation Commission et al., supra.

POINT II

THE LACK OF A SPECIFIC FINDING THAT WASTE IS OCCURRING UNDER AN EXISTING GAS ALLOCATION FORMULA DOES NOT INVALIDATE AN ORDER ESTABLISHING A NEW FORMULA; IN THE ALTERNATIVE, THE ORDER CONTAINS FINDINGS THAT WASTE WAS OCCURRING UNDER THE PRIOR GAS ALLOCATION FORMULA.

In considering the Petitioners' allegation that the order

is unreasonable and unlawful because it does not contain a finding that waste was occurring under the original formula, the Court should note Ferguson-Steere Motor Company v. State Corporation Commission, 60 N.M. 114, 117, 288 P.2d 440, wherein the Court said:

> "If findings, or more adequate findings, by the administrative board or commission be desired, a duty rests on the party complaining of their absence to have made a request for them."

It is pointed out that the Petitioners did not submit such a finding and that they did not tender any requested findings to the Commission at any stage of the proceedings.

The legislative mandate concerning allocation of allowable gas production is set out in Section 65-3-13(c), NMSA, 1953 Comp., wherein the Commission is directed to "allocate the allowable production among the gas wells in the pool delivering to a gas transportation facility upon a reasonable basis and recognizing correlative rights." There is no legislative mandate that the Commission make a specific finding that waste is occurring in order to issue a valid order allocating production. In this connection it should be noted that the New Mexico Supreme Court has stated that it is not necessary for the Commission to make formal and elaborate findings. Continental Oil Company et al. v. Oil Conservation Commission et al., supra.

If a finding that waste is occurring under an existing gas allocation formula is necessary to issue a valid order establishing a new formula, it is submitted that the order did contain such a finding. Finding No. 13 of Order No. R-2259-B reads as follows:

> "That under the present 25-75 formula, correlative rights are not being adequately protected; that the protection of correlative rights is a necessary adjunct to the prevention of waste, and that waste will result unless the Commission acts to protect correlative rights."

In commenting on the Commission's duty to protect correlative rights, the New Mexico Supreme Court has said:

> "The prevention of waste is of paramount interest, and protection of correlative rights is interrelated and inseparable from it. The very definition of 'correlative rights' emphasizes the term 'without waste.' However, the protection of correlative rights is a necessary adjunct to the prevention of waste. Waste will result unless the commission can also act to protect correlative rights."

As the Commission concluded that waste would result unless the Commission acted to protect correlative rights, it necessarily follows that waste was occurring under the existing gas allocation formula.

In Finding No. 14 the Commission concluded that the proposed formula would more adequately protect correlative rights and prevent waste by permitting more wells to receive their just and equitable share of the gas in the pool. It also is obvious from this finding that if waste was to be prevented, waste was occurring under the existing formula.

Respondents submit that although Findings No. 13 and No. 14 may not be formal and elaborate findings they are sufficient findings that waste was occurring under the ruling in the Continental case, supra.

In any event it should be pointed out that Order No. R-2259-B merely amends Order No. R-1670-C by the addition of a paragraph providing for the application of a new proration formula based on 60 percent acreage plus 40 percent deliverability. In all other respects Order No. R-1670-C remains in full force and effect. It also contains all necessary findings concerning the prevention of waste. In Finding No. 3 of Order No. R-1670-C, the Commission stated:

> "That the producing capacity of the wells in the Dakota Producing Interval is in excess of the market demand for gas from said common source of supply, and that for the purpose of preventing waste and protecting correlative rights, appropriate procedures should be adopted to provide a method of allocating gas among proration units in the area encompassed by the Dakota Producing Interval, commencing February 1, 1961."

This finding, predicated on Section 65-3-3(e), NMSA,

1953 Comp., is all the finding needed to authorize the action of the Commission, and constitute a statutory, jurisdictional finding on the part of the Commission. It has not been abrogated or rescinded.

POINT III

THE LACK OF A SPECIFIC FINDING THAT A CHANGE OF CONDITION HAS OCCURRED DOES NOT INVALIDATE AN ORDER CHANGING A GAS ALLOCATION FORMULA; IN THE ALTERNATIVE, THE ORDER CONTAINS FINDINGS THAT A CHANGE OF CONDITION HAD OCCURRED REQUIRING A CHANGE IN THE FORMULA.

The finality of a Commission order must be considered in determining whether or not a finding that a change of conditions had occurred was necessary in order to issue a valid proration order. The legislative function of the Commission must be considered in determining the finality of a Commission order. In discussing the legislative character of a conservation order, Williams, in Nature and Effect of Conservation Orders, Eighth Annual Rocky Mountain Mineral Law Institute, 433, 439, states:

> "The legislature, acting through the regulatory agency, has assumed the continuing responsibility to prevent waste or protect correlative rights. The regulatory agency, therefore, cannot by a so-called final order today preclude itself from modifying or setting such order aside next week, or at any time in the future, if, for any reason, it finds at such future time that the order should be set aside or modified to prevent waste or protect correlative rights. Just as a regulatory agency, while acting to prevent waste or to protect correlative rights, can disturb and change rights which were fixed and vested at the time the original conservation order was entered, it can likewise later disturb and change rights established by the original order if such change is necessary to accomplish the same objective."

The necessity of a showing of a change in conditions has been raised in several cases concerning the validity of conservation orders. The question was raised in Delaney et al. v. Osborn,

265 P.2d 481, 484, (Okla. 1953), which attacked the validity of a Commission order amending an order establishing a gas-oil ratio in a pool. In affirming the action of the Commission, the Court stated:

> "We find no merit in respondents' contention that the commission was without authority to modify its previous order. This contention is based upon a fallacious conception that where the commission has once acted it is impotent to act again."

In re Application of Peppers Refining Company, 272 P.2d 416, 424, (Okla. 1954), reversed a Commission order which had denied an application for exceptions to a spacing order. The Commission based its denial upon a finding that the evidence introduced by the applicant was insufficient to indicate any substantial change in the facts considered by the Commission in the granting of the original spacing orders. The Court said:

> "To hold that the commission could never modify a well spacing pattern established by a previous order not appealed from, upon a showing of characteristics about a common source of supply, and the withdrawls therefrom, that were not known or anticipated at the time of the original order, would 'tie the hands' of the commission and often prevent it from performing its statutory duties under our Oil and Gas Conservation Act."

It should be noted, in connection with this case, that if a showing of change in conditions was required, the Court held that changed conditions include a change in knowledge of conditions as they actually existed at the time of the prior order. Although Respondents submit that no change in conditions is necessary to issue a valid order reallocating gas production, if the Court should determine that such a showing is necessary, the Commission's findings and the evidence to support the same certainly establish that there was a change in knowledge of conditions as they actually existed at the time of the prior order.

The question of the necessity of a change in conditions was also raised in Southern Oklahoma Royalty Owners Association v. Stanolind Oil & Gas Company et al., 266 P.2d 633, 637,

(Okla. 1954), another case concerning exceptions to spacing rules, wherein the Court stated:

> "No change of conditions need be shown. The problem could not be decided before it arose; it was only after drilling the wells that the information was obtained upon which the applications are based. It was contemplated by the Legislature in providing for exceptions to be made upon application, notice, and hearing that problems would arise from time to time in the development of a field which would require amendment or readjustment of the original spacing and drilling unit order."

In Sinclair Oil & Gas Company v. Corporation Commission, 378 P.2d 947, 954, (Okla 1963), a recent case involving the validity of a gas allocation order, the Court said:

> "We know of no sound reason why the Commission should any more be prevented from changing a common source of supply (in an orderly and legally prescribed manner) from one allowable formula to another (which in the light of changing conditions and more and better knowledge about the reservoir will more likely fulfill the objects of waste prevention and protection of correlative rights) than it is prevented from changing well-spacing sizes and/or patterns, or well-spaced areas, in the light of new knowledge accumulated by the progressive development of such reservoirs."

The rule in Texas is well established. In Railroad Commission et al. v. Humble Oil & Refining Company et al, 193 S.W.2d 824, 828, (Tex 1946), the Court stated:

> "The commission's power to regulate oil production in the interest both of conservation and of protecting correlative rights is a continuing one and its proration orders are subject to change, modification or amendment at any time upon due notice and hearing, either upon the commission's own motion or upon application of an interested party. This principal is now so well established as to require no citation of authority."

Also see Railroad Commission et al. v. Phillips et al., 364 S.W.2d 408, (Tex. 1963), and Railroad Commission et al. v. Aluminum Company, 368 S.W.2d 818, (Tex. 1963).

Williams, in Nature and Effect of Conservation Orders, supra at 444, makes the following statement:

> "To say that an agency having made an order is powerless to change or set it aside, however erroneous or ill-advised it may have been, is to deny the continuing authority and responsibility of the agency to prevent waste or to protect correlative rights."

The Court's attention is also called to the prospective nature of a Commission order and specifically the order in question. The Commission's powers are legislative in nature and derived solely from the authority conferred by the Legislature. Continental Oil Company et al. v. Oil Conservation Commission et al., supra. Just as no one would contend that the Legislature could not change or appeal its legislative enactments at any time for any reason, the same must, of necessity, be true of a regulatory agency acting under delegated legislative authority. Williams, in Nature and Effect of Conservation Orders, supra.

Although Respondents strongly urge that the weight of authority supports the proposition that a specific finding concerning a change of conditions is not necessary to issue a valid order establishing a new gas allocation formula, it is submitted that the order in question contains sufficient findings to establish that a change of conditions had occurred.

Finding No. 8 indicates that there have been new completions in the pool causing fluctuation in reserve computations and that the reserves of existing wells have been re-evaluated. It is submitted that this constitutes a change in knowledge of underground conditions which would be sufficient to meet a requirement concerning a change in conditions. In Re Application of Peppers Refining Company, supra and Sinclair Oil & Gas Company v. Corporation Commission, supra.

In Finding No. 13, the Commission determined that under the 25-75 formula correlative rights were not being adequately protected and concluded that waste would result unless the Commission acted to protect correlative rights. As it must be assumed

that the original formula protected correlative rights and prevented waste at the time it was adopted by the Commission, it necessarily follows that conditions had changed if the original formula was not adequately protecting correlative rights and preventing waste. A reading of Finding No. 14 leads to the same conclusion as the Commission determined that the 60-40 formula would permit more wells to receive their just and equitable share of the gas in the pool.

In Finding No. 15, the Commission determined that numerous wells in the pool were capable of draining more than their just and equitable share of the gas in the pool. The only reasonable inference that can be drawn from this finding is that a change in conditions had occurred concerning the number of wells in the pool that were capable of draining more than their just and equitable share of the gas.

Respondents submit that if a finding that a change of condition had occurred was necessary, any of the above findings will satisfy the requirement and, if not, the above findings combined clearly establish that a change of condition had occurred requiring a change in the formula.

POINTS IV AND V

THE ORDER CONTAINS THE BASIC FINDINGS OF JURISDICTIONAL FACTS REQUIRED BY STATUTE; IT ALSO CONTAINS FINDINGS WHICH MEET THE STATUTORY REQUIREMENTS FOR A VALID ALLOCATION OF GAS PRODUCTION.

As the above points are believed to be synonymous, they will be discussed together in the interest of orderly presentation.

Some discussion concerning the general requirements placed upon a regulatory agency to make findings of fact would seem appropriate prior to an analysis of the specific order in

question. The Court's attention is again called to Ferguson-Steere Motor Company v. State Corporation Commission, supra, wherein the Court held that the duty rests on the party complaining of the adequacy of findings to have made a request for them.

The Court's attention is called to the fact that there is no statutory requirement that the Oil Conservation Commission make findings of fact. It has been held that in the absence of such a legislative mandate, an administrative agency need name no findings of fact. Saporiti v. Zoning Board, 137 Conn. 470, 78 A.2d 741 (1951). It also has been held that necessary findings of fact will be implied in orders of the Oil & Gas Division of the Texas Railroad Commission. Corzelius v. Harrell, 143 Tex. 509, 186 S.W.2d 961 (1945). Respondents do not strongly contend that it is not necessary for the Commission to make findings of fact as we are aware that such findings enable the Court to intelligently review the agency decision by ascertaining whether the facts provided a reasonable basis for the agency's action and they enable the Court to determine whether the decision was based upon proper legal principles and supported by substantial evidence. Swars v. Council of City of Vallejo, 33 Cal.2d 867, 206 P.2d 355 (1949); Securities and Exchange Commission v. Chenery Corp., 318 U.S. 80, 63 S.Ct. 454, 87 L.Ed. 626 (1942). However, it is strongly urged that every inference should be drawn in favor of the sufficiency of the findings, particularly in view of the legislative determination in Section 65-3-22(b), NMSA, 1953 Comp., that the order is prima facie valid. In Continental Oil Company et al. v. Oil Conservation Commission et al., supra at 320, the New Mexico Supreme Court set out the findings necessary to issue a valid gas allocation order and stated:

> "Lacking such findings, or their equivalents, a supposedly valid order in current use cannot be replaced." (Emphasis added.)

The Court also stated in the Continental case, supra, that formal and elaborate findings are not absolutely necessary.

In Sinclair Oil & Gas Company v. Corporation Commission, supra at 856, a recent case involving the validity of a gas allocation order, the Court stated:

> "We think it would have been impractical, and would have added nothing to the validity of the order, if the Commission had undertaken to detail therein the many considerations that went into making up the findings announced therein. We think the Order's findings are sufficient under the circumstances here."

The Court's attention is also called to a recent Kansas case involving the validity of a gas allocation order, Colorado Interstate Gas Co. v. State Corporation Commission, 386 P.2d 266, 280, (Kan. 1963), wherein the Court said:

> "What facts are to be considered and the relative weight to be accorded them are matters left to the Commission's discretion."

To properly evaluate the sufficiency of the findings of fact contained in the order, it is necessary to examine the applicable statutes to determine the legislative mandate and intent concerning allocation of gas production. Section 65-3-13(c), NMSA, 1953 Comp., is the basic statute concerning allocation of allowable gas production in a field or pool. The statute provides:

> "Whenever, to prevent waste, the total allowable natural gas production from gas wells producing from any pool in this state is fixed by the commission in an amount less than that which the pool could produce if no restrictions were imposed, the commission shall allocate the allowable production among the gas wells in the pool delivering to a gas transportation facility upon a reasonable basis and recognizing correlative rights, and shall include in the proration schedule of such pool any well which it finds is being unreasonably discriminated against through denial of access to a gas transportation facility which is reasonably capable of handling the type of gas produced by such well. In protecting correlative rights, the commission may give equitable consideration to acreage, pressure, open flow, porosity, permeability, deliverability and quality of the gas and to such other pertinent factors as may from time to time exist, and in so far as is

> practicable, shall prevent drainage between producing tracts in a pool which is not equalized by counter-drainage . . . ."

It should be noted that the duty imposed upon the Commission by the above statute is to "allocate the allowable production among the gas wells in the pool delivering to a gas transportation facility upon a reasonable basis and recognizing correlative rights." (Emphasis added.) Respondents submit that the order certainly contains a finding that the proposed 60-40 formula will allocate production upon a reasonable basis. Finding No. 11 specifically states that the most reasonable basis for allocating production in the pool is to determine for each proposed formula the percentage of total pool allowable apportioned to each non-marginal tract as compared to its percentage of total pool reserves and to select the allocation formula that will allow the maximum number of wells in the pool to produce within a reasonable tolerance of the ideal ratio. Findings No. 13, 14, 15, and 16 concerning the protection of correlative rights, the prevention of waste, drainage, and the opportunity to produce a just and equitable share of the reservoir energy also establish that the formula will allocate the allowable production upon a reasonable basis.

Section 65-3-13(c), NMSA, 1953 Comp., also requires the Commission to recognize correlative rights in allocating production and specifically authorizes the Commission, in protecting correlative rights, to give equitable consideration to acreage, pressure, open flow, porosity, permeability, deliverability, and quality of the gas and to such other pertinent factors as may from time to time exist, and insofar as is practicable, to prevent drainage between producing tracts in a pool which is not equalized by counter-drainage. As the legislative mandate concerning these factors is permissive rather than mandatory, it certainly cannot be argued that a failure to make a specific

finding concerning any of the above factors would be fatal to the order. And it could be noted that the order contains specific findings concerning acreage, deliverability, drainage, and other pertinent factors. Findings No. 10, 11, 12, 14, 15, and 16.

As the legislative mandate set out in Section 65-3-13(c), NMSA, 1953 Comp., requires the Commission to allocate the allowable production recognizing correlative rights, it also is necessary to consider Section 65-3-29(h) which defines correlative rights and Section 65-3-14(a) concerning equitable allocation of allowable production. These two statutory provisions are substantially similar. Section 65-3-29(h) reads as follows:

> "'Correlative rights' means the opportunity afforded, so far as it is practicable to do so, to the owner of each property in a pool to produce without waste its just and equitable share of the oil or gas, or both, in the pool, being an amount, so far as can be practically determined, and so far as can be practicably obtained without waste, substantially in the proportion that the quantity of recoverable oil or gas, or both, under such property bears to the total recoverable oil or gas, or both, in the pool, and for such purpose to use his just and equitable share of the reservoir energy."

Section 65-3-14(a) reads as follows:

> "The rules, regulations or orders of the commission shall, so far as it is practicable to do so, afford to the owner of each property in a pool the opportunity to produce his just and equitable share of the oil or gas, or both, in the pool, being an amount so far as can be practically determined, and so far as such can be practicably obtained without waste, substantially in the proportion that the quantity of the recoverable oil or gas, or both, under such property bears to the total recoverable oil or gas, or both, in the pool, and for this purpose to use his just and equitable share of the reservoir energy."

The New Mexico Supreme Court commented on the findings necessary to meet the legislative mandate set out above in Continental Oil Company v. Oil Conservation Commission, supra at 318, wherein it stated:

> "The commission was here concerned with a formula for computing allowables, which is obviously directly related to correlative rights. In order to protect correlative rights, it is incumbent upon the commission to determine, 'so far as it is practicable to do so,' certain foundationary matters,

> without which the correlative rights of the various owners cannot be ascertained. Therefore, the commission, by 'basic conclusions of fact' (or what might be termed 'findings'), must determine, insofar as practicable, (1) the amount of recoverable gas under each producer's tract; (2) the total amount of recoverable gas in the pool; (3) the proportion that (1) bears to (2); and (4) what portion of the arrived at proportion can be recovered without waste."

The Commission's order contains findings concerning each requirement set out by the Court. Finding No. 6 refers to Column C, Tract Reserves of Exhibit A, which specifically sets out the initial recoverable gas reserves underlying each non-marginal tract in the pool. As set out in Finding No. 5, marginal wells are permitted to produce at capacity; therefore, it was not practicable to compute individual tract reserves for marginal wells. Marginal wells are permitted to produce at capacity as they are not capable of making the allowable assigned to them. In Finding No. 5, the Commission, insofar as practicable, determined the total amount of recoverable gas in the pool, and in Finding No. 7, determined the proportion that the recoverable gas under each tract bears to the total amount of recoverable gas in the pool. The Commission then determined the proportion of the arrived at proportion that could be recovered without waste. This is the volume of gas that will be allocated to each well under a formula that will allow the maximum number of wells in the pool to produce the proper percentage of total pool allowable as compared to percentage of total pool reserves. (Finding No. 11). In Finding No. 13, the Commission determined that correlative rights were not being protected and that waste would result unless the Commission acted to protect correlative rights. Its adoption of the formula is such action and application of the formula and the gas volumes calculated thereby determine the amount of gas that each well in the pool can produce without waste. This is further substantiated by Finding No. 14 that the

proposed formula of 60 percent acreage plus 40 percent acreage times deliverability will prevent waste. Finding No. 15 also establishes that the allowable calculated by application of the 60-40 formula is the amount of gas that can be produced without waste as this finding concludes that application of the formula will prevent drainage between producing tracts which is not equalized by counter-drainage. The total amount of gas that can be produced from the pool without waste is established when the Commission determines reasonable market demand for the pool and the total volume of gas that each well can produce without waste is determined when the Commission allocates production pursuant to the allocation formula.

In Continental Oil Company v. Oil Conservation Commission, supra at 319, the Court stated:

> "Additionally, it should be observed that the commission, 'insofar as is practicable, shall prevent drainage between producing tracts in a pool which is not equalized by counter-drainage,' under the provisions of Section 65-3-13(c)."

As the Commission specifically found in Finding No. 15 that the 60-40 formula would, insofar as is practicable, prevent drainage between producing tracts which was not equalized by counter-drainage, it cannot be contended that the order is invalid for failure to contain such a finding.

Respondents submit that the order clearly contains findings which meet the legislative standard set out in Sections 65-3-14(a) and 65-3-29(h), supra. In Finding No. 14, the Commission determined that the proposed 60-40 formula would more adequately protect correlative rights and prevent waste by permitting more wells to receive their just and equitable share of the gas in the pool, insofar as could be determined. In Finding No. 15, the Commission determined that the 60-40 formula would, insofar as practicable, prevent drainage between producing tracts which was not equalized by counter-drainage, and in Finding No. 16,

the Commission determined that the 60-40 formula would, insofar as practicable, afford to the owner of each property in the pool the opportunity to use his just and equitable share of the reservoir energy.

POINT VI

THE COMMISSION'S FINDINGS AND ORDER ARE BASED ON AND SUPPORTED BY SUBSTANTIAL EVIDENCE.

The New Mexico Supreme Court has recently commented on the manner in which a reviewing court must determine the question of substantial evidence to support findings of fact. In Trujillo v. Clark, 71 N.M. 288, 291, 377 P.2d 958 (1963), the Court stated:

> "When appellant asserts that the evidence does not substantially support findings of fact made by the trial court, this court must view the evidence together with all reasonable inferences to be deduced therefrom in the light most favorable to the successful party, and all evidence to the contrary must be disregarded."

Many New Mexico decisions have held that in reviewing the evidence on appeal, all evidence and inferences contrary to the disputed facts will be disregarded and the evidence viewed in the aspect most favorable to the judgment. Reid v. Brown, 56 N.M. 65, 240 P.2d 213 (1952); Little v. Johnson, 56 N.M. 232, 242 P.2d 1000 (1952); Silva v. Haake, 56 N.M. 497, 245 P.2d 835 (1952); Edwards v. Peterson, 61 N.M. 104, 295 P.2d 858 (1956); Hines v. Hines, 64 N.M. 377, 328 P.2d 944 (1958). Our Court has stated on numerous occasions that every presumption is indulged in favor of the correctness of regularity of the decision below. Coastal Claims Company v. Douglas, 69 N.M. 68, 364 P.2d 131 (1961); State ex rel State Highway Commission v. Tanny, 68 N.M. 117, 359 P.2d 350 (1961); Tri-Bullion Corporation v. American Smelting and Refining Company, 58 N.M. 787, 277 P.2d 293 (1954); Transport Trucking Company v. First National Bank in Albuquerque, 61 N.M. 320,

300 P.2d 476 (1956); Heine v. Reynolds, 69 N.M. 398, 367 P.2d 708, 1962); Batte v. Stanley's, 70 N.M. 364, 374 P.2d 124 (1962).

In Delaney v. Osborn, supra at 484, which was an appeal from an order of the Oklahoma Corporation Commission changing the gas-oil ratio applicable to a certain field, the Court said:

> "In determining the sufficiency of the evidence to sustain the present findings of the commission and its order, we cannot review and weigh the evidence to determine its preponderance. Our review is limited to the question of whether the findings and conclusions are sustained by substantial evidence and the law."

In Woody v. State Corporation Commission, 265 P.2d 1102, 1106, (Okla. 1954), which was also an appeal from a conservation order, the Court stated:

> "Neither are we required to weigh and measure the evidence in an endeavor to determine its preponderance. Our duty ends with the finding that there is evidence of a probative value reasonably and substantially sustaining the corporation's findings and order."

Consideration should also be given to the definition of substantial evidence adopted in New Mexico. In Brown v. Cobb, 53 N.M. 169, 172, 204 P.2d 264 (1949), the New Mexico Supreme Court stated:

> "In Marchbanks v. McCullough, supra, we define substantial evidence in the following language: 'if reasonable men all agree, or if they may fairly differ, as to whether the evidence establishes such facts, then it is substantial.'
>
> "Substantial evidence may also be defined as evidence of substance which establishes facts and from which reasonable inferences may be drawn. International Ry. Co. v. Boland, 169 Misc. 926, 8 N.Y.S.2d 643."

Numerous courts in decisions involving findings by administrative agencies have defined substantial evidence as such evidence as a reasonable man or a reasonable mind might accept as adequate to support a conclusion. Boston and M.R.R. v. U.S., 208 Fed.Supp. 661 (D.C. Mass. 1962); Ex parte Morris, 263 Ala. 664, 83 So.2d 716 (1955); John W. McGrath Corp. v. Hughes, 264 F.2d 314 (2nd Cir. 1959);

Freud v. Davis, 64 N.J.Super. 242, 165 A.2d 850 (1960); Davis v. State Department of Public Health and Welfare, 274 S.W.2d (Mo. 1955); Pittsburgh and L.E.R. Company v. Pennsylvania Public Utility Commission, 170 Pa.Super. 411, 85 A.2d 646 (1952). Other courts have stated that substantial evidence to support findings of an administrative agency means enough evidence to justify, if a trial were to a jury, a refusal to direct a verdict. Larmay v. Hobby, 132 Fed.Supp. 738 (E.D.Wis. 1955); Craig v. Ribicoff, 192 Fed.Supp. 479 (M.D.N.C. 1961). And it should be noted that the Court should not review and weigh the evidence to determine its preponderance. Delaney v. Osborn, supra; Woody v. State Corporation Commission, supra; Cities Service Oil Company v. Anglin, 204 Okla. 171, 228 P.2d 191 (1951); Gateway City Transfer Company v. Public Service Commission, 253 Wis. 397, 34 N.W.2d 238 (1948).

As respondents do not wish to burden the Court with duplicate recitals of the evidence, the parties to this brief adopt in full the Summaries of Testimony, Parts I, II, and III of the brief filed by Respondents, Consolidated Oil & Gas, Inc., and submit that the Commission's findings and order are based on and supported by substantial evidence.

POINT VII

THE COURT DOES NOT HAVE JURISDICTION OVER THE SUBJECT MATTER OF THIS ACTION AS THE PETITIONERS HAVE FAILED TO JOIN INDISPENSABLE PARTIES.

It is Respondents position that the Court does not have jurisdiction over the subject matter of this action, because Petitioners have failed to join indispensable parties. The validity of this point is, of course, tied to the question of who is an indispensable party. Petitioners apparently take the position that only the Commission, plus the original applicant,

Consolidated Oil & Gas, Inc., are indispensable, as they are the only named Defendants. Apparently Petitioners have decided that the adverse parties of record before the Commission are not indispensable, for they have not joined them. Petitioners have merely served them with notice of appeal, which is certainly not the same as being made an actual party.

The Supreme Court of New Mexico has adopted a very broad definition of indispensable party. In the early case of American Trust and Savings Bank of Albuquerque v. Scobee, 29 N.M. 436, 224 P. 788 (1924), the Court adopted the following test for indispensable party:

> "There is a general rule that all persons whose interests will necessarily be affected by any decree in a given case, are necessary and indispensable parties, and the Court will not proceed to a decree without them."

This rule has been specifically affirmed in the more recent case of Burguette v. Del Cuerto, 49 N.M. 292, 163 P.2d 257 (1945), and again in State Game Commission v. Tackett, 71 N.M. 400, 379 P.2d 54 (1962). In both of these recent cases, the above-quoted language of the Scobee case has been specifically adopted. The result of failure to join an indispensable party is, of course, a lack of jurisdiction of the Court that prohibits it from proceeding with the case.

Though the above-cited cases may be distinguished on the facts from the present situation, the general test set out above certainly is applicable to our situation. Petitioners cannot argue that operators other than Consolidated Oil & Gas, Inc., do not have an interest "that will necessarily be affected by any decree". In fact, when one looks to discover who would necessarily be affected by this decree, the Petitioners conclusion that only Consolidated, among the many operators in the Basin-Dakota Gas Pool, meets this test, is extraordinary.

The basic bone of contention in this case is a formula that allocates allowable gas production among all operators in

the Basin-Dakota Gas Pool. A change in the formula will therefore directly affect the amount of gas every operator is permitted to produce.

Applying the accepted standard for establishing indispensable parties to the present fact situation, it becomes apparent that not only operators who advocate the new formula will be affected by the Court's decision, but also those operators who appeared in opposition to the formula will be equally affected. Despite this, many of the protestants in the hearing are not joined, either as party plaintiffs or defendants. By the same token, all operators in the Basin-Dakota Gas Pool, whether parties in the hearing before the Commission or not, will obviously be affected by the Court's decree. An examination of Exhibit "A" attached to the order appealed from shows how many additional parties Petitioners have left out of this suit. Exhibit "A" also shows to what extent the formula affects each non-marginal well in the pool.

Petitioners might well argue the hardship of joining all operators in this pool. This type of argument has never impressed the Supreme Court, for in all three of the cases cited above the State of New Mexico was determined to be an indispensable party. Yet, in each case the Court recognized that the State could not be joined without its consent, which it would not give. This fact did not change the result.

The Court in the Burguete case, on Page 260 of the Pacific Report states:

> "It has been suggested that some courts have announced a rule to the effect that where the State should be a party, but cannot under the law be sued and does not voluntarily come in, it need not be joined as a necessary party. Whether or not some courts have applied such a rule, we have foreclosed its application in New Mexico under our decision in American Trust & Savings Bank of Albuquerque v. Scobee, supra. See this case, 29 N.M. at page 453, 224 P. 790, where we said that:

> "* * * * *Where such necessary parties cannot for any reason be brought before the court, there is nothing to be done except to dismiss the bill, for the suit is inherently defective."

At first glance, the conclusion reached above that possibly all operators in the Basin-Dakota Gas Pool would be necessary and indispensable parties seems extreme. However, the Supreme Court of New Mexico has already reached such a conclusion in a case amazingly similar on its facts. This is the case of State v. W. S Ranch Company, 69 N.M. 169, 364 P.2d 1036 (1961), where the State Engineer had attempted to enjoin the Ranch Company from using waters from the Costilla Creek above the Costilla Reservoir, claiming that the Ranch Company never had a license to appropriate waters from the creek. The Ranch Company in its answer set up the defence of failure to join indispensable parties, to-wit: all the water users on the creek below the Costilla Reservoir. The Court agreed and dismissed the suit and the State Engineer appealed. The Supreme Court affirmed and held that all water users below the reservoir would necessarily be affected by any decree and were, therefore, necessary and indispensable parties.

The reason that the Court found the water users were necessary and indispensable was that any adjudication of the Ranch Company's water rights would necessarily mean more or less water to the users below. By the same token, any change in the proration formula would necessarily mean more or less gas to the respective operators.

The implications of the W. S. Ranch Company case are admittedly far-reaching and Respondents do not claim to know the extent of the effect. What Respondents do argue is that obviously, under the definition of "necessary and indispensable parties" as established in New Mexico and as applied to the W. S. Ranch case, supra, something more is required than joining the Commission and one out of approximately 78 operators in the Basin-Dakota

Gas Pool. In fact, why Petitioners joined Consolidated as a Defendant is a mystery. Certainly Consolidated is no more affected by this decree than any other operator. It certainly does not have as many wells in the pools as some other operators.

On the basis of the facts in this case, Respondents assert that the Court lacks jurisdiction over the subject matter of this action for the reason that Petitioners have failed to join indispensable parties.

CONCLUSION

In conclusion, we submit that the reasons and authorities set out in this brief clearly establish the validity of Order No. R-2259-B, and urge the Court to dismiss the Petition for Review and enter judgment affirming the Commission's action.

Respectfully submitted,

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I certify that a copy of this brief was mailed to opposing counsel of record on February 25, 1964.

J. M. DURRETT, Jr.

Dakota Decision

COPY

FILED: May 16, 1966

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

EL PASO NATURAL GAS COMPANY, a corporation, PAN AMERICAN PETROLEUM CORPORATION, a corporation, MARATHON OIL COMPANY, a corporation, and SUNSET INTERNATIONAL PETROLEUM CORPORATION, a corporation,

Petitioners-Appellants,

vs. NO. 7727

OIL CONSERVATION COMMISSION OF NEW MEXICO, JACK M. CAMPBELL, Chairman, E. S. WALKER, Member, A. L. PORTER, JR., Member and Secretary, and CONSOLIDATED OIL & GAS, INC., a corporation,

Respondents-Appellees.

APPEAL FROM THE DISTRICT COURT OF SAN JUAN COUNTY

McCULLOH, Judge

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O P I N I O N

NOBLE, Justice.

Consolidated Oil & Gas, Inc. requested a change in the proration formula in the Basin-Dakota gas pool from the existing "25-75" formula (25% acreage plus 75% acreage, times deliverability) to a "60-40" formula. The Oil Conservation Commission originally denied the change, but on rehearing, limited to the question of recoverable reserves in the pool, reversed its decision, ordered the change, and adopted the "60-40" formula. The Commission then denied a requested rehearing. The Commission's order was reviewed and affirmed by the district court of San Juan County. This appeal is from the judgment of the district court.

The district court reviewed only the record of the administrative hearing and concluded as a matter of law that the Commission's order was substantially supported by the evidence and by applicable law. This court, in reviewing the judgment, in the first instance, makes the same review of the Commission's action as did the district court. Reynolds v. Wiggins, 74 N.M. 670, 397 P.2d 469; Kelly v. Carlsbad Irrigation District, 71 N.M. 464, 379 P.2d 763.

As in Continental Oil Co. v. Oil Conservation Com'n, 70 N.M. 310, 373 P.2d 809, the Commission was concerned with a formula allocating production among the various producers from the gas pool - allocation of the correlative rights. It is agreed that the duty of the Commission in this case is identical with that in Continental, but the parties are not in complete agreement as to what Continental requires. Its proper interpretation requires us to again consider the statutes with which we were concerned in that case and which are controlling here. Since the pertinent statutory provisions were quoted at length in Continental Oil Co. v. Oil Conservation Com'n, supra, we shall not restate them in detail.

Recognizing the need and right of the state, in the interest of the public welfare, to prevent waste of an irreplaceable natural

resource, the legislature enacted those laws authorizing the Commission to exercise control over oil and gas wells by limiting the total production in the pool, and making it the duty of the Commission to protect the correlative rights of all producers so far as it can be accomplished without waste to the pool. Sections 65-3-1 to 29, N.M.S.A. 1953. A review of the history of our oil and gas legislation reveals the primary concern in eliminating and preventing waste in the pool so far as it can practicably be done, and next the protection of the correlative rights of the producers from the pool. The legislature spelled out the duty of the Commission to limit production in such manner as to prevent waste, while affording:

> ". . . to the owner of each property in the pool the opportunity to produce his just and equitable share of the . . . gas . . . in the pool, being an amount, . . . so far as such can be practicably obtained without waste, substantially in the proportion that the quantity of the recoverable . . . gas . . . under such property bears to the total recoverable gas . . . in the pool, . . ." (§ 65-3-14(a), N.M.S.A. 1953) (Emphasis added).

Continental Oil Co. v. Oil Conservation Commission, supra, made clear those purposes and requirements.

The disagreement in this case arises from a difference of opinion as to the proper construction of language in Continental, saying that the statute requires the Commission to determine certain foundationary matters without which the correlative rights of the various owners cannot be fixed, and, specifically, respecting those foundationary matters:

> ". . . . Therefore, the commission, by 'basic conclusions of fact' (or what might be termed 'findings'), must determine, insofar as practicable, (1) the amount of recoverable gas under each producer's tract; (2) the total amount of recoverable gas in the pool; (3) the proportion that (1) bears to (2); and (4) what portion of the arrived at proportion can be recovered without waste. . . . ."

The appellants argue that those four findings are jurisdictional in the sense that absent any one of them, the Commission lacked

authority to consider or change any production formula. While the parties agree that the first three "basic" facts were specifically found, the appellees assert and appellants deny that a percentage determination was made of "what portion of the arrived at proportion" can be recovered without waste. Thus, the main thrust of appellants' argument is directed to the contention that the Commission lacked jurisdiction to change the allocation formula.

We did not, in Continental, say that the four basic findings must be determined in advance of testing the result under an existing or proposed allocation formula. Actually, what we said was:

> ". . . . That the extent of the correlative rights must be determined before the commission can act to protect them is manifest."

In addition, however, Continental observed that the Commission should so far as practicable prevent drainage between tracts which is not equalized by counter-drainage and to so regulate as to permit owners to utilize their share of pool energy. While Continental stated the four basic findings which the Commission must make before it can change a production formula, we were not concerned with the language in which the findings must be couched. What we said is that a proposed new formula must be shown to have been "based on the amounts of recoverable gas in the pool and under the tracts insofar as those amounts can be practicably determined and obtained without waste." We then, in effect, said that such findings need not be in the language of the opinion but that they or their equivalents are necessary requisites to the validity of an order replacing a formula in current use. It is, accordingly, apparent that we must consider the Commission's findings to determine whether findings in the language of Continental or their equivalent were adopted. We think they were.

The statute, in requiring the allocation order to afford each owner the opportunity to produce his just and equitable share of the recoverable gas in the pool, "so far as such can be practicably

obtained without waste," of course, requires the adoption of an allocation formula which will permit the owners to produce as nearly as possible their percentage of the recoverable gas in the pool, with as little waste as can practicably be accomplished. It is obvious to us that each different allocation formula will allow the tract owners to produce a different percentage of the total gas in the pool. Having determined (1) the amount of recoverable gas under each tract, and (2) the total amount of recoverable gas in the pool, the ideal formula would be one that would permit each owner to recover all of that proportion which the gas underlying his tract bears to the total in the pool. But, since the legislature has required the Commission to protect the pool against waste, it must then test the different proposed formulae against the percentage which (1) bears to (2) to determine which one will permit the tract owner to most nearly produce its percentage of the total gas in the pool with the least waste. When that has been done, then the portion which the gas underlying each tract bears to the total recoverable gas in the pool which can be produced with the least waste can be determined. It is this latter figure which determines the formula that will permit the greater number of owners the opportunity to recover the greatest amount allowable under the applicable statutes. We think the Commission made that determination in this instance.

The Commission termed the relationship between the percentage of total pool allowable apportioned to each tract by a formula, as compared to those percentages of total pool reserves, the A/R factor. It, thus, based each formula on the amounts of recoverable gas in the pool and under the tracts insofar as these amounts can be practicably determined, as Continental requires it to do. Applying the statute and the rule of Continental, the Commission determined that it must then select the allocation formula that will allow the maximum number of wells in the pool to produce

as nearly as possible their complete percentage of the pool reserves. The Commission then made the required test applying both the "25-75" and the "60-40" formulae and determined that neither correlative rights nor waste were being adequately protected under the "25-75" formula but that both would be more nearly protected insofar as can be practicably determined under the "60-40" formula, and found the percentage that each owner could produce of the total pool reserves. It was further determined by the Commission that the "60-40" formula will, insofar as it is practicable to do so, afford to each owner the opportunity to use his just and equitable share of the reserve energy and prevent drainage between producing tracts which is not equalized by counter drainage.

It is true that the order in this instance did not, in the express language of the Continental Oil Company decision, find the "portion of the arrived at proportion" which "can be recovered without waste." However, our review of the Commission's findings reveals that it did make the requested findings in language equivalent to that required by Continental and did adopt a formula in compliance with statutory requirements. We think the findings as a whole determine that the percentage set forth in Schedule J constitute the "portion of the arrived at proportion" which can be recovered by each owner without waste. We agree with the district court that the Commission made those basic findings necessary to authorize it to change the production formula and that its Order R-2259-B is valid.

It follows that the judgment appealed from should be affirmed.

IT IS SO ORDERED.

/s/ M. E. NOBLE
Justice

WE CONCUR:

/s/ DAVID CHAVEZ, JR. J.

/s/ J. C. COMPTON J.

STATE OF NEW MEXICO)
) IN THE DISTRICT COURT
COUNTY OF SAN JUAN)

EL PASO NATURAL GAS COMPANY,
et al.,

Petitioners,

-vs- No. 11685

OIL CONSERVATION COMMISSION
OF NEW MEXICO, et al.,

Respondents.

REQUESTED FINDINGS OF FACT AND
CONCLUSIONS OF LAW OF RESPONDENT
CONSOLIDATED OIL & GAS, INC.

COMES NOW the Respondent Consolidated Oil & Gas, Inc., in the above styled and numbered cause and respectfully requests the Court to adopt the following:

FINDINGS OF FACT

1. Petitioners El Paso Natural Gas Company, PanAmerican Petroleum Corporation, Sunset International Petroleum Corporation and Marathon Oil Company are foreign corporations duly authorized to do business in New Mexico, and petitioner Southwest Production Company is a partnership consisting of Joseph P. Driscoll and John H. Hill, doing business as a partnership in the State of New Mexico.

2. After commencement of this cause, Beta Development Co., a Texas corporation, was substituted for Southwest Production Company as a petitioner.

3. Respondent Oil Conservation Commission of New Mexico is a duly organized agency of the State of New Mexico, whose members are Jack M. Campbell, Chairman, E. S. Walker, Member, and A. L.

Porter, Jr., Secretary and Member; Respondent Consolidated Oil & Gas, Inc., is a Colorado corporation duly authorized to do business in the State of New Mexico.

4. By order of the Court, Texaco, Inc., and Sunray DX Oil Company, both foreign corporations duly admitted to do business in the State of New Mexico, were granted leave to intervene as parties respondent in this cause, and Pubco Petroleum Corporation, and Southern Union Gas Company were permitted to appear amicus curiae.

5. The Oil Conservation Commission of New Mexico on the 20th day of May, 1960, entered its Order No. R-1670 in Case No. 1937 on the Commission's docket, promulgating rules and regulations governing prorated gas pools in New Mexico.

6. The Oil Conservation Commission of New Mexico on the 4th day of November, 1960, by its order No. R-1670-C entered in Case No. 2095 on the Commission's docket, created the Basin-Dakota Gas Pool, and order that said pool be prorated commencing February 1, 1961, adopted the provisions of Order No. R-1670 expept as modified by the special rules and regulations adopted for the Basin-Dakota Gas Pool in said Order No. R-1670-C.

7. The Oil Conservation Commission of New Mexico, following hearings in 1962, and rehearings in 1962 and 1963, entered its Order No. R-2259-B amending the special rules and regulations for the Basin-Dakota Gas Pool as promulgated by Order No. R-1670-C by changing the proration formula for the Basin-Dakota Gas Pool from a formula based upon twenty-five per cent acreage plus seventy-five per cent acreage times deliverability, to a formula based upon sixty per cent acreage plus forty per cent acreage times deliverability.

8. In entering its Order No. R-2259-B, the Oil Conservation Commission of New Mexico made the basic jurisdictional findings required by law, in that it found: That waste would occur unless it acted to change the proration formula; that correlative rights were not being protected under the existing proration formula; that the proposed formula of sixty per cent acreage plus forty per cent acreage times deliverability would more adequately protect correlative rights and prevent waste; that such a formula would, insofar as practicable, prevent drainage between producing tracts which is not equalized by counter drainage; and that the proposed formula would afford each owner of each property in the pool the opportunity to use his just and equitable share of the reservoir energy.

9. In acting to protect correlative rights, the Commission further made the basic conclusions of fact required by statute, in that it determined, insofar as practicable: The amount of recoverable gas in the pool; the amount of recoverable gas under each producers tract; the proportion that one bears to the other; and that the proportion arrived at would be produced without waste by application of the formula of sixty per cent acreage plus forty per cent acreage times deliverability.

10. The formula adopted by the Oil Conservation Commission in its Order No. R-2259-B allocates the allowable production among the gas wells in the Basin-Dakota Gas Pool upon a reasonable basis, recognizing correlative rights, and insofar as practicable, prevents drainage between producing tracts in the pool which is not equalized by counter-drainage.

11. Oil Conservation Commission Order No. R-2259-B contains a finding that there was a change of conditions in the Basin-Dakota Gas Pool, necessitating a change in the proration formula in that the Commission found correlative rights were not being protected under the existing formula, and that waste would occur if it did not act to protect correlative rights.

12. The order of the Commission is not based on findings which do not meet statutory requirements for a valid allocation of gas production.

filed April 2

30 days to appeal

State of New Mexico
Eleventh Judicial District Court
Aztec

CHAMBERS OF
C. C. McCULLOH
JUDGE, DIV. 1

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April 2, 1964

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Re: El Paso Natural Gas Company, et al, vs. Oil Conservation Commission of New Mexico, et al, No. 11685, San Juan County.

Gentlemen:

Enclosed herewith is a copy of Decision of the Court and Judgment in the above-entitled cause, which have been filed as of the above date.

Very truly yours

C. C. McCULLOH
District Judge

CCM:vf
Encls.

APR 3 PM 1:34
OIL CONSERVATION OFFICE OCC

STATE OF NEW MEXICO)
)
COUNTY OF SAN JUAN)

IN THE DISTRICT COURT

EL PASO NATURAL GAS COMPANY, a corporation, PAN AMERICAN PETROLEUM CORPORATION, a corporation, MARATHON OIL COMPANY, a corporation, BETA DEVELOPMENT COMPANY, and SUNSET INTERNATIONAL PETROLEUM CORPORATION, a corporation,

Petitioners,

vs.

No. 11685

OIL CONSERVATION COMMISSION OF NEW MEXICO, JACK M. CAMPBELL, Chairman, E. S. WALKER, Member, A. L. PORTER, JR., Member and Secretary, CONSOLIDATED OIL AND GAS, INC., a corporation,

Respondents.

DECISION OF THE COURT

The above-entitled cause having come on for trial and the Court having heard all of the evidence, arguments of counsel, and the parties having submitted Requested Findings of Fact and Conclusions of Law, and being sufficiently advised in the premises, the Court makes the following,

FINDINGS OF FACT

1. Petitioners El Paso Natural Gas Company, Pan American Petroleum Corporation, Marathon Oil Company, and Sunset International Petroleum Corporation are corporations authorized to do business in the State of New Mexico; Petitioner Southwest Production Company is a partnership consisting of Joseph P. Driscoll and John H. Hill, doing business as a partnership in the State of New Mexico.

2. After commencement of this cause, Beta Development Co., a Texas Corporation was substituted for Southwest Production Company as a Petitioner.

3. Respondent Oil Conservation Commission of New Mexico is a duly organized agency of the State of New Mexico, whose members are Jack M. Campbell, Chairman, E. S. Walker and A. L. Porter, Jr., Secretary; Respondent Consolidated Oil & Gas, Inc., is a corporation authorized to do business in the State of New Mexico.

4. By Order of the Court, Texaco, Inc., and Sunray DX Oil Company corporations authorized to do business in the State of New Mexico, were granted leave to intervene as parties respondent in this cause, and Pubco Petroleum Corporation and Southern Union Gas Company were permitted to appear amicus curiae.

5. In November, 1960, the Oil Conservation Commission issued Order No. R-1670-C which established Special Rules and Regulations for the Basin-Dakota Gas Pool in San Juan, Rio Arriba and Sandoval Counties, New Mexico, and adopted, by reference, Rule 9(C) of the General Rules applicable to pro-rated gas pools in Northwest New Mexico as set forth in Order No. R-1670. Rule 9(C) of Order No. R-1670 established a formula for allocating gas production from pro-rated gas pools in Northwest New Mexico on the basis of 25 percent acreage plus 75 percent acreage times deliverability. Until August 1, 1963, the effective date of Order No. R-2259-B, the allocation of allowable production of gas from the Basin-Dakota Gas Pool was determined by this formula. Since the effective date of Order No. R-2259-B, the allocation of allowable gas production in the Basin-Dakota Gas Pool has been determined by

formula of 60 percent acreage plus 40 percent acreage times deliverability.

6. On February 23, 1962, Consolidated Oil & Gas, Inc., filed its application with the Commission to change the formula for allocating the allowable gas production in the Basin-Dakota Gas Pool from a formula of 25 percent acreage plus 75 percent acreage times deliverability to a formula of 60 percent acreage plus 40 percent acreage times deliverability. This application was docketed by the Commission as its Case No. 2504. The case was duly advertised and heard by the Commission on April 18 and 19, 1962. On June 7, 1962, the Commission issued Order No. R-2259 which found that the evidence presented at the hearing of the case concerning recoverable gas reserves in the pool was insufficient to justify any change in the allocation formula and denied the application, retaining jurisdiction for the entry of such further orders as the Commission might deem necessary.

7. On June 27, 1962, Consolidated Oil & Gas, Inc., filed a Petition for Rehearing, and on July 7, 1962, the Commission issued Order No. R-2259-A which found that a rehearing should be granted and that the scope of the rehearing should be limited to matters concerning recoverable gas reserves in the Pool. Order No. R-2259-A granted a rehearing and limited the scope of the rehearing to matters concerning recoverable gas reserves in the Basin-Dakota Gas Pool.

8. On February 14 and 15, 1963, the Commission reheard Case No. 2504 and subsequently issued Order No. R-2259-B. By Order No. R-2259-B, the Commission superseded Order No. R-2259, which had denied Consolidated's application and amended the Special Rules

and regulations for the Basin-Dakota Gas Pool as promulgated by Order No. R-1670-C. The new formula allocated the allowable assigned to non-marginal wells in the following manner:

(1) Forty percent in the proportion that each well's acreage times deliverability factor bears to the total of the acreage times deliverability factors for all non-marginal wells in the pool.

(2) Sixty percent in the proportion that each well's acreage factor bears to the total of the acreage factors for all non-marginal wells in the pool.

9. In Finding No. 3 of Order No. R-1670-C, the Commission determined that the producing capacity of the wells in the Dakota Producing Interval was in excess of the market demand for gas from said common source of supply, and that for the purpose of preventing waste and protecting correlative rights, appropriate procedures should be adopted to provide a method of allocating gas among proration units in the area.

10. Order No. R-2259-B contained 18 findings to substantiate adoption of the new formula.

In Findings No. 1 through 4, the Commission determined that it had jurisdiction of the cause, that the Commission had adopted a formula for allocating allowable production from the Basin-Dakota Gas Pool on the basis of 25 percent acreage plus 75 percent acreage times deliverability, and that Consolidated sought to amend the formula to allocate the allowable production on the basis of 60 percent acreage plus 40 percent acreage times deliverability.

In Finding No. 5, the Commission determined the total initial recoverable gas reserves in the Basin-Dakota Gas Pool and the amount which was attibuted to marginal wells which were permitted to produce at capacity.

In Finding No. 6, the Commission determined, in million cubic feet, the initial recoverable gas reserves underlying each non-marginal tract of the Basin-Dakota Gas Pool.

In Finding No. 7, the Commission determined the percent of total pool reserves attributable to non-marginal tract in the pool.

In Finding No. 8, the Commission determined that it was not practicable to allocate production solely on the basis of each well's percentage of pool reserves because of the continuous fluctuation in reserve computations resulting from new completions in the pool and the re-evaluation of reserves attributed to existing wells.

In Finding No. 9, the Commission determined a tract acreage factor and the deliverability for each non-marginal well in the pool.

In Finding No. 10, the Commission determined that neither acreage nor deliverability should be used as the sole criterion for allocating production as there was no direct correlation between deliverability and reserves, or acreage and reserves.

In Finding No. 11, the Commission determined that the most reasonable basis for allocating production in the Basin-Dakota Gas Pool was to determine, for each proposed formula, the percentage of total pool allowable apportioned to each non-marginal tract as compared to its percentage of total pool reserves, and to select the allocation formula that would allow the maximum number of wells in the pool to produce with an ideal ratio of 1.0, or with a ratio of from 0.7 to 1.3, which was reasonable, due to inherent variance in interpreting and computing reserves.

In Finding No. 12, the Commission determined that the number of wells in the pool producing with a desired ratio was affected by the percentage of deliverability and the percentage of acreage included in the formula.

In Finding No. 13, the Commission determined that correlative rights were not being adequately protected under the formula then in effect, that the protection of correlative rights was a necessary adjunct to the prevention of waste, and that waste would result unless the Commission acted to protect correlative rights.

The Commission identified each non-marginal well producing with the desired ratio under each formula with an asterisk and determined, in Finding No. 14, that a comparison of the total number of wells producing with the desired ratio under each formula and the total volume of gas allocated to the wells producing with the desired ratio under each formula established that the proposed formula of 60 percent acreage plus 40 percent acreage times deliverability would more adequately protect correlative rights and prevent waste by permitting more wells to receive their just and equitable share of the gas in the pool.

In Finding No. 15, the Commission determined that numerous wells in the pool were capable of draining more than their just and equitable share of the gas and that the proposed formula would, insofar as practicable, prevent drainage between producing tracts which was not equalized by counter-drainage.

In Finding No. 16, the Commission determined that the proposed formula would, insofar as practicable, afford to the owner of each property in the pool the opportunity to use his just and equitable share of the reservoir energy.

In Finding No. 17, the Commission determined that Order No. R-1670-C should be amended to provide an allocation formula based on 60 percent on acreage and 40 percent on acreage times deliverability.

In Finding No. 18, the Commission determined that Order No. R-2259-B should not be effective until August 1, 1963.

11. Following the issuance of Order No. R-2259-B, Applications for Rehearing in Case No. 2504 were filed with the Commission by all of the Petitioners in this case.

12. On August 1, 1963, the Commission issued Order No. R-2259-C which determined that the Applications for Rehearing did not allege that the applicants for reheraing had new or additional evidence to present, that the Commission had carefully considered the evidence presented in the case and was fully advised in the premises, and that Order No. R-2259-B was proper in all respects. By Order No. R-2259-C, the Commission denied the Application for Rehearing.

13. Petitions for Review were thereafter duly filed by all of the Petitioners in this case.

14. The Oil Conservation Commission did not act fraudulently, arbitrarily or capriciously in issuing Orders No. R-2259-B and R-2259-C.

15. The Transcript of Record and Proceedings in Case No. 2504 before the Oil Conservation Commission contains substantial evidence to support the Commission's findings in Order No. R-2259-B.

16. The Oil Conservation Commission did not exceed its authority in issuing Orders No. R-2259-B and R-2259-C.

16. The Oil Conservation Commission did not exceed its authority in issuing Orders No. R-2259-B and R-2259-C.

17. Oil Conservation Commission Orders No. R-2259-B and R-2259-C are not erroneous, invalid, improper or discriminatory.

18. The formula adopted by the Oil Conservation Commission in its Order No. R-2259-B allocates the allowable production among the gas wells in the Basin-Dakota Gas Pool upon a reasonable basis, recognizing correlative rights, and, insofar as practicable, prevents drainage between producing tracts in the pool which is not equalized by counter-drainage.

19. The formula adopted by the Oil Conservation Commission in its Order No. R-2259-B affords to the owner of each property in the Basin-Dakota Gas Pool the opportunity to produce without waste his just and equitable share of the gas in the pool, insofar as it is practicable to do so, and for this purpose to use his just and equitable share of the reservoir energy.

20. Oil Conservation Commission Orders No. R-2259-B and R-2259-C will prevent waste and protect correlative rights.

From the foregoing Findings of Fact, the Court makes the following,

CONCLUSIONS OF LAW

1. The Court has jurisdiction over the subject matter of this action and of all necessary and indispensable parties thereto.

2. Petitioners in this proceeding exhausted their administrative remedy before the Oil Conservation Commission of New Mexico and are entitled to review of the validity of Order No. R-2259-B in this proceeding.

3. Oil Conservation Commission Order No. R-2259-B contains

the basic jurisdictional findings required by law to issue a valid order allocating allowable gas production among the producers in a pool.

4. Oil Conservation Commission Order No. R-2259-B contains findings which fully comply with all statutory requirements concerning allocation of allowable gas production among producers in a pool.

5. The findings contained in Oil Conservation Commission Order No. R-2259-B are based upon and supported by substantial evidence.

6. Oil Conservation Commission Orders No. R-2259-B and R-2259-C will prevent waste and protect correlative rights.

7. The Oil Conservation Commission did not act fraudulently, arbitrarily or capriciously in issuing Orders No. R-2259-B and R-2259-C.

8. The Oil Conservation Commission did not exceed its authority in issuing Orders No. R-2259-B and R-2259-C.

9. The Oil Conservation Commission has jurisdiction to enter Orders No. R-2259-B and R-2259-C.

10. The Petitioners have failed to sustain the burden of proof placed upon them by law and therefore the Petition for Review should be dismissed and Oil Conservation Commission Orders No. R-2259-B and R-2259-C should be affirmed.

IT IS HEREBY ORDERED, that all Requested Findings of Fact and Conclusions of Law submitted by either party and not made and entered herein by the Court are hereby refused and denied.

A. P. McCulloh

DISTRICT JUDGE

STATE OF NEW MEXICO)
)
COUNTY OF SAN JUAN)

IN THE DISTRICT COURT

EL PASO NATURAL GAS COMPANY, a corporation, PAN AMERICAN PETROLEUM CORPORATION, a corporation, MARATHON OIL COMPANY, a corporation, BETA DEVELOPMENT COMPANY, and SUNSET INTERNATIONAL PETROLEUM CORPORATION, a corporation,

Petitioners,

vs.

No. 11685

OIL CONSERVATION COMMISSION OF NEW MEXICO, JACK M. CAMPBELL, Chairman, E. S. WALKER, Member, A. L. PORTER, JR., Member and Secretary, CONSOLIDATED OIL AND GAS, INC., a corporation,

Respondents.

J U D G M E N T

This matter coming on to be heard on Petition for Review, filed herein, and after considering the transcript, summary and briefs submitted by the parties, and hearing oral argument, and after the parties submitted their Requested Findings of Fact and Conclusions of Law, and the Court has entered its Decision, and being sufficiently advised in the premises, the Court FINDS that the Petition herein should be dismissed.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED, that Judgment be entered herein in favor of Respondents and that the Petition be and it is hereby dismissed.

DISTRICT JUDGE

STATE OF NEW MEXICO)
) IN THE DISTRICT COURT
COUNTY OF SAN JUAN)

EL PASO NATURAL GAS COMPANY, a corporation, PAN AMERICAN PETROLEUM CORPORATION, a corporation, MARATHON OIL COMPANY, a corporation, SOUTHWEST PRODUCTION COMPANY, a partnership, and SUNSET INTERNATIONAL PETROLEUM CORPORATION, a corporation,

Petitioners,

vs. No. 11685,

OIL CONSERVATION COMMISSION OF NEW MEXICO, JACK M. CAMPBELL, Chairman, E. S. WALKER, Member, A. L. PORTER, JR., Member and Secretary, CONSOLIDATED OIL & GAS, INC., a corporation,

Respondents.

MEMORANDUM BRIEF
OF
RESPONDENT CONSOLIDATED OIL & GAS, INC.

Introduction

This brief is submitted in accordance with the directions of the Court. It should be observed, however, that in the normal course of a trial respondents would have the benefit of petitioner's argument and brief before preparing a brief of their own in support of the order of the Oil Conservation Commission under review. Even though petitioners supplied respondents with a statement of the points on which they intend to rely, these points are couched in such general terms as to add nothing to the matters already stated in the pleadings, and the procedure of filing simultaneous briefs prior to trial leaves counsel for the respondents somewhat in the dark as to the arguments that may be advanced by petitioners. For this reason it may be necessary for us to here argue matters that will not be controverted at the time of the trial, and to attempt to answer in oral argument matters raised by the petitioners in their brief.

This brief will be confined to the legal points argued, with limited reference to the transcript. References to the transcript, particularly to portions which respondents feel constitute substantial evidence to support the order of the Commission, are contained in the Summaries of Testimony which were requested by the Court, are filed herewith, and constitute a part of this brief.

The respondent Oil Conservation Commission of New Mexico will hereinafter be sometimes referred to as the "Commission."

Since the record before the Court in this case consists of the transcript of testimony, exhibits offered before the Commission, and orders, applications or petitions, and various other documents, that do not appear in a transcript, it is impossible to refer to transcript pages in referring to anything other than the testimony itself.

Statement of the Case

Order No. R-1670-C, entered by the Commission on November 4, 1960, and effective February 1, 1961, established Special Rules and Regulations for the Basin-Dakota Gas Pool including a formula for the allocation of allowable gas production which provided for allocation of allowable gas production to the non-marginal wells in the pool on the basis of 25% acreage plus 75% acreage times deliverability (herein the 25-75-formula).

Order No. R-1670-C was based in part on a Commission finding "that there is a general correlation between the deliverabilities of the gas wells in the Dakota Producing Interval and the recoverable gas in place under the tracts dedicated to the wells."

Consolidated Oil & Gas, Inc. (herein respondent or Consolidated) applied to the Commission for a new allowable allocation order for the Basin-Dakota Gas Pool including a formula for the allocation of allowable gas production to non-marginal wells in the pool on the basis of 60% acreage plus 40% acreage times deliverability (herein the 60-40 formula).

Pursuant to due notice the application of Consolidated was called for hearing on March 14, 1962, as Commission Case No. 2504, and after adjournment, was heard on April 18, 19, 20 and 21, 1962. As shown in more detail in the Summaries of Testimony filed in connection herewith, the main issue in the April, 1962, hearing related to the validity of the Commission's earlier finding (in its Order No. R-1670-C) that "there is a general correlation between the deliverabilities of the gas wells in the Dakota Producing Interval and the recoverable gas in place under the tracts dedicated to the wells".

Subsequent to the hearing, but prior to the issuance of its ruling thereon, the Supreme Court of the State of New Mexico handed down its decision in the case of Continental Oil

Company, et al. vs. Oil Conservation Commission, et al, 70 N.M. 31, 373 P.2d 809, 1962, (herein "the Jalmat decision"). The Jalmat decision provided guidelines for the interpretation and administration of the Oil Conservation Act. It assuredly can be assumed that the Commission reviewed the evidence adduced at the April, 1962 hearing in the light of the guidelines provided by the Jalmat decision.

By its Order No. R-2259, dated June 7, 1962, the Commission denied the application of Consolidated but retained jurisdiction for the entry of such further orders as the Commission deemed necessary. In paragraph (4) of its Order No. R-2259 the Commission found that the evidence presented at the hearing concerning recoverable gas reserves in the subject pool was insufficient to justify any change in the 25-75 formula.

Under date of June 27, 1962, Consolidated timely petitioned the Commission for a rehearing of the matter, such rehearing being granted by Commission Order No. R-2259-A and set for August 15, 1962. Thereafter the matter was continued several times and finally heard on February 14, 1963.

By its Order No. R-2259-B, entered July 3, 1963, the Commission granted the application of Consolidated and established the 60-40 formula requested. Order No. R-2259-B is the order complained of by the petitioners in this action.

By petition filed on July 26, 1963, El Paso Natural Gas Company sought rehearing on Order No. R-2259-B, and by petition filed on July 29, 1963, rehearing was sought by Pan American Petroleum Corporation, Marathon Oil Company, Southwest Production Company, and Sunset International Petroleum Corporation. On August 1, 1963, The Commission, by its Order R-2259-C, denied the rehearings sought by petitioners.

Pursuant to the provisions of Sec. 65-3-22 (b), N.M.S.A. 1953, petitioners filed their petition for review of Order No. R-2259-B and Order R-2259-C, resulting in the pending case in this Court. Named as respondents to the proceeding are the Oil Conservation Commission of New Mexico; Jack M. Campbell, Chairman; E. S. Walker, Member; A. L. Porter, Jr., Member and Director; and Consolidated Oil & Gas, Inc. (herein respondents).

Subsequent to the docketing of this case, Beta Development Co. has been substituted for Southwest Production Company as a petitioner, and by order of the Court filed September 26, 1963, Texaco, Inc., and Sunray DX Oil Company have been permitted to intervent as respondents in the case. On December 18, 1963, Pubco Petroleum Corporation was denied leave to intervent as a respondent in the case, but was granted leave to appear as amicus curiae. Motion has been filed with the Court for leave for Southern Union Gas Company to appear in the case as amicus curiae.

Statement of Facts

Case No. 2504 on the docket of the Commission, in which the orders here under review were entered, was originated by the filing of an application by respondent Consolidated. In its application Consolidated sought revision of the proration order governing the allocation of gas in what had previously been designated as the Basin-Dakota Gas Pool, comprising much of the San Juan and Rio Arriba Counties.

In its application, Consolidated alleged that the 25-75 formula created waste, did not properly recognize correlative rights, and permitted and would increasingly permit nonratable taking of gas from the pool and drainage between producing tracts in the pool which would not be equalized by counter-drainage. Consolidated therein recommended the 60-40 formula, which formula was later adopted by the Commission in its Order No. R-2259-B.

After a lengthy hearing, the Commission denied the application of Consolidated, basing its denial on the single finding:

> "That the evidence presented at the hearing of this case concerning recoverable gas reserves in the subject pool is insufficient to justify any change in the present allocation formula." (Order No. R-2259)

Consolidated filed its petition for rehearing and the Commission granted rehearing, limited as follows:

> "That the scope of such rehearing shall be limited to matters concerning recoverable gas reserves in the Basin-Dakota Gas Pool." (Order No. R-2259-A)

In connection with the rehearing, Consolidated sought, by subpoena duces tecum pursuant to the provisions of Sec. 65-3-7 N.M.S.A., 1953, to obtain information for presentation before the Commission on gas reserves in the Basin Dakota Gas Pool, and the reserves underlying the individual tracts within the pool, as shown by the record in this case. Motions to quash these subpoenas were filed, and after hearing on the motions, the Commission, by its unnumbered order dated October 18, 1962, granted the Motions to Quash except that the subpoenaed witnesses were directed to produce core analysis reports and electric and radioactivity logs concerning wells cored by their respective companies in the Basin-Dakota Gas Pool. The witnesses were not required to produce any information on reserves other than that which could be obtained from the core information and logs, and were not required to produce any reserve calculations of any kind, nor did they do so, except that witness Rainey produced the items called for in paragraphs 1 and 2 of the subpoena served upon him which items were not subject to the Motion to Quah and which were subsequently offered in evidence as Consolidated's Exhibits Nos. 1 and 2 at the February 14, 1963, rehearing.

After hearing, the Commission entered its order No. R-2259-B, which basically is the order under attack here. In

that order, which is a lengthy document, the Commission made numerous findings, and attached to the order as Exhibit A a tabulation showing a calculation for every non-marginal well in the pool, insofar as the figures could be determined, of the following information: (1) The acreage allocated to each non-marginal well in the pool; (2) the deliverability of each such well; (3) the initial recoverable gas reserves underlying each non-marginaltract in the pool; and (4) the percent of total pool reserves attributable to such tract in the pool. Comparisons between allocation of allowables under the 25-75 formula and the 60-40 formula were also therein made by the Commission.

It was on this information and from the record of the hearings that the Commission determined, among other things, that the total reserves in the pool were 2.255 trillion cubic feet; that under the 25-75 formula,

> "correlative rights are not being adequately protected; that the protection of correlative rights is a necessary adjunct to the prevention of waste; and that waste will result unless the Commission acts to protect correlative rights." (Emphasis supplied) (Order No. R-2259-B)

The Commission made extensive findings, which, since their sufficiency has been attacked, will be discussed as some length later in this brief. Since the Court has requested summaries of testimony, which are presented as a part of this brief, it will not be necessary to herein discuss the testimony offered at the hearing.

ARGUMENTS AND AUTHORITIES

Introduction

Since it is impossible for respondent Consolidated to determine what points will be argued, or the reasoning upon which petitioners base their claims that the order of the Commission is invalid, it is only possible to attempt to refute in

advance the arguments that may be made by petitioners.

For convenience and brevity we will group the points raised in Consolidated's Statement of Points on the basis of the questions of law involved in each, and make reference, without setting them out in full, to the points raised on the other side of the question by petitioners.

POINTS 1, 2 and 3

Sufficiency of the Commission's Findings

1. The order of the Commission is valid and no specific finding that there was waste occurring under the original formula or that a change of conditions had occurred is necessary to a valid order. The lack of a specific finding that waste was occurring under the original formula does not invalidate an order allocating gas production, and if such a finding were necessary, it is contained in the order as entered by the Commission. In the alternative, a change of conditions did, in fact exist, and the case file and record show such a change of conditions.

2. The order contains the basic findings of jurisdictional facts required by statute.

3. The order contains findings which meet the statutory requirements for a valid allocation of gas production.

Petitioners, in their points I, II and III, attack the sufficiency of the findings of the Commission in its Order No. R-2259-B, and argue that the order is invalid because not based upon findings that waste was occurring under the formula or that a change of conditions had occurred requiring a change in that formula; that the Commission failed to make the basic findings of jurisdictional facts required by statute; and that the order is based upon affirmative findings which do not meet statutory requirements for a valid order.

To dispose of the last argument first: If the Commission did, in fact, include in the order findings that do not meet statutory requirements, that, in and of itself, is not fatal to the order. In other words, if there is a proper finding upon which the order is based, and there is also any non-essential finding, the existence of the latter would not invalidate the order. The courts view this as they would the findings in a non-jury case. See, for example, Choctaw Gas Company v. Corporation Commission, 295 P.2d 800 (Okla.) where the court held that the fact the commission, having made findings adequate to justify an order, then made one or more other findings that may not be correct or supported by the evidence, is inconsequential and no grounds for reversal of the commission's order. As stated in 2 Am. Jur. 2d, Administrative Law, Sec. 458:

> "The inclusion of surplusage in findings, while undesirable, cannot invalidate proper and correct findings."

Waste

Petitioners argue that Order R-2259-B is invalid "because it is not based upon a finding that waste was occurring under the original formula."

For a clear discussion of the point, it is necessary to refer to the statutes which give the Commission its authority to prorate production of gas within the State, and to its general powers for the prevention of waste. We quote portions of these statutes at this point:

> "65-3-2. Waste prohibited.--The production or handling of crude petroleum oil or natural gas of any type or in any form, or the handling of products thereof, in such manner or under such conditions or in such amounts as to constitute or result in waste is each hereby prohibited.
>
> "65-3-3. Waste--Definitions.--As used in this act the term 'waste', in addition to its ordinary meaning, shall include:***

"(e) The production in this state of natural gas from any gas well or wells, or from any gas pool, in excess of the reasonable market demand from such source for natural gas of the type produced or in excess of the capacity of gas transportation facilities for such type of natural gas. The words 'reasonable market demand,' as used herein with respect to natural gas, shall be construed to mean the demand for natural gas for reasonable current requirements, for current consumption and for use within or outside the state, together with the demand for such amounts as are necessary for building up or maintaining reasonable storage reserves of natural gas or productes thereof, or both such natural gas and products."

The powers and the duties of the Commission in the prorationing and allocating of gas production are found in Sec. 65-3-13, N.M.S.A., 1953:

"(c) Whenever, to present waste, the total allowable natural gas production from gas wells producing from any pool in this state is fixed by the commission in an amount less than that which the pool could produce if no restrictions were imposed, the commission shall allocate the allowable production among the gas wells in the pool delivering to a gas transportation facility upon upon a reasonable basis and recognizing correlative rights, *** In protecting correlative rights the commission may give equitable consideration to acreage, pressure, open flow, porosity, permeability, deliverability and quality of the gas and to such other pertinent factors as may from time to time exist, and in so far as is practicable, shall prevent drainage between producing tracts in a pool which is not equalized by counter-drainage.*** (Emphasis added).

The term "correlative rights" is defined by Sec. 65-3-29, N.M.S.A. 1953, as follows:

"(h) 'Correlative rights' means the opportunity afforded, insofar as is practicable to do so, to the owner of each property in a pool to produce without waste his just and equitable share of the oil or gas, or both, in the pool, being an amount, so far as can be practically determined, and so far as can be practicably obtained without waste, substantially in the proportion that the quantity of recoverable oil or gas, or both, under such property bears to the total recoverable oil or gas, or both, in the pool, and for such purposes to use his just and equitable share of the reservoir energy."

A similar provision is contained in Sec. 65-3-14, N.M.S.A. 1953, Supp., governing equitable allocation of allowable

production, pooling and spacing, where the statue provides:

> "(a) The rules, regulations or orders of the commission shall, so far as it is practicable to do so, afford to the owner of each property in a pool the opportunity to produce his just and equitable share of the oil or gas, or both, in the pool, being an amount, so far as can be practically determined, and so far as such can be practicably obtained without waste, substantially in the proportion that the quantity of the recoverable oil or gas, or both, under such property bears to the total recoverable oil or gas, or both, in the pool, and for this purpose to use his just and equitable share of the reservoir energy."

The New Mexico Supreme Court, passed on these provisions of the statutes in the Jalmat decision. The Court there pointed out that the Commission must make certain basic findings, as follows: (70 N.M. 319):

> " The Commission was here concerned with a formula for computing allowables, which is obviously directly related to correlative rights, In order to protect correlative rights, it is incumbent upon the commission to determine, 'so far as it is practical to do so,' certain foundationary matters, without which the correlative rights of the various owners cannot be ascertained. Therefore, the Commission, by 'basic conclusions of fact' (or what might be termed 'findings'), must determine, insofar as practicable, (1) the amount of recoverable gas under each producer's tract; (2) the total amount of recoverable gas in the pool; (3) the proportion that (1) bears to (2); and (4) what portion of the arrived at proportion can be recovered without waste. That the extent of the correlative rights must first be determined before the commission can act to protect them is manifest." (Emphasis by the court).
>
> ***
>
> (p. 324)
>
> "To state the problem in a different way, if the commission had determined, from a practical standpoint, that each owner had a certain amount of gas underlying his acreage; that the pool contained a certain amount of gas; and that a determined amount of gas could be produced and obtained without waste; then the commission would have complied with the mandate of the statute and its actions would have been protecting the public interest, thereby, quite obviously, entitling it to defend, for the public, whatever order it issued."

In the instant case this is exactly what the Commission has done in its Order No. R-2259-B. In its Finding No. (5), the Commission found that the initial recoverable gas reserves in the Basin-Dakota Gas Pool were 2.255 trillion cubic feet, of which 96 billion are attributable to marginal wells. In Findings Nos. (6) and (7), the Commission found, by reference to Exhibit "A" attached to the order, the recoverable gas reserves underlying each non-marginal tract in the pool, and the percent of the total pool reserves attributable to each non-marginal tract. This is exactly what the Jalmat decision would require the Commission to do.

But the petitioners argue that there was no finding as to waste. To limit the Commission to the word "waste" begs the question. The Commission found the ultimate fact that the 60-40 formula will, insofar as it is practicable to do so, afford to the owner of each property in the pool the opportunity to use his just and equitable share of the reservoir energy (Finding No. 16), and will prevent drainage between producing tracts which is not equalied by counter-drainage. (Finding No. (15)). It further found:

> "(13) That under the present 25-75 formula, correlative rights are not being adequately protected; that the protection of correlative rights is a necessary adjunct to the prevention of waste, and that waste will result unless the Commission acts to protect correlative rights." (Order No. R-2259-B).

The Jalmat decision states clearly that the Commission exercises legislative functions. In exercising such functions it must act prospectively, dealing with the future. This is what it has done in the instant case where the Commission found that waste would occur if it did not act to change the proration formula and, in effect, found that the 60-40 formula would prevent waste. At no point have petitioners asserted that prorationing of production in the Basin-Dakota Gas Pool is not necessary

to prevent waste. The pool was already being prorated to prevent waste and the Commission here acted to protect correlative rights, as clearly shown by its order. It also acted to prevent waste that would occur if the 25-75 formula remained in effect, as shown by its Finding No. (13).

In Sinclair Oil & Gas Co. vs. Corporation Commission, 378 P.2d 847 (Okla., 1963) The Oklahoma Supreme Court was passing on an allowable formula entered by the Oklahoma Corporation Commission for the allocation of gas production. In upholding the commission order against a contention that the findings were insufficient, the court held that a finding by the Commission to the effect that "in order to prevent waste, and protect correlative rights, field rules and regulations are necessary" was sufficient. It had this to say:

> "*** With reference to the allowable formula, the subject order involves some very technical subjects, in which principles of mathematics, engineering, and physics are involved, that were explained to, and heard by the Commission during several days, and many pages of testimony.*** We think it would have been impractical, and would have added nothing to the validity of the order, if the Commission had undertaken to detail therein the many considerations that went into making up the findings announced therein. We think the Order's findings are sufficient under the circumstances here."

Change of Conditions

Petitioners further argue that there was no finding that there was a change of conditions requiring a change in the 25-75 formula. This attacks the jurisdiction of the Commission to review, modify, supplement, or set aside its conservation orders when it appears there was an error made, or a new provision could better serve to prevent waste or to protect correlative rights.

The Commission, however, did in fact find that there was a change of conditions. In its Finding No. (13) it found that correlative rights were not being adequately protected under the 25-75 formula. It also found:

"(10) That in the Basin-Dakota Gas Pool there is no direct correlation between deliverability and reserves, or acreage and reserves, and that, therefore, neither should be used as the sole criterion for distributing the total pool allowable among the tracts."

This finding clearly shows not only the discovery of an error but the existence of a change in conditions brought about by the experience of the Commission in prorating the Basin-Dakota Pool, and the finding shows the Commission considered that to give 75% of the allocation to the individual wells on the basis of deliverability did not meet the statutory requirement that each operator in the pool be given the opportunity to produce his just and equitable share of the pool reserves.

In an address on The Nature and Effect of Conservation Orders, 8 Rocky Mt. Mineral Law Inst. 433, R. M. Williams discusses the question of change in conditions as affecting a commission's authority to amend or modify an order, or supplement it. Citing numerous cases to the effect that commissions generally exercise their authority to review, modify, supplement or set aside their orders at any time, it is stated:

"*** Regulatory agencies in all of the states are continually amending, supplementing, setting aside, or granting exceptions to their orders because of change of condition, additional knowledge, inadequacies, or errors in existing orders, improved techniques, inequitable results, or other reasons. Such right to change is inherent in the regulatory agency's general powers and continuing responsibility to make orders to prevent waste or protect correlative rights. To say that an agency having made an order is powerless to change or set it aside, however erroneous or ill advised it may have been, is to deny the continuing authority and responsibility of the agency to prevent waste or to protect correlative rights. One Texas case said the principle is now so well established as to require no citation of authority. Railroad Com. v. Humble Oil & Rfg. Co., 193 S.W.2d 573, 828."

The Commission of course has continuing jurisdiction over the conservation of oil and gas in this State, and to give the finality to its orders that petitioners advocate would defeat the purpose of the New Mexico conservation statutes.

In Railroad Commission v. Humble Oil & Refining Co., 193 S.W.2d 824, 828 (Tex. 1946), the court said:

> "The Commissions power to regulate oil production in the interests both of conservation and of protecting correlative rights is a continuing one, and its proration orders are subject to change, modification, or amendment at any time, upon due notice and hearing, either upon the commission's own motion or upon application of an interested party. This principle is now so well established as to require no citation of authority."

But supposing the Commission can act only on a change of conditions, such a change of conditions can clearly included the acquisition of new information, additional development of a reservoir, a new conclusion based upon experience under an old order, or other factors than a change in physical conditions.

In Application of Peppers Refining Co., 272 P.2d 416, 424 (Okla.) the court pointed out:

> "To hold that the Commission could never modify a well spacing pattern established by a previous order not appealed from upon a showing of characteristics about a common source of supply, and the withdrawals therefrom, that were not known or anticipated at the time of the original order, would 'tie the hands' of the commission and often prevent it from performing its statutory duties under our Oil and Gas Conservation Act."

The Occurrence of Waste as a Change of Conditions.

A change of conditions here lay in the fact that the Commission, upon acquiring new information as a result of the hearing before it in this instance, found that waste would result and that correlative rights were not being protected under under the order previously entered by the Commission. (Finding No. (13)). In this connection it also found that numerous wells in the Basin-Dakota Gas Pool are capable of draining more than their just and equitable share of the gas in the pool, that the 60-40 formula would, insofar as practicable, prevent drainage between producing tracts (Finding No. (15)), and would afford each owner the opportunity to use his just and equitable share of the reservoir energy (Finding No. (16)).

There is ample support in the evidence that inequitable drainage between tracts would result in premature abandonment of wells in the pool, and would result in waste. There is also ample support in the evidence that the 25-75 formula would discourage drilling of portions of the Pool, thus leaving recoverable gas in the ground. This also is waste. This is thoroughly covered in the summaries of testimony filed herewith.

If they argue that there is no finding of the precise amount of gas that can be produced without waste, petitioner's quibble over words. In the Jalmat decision, supra, the Commission, made no finding as to the amount of recoverable gas in the pool, the amount of gas under each tract in the pool, or the amount that could be recovered by each well under any formula. An entirely different picture is presented here. The Commission made specific and detailed findings as to each of these elements. It found that waste would occur unless it acted to change the formula. To infer that its action was beyond the scope of its authority merely because the words "produced without waste" do not appear in Order No. R-2259-B is, on mere speculation, to infer that the Commission, after an exhaustive study and determination that waste would occur, would then enter an order permitting waste. The argument is absurd on its face. Obviously the Commission would not enter an order to prevent waste and at the same time, in the same order, permit the production of gas that could only be produced wastefully. The order must be looked to as a whole, and all reasonable doubts resolved in favor of its validity. Sec. 65-3-22 (b), N. M. S. A. 1953.

In any event, it should be pointed out that at six month intervals the Commission determines how much gas can be

produced from this pool, and all other prorated pools, without waste, as provided in Sec. 65-3-13. This determination of the amount of gas that can be produced from the Basin-Dakota pool without waste is reviewed and amended each month. The Court can take judicial notice of these official acts of the Commission as provided by Rule 44, Rules of Civil Procedure.

The definition of waste, as stated in Sec. 65-3-3 (e), N. M. S. A., 1953, includes:

> "(e) The production in this state of natural gas from any gas well or wells, or from any gas pool, in excess of the reasonable market demand from such source for natural gas of the type produced or in excess of the capacity of gas transportation facilities for such type of natural gas."

By its very definition the Commission can only prorate to prevent waste, and each six months, and again each month, the Commission enters proration orders for this purpose which contain ample findings that all of the gas permitted to be produced thereunder is producible without waste.

The function of Order No. R-2259-B is to allocate to the individual wells or tracts within the Basin-Dakota Gas Pool that portion of the gas the Commission has found, on a continuing basis, may be produced without waste.

To say that the Commission has not made a specific finding in its Order No. R-2259-B of the amount of gas that can be produced without waste ignores the specific action taken by the Commission each six months, reviewed and revised each month, to determine the amount of gas that may be produced without waste. To require the Commission to again do this in its allocation order would require it to perform repetitious and meaningless acts.

It is inherent in the nature of the operation of gas fields and pools that if all gas is produced into the pipeline and marketed, there can be no surface waste. There is no contention that surface waste is occurring or has occurred in the Basin-Dakota pool. There is no evidence in the record to support such a contention.

In its Finding No. (13) the Commission found "that waste will result unless the Commission acts to protect correlative rights." The only waste it could be talking about or needs to talk about is the underground waste that would result unless the allocation formula was changed from the 25-75 formula then in effect to the 60-40 formula it acopted.

There is ample testimony in the record to support the finding that underground waste would occur under the 25-75 formula as a result of the premature abandonment of gas wells in the pool and the failure to drill and develop tracts in the pool containing recoverable gas, with resultant loss in ultimate recovery of gas from the pool. This is pointed out further, with references to the transcript, in our Summaries of the Testimony, and we will not duplicate the discussion here.

It is submitted that the Order No. R-2259-B contains all of the findings of jurisdictional facts required by the statute, that it meets the statutory requirements for a valid allocation of gas production, and that it contains all specific findings necessary for its valifity under the statute.

POINT 4

Substantial Evidence

4. The order is reasonable and lawful and is based upon and supported by substantial evidence.

Petitioners, in their Point IV, and its various subdivisions, contend that the order is unreasonable and unlawful because the Commission's findings and order are not based on or supported by substantial evidence.

In the Summaries of Testimony filed in connection herewith we point specifically to the evidence in the transcripts supporting each of the findings of the Commission under attack here and will not repeat any portion of the arguments there made at this point in this brief.

Admittedly, an order of the Commission, to be valid, must be supported by substantial evidence. Continental Oil Co. vs. Oil Conservation Commission, supra; Johnson v. Sanchez, 64 N. M. 478, 351 P. 2d 449.

In the Johnson case, a case involving revocation of a driver's license by the motor vehicle commissioner, the court discussed the scope of review:

> "It has long been the policy in the State of New Mexico, as shown by the various decisions of this court, that on appeals from administrative bodies the questions to be answered by the court are questions of law and are actually restricted to whether the administrative body acted fraudulently, arbitrarily or capriciously, whether the order was supported by substantial evidence, and, generally, whether the action of the administrative head was within the scope of his authority."

Numerous cases are cited in support of this conclusion.

Where, as here, only the question of the sufficiency of the findings and the question of whether they are supported by substantial evidence are presented by petitioners, the issue to be determined is that bearing upon substantial evidence. Applying the substantial evidence rule does not mean that the Court should or will weigh the evidence or substitute its judgment for the considered judgment of the

administrative tribunal. 2 Am. Jur. 2d 469, Administrative Law, Sec. 621. And the Court must not substitute its judgment for that of the agency. Burlington Truck Lines, Inc., v. United States, 371 U. S. 156, 9 L. Ed. 2d 207, 83 S. Ct. 239. That this is the rule in New Mexico is unquestioned Continental Oil Co. v. Oil Conservation Commission, supra; Ferguson-Steere Motor Co. v. State Corp. Commission, 63 N. M. 137, 314 P. 2d 894; Yarbrough v. Montoya, 54 N. M. 91, 214 P. 2d 769.

The rule is stated in 2 Am. Jr. 2d 555, Administrative Law, Sec. 675:

> "The 'substantial evidence' rule does not mean that the court will substitute its judgment for the considered judgment of the administrative tribunal in making findings of fact, even under state or federal administrative procedure acts which broadened the court's scope of review or which were enacted in view of dissatisfaction with the court's too restrictive review of the facts.* * * Courts must respect the findings of fact within its field by an agency presumably equipped or informed by experience to deal with a specialized field of knowledge, and even as to matters not requiring expertise a court may not displace the agency's choice between two fairly conflicting views, even though the court would justifiably have made a different choice had the matter been before it de novo."

Coupled with this is the generally recognized rule that the action of the Commission is presumed valid, which is supported both by statute (Sec. 65-3-22 (c), N. M. S. A. 1953), and by rule of law.

The rule is stated in 2 Am. Jur. 2d 265, Administrative Law, Sec. 453:

> "Until the contrary appears, it must be assumed that an administrative tribunal will base its findings and decision on the evidence, and that there was evidence in the proceedings to support the findings made.* * *"

Petitioners having asserted that there is no substantial evidence in the record to support the order, have the burden of

reviewing all of the evidence in the case, and discounting it completely, as substantial evidence. They have assumed the same burden in this Court as would be imposed by Rule 15 (6) of the Rules of the Supreme Court.

With these considerations in mind, we ask the Court to review the Summaries of Testimony submitted herewith in which the substantial evidence in the record is discussed at length.

One other matter remains to be discussed. Petitioners, in their Point IV, A, attack the findings or initial recoverable reserves under each tract as being based on out-of-date data, received in evidence over the objection of petitioner El Paso.

The basic date upon which the initial recoverable reserves under each tract was determined is contained in or derivable from respondent's February 14, 1963 Exhibits 1 and 2, which were received in evidence without objection by petitioners (February 14, 1963 Tr. 32,33). It was upon the basis of the data contained in these exhibits that the calculations of initial reserves under each tract was made.

POINT 5

Failure to Exhaust Administrative Remedy

5. The Court is without jurisdiction to hear this appeal for the reason the petitioners failed to exhaust their administrative remedy in that their petitions for rehearing before the Commission were not timely filed.

Under Sec. 65-3-22, N. M. S. A. 1953, it is provided:

> "(a) Within twenty (20) days after entry of any order or decision of the commission, any person affected thereby may file with the commission an application for rehearing in respect to any matter determined by such order or decision, setting forth the respect in which such order or decision is believed to be erroneous. * * *"

As provided in section (b) of the same statute, the petition for rehearing limits the scope of review in the District Court in that only questions presented by the application for rehearing may be reviewed on appeal.

The situation that exists here is apparent on the face of the pleadings. Order No. R-2259-B, the order appealed from, shows on its face that it is dated July 3, 1963. Petitioners, in Paragraph 6 of their petition for review in this Court, state that petition for rehearing was filed with the commission on July 26, 1963, by El Paso Natural Gas Company, and on July 29, 1963, by the other petitioners. Thus more than twenty days had elapsed from the date of the order until petitions for review were filed.

Upon elapse of the twenty-day period after the date of the order, July 3, 1963, the order of the Commission became final, and the Commission had no jurisdiction to amend or modify that order except after notice and hearing, in a new proceeding. Petitioner's failure to comply with the statute renders this Court without jurisdiction to hear this appeal. A timely petition for rehearing is essential. As stated in 73 C. J. S. 506, Public Adm. Bodies and Procedure, Sec. 163:

> "* * * Where the right of judicial review is granted, there must be compliance with the terms by which such right is authorized, and appeals must be prosecuted in accordance with requirements of the statutes allowing them. The court, in reviewing an order of a board, must act within the bounds of the statute without intruding on the administrative process."

Failure to file a timely petition for rehearing constitutes a failure to exhaust an available administrative remedy. The untimely filing of the applications for rehearing were, standing alone, adequate grounds for the Commission to deny rehearing.

POINT 6

Indispensable Parties

6. The Court is without jurisdiction of the subject matter of this action for failure of petitioners to name indispensable parties.

Respondent Consolidated has, in its answer in this proceedings, advised the Court of the lack of indispensable parties in this proceeding, naming such parties.

The question of the necessity for joinder of these parties is argued fully in the brief of respondent Oil Conservation Commission, and we adopt and incorporate herein the arguments and authorities presented in that brief.

POINT 7

Available Evidence

7. The order of the Commission is based upon the best available evidence, and the Commission has determined, insofar as may be practicably done, the recoverable reserves under each tract in the pool, and no evidence was offered by petitioners on which a different determination, or any determination, of reserves could have been made.

Petitioners, in their petition under Point IV, A, of their Statement of Points, contend that the findings of the Commission as to the initial recoverable reserves under each tract are based on out-of-date data which were designed to determine the recoverable reserves in the pool as a whole and not the recoverable gas in place under the individual tracts in the pool.

This question is fully discussed under the Summaries of Testimony filed in connection herewith. At this juncture,

however, it is contended by respondent that the Commission received and properly acted upon the best available evidence.

The Jalmat decision clearly recognizes that the Commission is a body exercising legislative functions, and as such it must, of necessity, acquire the information necessary for an intelligent decision. As stated in 2 Am. Jur. 2d. 264, Administrative Law, Sec. 452:

> "The mere holding of a hearing does not justify administrative action required to be based upon a hearing. The decision of the trier of the facts must be reached in accordance with the facts provided, and the decision and any required findings must find adequate support in the evidence, formally introduced at the hearing, or known to the parties in all essential elements. * * *"

This clearly states the situation that existed in this case before the Commission.

Petitioners infer that new, up-to-date data is available. They cannot point to any place in the record where they produced this data, or any data on which the Commission could base a proper allowable allocation formula. As is shown by the entire record in this case and the Summaries of Testimony filed with this brief, the best, and in fact the only, reserve information meeting the requirements of the Commission for the entry of an order based upon the type of findings required by statute was offered by respondent Consolidated and those supporting respondents before the Commission.

In the exercise of its functions, the Commission must act upon the evidence available to it. Having failed (and in fact been unwilling) to offer the Commission any evidence upon which it could make a proper determination, the petitioners cannot now be heard to complain that out-of-date data was utilized.

Petitioners contend that the use of initial recoverable reserves under each tract, and the use of current deliverabilities, in making the various calculations utilized by the Commission in its Order No. R-2259-B was not proper. Respondents contend that the order was based upon sound engineering. That the utilization of new reserve calculations would have made no difference in the end result is clearly shown by the Summaries of Testimony, Part II, particularly the portions discussing testimony of the witness David H. Rainey and the rebuttal testimony of witness Harry A. Trueblood, Jr., where this question is further discussed.

POINT 8

No Valid Proration Order Prior to R-2259-B

8. There was no valid proration order in existence prior to the Issuance of Order R-2259-B and Order R-1670, as made applicable to gas prorationing in the Basin-Dakota Gas Pool by Order No. R-1670-C is invalid and void because it was issued without jurisdiction on the part of the Commission, and the Commission, in entering said order, failed to make the basic jurisdictional findings upon which such an order can be based, which renders said order void, which said fact was presented to and argued before the Commission.

In its Point I, Petitioners contend that the Commission cannot change the original gas proration formula in the absence of a finding that waste was occurring under the original formula or that a change of condition had occurred requiring a change in the formula. In connection with respondent's Points 1, 2 and 3 we have discussed the question of a finding that waste would occur and the existence of changed conditions.

It is the purpose of this point to show the Court that there actually was no valid proration or allocation order in effect at the time of the hearing, and hence no change was involved.

True, the Commission had been prorating gas, and making its allocation of gas under Order R-1670. It is the position of respondent Consolidated that this order, under the decision of Continental Oil Company v. Oil Conservation Commission, supra, was void ab initio. In paragraph 9 of Consolidated's petition for rehearing, which is a part of the record in this case, it was stated:

> Order No. R-1670-C is based upon a finding that 'there is a general correlation between the deliverabilities of the gas wells in the Dakota Producing Interval and the recoverable gas in place under the tracts dedicated to the wells.' Evidence presented at the April 18, 1962 hearing of this matter conclusively shows that no such correlation exists, and that the Commission's Order No. R-1670-C is void insofar as it establishes an allowable allocation formula for the Basin-Dakota pool and should be rescinded by the Commission."

Order No. R-1670-C is necessarily before the Court as a part of the record in this case. It will readily be seen that the order is based upon a finding almost identical to the finding held insufficient by the Supreme Court in Continental Oil Company v. Oil Conservation Commission, supra.

The findings upon which Order No. R-1670-C is based, insofar as material here, are:

> "(3) That the producing capacity of the wells in the Dakota Producing Interval is in excess of the market demand for gas from said common source of supply, and that for the purpose of preventing waste and protecting correlative rights, appropriate procedures should be adopted to provide a method of allocating gas among proration units in the area encompassed by the Dakota Producing Interval, commencing February 1, 1961.
>
> "(4) That since the evidence presented established that there is a general correlation between the deliverabilities of the gas wells in the Dakota

> Producing Interval and the recoverable gas in place under the tracts dedicated to the wells, the gas allocation formula for the pool should be based on seventy-five (75) per cent acreage times deliverability plus twenty-five (25) per cent acreage. Such a formula will protect correlative rights and will, insofar as is practicable, prevent drainage between producing tracts which is not equalized by counter-drainage."

Finding No. (3) above is a good sound finding of fact by the Commission which continues as a part of the record of this case. Finding No.(4), however, goes to the basic question of the jurisdiction of the Commission to enter the operative features of Order No. R-1670-C. In the Jalmat decision, Continental Oil Co. vs. Oil Conservation Commission, supra, at page 320, the Supreme Court stated:

> "* * * Further, that portion of the same finding that there is a 'general correlation between the deliverabilities of the gas wells in the Jalmat Gas Pool and the recoverable gas in place under the tracts dedicated to said wells' is not tantamount to a finding that the new formula is based on the amounts of recoverable gas in the pool and under the tracts, insofar as these amounts can be practically determined and obtained without waste. Lacking such findings, or their equivalents, a supposedly valid order in current use cannot be replaced."

And, at page 319, the Court outlined the "basic conclusions of fact" required for a valid order, including in these basic findings, the amount of recoverable gas under each producer's tract, the total amount of recoverable gas in the pool, the proportion one bears to the other, and the proportion that can be recovered without waste. In this respect Finding No. (4) of Order No. R-1670-C is fatally defective.

On the basis we have discussed, the Jalmat order was held void by the court, because the Commission was without jurisdiction to enter it. At page 321, the Supreme Court stated:

"We therefore find that the order of the commission lacked the basic findings necessary to and upon which jurisdiction depended, and that therefore Order No. R-1092-C and Order No. R-1092-A are invalid and void." (Emphasis added)

It may be argued that this constitutes a collateral attack on Order No. R-1670-C. On this subject the text in 2 Am. Jur. 2d 303, Administrative Law, Sec. 495, is applicable:

"Many cases applying the rule that administrative determinations are not subject to collateral attack recognize that the rule depends upon the existence of jurisdiction in the agency, and it is generally held that, like the judgment of a court, an administrative decision made by an agency acting in a judicial or quasi-judicial capacity is open to collateral attack on the ground that the decision is void for lack of jurisdiction over the person or the subject matter--that is, made without statutory power or in excess thereof." (Emphasis added)

In the Jalmat decision the validity of prior gas allocation order was not raised and the court indulged the presumption that it was "presumably valid." In this case the question of the validity of the prior order was raised before the Commission and has been raised before this Court.

Since the prior order was void, we are not here faced with the situation of changing the prior proration order. Respondent Consolidated asked the Commission to replace a prior void order with a valid order based upon competent and adequate evidence of the type and kind required by the Jalmat decision. This is the kind of order the Commission entered.

Respectfully submitted,

KELLAHIN and FOX

By Jason W. Kellahin
Jason W. Kellahin

HOLME, ROBERTS, MORE & OWEN

By Ted P. Stockmar
Ted P. Stockmar

I hereby certify that a true copy of the foregoing instrument was mailed to opposing counsel of record on the 24th day of February, 1964:

Ted P. Stockmar
Ted P. Stockmar

STATE OF NEW MEXICO)
COUNTY OF SAN JUAN) AM 13

IN THE DISTRICT COURT

EL PASO NATURAL GAS COMPANY, a corporation, PAN AMERICAN PETROLEUM CORPORATION, a corporation, MARATHON OIL COMPANY, a corporation, SOUTHWEST PRODUCTION COMPANY, a partnership, and SUNSET INTERNATIONAL PETROLEUM CORPORATION, a corporation,

Petitioners,

No. 11685,

-vs-

OIL CONSERVATION COMMISSION OF NEW MEXICO, JACK M. CAMPBELL, Chairman, E. S. Walker, Member, A. L. Porter, Jr., Member and Secretary, CONSOLIDATED OIL & GAS, INC., a corporation,

Respondents.

SUMMARIES OF TESTIMONY

OF

RESPONDENT CONSOLIDATED OIL & GAS, INC.

These summaries, as well as the Memorandum brief submitted herewith, are submitted in accordance with the directions of the Court. For convenience the summaries of testimony in this complex matter are presented in three parts:

I. A chronological summary of the testimony of each witness appearing in the hearing of the matter before the Oil Conservation Commission of the State of New Mexico (herein the Commission) which commenced April 18, 1962;

II. A chronological summary of the testimony of each witness appearing in the rehearing of the matter before the Commission which commenced February 14, 1963;

III. A composite summary of testimony bearing on the specific findings of fact made by the Commission in its Order No. R-2259-B.

In Parts I and II hereafter, each of which deals with a separate hearing, the references to transcript pages used will in each case refer to the transcript of the appropriate proceeding unless otherwise noted. In like manner a reference in Part I or II to an exhibit number will refer to an exhibit as numbered and used in the particular hearing unless otherwise noted.

In Part III hereafter the transcript and exhibit references for matters relating to the April 18, 1962 hearing will be simply stated. The references to matters relating to the February 14, 1962 hearing will be so designated.

P A R T I

CHRONOLOGICAL SUMMARIES

OF THE

TESTIMONY OF WITNESSES

APPEARING AT THE APRIL 18, 1962 HEARING

SUMMARY OF DIRECT TESTIMONY

OF

HARRY A. TRUEBLOOD, JR.

Witness for Consolidated Oil and Gas Company, Inc.

April 18, 1962 hearing

Mr. Trueblood, in addition to being President of Consolidated and thus testifying in part as a member of the management of the applicant was presented and qualified as a petroleum engineer (Tr. 15).

Mr. Trueblood testified that the Basin-Dakota reservoir was a large, fairly uniform sand body having no more than a 3 to 1 variation in characteristics, with communication throughout, which would produce its reserves at a low rate of production compared with the gas in place, thus allowing underground redistribution of gas if disproportionate withdrawals are made (Tr. 22, 26-28, 32, 77-78, 145, Consolidated's Exhibit No. 1).

In connection with Consolidated's Exhibit No. 3, Mr. Trueblood stated that the average reserve per well covered thereby was 3.6 billion cubic feet of gas (Tr. 34); that the average deliverability of the wells was 1225 MCF per day; that approximately 70% of the wells had below average deliverability and 30% above average deliverability (Tr. 35).

From Consolidated's Exhibits Nos. 2, 3 and 4 he stated that as of February, 1962, the average deliverability of the 473 non-marginal wells was 1404 MCF per day; that 69.6% of these wells had below average deliverability and 30.4% had above average deliverabilities; that the below average deliverability wells had 62.3% of the total fields reserves and the above average deliverability wells had 37.7% of the total field

reserve; and that the average reserves of the below average deliverability wells was 3 billion cubic feet of gas and the average reserves of the above average deliverability wells was 5 billion cubic feet of gas (Tr. 35-39, incl. and said Exhibits). He further stated that under the 25-75 formula the February, 1962, allocation of permitted production for such wells would allow the 30.4% above average deliverability wells to produce 61.2% of the field allowable and the 69.6% below average deliverability wells to produce 38.8% thereof, for an average of 32.3 MMCF for the above average wells and 8.9 MMCF for the below average wells, thus permitting drainage between tracts. The dramatic red arrow on Consolidated Exhibit No. 4 shows visually the drainage concept. (Tr. 39, Consolidated Exhibit No. 4)

Mr. Trueblood showed that as extremes under the 25-75 formula 2.1% of the field wells would receive 12.4% of the field allowable and 58.8% of the wells would receive 29.2% thereof (Consolidated Exhibit No. 3).

For future reference it is important to note that Mr. Trueblood made an analysis of an El Paso Natural Gas Company (herein "El Paso") study based on 160 wells and made at a time when there were only a few more than 200 wells in the Pool which, when compared with his analysis of data relating to 473 wells and made a year and one-half later when there were just over 500 wells in the Pool, showed an amazing consistency as to field-wide averages and ranges of well characteristics (Tr. 34-36). His apparent purpose in making the comparison was to show that enough data was available as to the general characteristics of the Pool and wells therein to enable him to forecast that little or no significant changes in the averages would result from additional development (Tr. 36).

Mr. Trueblood stated categorically that there was no direct relationship between deliverabilities and reserves, except possibly in lower deliverability ranges (Tr. 33-4); that continuance of the 25-75 formula would impair development of the Pool thus leaving recoverable gas in the ground (Tr. 16-18, 24, 37-40, 44, 52, 59, 67, 79, 117-8, 155-6, 160); and that the 25-75 formula was and would continue to permit violations of correlative rights and drainage from one tract to another not compensated by counter drainage (Tr. 22, 24, 28-30, 36, 39, 80, 128-9, 195, 199-200; Consolidated Exhibits Nos. 1 and 4).

The great bulk of the cross-examination of Mr. Trueblood related to the financial condition and management of applicant and is not here summarized (Tr. 46-126, incl., and Ohio Oil Company (herein "Ohio") Exhibits A-F, incl.)

SUMMARY OF DIRECT TESTIMONY

OF

OR N HAZELTINE

Witness for Southern Union Gas Company

April 18, 1962 Hearing

Mr. Hazeltine's testimony in explaining Southern Union's Exhibits Nos. 1 and 2 related to showing that the reservoir comprising the Basin-Dakota Pool is a blanket sand formation with fairly uniform characteristics throughout (Tr. 164); that changes in such characteristics are gradual across the entire basin (Tr. 164-5, 187); but that there is extreme lack of uniformity in the well deliverabilities and an erratic spread of deliverabilities from location to location (Tr. 165).

He further stated that there is no way to correlate well deliverabilities with subsurface information available to operators and nothing that ties deliverabilities to reserves (Tr. 165-6, 170, 172)

He cited examples from his Exhibits to show offsetting wells having similar characteristics and reserves but having up to a 65 to 1 spread of deliverabilities (Tr. 165-167, 171) which he attributed to artificial fracturing in completion practices and the luck of penetrating a natural fracture system in drilling in a well (Tr. 167-9) but which he stated did not materially increase gas reserves (Tr. 169, 171).

On Cross Examination Mr. Hazeltine stated that the township method of averaging reserves was a reasonable approach (Tr. 173-4), and that the drainage radius of a well could be up to two miles (Tr. 195).

As to a proper allowable formula it was Mr. Hazeltine's opinion that there should be a significant decrease (even below 40%) in the weight of deliverability in the formula (Tr. 176, 192).

SUMMARY OF DIRECT TESTIMONY

OF

A. M. WIEDEKEHR

Witness for Southern Union Gas Company

April 18, 1962 Hearing

Mr. Wiedekehr is a Vice President of Southern Union Gas Company in charge of exploration and gas supply and also a petroleum engineer familiar with the Basin-Dakota Field (Tr. 196-8, incl.).

He testified that the range of reserves underlying any given 320 acre tracts will, at a maximum, range from 5 to 6 billion cubic feet down to 1½ to 2 billion cubic feet at the edge of the pool, or a rough range of reserves of 3 or 3½ to 1 between the "heart" area and the poorer area (Tr. 198-9).

He further testified that the range of deliverabilities was much greater with the result that the 25-75 formula was not protecting correlative rights (Tr. 199-201). He stated that as of February, 1962, 21.7% of 118 wells in the San Juan Basin studied received 52.1% of the allowable (Tr. 199-200).

Mr. Wiedekehr stated that operations under the 25-75 formula are "gutting the heart of the field, gutting the good wells", causing economic waste and violating correlative rights (Tr. 201).

He further stated that a fair allowable formula for the Basin-Dakota Pool would give 2/3 weight to acreage and 1/3 to deliverability (Tr. 211), although deliverability was not even a necessary part of an allowable formula (Tr. 212).

SUMMARY OF DIRECT TESTIMONY

OF

ELVIS A. UTZ

Witness for the New Mexico Oil Conservation Commission

April 18, 1962, Hearing

The main thrust of the exhibits and testimony of Mr. Utz related to the possible need for establishing a minimum per well allowable for the Basin-Dakota Pool. He stated that such an allowable would prevent premature abandonment of small wells which receive allowables under the 25-75 formula lower than an economic limit and thereby prevent waste (Tr. 221-2, 248).

Mr. Utz stated that an acreage factor in an allowable formula provided a minimum well allowable but that a 25% acreage factor did not provide a sufficient minimum to prevent premature abandonment (Tr. 223-4, 271).

Mr. Utz indicated that it was incumbent on the Commission to permit all wells capable of producing the necessary gas to be permitted an allowable sufficient to provide a reasonable payout, within statutory requirements (Tr. 223, 232, 243, 269-271) so as to prevent premature abandonment of wells thus causing waste by leaving recoverable gas in the gound (Tr. 224, 248); and that such was proper even if some violation of correlative rights occurred (Tr. 250, 278-9).

Mr. Utz makes the interesting statement that the Commission in setting the 25-75 formula prejudged the case and affected operators who had no right to appear and present their arguments pro and con (Tr. 268).

SUMMARY OF TESTIMONY

of

BILL A. STREET

Witness for Pubco Petroleum Corporation

April 18, 1962 hearing

Mr. Street was presented as qualified to testify in this matter as an expert geologist (Tr. 282-283). On several occasions Mr. Street disavowed qualification as an engineer or a reservoir engineer (Tr. 342, 358).

The main thrust of his testimony was that "If there is a varying thickness in reservoir, the quantity of hydrocarbon reserves will increase or decrease providing the other reservoir parameters remain constant." (Tr. 286). This opinion is not only not refuted by other witnesses but is accepted by all of them who dealt with the concept, at least to the extent they referred to "net pay sand", i.e., that part of the gross thickness of the formation containing recoverable gas.

His second major premise was that there are sharp lateral variations in the gross sand thickness in the Dakota reservoir (Tr. 291, 309, 312, 347). In this connection Pubco Exhibits Nos. 2 and 3 were presented. Pubco Exhibit No. 2 is a cross section of 8 wells across the field and involved a total distance across the field of 76½ miles (Tr. 324). Pubco Exhibit No. 3 is a cross section of 21 wells and involves a distance of 14 miles. This testimony should be compared with that of Mr. Hazeltine summarized above and Pubco Exhibit No. 2 should be compared with Southern Union Exhibit No. 1. As to the same matters Mr. Hazeltine was of the opinion (Tr.

164-165) that although variations in reservoir characteristics do occur, the Dakota formation is a blanket sand and fairly uniform throughout with variations occurring gradually from location to location.

Visual inspection of Pubco Exhibit No. 3 confirms the gradual character of the variations. Mr. Street's testimony (Tr. 308-309) and Pubco Exhibit No. 4 indicate that instances of rapid lateral changes can occur, but it cannot be said that such instances are representative of the reservoir (see cross-examination Tr. 343-347, 397).

Mr. Street attempted to support his testimony (Tr. 284) that the deliverability of a well is directly proportionate to the reserves under such well with Pubco Exhibits Nos. 1 and 5. In connection therewith he testified that a correlation existed between the deliverability of a well and the gross thickness of the formation underlying the well (Tr. 311). In contradiction of himself, however, he had earlier pointed out that there is a major difference between gross sandstone thickness and net reservoir thickness (Tr. 288), and that the gross sandstone isopach map cannot be used for reserve calculations (Tr. 289).

Close visual comparison of Pubco Exhibits 1 and 5 brings out that although from a distance the artistic use of an arbitrary coloring plan creates the illusion of some general correlation between well deliverabilities and gross thickness, the exhibits when compared on a section by section or township by township basis do not bear out the overall visual impression. In scrutinizing the exhibits it should be noted that Exhibit 1 uses a color range as follows:

Yellow - Less than 40 feet gross thickness
Green - 40 to 60 feet gross thickness
Red - 60 feet and thicker gross thickness
(with a range of from 60 to 148 feet)

Exhibit 5 uses a color range as follows:

Yellow - Deliverabilities of less than 500 MCF
Green - Deliverabilities of 500 MCF to 1000 MCF
Red - Deliverabilities above 1000 MCF
(with a range from 1000 MCF to 18,000+ MCF)

thus lumping under the red color a much wider spread of deliverabilities than exists in the spread of acreage thicknesses in the red area. that net pay, not gross pay, should be used in determining reserves (Tr. 321); that even net pay is not a substitute for reserve calculations (Tr. 336) but simply one of the many factors involved in making them (Tr. 337, 357), and that he did not know what the relationship was between deliverabilities and reserves (Tr. 379).

That Pubco Exhibits 2, 3 and 4 were presented only to show the degree of variation of formation thickness is made clear by Mr. Street's testimony (Tr. 327, 336, 343). That the determinations of net pay sand for each well shown on those exhibits or testified to by Mr. Street (Tr. 292-297, 299-305, 308-309) disclose no general correlation with either the initial potentials of the respective wells as shown on the exhibits or with the deliverabilities thereof as shown on Pubco Exhibit No. 5 is evident from the wide range of comparative ratios which can be made (Tr. 339-341, 343-344, 365-374). In addition, Mr. Street disavowed that comparisons of net pay and initial potentials are useful in comparing reserves and deliverabilities (Tr. 326, 336).

It seems to be Pubco's theory that only high deliverability wells should be drilled and completed and that only high deliverability wells are "commercial wells" (Tr. 314-16). In arriving at this, Mr. Street was forced to admit that the "reserves under a well" are those reserves which may be recovered through a particular bore hole (i.e. from the radium of drainage) and that the 320-acre spacing order is all the protection of correlative rights needed (Tr. 313-14, 337) and further that the amount of gas a well necessary to make a well commercial is dependent on the allowable allocation formula (Tr. 316).

SUMMARY OF TESTIMONY

of

DAN CLEVELAND

Witness for Pubco Petroleum Corporation

April 18, 1962 Hearing

Mr. Cleveland was presented as qualified to testify in this matter as a petroleum reservoir engineer (Tr. 399-400).

His testimony largely related to a reserve study made on the reserves attributable to 33 wells using the pressure decline method.

In making his calculations Mr. Cleveland assumed an economic producing limit of 26,000 or 27,000 cubic feet per day (Tr. 407). On cross examination Mr. Cleveland admitted that wells capable of producing less than 765 MCF per month (or 25,500 cubic feet per day by calculation) may still have producible reserves and that abandonment at that point would be premature (Tr. 477).

From these arbitrarily determine reserve data Pubco's Exhibit No. 7 was constructed which purported to show, and from which Mr. Cleveland concluded, that the deliverability of a well is proportional to the recoverable gas reserves attributable thereto (Tr. 408-409). It should be noted that the points through which the curve on Pubco Exhibit 7 was drawn by Mr. Cleveland were widely scattered and show a wide range of characteristics. For example, two of the wells in his 4 billion to 5 billion reserve range have deliverabilities of 800 and 4050 respectively, a difference of over 500%. In this connection reference is made to the testimony of Mr. Rainey summarized below and to El Paso's Exhibit No. 1 which was constructed by the use of an averaging method but applied to a larger number of wells.

Further reference is made to the rebuttal testimony of Mr. Trueblood summarized below and to Consolidated's Exhibit No. 6 which shows conclusively that it is possible (and equally valid or invalid), to draw any number of completely different curves showing an apparent relationship between deliverability and reserves from exactly the same data.

The impact of cross examination relating to the validity of the basis of the reserve calculations and of witness Trueblood's rebuttal testimony was to discredit completely Pubco Exhibit No. 7 and any conclusions derived from it that a proportional relationship exists between deliverability and reserves. This in turn discredited Mr. Cleveland's other testimony which in large part was based on his opinion that reserves and deliverability are related. For example, his testimony that an allocation formula based primarily on deliverability is a just and equitable method of assigning allowables (Tr. 401-402); that the previous 25-75 formula prevents waste and protects correlative rights (Tr. 402-403); that low deliverability wells were receiving more than their fair share of the field allowable (Tr. 410); and that further development of the Basin-Dakota Pool would be prejudiced by a change in the 25-75 allowable formula (Tr. 413). In addition, Mr. Cleveland admitted that he had not been able to develop a precise formula relating deliverability to reserves (Tr. 462).

An interesting anomaly in Mr. Cleveland's testimony is the inconsistency of relating the reserves in a given tract, which by his definitions are reserves lying under the particular 320-acre tract dedicated to the producing well under existing well spacing orders (Tr. 425, 457), with the deliverability of that well, which by his definition is a function of some or all of the reservoir characteristics involved in the drainage area

of the well (Tr. 401, 410, 435, 459-460). He stated that it cannot be known by anyone whether a given well is draining more or less than 320 acres (Tr. 453-454, 457).

As to wells which have different deliverabilities but identical reserves, Mr. Cleveland denied that the higher deliverability well will produce its reserves first and that then a redistribution of gas would take place underground so that the higher deliverability well would produce substantially more of the total gas than the other (Tr. 436-437). In opposition to this is the testimony of Mr. Trueblood summarized above. Mr Cleveland admitted that under the 25-75 formula, in the absence of a minimum allowable, recoverable gas could be left in the ground (Tr. 477).

SUMMARY OF TESTIMONY

of

DAVID H. RAINEY

Witness for El Paso Natural Gas Company

April 18, 1962 hearing

The testimony of Mr. Rainey as to the reserves attributable to the wells in the Basin-Dakota Gas Pool was based upon a continuing and continuous study by the reservoir department of El Paso based on data gathered over a long period of time (Tr. 479, 484).

These data were developed on a township area basis and field-wide averages were not used. Mr. Rainey stated this to be a much more accurate method than field-wide averaging (Tr. 482). Mr. Rainey concluded that the thickest areas in the field are not necessarily the best reserve areas (Tr. 483).

It was stated that the variations in the actual MCF per acre-foot factor varied from a low of 201 MCF per acre foot to a high of 537.7 MCF per acre foot (Tr. 484) thus giving a ratio of 1 to 2.66 (calculated).

Mr. Rainey stated that the determination of net pay thickness was made on exactly the same basis for every well in the Basin (Tr. 485) and that in doing so all knowledge of core data, log characteristics and quality of sand was taken into account (Tr. 488). From these data the recoverable gas reserve was calculated for each of the 457 wells in the field where both logs and deliverabilities were available (Tr. 479-480, 489).

It is noteworthy that all of the other witnesses at the hearings who discussed the El Paso reserve determinations, including those opposed to El Paso, wholeheartedly subscribed to the validity of El Paso's work even though there was substantial

disagreement over El Paso's use of the work to show a relationship between deliverability and reserves. (Tr. 561-2, 637-8, 649; February 14, 1963 Tr. 17, 168-9)

The known deliverabilities and the reserves of those wells calculated by El Paso were, by an averaging method, used by El Paso to construct El Paso's Exhibit No. 1 - a graph purporting to show a relationship between deliverabilities and reserves (Tr. 489-493). It should be noted that Mr. Rainey stated "... I think we will all recognize that if you plotted each individual well, in addition to getting sort of a shotgun pattern on your graph, you get something that's a little difficult to see and understand, so for simplicity's sake we averaged these by reserve groups,..." (Tr. 489).

From El Paso Exhibit No. 1 Mr. Rainey concluded that a close correlation exists between deliverability and recoverable reserves (Tr. 493). This is the same conclusion reached by Mr. Cleveland on a similar comparison of 33 wells and subject to the same defects disclosed by Mr. Trueblood's rebuttal testimony hereafter summarized. Thus, the opinions of Mr. Rainey based on his interpretation of El Paso Exhibit No. 1 must be scrutinized in the light of its validity. For example, Mr. Rainey's views that low reserve wells receive more allowable than high reserve wells by virtue of a deliverability formula (Tr. 492, 505, 507); that there was drainage from the high reserve area to the low reserve area (Tr. 510); and that "any move to assign more allowable by virtue of increasing the acreage factor to low deliverability wells is a move 180 degrees in the wrong direction." (Tr. 505).

On cross-examination Mr. Rainey testified that there is a direct relationship between permeability and deliverability and a direct relationship between deliverabilities and reserves,

but no specific relationship between permeability and reserves, thus stating a mathematical absurdity (Tr. 517-8).

The second phase of Mr. Rainey's temtimony was in connection with El Paso Exhibit No. 2 which was a comparison of fixed depletion rate and alternate allowable formulae. It is clear that some of the basic data used in El Paso Exhibit No. 2 was derived from the average curve shown on El Paso Exhibit No. 1 (Tr. 497) and to that extent is subject to the same defects.

El Paso Exhibit No. 2 was presented to show the impact on groups of wells (averaged by reserve categories) of comparing permitted allowables under various allowable formulae with an arbitrary so-called fixed depletion rate of 1 million cubic feet per day for each 10 billion cubic feet of reserves. Reference is made to the rebuttal testimony of Mr. Trueblood hereafter summarized where the basic data on El Paso Exhibit No. 2 is reworked on another equally valid (or invalid) averaging method (i.e., averaging by deliverability categories) with substantially different results.

In speaking of what constitutes a proper allowable formula Mr. Rainey testified that the hope of all proration formulae is to deplete reserves percentagewise on an equal basis (Tr. 547).

In connection with the criticism made at the February 14, 1963 hearing by Mr. Rainey of Consolidated's February 14, 1963 Exhibit No. 4 (February 14, 1963 Tr. 134-5) it is interesting to note that in comparing data he had prepared showing initial reserve conditions and that which he had prepared showing current conditions, his curves purporting to show the relationship between deliverabilities and reserves fell in exactly the same place for the vast majority of the wells studied (Tr. 491-2, El Paso Exhibit No. 1), and that since,

in his opinion they should fall exactly in line throughout, he admitted the possibility of having attributed a little bit too much reserve to the high reserve wells (Tr. 511), and that all the wells on the end of the curve were "freaks" (Tr. 533).

SUMMARY OF TESTIMONY

OF

L. M. STEVENS

Witness for Aztec Oil and Gas Company

April 18, 1962 Hearing

Mr. Stevens testified that there is a general correlation between deliverability and reserves (Tr. 558) and testified as to studies made by Aztec based on 101 wells in which Aztec is interested. Mr. Stevens introduced Aztec Exhibits No. 1 and 2 which were substantially similar in import to the deliverability versus reserve graphs presented by Pubco Exhibit No. 7 and El Paso Exhibit No. 1. In fact Aztec Exhibits 1 and 2 were based on the above referred to El Paso study of 457 wells as to which Mr. Stevens testified as follows (Tr. 561-562):

"Q Did the computation of Aztec's reserves on an individual well basis compare favorably with the study of reserves made by El Paso as represented on El Paso's Exhibit No. 1?

"A Yes, sir, they compared very favorably.

"Q Do you have an opinion as to El Paso's reserves study and its value in showing the distribution of recoverable reserves in the Basin-Dakota Pool?

"A I have a very firm conviction that they are very correct according to Mr. Rainey's testimony to the way that he supported them in his testimony, and also because our own reserve and deliverability calculations and investigation compared so favorably with them; and I think that I'm satisfied that our reserve calculations are correct.

"Q What is your feeling as to the appropriateness of the El Paso study of 457 wells in this study?

"A Well, I think it's the most appropriate thing that we have seen at this hearing, because it contains 457 wells, which was just about every existing Dakota well completion around December of last year or January of this year."

As to there being a general correlation between deliverability and reserves Mr. Stevens stated on cross examination that he did not have the slightest idea as to the accuracy of such a correlation (Tr. 568); that he had never seen it explained (Tr. 569); and that he was unwilling to define what he meant by a "general correlation" (Tr. 571).

In essence Mr. Stevens' testimony was repetitive of that offered by witnesses Street, Cleveland and Rainey.

SUMMARY OF TESTIMONY

OF

THOMAS F. POPP

Witness for Sunset International Petroleum Corporation

April 18, 1962 Hearing

The testimony of Mr. Popp (who is not a reservoir engineer (Tr. 586) was repetitive of the testimony of witnesses Cleveland, Rainey and Stevens. Sunset Exhibits 1 and 2 were similar in import to Pubco Exhibit No. 7, El Paso Exhibit No. 1 and Aztec Exhibits 1 and 2, although based on reserve calucla-tions for 13 wells in which Sunset was interested.

To the extent such testimony and exhibits purport to show a relationship between deliverability and reserves reference is made to comments hereinabove made as to the testimony of witnesses Cleveland, Rainey and Stevens and to the rebuttal testimony of Mr. Trueblood hereafter summarized.

It should be noted, however, that Mr. Popp stated that a substantial change in the deliverability of a well resulting from artificial fracturing operations did not change the reserves of the well (Tr. 580).

SUMMARY OF TESTIMONY

OF

A. F. HOLLAND

Witness for Caulkins Oil Company

April 18, 1962 Hearing

The testimony of Mr. Holland was largely repetitive of that of prior witnesses supporting the 25-75 formula, including his admission that he did not know the actual drainage area of the wells he had studied (Tr. 611).

SUMMARY OF TESTIMONY

of

FRANK D. GORHAM

Witness for Pubco Petroleum Corporation

April 18, 1962 hearing

Mr. Gorham subscribed to the testimony of previous witnesses that deliverability is proportionate to reserves (Tr. 620) and that increasing the acreage factor in the allowable formula would violate correlative rights (Tr. 621, 625).

Mr. Gorham confirmed the propriety of calculating reserves for wells by the use of township averages (Tr. 622-623) thus apparently supporting the practice of El Paso in determining reserves.

Mr. Gorham stated that the 25-75 allowable allocation formula should be continued, or if changed should more heavily favor deliverability (Tr. 625-626).

SUMMARY OF REBUTTAL TESTIMONY

OF

HARRY A. TRUEBLOOD, JR.

Witness for Consolidated Oil & Gas, Inc.

April 18, 1962 Hearing

It is noted that the evening previous to Mr. Trueblood's rebuttal testimony, Mr. Rainey had made available to him 9 data sheets which contained specific details as to the deliverabilities and calculated reserves of the 457 wells which were the basis of El Paso Exhibits 1 and 2 and of much of Mr. Rainery's testimony (Tr. 538, 539, 543, 545, 628).

The main thrust of Mr. Trueblood's rebuttal testimony was that El Paso and Aztec had erred in their approaches to creating El Paso Exhibits 1 and 2 and Aztec Exhibits 1 and 2, and that all conclusions based thereon were perpetuations of the same errors. It will be recalled that each of those exhibits were graphs showing curves based on average points of the reserves and deliverabilities of wells falling in specific reserve groups.

To demonstrate the error Mr. Trueblood took the El Paso data for each of the 457 wells involved in El Paso's study and rearranged the wells into deliverability groups (Tr. 630) and then averaged the reserves and deliverabilities of the wells falling in each deliverability group (Tr. 630-631). This resulted in seven average points each representing the wells in its group which, when plotted on a deliverability versus reserves graph resulted in a curve radically different from that achieved by averaging the same basic data by reserve groups and plotting it (Tr. 633-635, Compare red curve on Consolidated Exhibit No. 6 with the curves on El Paso Exhibit No. 1).

Consolidated Exhibits Nos. 7 and 8 are similar reworkings of Aztec Exhibits Nos. 1 and 2, the red line being Consolidated's reversal of the same data (Tr. 642-4).

The conclusions which may fairly be drawn from Mr. Trueblood's direct and rebuttal testimony are:

(1) There is no precise mathematical or engineering relationship between deliverabilities and reserves (Tr. 632, 637).

(2) There is no general correlation between deliverabilities and reserves where in each reserve range a wide variation in deliverabilities exists and where in each deliverability range a wide variation in reserves exists (Tr. 23, 31, 33, 638, 654).

(3) The apparent correlation which exists as to a well having deliverabilities of 200,000 MCF and below occurs because that well will probably not drain the 320 acres assigned to it in any reasonable period of time and therefore engineers are inclined to measure reserves by the ability of the well to produce (i.e., its deliverability) during a reasonable period (Tr. 635).

(4) That the deliverability of a well results from the simultaneous operation of many reservoir and rock characteristics which bear upon the capacity of that well to produce its reserves but measures or controls only the time in which the reserves will be produced and not the amount of the reserves (Tr. 636-7, 653).

(5) That a 60-40 formula would prevent waste by permitting the drilling of many wells which otherwise would be forecast as uneconomic and not be drilled, thus permitting the production of substantial quantities of

gas which would otherwise be left in the ground (Tr. 16-18, 24, 37-40, 44, 52, 59, 67, 79, 117-8, 155-6, 160)

(6) That a 60-40 formula would aid in protecting correlative rights (Tr. 22, 24, 28-30, 36, 39, 80, 128-9, 195, 199-200, Consolidated Exhibits Nos. 1 and 4).

P A R T II

CHRONOLOGICAL SUMMARIES

OF THE

TESTIMONY OF WITNESSES

APPEARING AT THE FEBRUARY 14, 1963 HEARING

SUMMARY OF THE DIRECT TESTIMONY

OF

HARRY A. TRUEBLOOD, JR.

Witness for Consolidated Oil & Gas, Inc.

February 14, 1963 Hearing

Mr. Trueblood introduced as Consolidated's Exhibit No. 2 certain basic data sheets prepared by El Paso which had been delivered to Consolidated pursuant to subpoena issued by the Commission and which showed, among other data, the gas reserves attributed by El Paso to the tracts underlying 460 wells in the Basin-Dakota Pool (Tr. 14-15, Consolidated Exhibit No. 2).

Mr. Trueblood testified that engineers working under his supervision had made independent gas reserve calculations for the tracts underlying 58 wells as to which core analyses and logs had been made available to him by subpoena or otherwise, which calculations were then compared with the reserves attributed to the same 58 tracts in Consolidated's Exhibit No. 2 (Tr. 16). He further stated that the calculations of his engineers compared favorably with the individual El Paso calculations, ranging from a low of 70% to a high of 130%, with a comparison of total reserves for the 58 tracts of 108% of those calculated by El Paso (Tr. 16-17).

Mr. Trueblood stated that he felt the El Paso calculations had been remarkably accurate and honest (Tr. 17, 35) and on the basis of his own calculations, as an expert petroleum engineer adopted as his own the calculations made by El Paso for the 460 tracts identified on Consolidated Exhibit No. 2 (Tr. 19).

Mr. Trueblood further testified in connection with Consolidated Exhibit No. 3 that the reserve data from Consolidated Exhibit No. 2 was plotted on a map of the Basin-Dakota wells and that data contoured to enable him to provide reserve data for every well in the field (Tr. 18-19, 42).

From this he was able to show that the 699 non-marginal wells which had been given a deliverability factor in the Commission's December, 1962 proration schedule had an average reserve per well of 3.03 billion cubic feet of gas with a total reserve for those 699 wells of 2.159 trillion cubic feet of gas (Tr. 19-20). He stated further that the total reserves in the field outline, including marginal wells, had been determined to be 2.255 trillion cubic feet of gas (Tr. 20).

Mr. Trueblood testified that Consolidated Exhibit No. 4 had been prepared to include, for each of the 699 non-marginal tracts in the field, data with respect to the acreage factor as determined by the Commission; the deliverability as determined under Commission rules; the gas reserves for each tract as determined from Consolidated's Exhibit No. 3; and the percent of the total of such reserves under each tract (Tr. 20-21).

Consolidated Exhibit No. 4 also showed, for eight possible formulae based on different combinations of acreage and deliverability factors, the percentage of the total field non-marginal well allowable attributable to each tract under each of the eight hypothetical formulae and the ratio between each such percentage of the field allowable and the percentage of the total reserves attributable to those 699 wells (Tr. 21-33).

Mr. Trueblood testified that from Consolidated Exhibit No. 4 it was then possible, for each of the 699 tracts, to determine which of the eight hypothetical formulae came nearest to the ideal of providing a one-to-one ratio of reserves to

allowable (Tr. 22-24), but that the best of the eight hypothetical formulae would be that one which would best group the maximum number of wells near unity (or the one-to-one reserve to allowables ratio) (Tr. 24-25).

Mr. Trueblood testified that Consolidated's Exhibits Nos. 5 and 6 had been prepared from the data on its Exhibit No. 4 and showed graphically that the ideal one-to-one ratio of reserves to allowables was achieved for the largest number of wells under an allowable formula having approximately a 60% (or somewhat larger) acreage factor and a 40% (or somewhat smaller) deliverability factor (Tr. 24-26).

Mr. Trueblood testified that in evaluating gas reserves it was reasonable to allow a reasonable tolerance for accuracy of 30% on either side of a determined reserve figure (Tr. 26), and that any reserve determination which, after granting that tolerance, approached a one-to-one ratio of reserves to allowable would not be a violation of correlative rights (Tr. 26). He then stated that Consolidated's Exhibit No. 7 showed that the minimum number of abuses of correlative rights would occur under an allowable formula providing for an acreage factor of 60% (or somewhat more) and a deliverability factor of 40% (or somewhat less) (Tr. 27), and that similar results were obtained by using other ranges of tolerance for the accuracy of computed reserves (Tr. 27-28)

It should be noted that in connection with Consolidated's request for the admission of its Exhibits Nos. 1 through 7, El Paso objected only to Exhibits 3 through 7 and did not object to Exhibits 1 and 2 (Tr. 32, 33).

On redirect examination Mr. Trueblood testified with respect to Consolidated Exhibit No. 8 which he stated was identical to its Exhibit No. 5 in concept but limited to the 460 wells for which actual reserve data was available from its Exhibit No. 2, and which also showed that the 60-40 formula was proper (Tr. 42-3).

In connection with the validity of deriving gas reserves by contouring methods as was done for certain wells from Consolidated Exhibit No. 3, it is interesting to note that Pubco's Witness Cleveland used the same method in connection with work supporting his testimony (Tr. 58-59).

SUMMARY OF TESTIMONY

OF

DAN CLEVELAND

Witness for Pubco Petroleum Corporation

February 14, 1963 Hearing

Mr. Cleveland presented a study of the recoverable gas reserves attributable to 382 wells in the Basin-Dakota Field based upon formulae set forth in Pubco Exhibit R-1 (Tr. 53, 60). It is noted that the formula requires that a "recovery efficiency factor" be multiplied times the gas in place computed by the volumetric formula and that Mr. Cleveland used non-uniform abandonment pressures in his calculations of reserves for various tracts (Tr. 53-5, 83), even though Mr. Cleveland admitted on cross-examination that all wells could be produced to the same abandonment pressure (Tr. 86) and that in his work he indirectly considered permeability (Tr. 84, 87, 89) which is a function of deliverability.

It is also noted that Mr. Cleveland's definition of "recovery efficiency factor" on its face involves his arbitarily established factor of abandonment pressure (Pubco Exhibit No. R-1) and that his volumetric formula includes an acreage factor which he arbitrarily set at 320 acres although admitting that he had "assumed" that every well would drain 320 acres and no more and no less "because the spacing distribution out here is on 320 acres" (Tr. 72). In this connection reference is made to the summary of Mr. Cleveland's testimony in the April 18, 1962 hearing where he stated that it cannot be known by anyone whether a given well is draining more or less than 320 acres (April 18, 1962 Tr. 453-4, 457).

In any event, except for confirming that contouring from known data is an acceptable way of arriving at reserves for other wells (Tr. 58-9, 75) and testifying that the recoverable reserves for the developed portion of the Basin-Dakota Pool is about 2.8 trillion cubic feet of gas, none of his other testimony or exhibits disclosed an individual reserve figure for any individual tract or well (Tr. 69) or the ratio between the reserves computed by him for any tract to the total reserves in the pool (Tr. 69-70).

Mr. Cleveland's testimony relating to Pubco Exhibits Nos. R-2 through R-8 can best be summarized as a broader restatement of his testimony and exhibits as presented at the April 18, 1962 hearing but based on the same erroneous procedure of plotting deliverabilities versus reserves from points averaged by deliverability groupings used by witness Rainey at that hearing (Tr. 70). In this connection reference is made to the summary of the rebuttal testimony (supra) given by witness Trueblood at the April 18, 1962 hearing which discredited completely the approach to relating deliverabilities and reserves used by witness Cleveland and Rainey, and to his further rebuttal in the February 14, 1963 hearing summarized below.

SUMMARY OF TESTIMONY

OF

FRANK D. GORHAM, JR.

Witness for Pubco Petroleum Corporation

February 14, 1963 Hearing

The main thrust of Mr. Gorham's testimony was in connection with the bases for and the supervision of Pubco's reserve calculations which were the basis for Pubco Exhibits Nos. R-2 through R-8 presented by Witness Cleveland and for Pubco Exhibits Nos. R-9 through R-11 presented by Mr. Gorham (Tr. 102-112).

Mr. Gorham testified that the 382 reserve calculations referred to by witness Cleveland has been spotted on a well map (Pubco Exhibit R-9) and then contoured to give an iso-reserve map of the developed portions of the Basin Dakota Field (Tr. 107) but admitted that Pubco Exhibit No. R-9 did not show the reserves for particular 320-acre tracts but only showed the per acre reserves attributable to each well (Tr. 118) thus exposing the exhibit to the same criticism as was made with respect to the testimony of witness Cleveland (supra) that reserves calculated with respect to a well's radius of drainage is not the same as the reserves under the 320-acre tract upon which the well is located.

Pubco Exhibits Nos. R-9 and R-10 were colored in three colors each representing a specified range of well reserves or deliverabilities, and from a distance gave a visual impression that high reserve and high deliverability areas are the same. Close inspection of any detailed area discloses that no close

correlation exists and that even where the color of an area is the same a wide range of variation can exist in the reserves and deliverabilities lumped in a color category (Pubco Exhibit No. R-2, Tr. 107, 115-116, 122, 192-193).

Mr. Gorham stated that Pubco Exhibits No. R-9, R-10 and R-11 showed a direct relationship between the deliverability of a well and the gas reserves recoverable through that well bore (Tr. 110-111) but on cross-examination admitted that Pubco's studies had not disclosed whether or not a direct mathematical relationship exists (Tr. 116).

In summary, Mr. Gorham testified that a proper allowable formula should primarily be on the basis of 100% deliverability (Tr. 114-5).

SUMMARY OF TESTIMONY

OF

DAVID H. RAINEY

Witness for El Paso Natural Gas Company

February 14, 1963 Hearing

Mr. Rainey criticized Consolidated Exhibits Nos. 3 and 4 on the grounds that they utilized initial recoverable reserve calculations and current deliverabilities, stating (Tr. 134-5):

> In attempting to establish a relationship between recoverable reserves and deliverability, we should either use initial recoverable reserves and initial deliverability or determine current recoverable reserves to use against current deliverability."

In this connection Mr. Rainey apparently overlooked the basic import of all prior Consolidated testimony and exhibits, that is, that there was no relationship between deliverabilities and reserves, and that the main purpose of the Consolidated exhibits was to compare the effect on the correlative rights of all owners in the field of the adoption of one formula or another. (Tr. 205). He also apparently had forgotten his own testimony at the April 18, 1962 hearing (where he pointed out that his curves showing initial conditions and current conditions were exactly the same for the vast majority of the wells studied (Tr. 162, April 18, 1962 Tr. 491 and El Paso February 14, 1962 Exhibit No. 1).

Mr. Rainey further criticized the use by Consolidated of recoverable reserves calculated by El Paso in April, 1962, on the premise that El Paso's more recent estimates of reserves indicated that changes in El Paso's figures had occurred, giving several examples of such changes (Tr. 135-139). In this connection the record is clear that El Paso vigorously contested Consolidated's efforts to have such data subpoenaed and was unwilling to put into

evidence its more recent reserve calculations for the individual wells (Tr. 166-7).

In connection with both of the above mentioned criticisms by Mr. Rainey, reference is made to the rebuttal testimony of witness Trueblood that Consolidated could have used initial reserves, initial deliverabilities or current reserves and current deliverabilities, or even other combinations of data without significant change in the results and that Consolidated could just as well have used El Paso's purported (but unavailable) more recent reserve calculations (Tr. 205-6).

Most of the remainder of Mr. Rainey's testimony was in connection with El Paso's Exhibits Nos. 1-R and 2-R. Inspection of El Paso Exhibits Nos. 1-R and 2-R will show that they are substantially the same as, and repetitive of El Paso Exhibit No. 1 and Mr. Rainey's testimony as presented by El Paso at the April 18, 1962 hearing, and therefore subject to the comments made with respect thereto in the summary of that testimony (supra), particularly as to the method of averaging reserve data by reserve groupings.

In his testimony Mr. Rainey attempted to downgrade El Paso's reserve calculations as being accurate for individual tracts (Tr. 140-145). In this connection reference is made to the transcript of the April 18, 1962 hearing where no similar statement is made and where, in fact, Mr. Rainey held out the same data as being based on the best available information and methods (April 18, 1962 Tr. 479-489), and supported it as evidence in behalf of the allowable formula recommended by El Paso.

SUMMARY OF TESTIMONY

OF

L. M. STEVENS

Witness for Aztec Oil and Gas Company

February 14, 1963 Hearing

The bulk of the testimony of Mr. Stevens and Aztec Exhibit No. 1 was based upon data furnished to Aztec by El Paso as to the 729 well studies performed by El Paso and referred to by Mr. Rainey (supra) and was tantamount to an adoption and approval of that work by Aztec (Tr. 168-9).

Mr. Stevens' testimony and Aztec Exhibit No. 1 was a somewhat new approach to the old proposition that a direct relationship exists between deliverabilities and reserves, but was still based entirely on the method of averaging data for individual wells by reserve groupings (Tr. 179-170) and thus subject to the same comments heretofore made about the use of this device by witness Rainey, Cleveland Stevens and others (supra).

SUMMARY OF TESTIMONY

OF

OREN HAZELTINE

Witness for Southern Union Gas Company

February 14, 1963 Hearing

Mr. Hazeltine primarily testified as to deficiencies inherent in accurately measuring deliverabilities of wells in the Basin-Dakota Field (Tr. 188-9) and that changes in the deliverabilities of a given well, whether natural or artificially induced, do not serve to increase the gas reserves available for production through that well (Tr. 187).

Mr. Hazeltine further testified that he disagreed with the basis of the calculations presented by witness Cleveland (supra) to the extent they were based on the abandonment pressures assumed by Mr. Cleveland (Tr. 189-90).

He further criticized witness Cleveland's method of relating deliverabilities to reserves by averaging wells by reserve groupings and of giving equal weight to groups of wells consisting of from 1 to 50 or 60 wells (Tr. 190-1).

Mr. Hazeltine further called attention to the difference between the visual impression created by the coloring scheme used on Pubco Exhibits Nos. R-9 and R-10 and a detailed inspection thereof, reciting a number of examples of substantial discrepancy (Tr. 191-193).

Lastly, Mr. Hazeltine testified that there is no direct relationship between deliverabilities and reserves (Tr. 193).

SUMMARY OF REBUTTAL TESTIMONY

OF

HARRY A. TRUEBLOOD, JR.

Witness for Consolidated Oil & Gas, Inc.

February 14, 1963 Hearing

In rebuttal of witness Rainey's testimony that (by the method of averaging wells by reserve groups) a direct relationship between deliverabilities and reserves could be shown, Mr. Trueblood presented Consolidated Exhibit No. 9 which is an individual platting of all 460 of the wells identified in Consolidated Exhibit No. 2 on a graph of deliverabilities versus reserves (Tr. 199-200).

From this exhibit Mr. Trueblood made a mathematical analysis of the true relationship between the deliverability of a well and the reserves under the tract underlying the well, showing that a simple time relationship exists for all wells falling on any of the infinite number of straight lines which can be drawn through the scattered points but also showing the fallacy of attempting to average groups of wells with different characteristics and showing the violations of correlative rights concealed by any averaging method (Tr. 201-203).

In response to Mr. Rainey's criticism of Consolidated Exhibit No. 4, Mr. Trueblood testified as to his reasons for using initial recoverable reserves and current deliverabilities therein, stating that because actual field production to that date had been relatively insignificant the results would be substantially the same, and further, using current deliverabilities was designed to give the Commission a better view of the current picture (Tr. 205-6). He further stated that from the testimony

of Mr. Rainey he could assume that if Consolidated Exhibit No. 4 were redone using El Paso's reserve data on 723 wells (if it were made available) and original deliverabilities the results would not vary in excess of 5% (Tr. 206) which is well within the 30% range of tolerance used by Consolidated in interpreting its Exhibit No. 4 (Tr. 26-28).

In any event the Commission had all necessary data available (Consolidated Exhibits Nos. 2 and 3, and its own production records) so that it could have (and possibly did) make similar calculations on other bases prior to arriving at its decision.

In rebuttal, Mr. Trueblood criticized the use by witness Cleveland of reserve calculations based on abandonment pressures varying from 140 pounds to 1560 pounds (Tr. 96-7) and the percentages of water saturations selected by Pubco, testifying to other pressures and percentagges of water saturations he deemed correct for such use (Tr. 206-209, 211-212).

Mr. Trueblood testified that using an abandonment pressure as high as 1560 pounds would cause waste (Tr. 209) and that increasing the weight given to acreage in the allowable formula would aid in preventing waste (Tr. 210-212).

As to Aztec Exhibit No. 1, Mr. Trueblood stated that rebuilding the exhibit on the basis of averaging by deliverability groupings would have shown the opposite result from that portrayed (Tr. 212).

P A R T III

COMPOSITE SUMMARY

OF

TESTIMONY BEARING ON

THE COMMISSION'S FINDINGS OF FACT

IN ORDER NO. R-2259-B

FINDINGS NOS. (1), (2), (3) AND (4). The sufficiency of these findings has not been objected to and is therefore considered to have been conceded by Petitioners.

FINDING NO. (5) is primarily supported by the testimony of witness Trueblood, an expert petroleum engineer (Tr. 15; February 14, 1963 Tr. 14), that the initial recoverable gas reserves in the Basin-Dakota Gas Pool total 2,255 trillion cubic feet of gas and that 96 billion cubic feet thereof is attributed to the tracts on which there are marginal wells (February 14, 1963 Tr. 19-20, 422; Consolidated's February 14, 1963 Exhibit Nos. 2 and 3).

Witness Cleveland testified for Pubco, that the total present recoverable reserves of the developed portion of the Basin-Dakota Field was about 2.792 trillion cubic feet of gas (February 14, 1963 Tr. 58) and the non-marginal wells in the pool had reserves of 2.754 trillion cubic feet of gas (February 14, 1963 Tr. 69; Pubco Exhibit No. R-5), which is well within the reasonable tolerance for computation of reserves testified to by witness Trueblood (February 14, 1963 Tr. 26).

Witness Gorham, also of Pubco, repeated witness Cleveland's figure of 2.792 trillion cubic feet of gas (February 14, 1963 Tr. 121; Pubco Exhibit No. R-9).

Although witness Rainey did not testify directly as to total field reserves he did say (February 14, 1963 Tr. 147) that the average recoverable reserves for 729 wells was 2.848 billion cubic feet of gas which, by calculation (729 x 2.848 billion) gives a total for the non-marginal wells in the field of 2.076 trillion cubic feet of gas, a figure which compares favorable with witness Trueblood's figure of 2.159 trillion cubic feet for non-marginal wells (February 14, 1963 Tr. 20), and is even within the estimate of 5% made by witness Trueblood (February 14, 1963 Tr. 206).

Many of the technical witnesses recognized the impossibility of precise agreement on reserve calculations (February 14, 1963 Tr. 26, 140).

FINDING NO. (6) is supported by Consolidated's February 14, 1963 Exhibit Nos. 3 and 4 and the testimony of witness Trueblood in connection therewith (February 14, 1963 Tr. 19-21). The initial recoverable gas reserves for each non-marginal tract in the Basin-Dakota Gas Pool, as shown in Column C, Tract Reserves, of Exhibit A attached to Order No. R-2259-B, are identical with the initial gas reserves for such tracts appearing in Column 2 (under the caption R) of Consolidated's February 14, 1963 Exhibit No. 4, and which witness Trueblood testified had been derived from Consolidated's February 14, 1963 Exhibits Nos. 2 and 3 under a "fair and reasonable approach to the problem at hand" (February 14, 1963 Tr. 19).

Except for isolated instances relating to individual wells, no other witness presented estimates or calculations of the initial recoverable gas reserves underlying each non-marginal tract in the Pool. The nearest approach was made by witness Gorham in connection with Pubco Exhibit No. R-9 which shows a type of estimated well recovery per acre based on calculations of recoveries from each well's radius of drainage which is not the same as the 320-acre tract on which the wells are located (Tr. 453-4, 457; February 14, 1963 Tr. 118).

FINDING NO. (7) is supported by Consolidated's February 14, 1963 Exhibit No. 4 and the testimony of witness Trueblood in connection therewith (February 14, 1963 Tr. 20-21). This finding is the result of a simple addition of the individual tract reserves shown in Column C, Tract Reserves, of Exhibit A to Order No. R-2259-B, and then the determination for each tract of its percentage of the total reserves. These percentages

for each tract are shown in Column D, Percent of Pool Reserves, in Exhibit A to Order No. R-2259-B, and are identical to the percentages shown in the column entitled R in Consolidated's February 14, 1963 Exhibit No. 4.

No other witness presented any determinations of the percent of the total pool reserves attributable to each non-marginal tract in the Basin-Dakota Pool.

FINDING NO. (8) is supported by the testimony of all of the witnesses who dealt with the matter (Tr. 210-214, 658-659; February 14, 1963 Tr. 40-42, 127-128, 140). Although not direct evidence the record contains many statements of counsel which support the finding and which are not refuted by the direct testimony of any witness that it is practicable to allocate production to the respective tracts solely on the basis of the percentage of pool reserves therein.

FINDING NO. (9) is supported in the record by Consolidated's February 14, 1963 Exhibit No. 4 and the testimony of witness Trueblood in connection therewith (February 14, 1963 Tr. 20-21). It is noted that the data for each tract set out in Columns A and B of Exhibit A to Order No. R-2259-B are identical with the data set out in Column 2 under the headings A and D in Consolidated's February 14, 1963 Exhibit No. 4.

It is further noted that the origin of the data is from the Commission's own files and based upon tests and measurements conducted by or in accordance with the Conservation Act and the Rules and Regulations of the Commisssion thereunder.

There is nothing in the record indicating any objection to the accuracy of the data.

FINDING NO. (10) is obviously the conclusion reached by the Commission on the most vigorously contested and evidenced point of the hearings. Without uselessly repeating the references to

the transcript pages set out in Parts I and II hereof, it is safe to say that the bulk of the testimony and exhibits presented by El Paso, Pubco, Aztec and others were in support of the premise that a direct relationship or correlation exists between deliverabilities and reserves and that a great deal of the testimony and exhibits of Consolidated and Southern Union were in support of the opposite premise.

The dispute might best be reviewed by perusing Consolidated's February 14, 1963 Exhibit No. 9 which shows the random scattering (or shotgun blast effect) of plotting separately all of the 460 individual wells studied. Visual inspection of the scatter pattern certainly does not give the impression of a general trend, correlation or relationship between the points plotted.

It is noted that no witness supporting the existence of a correlation was able to offer any direct mathematical prood of a correlation. Their consistent pattern (except for Pubco Exhibit No. 7) was to conceal the random scattering of plotted points by arbitrarily selecting certain reserve groups and averaging all of the random points in each group to arrive at an "average well" for that group. The plotting of the points representing these average well points seemed to show a simple correlation but it is easily demonstrable that if deliverability and reserve values were assigned to the random points made by a shotgun blast exactly the same invalid conclusion could be reached!

In addition, witness Trueblood showed conclusively at the end of the April 18, 1962 hearing that by averaging exactly the same random data by deliverability groups (instead of reserve groups) a totally different relationship seemed to exist (Consolidated Exhibits Nos. 6, 7 and 8; Tr. 629-638).

The truth of the matter is that this finding, although arising out of hearings replete with expert technical opinions, is a recognition by the Commission of the mathematical truism that through a more or less random distribution of points an infinite number of straight or curved lines can be drawn each of which are meaningless except as they reflect the arbitrary assumptions or rules established for the guidance of the draftsman.

Reference is made to the testimony of witness Trueblood for analysis of these problems (Tr. 628-644; February 14, 1963 Tr. 28, 199-206; Consolidated Exhibits Nos. 6, 7, 8; and its February 14, 1963 Exhibit No. 9).

All of the witnesses, including those recommending a 100% deliverability formula recognized that an allowable formula based on acreage alone was not proper, and all except those recommending a 100% deliverability formula recognized that acreage was a proper factor.

FINDING NO. (11) is supported by Consolidated's February 14, 1963 Exhibits Nos. 4 - 7, incl.; and the testimony of witness Trueblood in connection therewith (February 14, 1963 Tr. 20-28, 40-41).

It is obvious from the entire record that no practicable allowable formula can ever be created which will result in a perfect allocation of recoverable reserves. That being so, it is obvious that, insofar as practicable, the Commission must seek to establish a formula which will most nearly approach the ideal (Tr. 176, 570). There is no evidence in the record to the contrary.

FINDING NO. (12) is obvious from inspection of Columns E and F, and H and I of Exhibit A to Order No. R-2259-B. This finding

is supported by Consolidated's February 14, 1963 Exhibits Nos. 4, 5, 6 and 7 and by the testimony of witness Trueblood in connection therewith (February 14, 1963 Tr. 20-28). The record contains no evidence to the contrary.

FINDING NO. (13) is directly supported as to the correlative rights issue by the testimony of witnesses Trueblood (Tr. 21, 22, 24, 26 - 30, 36-7, 39-41, 80, 128-9, 195, 199-200; February 14, 1963 Tr. 21, 26, 201-3, 209-10; Consolidated Exhibits Nos. 1-8, incl.; Consolidated's February 14, 1963 Exhibits Nos. 4-9, incl.); Wiedekehr (Tr. 199-200, 210-11); and even by witness Stevens (February 14, 1963 Tr. 174).

In opposition is the testimony of witnesses Rainey (Tr. 492, 505, 507, 510); Cleveland (Tr. 402-3, 410; February 14, 1963 Tr. 64); Gorham (Tr. 621, 625); and Sevens (Tr. 558, 565).

As to the issue of waste, the finding is amply supported by the testimony of witnesses Trueblood (Tr. 16-18, 24, 37, 38, 40, 41, 44, 52, 59, 67, 79, 117, 118, 155-6); Hazeltine (Tr. 170, 179; February 14, 1963 Tr. 195); Wiedekehr (Tr. 201, 203, 209); Cleveland (Tr. 477); Rainey (February 14, 1963 Tr. 144); and Utz (Tr. 221-4, 248).

In opposition is the testimony of witness Street (Tr. 285); Gorham (Tr. 620, 625); and Stevens (February 14, 1963 Tr. 565).

FINDING NO. (14) is supported by Consolidated's February 14, 1963 Exhibits Nos. 4-7, incl., and by the testimony of witness Trueblood in connection therewith (February 14, 1963 Tr. 20-28). The data set forth in Columns G and J of Exhibit A to Order No. R-2259-B is identical with that set forth in the columns headed A/R in Consolidated's February 14, 1963 Exhibit No. 4 in connection with the 25-75 and 60-40 formulae.

Except for the general testimony relating to correlative rights and waste mentioned under Finding No. (13), the record discloses no evidence opposed to the validity of this data.

FINDING NO. (15) is supported, insofar as it relates to the capability of certain wells to drain more than 320 acres, by almost all of the witnesses (Tr. 22, 195, 199, 453, 611). That the 60-40 formula will, insofar as practicable, prevent drainage between producing tracts which is not equalized by counter drainage is amply supported by Consolidated Exhibits Nos. 1-8, incl.; its February 14, 1963 Exhibits Nos. 4-9, incl; and the testimony of witness Trueblood in connection therewith (Tr. 22, 24, 28-30, 36, 39, 80, 128-9, 195, 199, 200; February 14, 1963 Tr. 21, 26, 209-10). In addition this part of the finding is supported by witness Wiedekehr (Tr. 199-200, 210-211).

FINDING NO. (16) is an ultimate conclusion of fact properly made by the Commission which follows logically and naturally from the foregoing Findings relating to drainage and correlative rights.

FINDING NO. (17) is also an obvious ultimate conclusion of fact derivable from all of the foregoing Findings.

FINDING NO. (18) is a reasonable administrative determination amply supported by the inherent complexities of implementing

an order involving so many wells and tracts and in any event its sufficiency is believed to have been conceded by Petitioners.

Respectfully submitted,

KELLAHIN and FOX

By Jason W. Kellahin
Jason W. Kellahin

HOLME, ROBERTS, MORE & OWEN

By Ted P. Stockmar
Ted P. Stockmar

I hereby certify that a true copy of the foregoing instrument was mailed to opposing counsel on the 24th day of February, 1964.

Ted P. Stockmar
Ted P. Stockmar

STATE OF NEW MEXICO)
) IN THE DISTRICT COURT
COUNTY OF SAN JUAN)

EL PASO NATURAL GAS COMPANY,
a corporation;
PAN AMERICAN PETROLEUM CORPORATION,
a corporation;
MARATHON OIL COMPANY,
a corporation;
BETA DEVELOPMENT COMPANY; and
SUNSET INTERNATIONAL PETROLEUM
CORPORATION, a corporation,

Petitioners,

-vs- No. 11,685

OIL CONSERVATION COMMISSION OF NEW
MEXICO, JACK M. CAMPBELL, Chairman;
E. S. WALKER, Member; A. L. PORTER,
JR., Member and Secretary, CONSOLI-
DATED OIL & GAS, INC., a corporation,

Respondents.

JUDGMENT UPON MANDATE

THIS CAUSE came on for consideration by the Court on this day on the Mandate issued by the Supreme Court of New Mexico on June 7, 1966, in the appeal from the judgment in this cause, said appeal being Cause No. 7727 on the docket of the Supreme Court of New Mexico. The Court having considered the Mandate of the Supreme Court, and in accordance therewith,

IT IS ORDERED, ADJUDGED AND DECREED BY THE COURT that the judgment heretofore entered by the Court on the 2nd day of April 1964, be, and the same is, in all respects sustained, and that in accordance with said judgment and the Mandate of the Supreme Court of New Mexico, the petitioners' petition herein be, and the same hereby is, dismissed,

IT IS FURTHER ORDERED, ADJUDGED AND DECREED BY THE COURT that Order R-2259-B of the Oil Conservation Commission of New Mexico entered in cause No. 2504 on the docket of said Commission, be, and the same hereby is, declared a valid and subsisting order of the Commission.

_____
DISTRICT JUDGE

APPROVED AS TO FORM:

_____
Attorney for Oil Conservation Commission of New Mexico

_____
Attorney for Consolidated Oil & Gas, Inc.

_____
Attorney for El Paso Natural Gas Company

_____
Attorney for Pan American Petroleum Corporation

_____
Attorney for Marathon Oil Company

_____
Attorney for Sunset International Petroleum Corporation

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

MANDATE NO. 7727

THE STATE OF NEW MEXICO TO THE DISTRICT COURT sitting within and for the County of San Juan, GREETING:

WHEREAS, in a certain cause lately pending before you, numbered 11685 on your Civil docket, wherein El Paso Natural Gas Company, et al were Petitioners, and Oil Conservation Commission of New Mexico, et al were Respondents, by your consideration in that behalf judgment was entered against said Petitioners; and

WHEREAS, said cause and judgment were afterwards brought into our Supreme Court for review by Petitioners by appeal, whereupon such proceedings were had that on May 16, 1966, an opinion was handed down and the judgment of said Supreme Court was entered affirming your judgment aforesaid, and remanding said cause to you;

NOW, THEREFORE, this cause is hereby remanded to you for such further proceedings therein as may be proper, if any, consistent and in conformity with said opinion and said judgment.

WITNESS, The Honorable David W. Carmody, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 7th day of June, 1966.

Clerk of the Supreme Court
of the State of New Mexico

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

EL PASO NATURAL GAS COMPANY, a corporation, PAN AMERICAN PETROLEUM CORPORATION, a corporation, MARATHON OIL COMPANY, a corporation, and SUNSET INTERNATIONAL PETROLEUM CORPORATION, a corporation,

Petitioners-Appellants,

vs. NO. 7727

OIL CONSERVATION COMMISSION OF NEW MEXICO, JACK M. CAMPBELL, Chairman, E. S. WALKER, Member, A. L. PORTER, JR., Member and Secretary, and CONSOLIDATED OIL & GAS, INC., a corporation,

Respondents-Appellees.

APPEAL FROM THE DISTRICT COURT OF SAN JUAN COUNTY

McCULLOH, Judge

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O P I N I O N

NOBLE, Justice.

Consolidated Oil & Gas, Inc. requested a change in the proration formula in the Basin-Dakota gas pool from the existing "25-75" formula (25% acreage plus 75% acreage, times deliverability) to a "60-40" formula. The Oil Conservation Commission originally denied the change, but on rehearing, limited to the question of recoverable reserves in the pool, reversed its decision, ordered the change, and adopted the "60-40" formula. The Commission then denied a requested rehearing. The Commission's order was reviewed and affirmed by the district court of San Juan County. This appeal is from the judgment of the district court.

The district court reviewed only the record of the administrative hearing and concluded as a matter of law that the Commission's order was substantially supported by the evidence and by applicable law. This court, in reviewing the judgment, in the first instance, makes the same review of the Commission's action as did the district court. Reynolds v. Wiggins, 74 N.M. 670, 397 P.2d 469; Kelly v. Carlsbad Irrigation District, 71 N.M. 464, 379 P.2d 763.

As in Continental Oil Co. v. Oil Conservation Com'n, 70 N.M. 310, 373 P.2d 809, the Commission was concerned with a formula allocating production among the various producers from the gas pool - allocation of the correlative rights. It is agreed that the duty of the Commission in this case is identical with that in Continental, but the parties are not in complete agreement as to what Continental requires. Its proper interpretation requires us to again consider the statutes with which we were concerned in that case and which are controlling here. Since the pertinent statutory provisions were quoted at length in Continental Oil Co. v. Oil Conservation Com'n, supra, we shall not restate them in detail.

Recognizing the need and right of the state, in the interest of the public welfare, to prevent waste of an irreplaceable natural

resource, the legislature enacted those laws authorizing the Commission to exercise control over oil and gas wells by limiting the total production in the pool, and making it the duty of the Commission to protect the correlative rights of all producers so far as it can be accomplished without waste to the pool. Sections 65-3-1 to 29, N.M.S.A. 1953. A review of the history of our oil and gas legislation reveals the primary concern in eliminating and preventing waste in the pool so far as it can practicably be done, and next the protection of the correlative rights of the producers from the pool. The legislature spelled out the duty of the Commission to limit production in such manner as to prevent waste, while affording:

> ". . . to the owner of each property in the pool the opportunity to produce his just and equitable share of the . . . gas . . . in the pool, being an amount, . . . so far as such can be practicably obtained without waste, substantially in the proportion that the quantity of the recoverable . . . gas . . . under such property bears to the total recoverable gas . . . in the pool, . . ."
> (§ 65-3-14(a), N.M.S.A. 1953) (Emphasis added).

Continental Oil Co. v. Oil Conservation Commission, supra, made clear those purposes and requirements.

The disagreement in this case arises from a difference of opinion as to the proper construction of language in Continental, saying that the statute requires the Commission to determine certain foundationary matters without which the correlative rights of the various owners cannot be fixed, and, specifically, respecting those foundationary matters:

> ". . . . Therefore, the commission, by 'basic conclusions of fact' (or what might be termed 'findings'), must determine, insofar as practicable, (1) the amount of recoverable gas under each producer's tract; (2) the total amount of recoverable gas in the pool; (3) the proportion that (1) bears to (2); and (4) what portion of the arrived at proportion can be recovered without waste. . . . ."

The appellants argue that those four findings are jurisdictional in the sense that absent any one of them, the Commission lacked

authority to consider or change any production formula. While the parties agree that the first three "basic" facts were specifically found, the appellees assert and appellants deny that a percentage determination was made of "what portion of the arrived at proportion" can be recovered without waste. Thus, the main thrust of appellants' argument is directed to the contention that the Commission lacked jurisdiction to change the allocation formula.

We did not, in Continental, say that the four basic findings must be determined in advance of testing the result under an existing or proposed allocation formula. Actually, what we said was:

> ". . . . That the extent of the correlative rights must be determined before the commission can act to protect them is manifest."

In addition, however, Continental observed that the Commission should so far as practicable prevent drainage between tracts which is not equalized by counter-drainage and to so regulate as to permit owners to utilize their share of pool energy. While Continental stated the four basic findings which the Commission must make before it can change a production formula, we were not concerned with the language in which the findings must be couched. What we said is that a proposed new formula must be shown to have been "based on the amounts of recoverable gas in the pool and under the tracts insofar as those amounts can be practicably determined and obtained without waste." We then, in effect, said that such findings need not be in the language of the opinion but that they or their equivalents are necessary requisites to the validity of an order replacing a formula in current use. It is, accordingly, apparent that we must consider the Commission's findings to determine whether findings in the language of Continental or their equivalent were adopted. We think they were.

The statute, in requiring the allocation order to afford each owner the opportunity to produce his just and equitable share of the recoverable gas in the pool, "so far as such can be practicably

obtained without waste," of course, requires the adoption of an allocation formula which will permit the owners to produce as nearly as possible their percentage of the recoverable gas in the pool, with as little waste as can practicably be accomplished. It is obvious to us that each different allocation formula will allow the tract owners to produce a different percentage of the total gas in the pool. Having determined (1) the amount of recoverable gas under each tract, and (2) the total amount of recoverable gas in the pool, the ideal formula would be one that would permit each owner to recover all of that proportion which the gas underlying his tract bears to the total in the pool. But, since the legislature has required the Commission to protect the pool against waste, it must then test the different proposed formulae against the percentage which (1) bears to (2) to determine which one will permit the tract owner to most nearly produce its percentage of the total gas in the pool with the least waste. When that has been done, then the portion which the gas underlying each tract bears to the total recoverable gas in the pool which can be produced with the least waste can be determined. It is this latter figure which determines the formula that will permit the greater number of owners the opportunity to recover the greatest amount allowable under the applicable statutes. We think the Commission made that determination in this instance.

The Commission termed the relationship between the percentage of total pool allowable apportioned to each tract by a formula, as compared to those percentages of total pool reserves, the A/R factor. It, thus, based each formula on the amounts of recoverable gas in the pool and under the tracts insofar as those amounts can be practicably determined, as Continental requires it to do. Applying the statute and the rule of Continental, the Commission determined that it must then select the allocation formula that will allow the maximum number of wells in the pool to produce

as nearly as possible their complete percentage of the pool reserves. The Commission then made the required test applying both the "25-75" and the "60-40" formulae and determined that neither correlative rights nor waste were being adequately protected under the "25-75" formula but that both would be more nearly protected insofar as can be practicably determined under the "60-40" formula, and found the percentage that each owner could produce of the total pool reserves. It was further determined by the Commission that the "60-40" formula will, insofar as it is practicable to do so, afford to each owner the opportunity to use his just and equitable share of the reserve energy and prevent drainage between producing tracts which is not equalized by counter drainage.

It is true that the order in this instance did not, in the express language of the Continental Oil Company decision, find the "portion of the arrived at proportion" which "can be recovered without waste." However, our review of the Commission's findings reveals that it did make the requested findings in language equivalent to that required by Continental and did adopt a formula in compliance with statutory requirements. We think the findings as a whole determine that the percentage set forth in Schedule J constitute the "portion of the arrived at proportion" which can be recovered by each owner without waste. We agree with the district court that the Commission made those basic findings necessary to authorize it to change the production formula and that its Order R-2259-B is valid.

It follows that the judgment appealed from should be affirmed.

IT IS SO ORDERED.

M. E. Noble
Justice

WE CONCUR:

David Chavez, Jr. J.

J.

preme Court of the State of New M ico

Santa Fe, New Mexico Sept. 15, 1965, 19

Dear Sir:

Cause No. 7727

El Paso Nat. Gas. et al v. OCC. et al

has been placed on the calendar for submission to the Court upon

oral argument / ~~briefs only~~ } on October 13, 1965, 19, at 9 o'clock a.m.

Please return to me promptly copy of transcript of the record in this case, if you have one.

Lamell O Green

Clerk of Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

Cases to be Submitted

Monday
October 18, 1965
9:00 A. M.

No. 7727

El Paso Natural Gas Company, et al, Appellants	Seth, Montgomery, Federici & Andrews For El Paso Natural Gas Company & Sunset International Petroleum Corp. Ben R. Howell Garrett C. Whitworth El Paso, Texas, For El Paso Natural Gas Company Atwood and Malone J. K. Smith, Fort Worth, Texas For Pan American Petroleum Corp. Kent Hampton, Casper, Wyoming For Marathon Oil Co.
vs.	
Oil Conservation Commission of New Mexico, et al, Appellees	Boston E. Witt, Attorney General J. M. Durrett, Jr., Special Asst. Atty. Gen., for Oil Conservation Commission of New Mexico Kellahin and Fox Holme, Roberts, More & Owen Ted P. Stockmar Denver, Colorado For Consolidated Oil & Gas, Inc.

No. 7754

James A. Ledbetter, Appellant	Sheehan and Duhigg
vs.	
Lanham Construction Company, Employer, and Firemen's Fund Insurance Company, Insurer, Appellees	Rodey, Dickason, Sloan, Akin & Robb Robert D. Taichert

No. 7772

Le[illegible] Hilger, Appellant	Dale B. Dilts
vs.	
R. Hugo Cotter, et al, Appellees	Shaffer and Butt

(Continued)

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

Cases to be Submitted

Monday
October 18, 1965
9:00 A. M.

CONSOLIDATED FOR ORAL ARGUMENT ONLY:

Petitions to Review Decision of
Board of Bar Examiners

No. 7863	Hobart M. Shulenburg, Petitioner	Pro Se
No. 7874	Jacob Carian, Petitioner	A. L. Strong Malcolm G. Colberg
No. 7883	D. Peter Rask, Petitioner	Sutin and Jones
No. 7900	Leroy R. Warren, Petitioner	Sterling F. Black
No. 7908	Grover Lawrence Severs, Petitioner	Traub, Parham and Zuris
	vs.	
	Board of Bar Examiners of the State of New Mexico, Respondent	Marron and Houk

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

Cases to be Submitted

Tuesday
October 19, 1965
9:00 A. M.

No. 7698

Eula Mae Bailey, et al, Appellees	Patricio S. Sanchez
vs.	
Jeffries-Eaves, Inc., et al, Appellants	Sutin and Jones Matias A. Zamora

No. 7742

Katie Mae Johnson, Appellee	E. Ray Phelps
vs.	
David A. Gray, et al, Appellants	James L. Dow

No. 7768

Ohio Casualty Insurance Co., Appellant	Neal and Neal
vs.	
American Insurance Co., Appellee	Girand, Cowan and Reese

No. 7776

S. I. C. Finance-Loans of Menaul, Inc., Appellee	Bigbee and Byrd John A. Mitchell
vs.	
W. J. Upton, State of New Mexico Bank Examiner, Appellant	Boston E. Witt, Attorney General Wayne C. Wolf, Asst. Atty. Gen. Howard M. Rosenthal Special Asst. Atty. Gen. Amicus Curiae: Iden and Johnson Richard G. Cooper J. J. Monroe

'65 APR 10 AM

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

EL PASO NATURAL GAS COMPANY,
a corporation, et al.,

Petitioners and Appellants,

v.

OIL CONSERVATION COMMISSION
OF NEW MEXICO, et al.,

Respondents and Appellees.

No. 7727

MOTION FOR EXTENSION OF TIME

Petitioners and Appellants, through their attorneys Seth, Montgomery, Federici & Andrews, move the Court for an extension of time to and including April 23, 1965, within which to file their Reply Brief in the above cause and state that by reason of participation by various counsel from various states and due to the press of business of one or all of counsel they have been unable to prepare a Reply Brief by April 12, 1965.

SETH, MONTGOMERY, FEDERICI & ANDREWS

By _____
William R. Federici
P. O. Box 2307
Santa Fe, New Mexico

Approved this 9th day of
April, 1965.

_____
David W. Carmody
Chief Justice

'65 MAR 15 AM

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

EL PASO NATURAL GAS COMPANY, a corporation, PAN AMERICAN PETROLEUM CORPORATION, a corporation, MARATHON OIL COMPANY, a corporation, and SUNSET INTERNATIONAL PETROLEUM CORPORATION, a corporation,

Petitioners-Appellants,

vs.

No. 7727

OIL CONSERVATION COMMISSION OF NEW MEXICO, et al.,

Respondents.

MOTION FOR EXTENSION OF TIME TO FILE REPLY BRIEF

Petitioners-appellants in the above cause, through their attorneys, move the Court for an extension of time to April 12, 1965 within which to file their Reply Brief and state that due to the press of business they have been unable to prepare the Reply Brief within the time allowed.

SETH, MONTGOMERY, FEDERICI & ANDREWS

By _____
350 East Palace Avenue
Santa Fe, New Mexico
One of the Attorneys for Petitioners

APPROVED this
____ day of March 1965.

_____
CHIEF JUSTICE

GRANTED

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

EL PASO NATURAL GAS COMPANY, a Corporation, et al.,	)	
Petitioners-Appellants,	)	
-v-s-	)	No. 7727
OIL CONSERVATION COMMISSION OF NEW MEXICO, et al.,	)	
Respondents-Appellees.	)	

MOTION FOR EXTENSION OF TIME TO FILE BRIEF

Respondents-Appellees in the above cause, through their attorneys, move the Court for an extension of time to March 1, 1965, within which to file their answer brief and state that by reason of participation of counsel in the case being outside of the State and necessity for participation in other hearings by counsel for respondents that they are unable to prepare their answer brief within the time allowed.

KELLAHIN & FOX

By _____
P. O. Box 1769
Santa Fe, New Mexico

ATTORNEY FOR RESPONDENT-APPELLEE
Consolidated Oil & Gas, Inc.

APPROVED this _____ day of January, 1965.

_____
Chief Justice

_____
J. M. DURRETT, Jr.
Special Assistant Attorney General
Representing Respondent-Appellee
Oil Conservation Commission

SETH, MONTGOMERY, FEDERICI & ANDREWS
ATTORNEYS AND COUNSELLORS AT LAW
P. O. BOX [redacted]
SANTA FE, NEW MEXICO

November 24, 1964

Mr. Garrett C. Whitworth
El Paso Natural Gas Company
Post Office Box 1492
El Paso, Texas

Mr. Jason W. Kellahin
Post Office Box 1769
Santa Fe, New Mexico

Mr. William B. Kelly
Gilbert, White & Gilbert
Bishop Building
Santa Fe, New Mexico

Mr. James M. Durrett
Attorney
Oil Conservation Commission
State Land Office
Santa Fe, New Mexico

Mr. Kent B. Hampton
Marathon Oil Company
P O Box 120
Casper, Wyoming

Mr. Ross Malone
Post Office Drawer 700
Roswell, New Mexico

Re: El Paso Natural
Gas Company vs.
Oil Conservation Commission
No. 7727, Supreme Court of
New Mexico

Gentlemen:

Enclosed is copy of order approving extension of time to January 1, 1965 to file brief in the above appeal.

Very truly yours,

WRF:dd
Enclosure

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

EL PASO NATURAL GAS COMPANY, a Corporation et al.,

Petitioners-Appellants,

vs

No. 7727

OIL CONSERVATION COMMISSION OF NEW MEXICO et al.,

Respondents.

MOTION FOR EXTENSION OF TIME TO FILE BRIEF

Petitioners-Appellants in the above cause, through their attorneys, move the Court for an extension of time to January 1, 1965 within which to file their brief in chief and state that by reason of participation by several counsel in the case and their absence from the State during the month of November that they are unable to prepare their brief in chief within the time allowed.

SETH, MONTGOMERY, FEDERICI & ANDREWS

By Wm Federici
P. O. Box 2307
Santa Fe, New Mexico
One of the Attorneys for Petitioners

APPROVED this ____ day of November, 1964.

Chief Justice

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

EL PASO NATURAL GAS COMPANY, a corporation, et al

Petitioners-Appellants,

vs.

No. 7727

OIL CONSERVATION COMMISSION OF NEW MEXICO, et al

Respondents.

MOTION FOR EXTENSION OF TIME TO FILE BRIEF

Petitioners-Appellants in the above cause, through their attorneys, move the Court for an extension of time to December 1, 1964 within which to file their brief in chief and state that by reason of participation by several counsel in the case and their absence from the State during the month of October, that they are unable to prepare their brief in chief within the time allowed.

SETH, MONTGOMERY, FEDERICI & ANDREWS

By William R Federici

Post Office Box 2307
Santa Fe, New Mexico
One of the Attorneys for Petitioners.

APPROVED this 16th day of October, 1964.

S/ A. C Compton

Chief Justice

STATE OF NEW MEXICO COUNTY OF SAN JUAN IN THE DISTRICT COURT

EL PASO NATURAL GAS COMPANY, a corporation, PAN AMERICAN PETROLEUM CORPORATION, a corporation, MARATHON OIL COMPANY, a corporation, and SUNSET INTERNATIONAL PETROLEUM CORPORATION, a corporation,

Petitioners,

vs.

No. 11685

OIL CONSERVATION COMMISSION OF NEW MEXICO, JACK M. CAMPBELL, CHAIRMAN, E. S. WALKER, Member, A. L. PORTER, JR., Member and Secretary, and CONSOLIDATED OIL & GAS, INC., a corporation,

Respondents.

WAIVER OF NOTICE

Comes now the attorney for the Respondents in the above entitled cause and waives notice of the time and place of the settling of the Bill of Exceptions herein, and does hereby consent that without any further notice, the Honorable C. C. McCulloh may sign and settle said Bill of Exceptions.

J. M. Durrett, Jr.
Special Assistant Attorney General
Representing the New Mexico Oil
Conservation Commission

STATE OF NEW MEXICO)
)
COUNTY OF SAN JUAN)

IN THE DISTRICT COURT

EL PASO NATURAL GAS COMPANY, a corporation, PAN AMERICAN PETROLEUM CORPORATION, a corporation, MARATHON OIL COMPANY, a corporation, and SUNSET INTERNATIONAL PETROLEUM CORPORATION, a corporation,

Petitioners,

vs. No. 11685

OIL CONSERVATION COMMISSION OF NEW MEXIDO, JACK M. CAMPBELL, CHAIRMAN, E. S. WALKER, Member, A. L. PORTER, JR., Member and Secretary, and CONSOLIDATED OIL & GAS, INC., a corporation,

Respondents.

O R D E R

This matter having come on to be heard before the Court on Motion of Appellants, for an Order extending the time within which to file the transcript upon appeal, and the Court being otherwise fully advised in the premises,

IT IS, THEREFORE, ORDERED, that the time within which to file the transcript upon appeal be and the same hereby is extended until the 1st day of October, 1964.

s/ C. C. McCULLOH
DISTRICT JUDGE

STATE OF NEW MEXICO)
)
COUNTY OF SAN JUAN)

IN THE DISTRICT COURT

EL PASO NATURAL GAS COMPANY, a corporation, PAN AMERICAN PETROLEUM CORPORATION, a corporation, MARATHON OIL COMPANY, a corporation, and SUNSET INTERNATIONAL PETROLEUM CORPORATION, a corporation,

Petitioners,

vs. No. 11685

OIL CONSERVATION COMMISSION OF NEW MEXIDO, JACK M. CAMPBELL, CHAIRMAN, E. S. WALKER, Member, A. L. PORTER, JR., Member and Secretary, and CONSOLIDATED OIL & GAS, INC., a corporation,

Respondents.

O R D E R

This matter having come on to be heard before the Court on Motion of Appellants, for an Order extending the time within which to file the transcript upon appeal, and the Court being otherwise fully advised in the premises,

IT IS, THEREFORE, ORDERED, that the time within which to file the transcript upon appeal be and the same hereby is extended until the 1st day of October, 1964.

s/ C. C. McCULLOH
DISTRICT JUDGE

STATE OF NEW MEXICO)
) IN THE DISTRICT COURT
COUNTY OF SAN JUAN)

EL PASO NATURAL GAS COMPANY, a corporation, PAN AMERICAN PETROLEUM CORPORATION, a corporation, MARATHON OIL COMPANY, a corporation, and SUNSET INTERNATIONAL PETROLEUM CORPORATION, a corporation,

Petitioners,

vs. No. 11685

OIL CONSERVATION COMMISSION OF NEW MEXICO, JACK M. CAMPBELL, CHAIRMAN, E. S. WALKER, Member, A. L. PORTER, JR., Member and Secretary, and CONSOLIDATED OIL & GAS, INC., a corporation,

Respondents.

O R D E R

This matter having come on to be heard before the Court on Motion of Appellants, for an Order extending the time within which to file the transcript upon appeal, and the Court being otherwise fully advised in the premises,

IT IS, THEREFORE, ORDERED, that the time within which to file the transcript upon appeal be and the same hereby is extended until the 1st day of September, 1964.

s/ C. C. McCULLOH
DISTRICT JUDGE

J. O. SETH (1883-1963)

A. K. MONTGOMERY
WM. FEDERICI
FRANK ANDREWS
FRED C. HANNAHS

GEORGE A. GRAHAM, JR.
RICHARD S. MORRIS
FREDERICK M. MOWRER

SETH, MONTGOMERY, FEDERICI & ANDREWS
ATTORNEYS AND COUNSELORS AT LAW
350 EAST PALACE AVENUE
SANTA FE, NEW MEXICO 87501

POST OFFICE BOX 2307
AREA CODE 505
TELEPHONE 982-3876

July 10, 1964

Mr. Ben R. Howell
El Paso Natural Gas Company
Post Office Box 1492
El Paso, Texas

Re: El Paso Natural Gas Company et al vs. Oil Conservation Commission et al

Dear Mr. Howell:

Enclosed is copy of the Order which was signed by the Chief Justice of the Supreme Court permitting filing of the original only of the Oil Conservation Commission transcript and exhibits in the appeal.

Since the case is not yet docketed in the Supreme Court, the original of the Order will not be filed until the transcript has been completed and filed in the Supreme Court. I understand from the reporter that the transcript will be ready for filing on the due date of July 27.

Very truly yours,

WRF:dd
Enclosure

CC - Atwood & Malone
Kent B. Hampton
Kellahin & Fox
Gilbert, White & Gilbert
J. M. Durrett, Jr.
Special Ass't Attorney General

(with enclosure)

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

EL PASO NATURAL GAS COMPANY, a corporation, PAN AMERICAN PETROLEUM CORPORATION, a corporation, MARATHON OIL COMPANY, a corporation, and SUNSET INTERNATIONAL PETROLEUM CORPORATION, a corporation,

Petitioners,

vs.

No. _____

OIL CONSERVATION COMMISSION OF NEW MEXICO, JACK M. CAMPBELL, Chairman, E. S. WALKER, Member, A. L. PORTER, JR., Member and Secretary, and CONSOLIDATED OIL & GAS, INC., a corporation,

Respondents.

O R D E R

This matter having come on to be heard upon oral motion of petitioners for preparation and acceptance of the record herein, and it appearing to the Court:

1. That the above styled cause was filed in the District Court of San Juan County, State of New Mexico, as an appeal from the order entered by the Oil Conservation Commission of New Mexico, said appeal being designated on the docket of said court as follows: El Paso Natural Gas Company, et al, vs. Oil Conservation Commission of New Mexico, et al, No. 11685.

2. That the parties hereto by their respective attorneys have heretofore stipulated that the original transcript only, with exhibits and attachments thereto, of the hearing before the Oil Conservation Commission of New Mexico in the Application Of Consolidated Oil & Gas, Inc., For An Amendment Of Order No. R-1670-C Changing The Allocation Formula For The Basin-Dakota Gas Pool, San Juan, Rio Arriba And Sandoval Counties, New Mexico, being Case No. 2504, Order No. R-2259-B, on the docket of said Commission, which transcript of proceedings was received in evidence subject to objections as an exhibit in the said District Court, be considered as if the same had been included in the transcript, bill of exceptions and record, as prepared and certified by the clerk of the court in this appeal.

3. That the District Court of San Juan County has heretofore entered its Order approving the Stipulation of the parties and granting permission to submit the original only of the transcript of testimony as set forth in the Stipulation.

AND the Court being fully advised in the premises and good cause appearing therefor,

IT IS ORDERED that the original only of the transcript, with all exhibits and attachments thereto, of the hearing before the Oil Conservation Commission of New Mexico in Case No. 2504 on the docket of said Commission, be and the same is hereby received in Court for all intents and purposes as if the same had been included in the transcript and bill of exceptions certified to the Court by the said District Court of San Juan County in its transcript and bill of exceptions.

/S/ J. C.Compton
CHIEF JUSTICE

STATE OF NEW MEXICO COUNTY OF SAN JUAN IN THE DISTRICT COURT

EL PASO NATURAL GAS COMPANY, a corporation, PAN AMERICAN PETROLEUM CORPORATION, a corporation, MARATHON OIL COMPANY, a corporation, BETA DEVELOPMENT COMPANY, and SUNSET INTERNATIONAL PETROLEUM CORPORATION, a corporation,

Petitioners,

vs. No. 11685

OIL CONSERVATION COMMISSION OF NEW MEXICO, JACK M. CAMPBELL, Chairman, E. S. Walker, Member, A. L. PORTER, JR., Member and Secretary, CONSOLIDATED OIL & GAS, INC., a corporation,

Respondents.

S T I P U L A T I O N

WHEREAS, Petitioners have heretofore filed their Notice of Appeal in the above cause permitting and allowing an Appeal to the Supreme Court of the State of New Mexico from the Judgment entered therein; and

WHEREAS, Petitioners and Respondents desire that the original transcript only, with exhibits and attachments thereto, of the hearing before the Oil Conservation Commission of New Mexico be submitted to the Supreme Court of New Mexico.

NOW, THEREFORE, the undersigned attorneys of record for the respective parties hereto hereby stipulate and agree that the original transcript only, with all attachments and exhibits thereto, of the hearing before the Oil Conservation Commission of New Mexico in the matter of the Application of Consolidated Oil & Gas, Inc., For An Amendment of Order No. R-1670-C, Changing The Allocation Formula For The Basin-Dakota Gas Pool, San Juan, Rio Arriba And Sandoval Counties,

New Mexico, Case No. 2504, Order No. R-2259-B, on the docket of said Commission, which transcript of proceedings was filed in evidence in the District Court of San Juan County, New Mexico, subject to objections by the parties, and received by the said District Court in evidence as an exhibit in Cause No. 11685 in the said District Court, shall be considered by the Court as if the same had been included in the transcript, bill of exceptions and record, as prepared and certified by the clerk of the court relating to the appeal herein now pending.

IT IS FURTHER STIPULATED AND AGREED that except for the matters included in this stipulation, all other matters requested in the praecipe heretofore filed in this cause shall be included in the transcript of the record proper, subject to settlement as a bill of exceptions as in other cases provided.

BEN R. HOWELL

GARRETT C. WHITWORTH

SETH, MONTGOMERY, FEDERICI & ANDREWS

By_____

Attorneys for El Paso Natural Gas Company

J. K. SMITH

ATWOOD & MALONE

By_____

Attorneys for Pan American Petroleum Corp.

KENT B. HAMPTON

ATWOOD & MALONE

By_____

Attorneys for Marathon Oil Company

SETH, MONTGOMERY, FEDERICI & ANDREWS

By_____

Attorneys for Sunset International
Petroleum Corporation

PETITIONERS-APPELLANTS

J. M. Durrett, Jr.
Special Assistant Attorney General
Representing the New Mexico Oil
Conservation Commission

KELLAHIN & FOX

By_____

Attorneys for Consolidated Oil & Gas, Inc.

GILBERT, WHITE & GILBERT

By_____
William B. Kelly

Attorneys for Texaco, Inc. and
Sunray DX Oil Company

RESPONDENTS-APPELLEES

IN THE DISTRICT COURT OF SAN JUAN COUNTY

STATE OF NEW MEXICO

EL PASO NATURAL GAS COMPANY, a corporation, PAN AMERICAN PETROLEUM CORPORATION, a corporation, MARATHON OIL COMPANY, a corporation, BETA DEVELOPMENT COMPANY, and SUNSET INTERNATIONAL PETROLEUM CORPORATION, a corporation,

Petitioners,

vs

No. 11,685

OIL CONSERVATION COMMISSION OF NEW MEXICO, JACK M. CAMPBELL, Chairman, E. S. WALKER, Member, A. L. PORTER, JR., Member and Secretary, CONSOLIDATED OIL & GAS, INC., a corporation,

Respondents.

NOTICE

TO:

J. M. Durrett, Jr.
Special Assistant Attorney General
Representing the New Mexico Oil
Conservation Commission
State Land Office Building
Santa Fe, New Mexico;

Jason Kellahin
Kellahin & Fox
Attorneys for Consolidated Oil & Gas, Inc.
54½ East San Francisco Street
Santa Fe, New Mexico;

Wm. B. Kelly
Gilbert, White & Gilbert
Attorneys for Texaco, Inc., and Sunray DX
Oil Company
Bishop Building
Santa Fe, New Mexico

Please take notice that petitioners El Paso Natural Gas Company, Pan American Petroleum Corporation, Marathon Oil

Company and Sunset International Petroleum Corporation, by Not
Notice of Appeal filed herein on April 27, 1964, have appealed to the Supreme Court of the State of New Mexico from the judgment, order, and decision of the Court filed herein on April 2, 1964.

SETH, MONTGOMERY, FEDERICI & ANDREWS

By s/ Wm. R. Federici
Attorneys for El Paso Natural Gas Company and Sunset International Petroleum Corporation.

ATWOOD & MALONE

By s/ Ross Malone
Attorneys for Pan American Petroleum Corporation and Marathon Oil Company

PROOF OF SERVICE

I certify that I caused to be mailed one each true and correct copy of the foregoing Notice to J. M. Durrett, Jr., Special Assistant Attorney General, representing the New Mexico Oil Conservation Commission, and to Jason Kellahin, of Kellahin & Fox, 54½ East San Francisco Street, Santa Fe, New Mexico, and Wm. B. Kelly, of Gilbert, White & Gilbert, Bishop Building, Santa Fe, New Mexico, opposing counsel of record, on this ____ day of May 1964.

s/ Wm. R. Federici

IN THE DISTRICT COURT OF SAN JUAN COUNTY

STATE OF NEW MEXICO

EL PASO NATURAL GAS COMPANY, a Corporation, PAN AMERICAN PETROLEUM CORPORATION, a Corporation, MARATHON OIL COMPANY, a Corporation, BETA DEVELOPMENT COMPANY, and SUNSET INTERNATIONAL PETROLEUM CORPORATION, a Corporation, Petitioners, vs OIL CONSERVATION COMMISSION OF NEW MEXICO, JACK M. CAMPBELL, Chairman, E. S. WALKER, Member, A. L. PORTER, JR., Member and Secretary, CONSOLIDATED OIL & GAS, INC., a Corporation, Respondents.	No. 11,685

P R A E C I P E

TO: Clerk of the District Court of
San Juan County, State of New Mexico:

Please prepare a transcript of the record proper and of the proceedings in this cause to be filed with the Supreme Court of the State of New Mexico in support of the appeal heretofore taken by petitioners; the complete record and proceedings shall include, but not be limited to, the following specified matters:

(1) Complete transcript of all proceedings before the Oil Conservation Commission in OCC Case No. 2504, including transcript of testimony and all orders, petitions, applications, pleadings, and exhibits therein;

(2) Petitions for review filed by petitioners in this case;

(3) Petitioners' requested findings of fact and conclusions of law;

(4) Judgment, order, and decision of the Court in this action;

(5) Notice of Appeal (filed April 27, 1964);

(6) Notice of Appeal (to counsel), and Proof of Service;

(7) This Praecipe; and

(8) Certificate of Clerk of the District Court and Court Stenographer, showing that satisfactory arrangements have been made with them by petitioners-appellants for the payment of their compensation.

In addition to the complete record proper and proceedings in this cause, there shall be included in the transcript the notice of appeal to the district court from the New Mexico Oil Conservation Commission, and all affidavits of service and acceptances of service with respect thereto.

SETH, MONTGOMERY, FEDERICI & ANDREWS

By s/ Wm. R. Federici
Attorneys for El Paso Natural Gas Company and Sunset International Petroleum Corporation.

ATWOOD & MALONE

By s/ Ross Malone
Attorneys for Pan American Petroleum Corporation and Marathon Oil Company

CERTIFICATE OF MAILING

I certify that I caused to be mailed one each true and correct copy of the foregoing Praecipe to J. M. Durrett, Jr., Special Assistant Attorney General, representing the New Mexico Oil Conservation Commission, and to Jason Kellahin, of Kellahin & Fox, 54½ East San Francisco Street, Santa Fe, New Mexico, and Wm. B. Kelly, of Gilbert, White & Gilbert, Bishop Building, Santa Fe, New Mexico, opposing counsel of record, on this ____ day of May 1964.

s/ Wm. R. Federici

IN THE DISTRICT COURT OF SAN JUAN COUNTY

STATE OF NEW MEXICO

EL PASO NATURAL GAS COMPANY, a corporation, PAN AMERICAN PETROLEUM CORPORATION, a corporation, MARATHON OIL COMPANY, a corporation, BETA DEVELOPMENT COMPANY, and SUNSET INTERNATIONAL PETROLEUM CORPORATION, a corporation,

Petitioners,

vs.

OIL CONSERVATION COMMISSION OF NEW MEXICO, JACK M. CAMPBELL, Chairman, E. S. WALKER, Member, A. L. PORTER, JR., Member and Secretary, CONSOLIDATED OIL & GAS, INC., a corporation,

Respondents.

No. 11,685

NOTICE OF APPEAL

Come now the Petitioners, El Paso Natural Gas Company, Pan American Petroleum Corporation, Marathon Oil Company, and Sunset International Petroleum Corporation, and hereby give notice that they are appealing to the Supreme Court of the State of New Mexico from the Judgment, Order, and Decision of the Court in this action, which was filed on April 2, 1964.

s/ Ben R. Howell
BEN R. HOWELL

s/ Garrett C. Whitworth
GARRETT C. WHITWORTH

SETH, MONTGOMERY, FEDERICI & ANDREWS

By s/ Wm. R. Federici
Attorneys for El Paso Natural Gas Company

s/J. K. Smith
J. K. SMITH

ATWOOD & MALONE

By s/ Ross L. Malone
Attorneys for Pan American Petroleum Corporation.

s/ Kent B. Hampton
KENT B. HAMPTON

ATWOOD & MALONE

By s/ Ross L. Malone
Attorneys for Marathon Oil Company

SETH, MONTGOMERY, FEDERICI & ANDREWS

By s/ Wm. R. Federici
Attorneys for Sunset International Petroleum Corporation.

CERTIFICATE OF MAILING

I certify that I caused to be mailed one each true and correct copy of the foregoing Notice of Appeal to Jason Kellahin of Kellahin & Fox, 54½ E. San Francisco Street, Santa Fe, New Mexico, to J. M. Durrett, Jr., Special Assistant Attorney General, representing the New Mexico Oil Conservation Commission, and to Gilbert, White & Gilbert, Bishop Building, Santa Fe, New Mexico, opposing counsel of record, on this 24th day of April, 1964.

s/ Wm. R. Federici

STATE OF NEW MEXICO)
)
COUNTY OF SAN JUAN)

IN THE DISTRICT COURT

EL PASO NATURAL GAS COMPANY, a corporation, PAN AMERICAN PETROLEUM CORPORATION, a corporation, MARATHON OIL COMPANY, a corporation, BETA DEVELOPMENT COMPANY, and SUNSET INTERNATIONAL PETROLEUM CORPORATION, a corporation,

Petitioners,

vs.

No. 11685

OIL CONSERVATION COMMISSION OF NEW MEXICO, JACK M. CAMPBELL, Chairman, E. S. WALKER, Member, A. L. PORTER, JR., Member and Secretary, CONSOLIDATED OIL AND GAS, INC., a corporation,

Respondents.

J U D G M E N T

This matter coming on to be heard on Petition for Review, filed herein, and after considering the transcript, summary and briefs submitted by the parties, and hearing oral argument, and after the parties submitted their Requested Findings of Fact and Conclusions of Law, and the Court has entered its Decision, and being sufficiently advised in the premises, the Court FINDS that the Petition herein should be dismissed.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED, that Judgment be entered herein in favor of Respondents and that the Petition be and it is hereby dismissed.

DISTRICT JUDGE

STATE OF NEW MEXICO)
)
COUNTY OF SAN JUAN)

IN THE DISTRICT COURT

EL PASO NATURAL GAS COMPANY, a corporation, PAN AMERICAN PETROLEUM CORPORATION, a corporation, MARATHON OIL COMPANY, a corporation, BETA DEVELOPMENT COMPANY, and SUNSET INTERNATIONAL PETROLEUM CORPORATION, a corporation,

Petitioners,

vs.

No. 11685

OIL CONSERVATION COMMISSION OF NEW MEXICO, JACK M. CAMPBELL, Chairman, E. S. WALKER, Member, A. L. PORTER, JR., Member and Secretary, CONSOLIDATED OIL AND GAS, INC., a corporation,

Respondents.

DECISION OF THE COURT

The above-entitled cause having come on for trial and the Court having heard all of the evidence, arguments of counsel, and the parties having submitted Requested Findings of Fact and Conclusions of Law, and being sufficiently advised in the premises, the Court makes the following,

FINDINGS OF FACT

1. Petitioners El Paso Natural Gas Company, Pan American Petroleum Corporation, Marathon Oil Company, and Sunset International Petroleum Corporation are corporations authorized to do business in the State of New Mexico; Petitioner Southwest Production Company is a partnership consisting of Joseph P. Driscoll and John H. Hill, doing business as a partnership in the State of New Mexico.

2. After commencement of this cause, Beta Development Co., a Texas Corporation was substituted for Southwest Production Company as a Petitioner.

3. Respondent Oil Conservation Commission of New Mexico is a duly organized agency of the State of New Mexico, whose members are Jack M. Campbell, Chairman, E. S. Walker and A. L. Porter, Jr., Secretary; Respondent Consolidated Oil & Gas, Inc., is a corporation authorized to do business in the State of New Mexico.

4. By Order of the Court, Texaco, Inc., and Sunray DX Oil Company corporations authorized to do business in the State of New Mexico, were granted leave to intervene as parties respondent in this cause, and Pubco Petroleum Corporation and Southern Union Gas Company were permitted to appear amicus curiae.

5. In November, 1960, the Oil Conservation Commission issued Order No. R-1670-C which established Special Rules and Regulations for the Basin-Dakota Gas Pool in San Juan, Rio Arriba and Sandoval Counties, New Mexico, and adopted, by reference, Rule 9(C) of the General Rules applicable to pro-rated gas pools in Northwest New Mexico as set forth in Order No. R-1670. Rule 9(C) of Order No. R-1670 established a formula for allocating gas production from pro-rated gas pools in Northwest New Mexico on the basis of 25 percent acreage plus 75 percent acreage times deliverability. Until August 1, 1963, the effective date of Order No. R-2259-B, the allocation of allowable production of gas from the Basin-Dakota Gas Pool was determined by this formula. Since the effective date of Order No. R-2259-B, the allocation of allowable gas production in the Basin-Dakota Gas Pool has been determined by

formula of 60 percent acreage plus 40 percent acreage times deliverability.

6. On February 23, 1962, Consolidated Oil & Gas, Inc., filed its application with the Commission to change the formula for allocating the allowable gas production in the Basin-Dakota Gas Pool from a formula of 25 percent acreage plus 75 percent acreage times deliverability to a formula of 60 percent acreage plus 40 percent acreage times deliverability. This application was docketed by the Commission as its Case No. 2504. The case was duly advertised and heard by the Commission on April 18 and 19, 1962. On June 7, 1962, the Commission issued Order No. R-2259 which found that the evidence presented at the hearing of the case concerning recoverable gas reserves in the pool was insufficient to justify any change in the allocation formula and denied the application, retaining jurisdiction for the entry of such further orders as the Commission might deem necessary.

7. On June 27, 1962, Consolidated Oil & Gas, Inc., filed a Petition for Rehearing, and on July 7, 1962, the Commission issued Order No. R-2259-A which found that a rehearing should be granted and that the scope of the rehearing should be limited to matters concerning recoverable gas reserves in the Pool. Order No. R-2259-A granted a rehearing and limited the scope of the rehearing to matters concerning recoverable gas reserves in the Basin-Dakota Gas Pool.

8. On February 14 and 15, 1963, the Commission reheard Case No. 2504 and subsequently issued Order No. R-2259-B. By Order No. R-2259-B, the Commission superseded Order No. R-2259, which had denied Consolidated's application and amended the Special Rules

and regulations for the Basin-Dakota Gas Pool as promulgated by Order No. R-1670-C. The new formula allocated the allowable assigned to non-marginal wells in the following manner:

(1) Forty percent in the proportion that each well's acreage times deliverability factor bears to the total of the acreage times deliverability factors for all non-marginal wells in the pool.

(2) Sixty percent in the proportion that each well's acreage factor bears to the total of the acreage factors for all non-marginal wells in the pool.

9. In Finding No. 3 of Order No. R-1670-C, the Commission determined that the producing capacity of the wells in the Dakota Producing Interval was in excess of the market demand for gas from said common source of supply, and that for the purpose of preventing waste and protecting correlative rights, appropriate procedures should be adopted to provide a method of allocating gas among proration units in the area.

10. Order No. R-2259-B contained 18 findings to substantiate adoption of the new formula.

In Findings No. 1 through 4, the Commission determined that it had jurisdiction of the cause, that the Commission had adopted a formula for allocating allowable production from the Basin-Dakota Gas Pool on the basis of 25 percent acreage plus 75 percent acreage times deliverability, and that Consolidated sought to amend the formula to allocate the allowable production on the basis of 60 percent acreage plus 40 percent acreage times deliverability.

In Finding No. 5, the Commission determined the total initial recoverable gas reserves in the Basin-Dakota Gas Pool and the amount which was attibuted to marginal wells which were permitted to produce at capacity.

In Finding No. 6, the Commission determined, in million cubic feet, the initial recoverable gas reserves underlying each non-marginal tract of the Basin-Dakota Gas Pool.

In Finding No. 7, the Commission determined the percent of total pool reserves attributable to non-marginal tract in the pool.

In Finding No. 8, the Commission determined that it was not practicable to allocate production solely on the basis of each well's percentage of pool reserves because of the continuous fluctuation in reserve computations resulting from new completions in the pool and the re-evaluation of reserves attributed to existing wells.

In Finding No. 9, the Commission determined a tract acreage factor and the deliverability for each non-marginal well in the pool.

In Finding No. 10, the Commission determined that neither acreage nor deliverability should be used as the sole criterion for allocating production as there was no direct correlation between deliverability and reserves, or acreage and reserves.

In Finding No. 11, the Commission determined that the most reasonable basis for allocating production in the Basin-Dakota Gas Pool was to determine, for each proposed formula, the percentage of total pool allowable apportioned to each non-marginal tract as compared to its percentage of total pool reserves, and to select the allocation formula that would allow the maximum number of wells in the pool to produce with an ideal ratio of 1.0, or with a ratio of from 0.7 to 1.3, which was reasonable, due to inherent variance in interpreting and computing reserves.

In Finding No. 12, the Commission determined that the number of wells in the pool producing with a desired ratio was affected by the percentage of deliverability and the percentage of acreage included in the formula.

In Finding No. 13, the Commission determined that correlative rights were not being adequately protected under the formula then in effect, that the protection of correlative rights was a necessary adjunct to the prevention of waste, and that waste would result unless the Commission acted to protect correlative rights.

The Commission identified each non-marginal well producing with the desired ratio under each formula with an asterisk and determined, in Finding No. 14, that a comparison of the total number of wells producing with the desired ratio under each formula and the total volume of gas allocated to the wells producing with the desired ratio under each formula established that the proposed formula of 60 percent acreage plus 40 percent acreage times deliverability would more adequately protect correlative rights and prevent waste by permitting more wells to receive their just and equitable share of the gas in the pool.

In Finding No. 15, the Commission determined that numerous wells in the pool were capable of draining more than their just and equitable share of the gas and that the proposed formula would, insofar as practicable, prevent drainage between producing tracts which was not equalized by counter-drainage.

In Finding No. 16, the Commission determined that the proposed formula would, insofar as practicable, afford to the owner of each property in the pool the opportunity to use his just and equitable share of the reservoir energy.

In Finding No. 17, the Commission determined that Order No. R-1670-C should be amended to provide an allocation formula based ~~on~~ 60 percent on acreage and 40 percent on acreage times deliverability.

In Finding No. 18, the Commission determined that Order No. R-2259-B should not be effective until August 1, 1963.

11. Following the issuance of Order No. R-2259-B, Applications for Rehearing in Case No. 2504 were filed with the Commission by all of the Petitioners in this case.

12. On August 1, 1963, the Commission issued Order No. R-2259-C which determined that the Applications for Rehearing did not allege that the applicants for reheraing had new or additional evidence to present, that the Commission had carefully considered the evidence presented in the case and was fully advised in the premises, and that Order No. R-2259-B was proper in all respects. By Order No. R-2259-C, the Commission denied the Application for Rehearing.

13. Petitions for Review were thereafter duly filed by all of the Petitioners in this case.

14. The Oil Conservation Commission did not act fraudulently, arbitrarily or capriciously in issuing Orders No. R-2259-B and R-2259-C.

15. The Transcript of Record and Proceedings in Case No. 2504 before the Oil Conservation Commission contains substantial evidence to support the Commission's findings in Order No. R-2259-B.

16. The Oil Conservation Commission did not exceed its authority in issuing Orders No. R-2259-B and R-2259-C.

16. The Oil Conservation Commission did not exceed its authority in issuing Orders No. R-2259-B and R-2259-C.

17. Oil Conservation Commission Orders No. R-2259-B and R-2259-C are not erroneous, invalid, improper or discriminatory.

18. The formula adopted by the Oil Conservation Commission in its Order No. R-2259-B allocates the allowable production among the gas wells in the Basin-Dakota Gas Pool upon a reasonable basis, recognizing correlative rights, and, insofar as practicable, prevents drainage between producing tracts in the pool which is not equalized by counter-drainage.

19. The formula adopted by the Oil Conservation Commission in its Order No. R-2259-B affords to the owner of each property in the Basin-Dakota Gas Pool the opportunity to produce without waste his just and equitable share of the gas in the pool, insofar as it is practicable to do so, and for this purpose to use his just and equitable share of the reservoir energy.

20. Oil Conservation Commission Orders No. R-2259-B and R-2259-C will prevent waste and protect correlative rights.

From the foregoing Findings of Fact, the Court makes the following,

CONCLUSIONS OF LAW

1. The Court has jurisdiction over the subject matter of this action and of all necessary and indispensable parties thereto.

2. Petitioners in this proceeding exhausted their administrative remedy before the Oil Conservation Commission of New Mexico and are entitled to review of the validity of Order No. R-2259-B in this proceeding.

3. Oil Conservation Commission Order No. R-2259-B contains

the basic jurisdictional findings required by law to issue a valid order allocating allowable gas production among the producers in a pool.

4. Oil Conservation Commission Order No. R-2259-B contains findings which fully comply with all statutory requirements concerning allocation of allowable gas production among producers in a pool.

5. The findings contained in Oil Conservation Commission Order No. R-2259-B are based upon and supported by substantial evidence.

6. Oil Conservation Commission Orders No. R-2259-B and R-2259-C will prevent waste and protect correlative rights.

7. The Oil Conservation Commission did not act fraudulently, arbitrarily or capriciously in issuing Orders No. R-2259-B and R-2259-C.

8. The Oil Conservation Commission did not exceed its authority in issuing Orders No. R-2259-B and R-2259-C.

9. The Oil Conservation Commission ~~has~~ jurisdiction to enter Orders No. R-2259-B and R-2259-C.

10. The Petitioners have failed to sustain the burden of proof placed upon them by law and therefore the Petition for Review should be dismissed and Oil Conservation Commission Orders No. R-2259-B and R-2259-C should be affirmed.

IT IS HEREBY ORDERED, that all Requested Findings of Fact and Conclusions of Law submitted by either party and not made and entered herein by the Court are hereby refused and denied.

C. C. McCulloh

DISTRICT JUDGE

STATE OF NEW MEXICO COUNTY OF SAN JUAN IN THE DISTRICT COURT

EL PASO NATURAL GAS COMPANY, a corporation, PAN AMERICAN PETROLEUM CORPORATION, a corporation, MARATHON OIL COMPANY, a corporation, BETA DEVELOPMENT COMPANY, and SUNSET INTERNATIONAL PETROLEUM CORPORATION, a corporation,

Petitioners,

vs.

OIL CONSERVATION COMMISSION OF NEW MEXICO, JACK M. CAMPBELL, Chairman, E. S. WALKER, Member, A. L. PORTER, JR., Member and Secretary, CONSOLIDATED OIL & GAS, INC., a corporation,

Respondents.

No. 11635

PETITIONERS REQUESTED FINDINGS AND CONCLUSIONS

PETITIONERS REQUESTED FINDINGS OF FACT AND CONCLUSIONS OF LAW

REQUESTED FINDINGS OF FACT

1. Petitioners El Paso Natural Gas Company, Pan American Petroleum Corporation and Sunset International Petroleum Corporation are corporations organized under the laws of the State of Delaware and authorized to do business in the State of New Mexico; petitioner Marathon Oil Company is a corporation organized under the laws of the State of Ohio and authorized to do business in the State of New Mexico; petitioner Beta Development Company is a partnership doing business in the State of New Mexico.

2. Respondent Oil Conservation Commission of New Mexico is a duly organized agency of the State of New Mexico, whose members are Jack M. Campbell, Chairman, E. S. Walker, and A. L. Porter, Jr., Secretary; respondent Consolidated Oil & Gas, Inc., is a corporation organized under the laws of the State of Colorado and authorized to do business in the State of New Mexico.

3. Petitioners each own property in San Juan County, New Mexico, which is affected by Orders Nos. R-2259-B and R-2259-C of the New Mexico Oil Conservation Commission.

4. Proration of gas production from the Basin Dakota Pool was initiated by Order R-1670-C promulgated by the Oil Conservation Commission of New Mexico on November 4, 1960. That Order established the so called "25-75 formula" for the allocation of allowable between wells in the pool. Under the formula allowable was allocated 25% upon the acreage attributable to the well and 75% upon the acreage attributable to the well multiplied by the deliverability factor of the well. This formula was applicable to all production from the Basin Dakota Pool from the initiation of proration of its production until the promulation of Order R-2259-B. During the period that Order R-1670-C was in effect 372 wells were drilled by operators in the pool under the provisions of, and in reliance upon, the 25-75 formula.

5. On April 18 through April 21, 1962, Respondent Oil Conservation Commission of New Mexico considered at hearing the application of Respondent Consolidated Oil & Gas, Inc., to change the proration formula for the Basin Dakota Gas Pool located in San Juan, Rio Arriba and Sandoval Counties, New Mexico, from a formula based twenty-five percent upon acreage and seventy-five percent upon acreage multiplied by deliverability to a formula based sixty percent upon acreage and forty percent upon acreage multiplied by deliverability. By its Order No. R-2259, dated June 7, 1962, the Commission denied the application. Consolidated Oil & Gas, Inc., then applied for rehearing which was granted by Commission Order No. R-2259-A, dated July 7, 1962. On July 9, 1963, following rehearing, Respondent Oil Conservation Commission of New Mexico entered its Order No. R-2259-B changing the pro-

ration formula for the Basin Dakota Gas Pool to sixty per cent acreage and forty per cent acreage times deliverability as requested by Respondent Consolidated Oil & Gas, Inc.

6. The facts with reference to the signing and promulation of Order R-2259-B were these. On July 3, 1963, two members of the New Mexico Oil Conservation Commission met and signed an original and one copy of Oil Conservation Commission Order No. R-2259-B; that said original order was forwarded to the printer for reproduction; upon the return of the original order from the printer, both the original and the copy of said order were signed by the third member of the Commission; the signed copy of said Order No. R-2259-B, upon being signed by the third member of the Commission, was placed in the file of Case No.2504; the original order was then placed in full, as required by Sec. 65-3-6, N.M.S.A., 1953 Comp., in a book kept in the Commission office for such purpose, this action being taken at the direction of A. L. Porter, Jr., Secretary-Director of the Commission, and said A. L. Porter, Jr., thereupon endorsed on the order placed in said book the following:

"Entered July 9, 1963
A. L. P."

upon the first page of such original order.

7. On July 26, 1963, Petitioner El Paso Natural Gas Company filed with the Commission its Application for Rehearing setting forth the respect in which such Order was believed to be erroneous, which Application for Rehearing was denied by the Commission in its Order No. R-2259-C, dated August 1, 1963. On July 29, 1963, Petitioners Pan American Petroleum Corporation, Marathon Oil Company, Southwest Production Company and Sunset

International Petroleum Corporation filed with the Commission their Applications for Rehearing setting forth the respect in which Order No. R-2259-B was believed to be erroneous, which Applications for Rehearing also were denied by the Commission in its Order No. R-2259-C, dated August 1, 1963.

8. Beta Development Company has succeeded to the interest of Petitioner Southwest Production Company in the Basin Dakota Pool and has been substituted for Southwest Production Company as a party hereto.

9. That a copy of said Order No. R-2259-B was mailed by the Commission to the Supreme Court Library and to all interested parties on July 9, 1963, and that no notice of said order was given to any party prior to said date, nor did any party have actual knowledge of said order prior to July 9, 1963.

10. That on August 20, 1963, Petitioners filed herein their Petition for Review of Orders Nos. R-2259-B and R-2259-C.

11. That notice of appeal to the District Court of San Juan County, New Mexico, was served by Petitioners upon the Respondent Consolidated Oil & Gas, Inc., upon the Respondent Oil Conservation Commission, and upon all adverse parties, in the manner provided by law.

12. The Commission, having purported to find (1) the amount of recoverable gas under each producers tract in the Basin Dakota Pool, (2) a total amount of recoverable gas in the Pool and (3) the proportion that (1) bears to (2), wholly failed to make any finding or determination as to what portion of the proportion so arrived at could be recovered without waste.

13. The Commission, in its Order No. R-2259-B made no finding that waste was occurring under the original 25-75 formula, or that waste would be prevented by the 60-40 formula.

14. The Commission's order is unreasonable and unlawful because it is based on affirmative findings which were illusory and which do not meet the statutory standards for a valid allocation of gas production.

15. The Commission's order does not equitably protect correlative rights insofar as is practicable in accordance with statutory standards.

16. Order No. R-2259-B is not supported by substantial evidence.

17. Findings No. (5), (6), (7), (9), (11), (14), (15), (16), and (17), of Order R-2259-B are not supported by substantial evidence in that each is based directly, or indirectly, upon a determination of initial recoverable reserves which was based on out of date data designed to determine the recoverable reserves in the pool as a whole and not suitable or reliable as a basis for determining the recoverable gas in place under individual tracts in the pool, which data was erroneously received in evidence over the timely objection of Petitioner El Paso Natural Gas Company.

18. Findings No. (9), (10), (11), (13), (14), (15), (16), and (17), of Order R-2259-B are not supported by substantial evidence in that each is based directly, or indirectly, upon a comparison of initial recoverable reserves for the individual tracts in the Basin Dakota Pool with current deliverabilities of the wells located upon said tracts. The comparison so made is not meaningful, is illusory and discriminatory, and does not constitute substantial evidence to support the findings so based upon it.

19. There is no substantial evidence to support Finding No. 13 of the Commission that correlative rights are not being

adequately protected under the present 25-75 formula and that waste will result unless the Commission acts to protect correlative rights.

20. There is no substantial evidence in the record to support the Commission's Findings Nos. 14, 15 and 16, in that the record affirmatively shows that approximately half of the wells in the Basin Dakota Pool will not be permitted to recover their just and equitable share of the gas in the pool, as defined by applicable statutes, or a figure within a reasonable tolerance thereof, under the 60-40 formula promulgated by the Commission.

21. There is no substantial evidence in the record to support Commission's Findings 9, 10, 11, 13, 14, 15, 16 and 17, in that each is based upon a determination of the initial recoverable gas reserves in the Basin Dakota Gas Pool and the initial recoverable gas reserves underlying each non-marginal tract which fails to take into account the portion of the recoverable gas in place which can be produced <u>without waste</u>.

22. The Commission's Findings Nos. (11), (12), (13), (14), (15), (16), and (17), are not supported by substantial evidence in that each is based directly, or indirectly, upon a calculation of initial recoverable gas reserves in the Basin Dakota Gas Pool and initial recoverable gas reserves underlying each non-marginal tract in the Pool which, as found by the Commission, is impracticable as a basis for allocation of production due to continuous fluctuation which will result therein during the life of Order R-2259-B.

CONCLUSIONS OF LAW

1. The Court has jurisdiction of the subject matter of this action and of all necessary and indispensable parties thereto.

2. Order No. R-2259-B is unreasonable and unlawful and void by reason of the failure of the Oil Conservation Commission to make required findings of jurisdictional fact as to the portion of the reserves of the Basin Dakota Pool and the individual tracts therein which can be produced without waste.

3. Order No. R-2259-B is unreasonable and unlawful and void by reason of the fact that the findings of fact upon which it is predicated are not supported by substantial evidence.

4. Petitioners in this proceeding exhausted their administrative remedy before the Oil Conservation Commission of New Mexico and are entitled to review of the validity of Order No. R-2259-B in this proceeding.

5. The validity of Order R-1670-C and of the 25-75 formula promulgated by it has not been passed upon by the Oil Conservation Commission of New Mexico, is not an issue in this case and is not material to the validity of Order No. R-2259-B which has been issued in this case.

ATWOOD & MALONE

By /s/ Ross L. Malone
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Roswell, New Mexico

/s/ Ben R. Howell

/s/ Garrett C. Whitworth
EL PASO NATURAL GAS COMPANY
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/s/ J. K. Smith
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Farmington, New Mexico

Attorneys for Petitioners

STATE OF NEW MEXICO)
)
COUNTY OF SAN JUAN)

IN THE DISTRICT COURT

CONSOLIDATED REQUESTED FINDINGS AND CONCLUSIONS

EL PASO NATURAL GAS COMPANY, et al.,

Petitioners,

-vs-

No. 11,685

OIL CONSERVATION COMMISSION OF NEW MEXICO, et al.,

Respondents.

REQUESTED FINDINGS OF FACT AND CONCLUSIONS OF LAW OF RESPONDENT CONSOLIDATED OIL & GAS, INC.

Comes now the Respondent Consolidated Oil & Gas, Inc., in the above styled and numbered cause and respectfully requests the Court to adopt the following:

FINDINGS OF FACT

1. Petitioners El Paso Natural Gas Company, Pan American Petroleum Corporation, Marathon Oil Company, and Sunset International Petroleum Corporation are corporations authorized to do business in the State of New Mexico; Petitioner Southwest Production Company is a partnership consisting of Joseph P. Driscoll and John H. Hill, doing business as a partnership in the State of New Mexico.

2. After commencement of this cause, Beta Development Co., a Texas Corporation, was substituted for Southwest Production Company as a petitioner.

3. Respondent Oil Conservation Commission of New Mexico is a duly organized agency of the State of New Mexico, whose members are Jack M. Campbell, Chairman, E. S. Walker, and A. L. Porter, Jr., Secretary; Respondent Consolidated Oil & Gas, Inc., is a corporation authorized

to do business in the State of New Mexico.

4. By order of the Court, Texaco, Inc., and Sunray DX Oil Company, corporations authorized to do business in the State of New Mexico, were granted leave to intervene as parties respondent in this cause, and Pubco Petroleum Corporation and Southern Union Gas Company were permitted to appear amicus curiae.

5. In November, 1960, the Oil Conservation Commission issued Order No. R-1670-C which established Special Rules and Regulations for the Basin-Dakota Gas Pool in San Juan, Rio Arriba, and Sandoval Counties, New Mexico, and adopted, by reference, Rule 9(C) of the General Rules applicable to prorated gas pools in Northwest New Mexico as set forth in Order No. R-1670. Rule 9(C) of Order No. R-1670 established a formula for allocating gas production from prorated gas pools in Northwest New Mexico on the basis of 25 percent acreage plus 75 percent acreage times deliverability. Until August 1, 1963, the effective date of Order No. R-2259-B, the allocation of allowable production of gas from the Basin-Dakota Gas Pool was determined by this formula. Since the effective date of Order No. R-2259-B, the allocation of allowable gas production in the Basin-Dakota Gas Pool has been determined by a formula of 60 percent acreage plus 40 percent acreage times deliverability.

6. On February 23, 1962, Consolidated Oil & Gas, Inc., filed its application with the Commission to change the formula for allocating the allowable gas production in the Basin-Dakota Gas Pool from a formula of 25 percent acreage plus 75 percent acreage times deliverability to a formula of 60 percent acreage plus 40 percent acreage times deliverability. This application was docketed by the Commission as its Case No. 2504. The case was duly advertised and heard by the Commission on April 18 and 19, 1962. On June 7, 1962, the Commission issued Order No. R-2259 which found that the evidence presented at the hearing of the case concerning recoverable gas reserves in the pool was insufficient to justify

any change in the allocation formula and denied the application, retaining jurisdiction for the entry of such further orders as the Commission might deem necessary.

7. On June 27, 1962, Consolidated Oil & Gas, Inc., filed a Petition for Rehearing, and on July 7, 1962, the Commission issued Order No. R-2259-A which found that a rehearing should be granted and that the scope of the rehearing should be limited to matters concerning recoverable gas reserves in the Basin-Dakota Gas pool.

8. On February 14 and 15, 1963, the Commission reheard Case No. 2504 and subsequently issued Order No. R-2259-B. By Order No. R-2259-B, the Commission superseded Order No. R-2259, which had denied Consolidated's application, and amended the Special Rules and Regulations for the Basin-Dakota Gas Pool as promulgated by Order No. R-1670-C. The new formula allocated the allowable assigned to non-marginal wells in the following manner:

(1) Forty percent in the proportion that each well's acreage times deliverability factor bears to the total of the acreage times deliverability factors for all non-marginal wells in the pool.

(2) Sixty percent in the proportion that each well's acreage factor bears to the total of the acreage factors for all non-marginal wells in the pool.

9. In Finding No. 3 of Order No. R-1670-C, the Commission determined that the producing capacity of the wells in the Dakota Producing Interval was in excess of the market demand for gas from said common source of supply, and that for the purpose of preventing waste and protecting correlative rights, appropriate procedures should be adopted to provide a method of allocating gas among proration units in the area.

10. Order No. R-2259-B contained 18 findings to substantiate adoption of the new formula.

In Findings No. 1 through 4, the Commission determined that it had jursidiction of the case, that the Commission had adopted a formula for

allocating allowable production from the Basin-Dakota Gas Pool on the basis of 25 percent acreage plus 75 percent acreage times deliverability, and that Consolidated sought to amend the formula to allocate the allowable production on the basis of 60 percent acreage plus 40 percent acreage times deliverability.

In Finding No. 5, the Commission determined the total initial recoverable gas reserves in the Basin-Dakota Gas Pool and the amount which was attributed to marginal wells which were permitted to produce at capacity.

In Finding No. 6, the Commission determined, in million cubic feet, the initial recoverable gas reserves underlying each non-marginal tract in the Basin-Dakota Gas Pool.

In Finding No. 7, the Commission determined the percent of total pool reserves attributable to each non-marginal tract in the pool, and in Exhibit A attached to Order No. R-2259-B, Column I, is a determination by the Commission of the percent of the total pool allowable attributable to each non-marginal tract in the pool under Order No. R-2259-B.

In Finding No. 8, the Commission determined that it was not practicable to allocate production solely on the basis of each well's percentage of pool reserves because of the continuous fluctuation in reserve computations resulting from new completions in the pool and the re-evaluation of reserves attributed to existing wells.

In Finding No. 9, the Commission determined a tract acreage factor and the deliverability for each non-marginal well in the pool.

In Finding No. 10, the Commission determined that neither acreage nor deliverability should be used as the sole criterion for allocating production as there was no direct correlation between deliverability and reserves, or acreage and reserves.

In Finding No. 11, the Commission determined that the most reasonable basis for allocating production in the Basin-Dakota Gas Pool was to determine, for each proposed formula, the percentage of total pool allowable

apportioned to each non-marginal tract as compared to its percentage of total pool reserves, and to select the allocation formula that would allow the maximum number of wells in the pool to produce with an ideal ratio of 1.0, or with a ratio of from 0.7 to 1.3, which was reasonable due to inherent variance in interpreting and computing reserves.

In Finding No. 12, the Commission determined that the number of wells in the pool producing with a desired ratio was affected by the percentage of deliverability and the percentage of acreage included in the formula.

In Finding No. 13, the Commission determined that correlative rights were not being adequately protected under the formula then in effect, that the protection of correlative rights was a necessary adjunct to the prevention of waste, and that waste would result unless the Commission acted to protect correlative rights.

The Commission identified each non-marginal well producing with the desired ratio under each formula with an asterisk and determined, in Finding No. 14, that a comparison of the total number of wells producing with the desired ratio under each formula and the total volume of gas allocated to the wells producing with the desired ratio under each formula established that the proposed formula of 60 percent acreage plus 40 percent acreage times deliverability would more adequately protect correlative rights and prevent waste by permiting more wells to receive their just and equitable share of the gas in the pool.

In Finding No. 15, the Commission determined that numerous wells in the pool were capable of draining more than their just and equitable share of the gas and that the proposed formula would, insofar as practiable, prevent drainage between producing tracts which was not equalized by counter-drainage.

In Finding No. 16, the Commission determined that the proposed formula would, insofar as practicable, afford to the owner of each property in the pool the opportunity to use his just and equitable share

of the reservoir energy.

In Finding No. 17, the Commission determined that Order No. R-1670-C should be amended to provide an allocation formula based 60 percent on acreage and 40 percent on acreage times deliverability.

In Finding No. 18, the Commission determined that Order No. R-2259-B should not be effective until August 1, 1963.

11. Followingthe issuance of Order No. R-2259-B, Applications for Rehearing in Case No. 2504 were filed with the Commission by all of the Petitioners in this case.

12. On August 1, 1963, the Commission issued Order No. R-2259-C which determined that the Applications for Rehearing did not allege that the applicants for rehearing had new or additional evidence to present, that the Commission had carefully considered the evidence presented in the case and was fully advised in the premises, and that Order No. R-2259-B was proper in all respects. By Order No. R-2259-C, the Commission denied the Applications for Rehearing.

13. Petitions for Review were thereafter duly filed by all of the Petitioners in this case.

14. The Oil Conservation Commission did not act fraudulently, arbitrarily or capriciously in issuing Orders No. R-2259-B and R-2259-C.

15. The Transcript of Record and Proceedings in Case No. 2504 before the Oil Conservation Commission contains substantial evidence to support the Commission's findings in Order No. R-2259-B.

16. The Oil Conservation Commission did not exceed its authority in issuing Orders No. R-2259-B and R-2259-C.

17. Oil Conservation Commission Orders No. R-2259-B and R-2259-C are not erroneous, invalid, improper, or discriminatory.

18. The formula adopted by the Oil Conservation Commission in its Order No. R-2259-B allocates the allowable production among the gas wells in the Basin-Dakota Gas Pool upon a reasonable basis, recognizing correlative rights, and, insofar as practicable, prevents drainage between producing

tracts in the pool which is not equalized by counter-drainage.

19. The formula adopted by the Oil Conservation Commission in its Order No. R-2259-B affords to the owner of each property in the Basin-Dakota Gas Pool the opportunity to produce without waste his just and equitable share of the gas in the pool, insofar as it is practicable to do so, and for this purpose to use his just and equitable share of the reservoir energy.

20. Oil Conservation Commission Orders No. R-2259-B and R-2259-C will prevent waste and protect correlative rights.

21. Humble Oil & Refining Company, Skelly Oil Company, The Atlantic Refining Company, Benjamin K. Horton & Associates, R. & G. Drilling Company, The United States Geological Survey, Tidewater Oil Company, Bruce Anderson Oil & Gas Properties, The Frontier Refining Company, Kay Kimbell Oil Company, Amerada Petroleum Corporation, Continental Oil Company, Beard Oil Company, Delhi Oil Corporation, Western Natural Gas Company, Compass Exploration Co., Tenneco Oil Company, Caulkins Oil Company, Pioneer Production Co., and The British American Oil Producing Company, and each of them, participated in the hearings before the Oil Conservation Commission as appears on the face of the record, and they are, and each of them is, a necessary and indispensable party to this action, whose interest in the controversy is such that no final judgment can be entered which will do justice between the parties without injuriously affecting the rights of said parties. Said parties are owners and operators of gas properties in the Basin-Dakota Gas Pool and will be directly affected by, and be subject to, any order entered by the Court in this proceeding, and said parties have not been brought before the Court in this proceeding.

22. Petitioners have failed to exhaust their administrative remedy in that their petition for reheaing before the Oil Conservation Commission was not timely filed.

23. Unless implemented by Oil Conservation Commission Order No. R-2259-B, Orders No. R-1670 and No. R-1670-C are invalid and void for the reason they do not contain the jurisdictional findings required by law.

CONCLUSIONS OF LAW

1. The Court is without jurisdiction to grant the relief sought by Petitioners by reason of the fact Petitioners have failed to name indispensable parties in this proceeding.

2. The Court is without jurisdiction to grant the relief sought by Petitioners by reason of the fact petitioners failed to exhaust their administrative remedy.

3. The Court has jurisdiction over the subject matter of this suit and the parties hereto.

4. Oil Conservation Commission Order No. R-2259-B contains the basic jurisdictional findings required by law to issue a valid order allocating allowable gas production among the producers in a pool.

5.. Oil Conservation Commission Order No. R-2259-B contains findings which fully comply with all statutory requirements concerning allocation of allowable gas production among producers in a pool.

6. The findings contained in Oil Conservation Commission Order No. R-2259-B are based upon and supported by substantial evidence.

7. Oil Conservation Commission Orders No. R-2259-B and R-2259-C will prevent waste and protect correlative rights.

8. The Oil Conservation Commission did not act fraudulently, arbitrarily or capriciously in issuing Orders No. R-2259-B and R-2259-C.

9. The Oil Conservation Commission did not exceed its authority in issuing Orders No. R-2259-B and R-2259-C.

10. The Oil Conservation Commission had jurisdiction to enter Orders No. R-2259-B and R-2259-C.

11. The Petitioners have failed to sustain the burden of proof placed upon them by law and therefore the Petition for Review should be dismissed and Oil Conservation Commission Orders No. R-2259-B and R-2259-C should be be affirmed.

12. Insofar as it relates to the Basin-Dakota Gas Pool, Commission Orders No. R-1670 and R-1670-C were invalid and void.

13. As amended and implemented by Order No. R-2259-B, Orders No. R-1670 and R-1670-C became and now are valid orders allocating gas production among the producers of the Basin-Dakota Gas Pool.

14. The petition for review should be dismissed and judgment entered for the Respondents herein.

CONSOLIDATED OIL & GAS, INC.

T. P. Stockmar
Holme, Roberts, More & Owen
Denver, Colorado

Kellahin & Fox
54½ East San Francisco
Santa Fe, New Mexico

By _____

STATE OF NEW MEXICO COUNTY OF SAN JUAN

IN THE DISTRICT COURT

EL PASO NATURAL GAS COMPANY, et al.,

Petitioners,

vs. No. 11,685

OIL CONSERVATION COMMISSION OF NEW MEXICO, et al.,

Respondents.

OCC REQUESTED FINDINGS AND CONCLUSIONS

REQUESTED FINDINGS OF FACT AND CONCLUSIONS OF LAW OF RESPONDENTS OIL CONSERVATION COMMISSION, TEXACO INC., AND SUNRAY DX OIL COMPANY

Respondents Oil Conservation Commission of New Mexico, Texaco Inc., and Sunray DX Oil Company respectfully submit to the Court the following:

FINDINGS OF FACT

1. Petitioners El Paso Natural Gas Company, Pan American Petroleum Corporation, Marathon Oil Company, and Sunset International Petroleum Corporation are corporations authorized to do business in the State of New Mexico; Petitioner Southwest Production Company is a partnership consisting of Joseph P. Driscoll and John H. Hill, doing business as a partnership in the State of New Mexico.

2. After commencement of this cause, Beta Development Co., a Texas corporation, was substituted for Southwest Production Company as a petitioner.

3. Respondent Oil Conservation Commission of New Mexico is a duly organized agency of the State of New Mexico, whose members are Jack M. Campbell, Chairman, E. S. Walker, and A. L.

Porter, Jr., Secretary; Respondent Consolidated Oil & Gas, Inc., is a corporation authorized to do business in the State of New Mexico.

4. By Order of the Court, Texaco Inc. and Sunray DX Oil Company, corporations authorized to do business in the State of New Mexico, were granted leave to intervene as parties respondent in this cause, and Pubco Petroleum Corporation and Southern Union Gas Company were permitted to appear amicus curiae.

5. In November 1960, the Oil Conservation Commission issued Order No. R-1670-C which established Special Rules and Regulations for the Basin-Dakota Gas Pool in San Juan, Rio Arriba, and Sandoval Counties, New Mexico, and adopted, by reference, Rule 9(C) of the General Rules applicable to prorated gas pools in Northwest New Mexico as set forth in Order No. R-1670. Rule 9(C) of Order No. R-1670 established a formula for allocating gas production from prorated gas pools in Northwest New Mexico on the basis of 25 percent acreage plus 75 percent acreage times deliverability. Until August 1, 1963, the effective date of Order No. R-2259-B, the allocation of allowable production of gas from the Basin-Dakota Gas Pool was determined by this formula. Since the effective date of Order No. R-2259-B, the allocation of allowable gas production in the Basin-Dakota Gas Pool has been determined by a formula of 60 percent acreage plus 40 percent acreage times deliverability.

6. On February 23, 1962, Consolidated Oil & Gas, Inc., filed its application with the Commission to change the formula for allocating the allowable gas production in the Basin-Dakota Gas Pool from a formula of 25 percent acreage plus 75 percent acreage times deliverability to a formula of 60 percent acreage plus 40 percent acreage times deliverability. This application was docketed by the Commission as its Case No. 2504. The case was duly advertised and heard by the Commission on April 18 and 19, 1962. On June 7, 1962, the Commission issued Order No.

R-2259 which found that the evidence presented at the hearing of the case concerning recoverable gas reserves in the pool was insufficient to justify any change in the allocation formula and denied the application, retaining jurisdiction for the entry of such further orders as the Commission might deem necessary.

7. On June 27, 1962, Consolidated Oil & Gas, Inc., filed a Petition for Rehearing, and on July 7, 1962, the Commission issued Order No. R-2259-A which found that a rehearing should be granted and that the scope of the rehearing should be limited to matters concerning recoverable gas reserves in the pool. Order No. R-2259-A granted a rehearing and limited the scope of the rehearing to matters concerning recoverable gas reserves in the Basin-Dakota Gas Pool.

8. On February 14 and 15, 1963, the Commission reheard Case No. 2504 and subsequently issued Order No. R-2259-B. By Order No. R-2259-B, the Commission superseded Order No. R-2259, which had denied Consolidated's application, and amended the Special Rules and Regulations for the Basin-Dakota Gas Pool as promulgated by Order No. R-1670-C. The new formula allocated the allowable assigned to non-marginal wells in the following manner:

(1) Forty percent in the proportion that each well's acreage times deliverability factor bears to the total of the acreage times deliverability factors for all non-marginal wells in the pool.

(2) Sixty percent in the proportion that each well's acreage factor bears to the total of the acreage factors for all non-marginal wells in the pool.

9. In Finding No. 3 of Order No. R-1670-C, the Commission determined that the producing capacity of the wells in the Dakota Producing Interval was in excess of the market demand for gas from said common source of supply, and that for the purpose of preventing waste and protecting correlative rights, appropriate procedures should be adopted to provide a method of allocating gas among proration units in the area.

10. Order No. R-2259-B contained 18 findings to substantiate adoption of the new formula.

In Findings No. 1 through 4, the Commission determined that it had jurisdiction of the cause, that the Commission had adopted a formula for allocating allowable production from the Basin-Dakota Gas Pool on the basis of 25 percent acreage plus 75 percent acreage times deliverability, and that Consolidated sought to amend the formula to allocate the allowable production on the basis of 60 percent acreage plus 40 percent acreage times deliverability.

In Finding No. 5, the Commission determined the total initial recoverable gas reserves in the Basin-Dakota Gas Pool and the amount which was attributed to marginal wells which were permitted to produce at capacity.

In Finding No. 6, the Commission determined, in million cubic feet, the initial recoverable gas reserves underlying each non-marginal tract in the Basin-Dakota Gas Pool.

In Finding No. 7, the Commission determined the percent of total pool reserves attributable to each non-marginal tract in the pool.

In Finding No. 8, the Commission determined that it was not practicable to allocate production solely on the basis of each well's percentage of pool reserves because of the continuous fluctuation in reserve computations resulting from new completions in the pool and the re-evaluation of reserves attributed to existing wells.

In Finding No. 9, the Commission determined a tract acreage factor and the deliverability for each non-marginal well in the pool.

In Finding No. 10, the Commission determined that neither acreage nor deliverability should be used as the sole criterion for allocating production as there was no direct correlation between deliverability and reserves, or acreage and reserves.

In Finding No. 11, the Commission determined that the most reasonable basis for allocating production in the Basin-Dakota Gas Pool was to determine, for each proposed formula, the percentage of total pool allowable apportioned to each non-marginal tract as compared to its percentage of total pool reserves, and to select the allocation formula that would allow the maximum number of wells in the pool to produce with an ideal ratio of 1.0, or with a ratio of from 0.7 to 1.3, which was reasonable due to inherent variance in interpreting and computing reserves.

In Finding No. 12, the Commission determined that the number of wells in the pool producing with a desired ratio was affected by the percentage of deliverability and the percentage of acreage included in the formula.

In Finding No. 13, the Commission determined that correlative rights were not being adequately protected under the formula then in effect, that the protection of correlative rights was a necessary adjunct to the prevention of waste, and that waste would result unless the Commission acted to protect correlative rights.

The Commission identified each non-marginal well producing with the desired ratio under each formula with an asterisk and determined, in Finding No. 14, that a comparison of the total number of wells producing with the desired ratio under each formula and the total volume of gas allocated to the wells producing with the desired ratio under each formula established that the proposed formula of 60 percent acreage plus 40 percent acreage times deliverability would more adequately protect correlative rights and prevent waste by permitting more wells to receive their just and equitable share of the gas in the pool.

In Finding No. 15, the Commission determined that numerous wells in the pool were capable of draining more than their just and equitable share of the gas and that the proposed formula would, insofar as practicable, prevent drainage

between producing tracts which was not equalized by counter-drainage.

In Finding No. 16, the Commission determined that the proposed formula would, insofar as practicable, afford to the owner of each property in the pool the opportunity to use his just and equitable share of the reservoir energy.

In Finding No. 17, the Commission determined that Order No. R-1670-C should be amended to provide an allocation formula based 60 percent on acreage and 40 percent on acreage times deliverability.

In Finding No. 18, the Commission determined that Order No. R-2259-B should not be effective until August 1, 1963.

11. Following the issuance of Order No. R-2259-B, Applications for Rehearing in Case No. 2504 were filed with the Commission by all of the Petitioners in this case.

12. On August 1, 1963, the Commission issued Order No. R-2259-C which determined that the Applications for Rehearing did not allege that the applicants for rehearing had new or additional evidence to present, that the Commission had carefully considered the evidence presented in the case and was fully advised in the premises, and that Order No. R-2259-B was proper in all respects. By Order No. R-2259-C, the Commission denied the Applications for Rehearing.

13. Petitions for Review were thereafter duly filed by all of the Petitioners in this case.

14. The Oil Conservation Commission did not act fraudulently, arbitrarily or capriciously in issuing Orders No. R-2259-B and R-2259-C.

15. The Transcript of Record and Proceedings in Case No. 2504 before the Oil Conservation Commission contains substantial evidence to support the Commission's findings in Order No. R-2259-B.

16. The Oil Conservation Commission did not exceed its authority in issuing Orders No. R-2259-B and R-2259-C.

17. Oil Conservation Commission Orders No. R-2259-B and

R-2259-C are not erroneous, invalid, improper, or discriminatory.

18. The formula adopted by the Oil Conservation Commission in its Order No. R-2259-B allocates the allowable production among the gas wells in the Basin-Dakota Gas Pool upon a reasonable basis, recognizing correlative rights, and, insofar as practicable, prevents drainage between producing tracts in the pool which is not equalized by counter-drainage.

19. The formula adopted by the Oil Conservation Commission in its Order No. R-2259-B affords to the owner of each property in the Basin-Dakota Gas Pool the opportunity to produce without waste his just and equitable share of the gas in the pool, insofar as it is practicable to do so, and for this purpose to use his just and equitable share of the reservoir energy.

20. Oil Conservation Commission Orders No. R-2259-B and R-2259-C will prevent waste and protect correlative rights.

21. Petitioners have failed to join parties whose interests will necessarily be affected by a decree in this case.

CONCLUSIONS OF LAW

1. The Court has jurisdiction over the subject matter of this suit and the parties thereto.

2. Oil Conservation Commission Order No. R-2259-B contains the basic jurisdictional findings required by law to issue a valid order allocating allowable gas production among the producers in a pool.

3. Oil Conservation Commission Order No. R-2259-B contains findings which fully comply with all statutory requirements concerning allocation of allowable gas production among producers in a pool.

4. The findings contained in Oil Conservation Commission Order No. R-2259-B are based upon and supported by substantial evidence.

5. Oil Conservation Commission Orders No. R-2259-B and R-2259-C will prevent waste and protect correlative rights.

6. The Oil Conservation Commission did not act fraudulently, arbitrarily or capriciously in issuing Orders No. R-2259-B and R-2259-C.

7. The Oil Conservation Commission did not exceed its authority in issuing Orders No. R-2259-B and R-2259-C.

8. The Oil Conservation Commission had jurisdiction to enter Orders No. R-2259-B and R-2259-C.

9. The Petitioners have failed to sustain the burden of proof placed upon them by law and therefore the Petition for Review should be dismissed and Oil Conservation Commission Orders No. R-2259-B and R-2259-C should be affirmed.

10. The Petition for Review must be dismissed and judgment entered for the Respondents as Petitioners have failed to join necessary and indispensable parties.

J. M. DURRETT, Jr.
Special Assistant
Attorney General

Attorney for Respondent
Oil Conservation Commission
P. O. Box 2088
Santa Fe, New Mexico

GILBERT, WHITE & GILBERT
Attorneys for Respondents
Texaco Inc., and Sunray DX
Oil Company, P. O. Box 787,
Santa Fe, New Mexico

I certify that a copy of this pleading
was mailed to opposing counsel of record
on March 30, 1964.

J. M. Durrett, Jr.

STATE OF NEW MEXICO COUNTY OF SAN JUAN

IN THE DISTRICT COURT

TRANSCRIPT OF RECORD AND PROCEEDINGS

EL PASO NATURAL GAS COMPANY, a corporation, PAN AMERICAN PETROLEUM CORPORATION, a corporation, MARATHON OIL COMPANY, a corporation, SOUTHWEST PRODUCTION COMPANY, a partnership, and SUNSET INTERNATIONAL PETROLEUM CORPORATION, a corporation,

Petitioners,

No. 11,685

vs.

OIL CONSERVATION COMMISSION OF NEW MEXICO, JACK M. CAMPBELL, Chairman, E. S. WALKER, Member, A. L. PORTER, Jr., Member and Secretary, CONSOLIDATED OIL & GAS, INC., a corporation.

Respondents.

TRANSCRIPT OF RECORD AND PROCEEDINGS

IN CASE 2504

BEFORE THE NEW MEXICO OIL CONSERVATION COMMISSION

A. L. Porter, Jr., Secretary-Director of the New Mexico Oil Conservation Commission hereby certifies to the Court the Transcript of Record and Proceedings before the New Mexico Oil Conservation Commission in Case No. 2504 consisting of the following:

1. Application by Consolidated Oil & Gas, Inc.

2. Response to Application by Pubco Petroleum Corporation.

3. Affidavits of Publication for the March 14, 1962 hearing.

4. Entry of Appearance by Atwood and Malone for the Ohio Oil Company.

5. Docket of the March 14, 1962 hearing.

6. Entry of Appearance by Atwood and Malone for Pan American Petroleum Corporation.

7. Docket of the April 18, 1962 hearing.

8. Order No. R-2259.

9. Petition for Rehearing by Consolidated Oil & Gas, Inc.

10. Certificate of Service.

11. Order No. R-2259-A.

12. Affidavits of Publication for the September 13, 1962 hearing.

13. Notice of Continuance.

14. Docket of the August 15, 1962 hearing.

15. Returns of service of Subpoenas Duces Tecum upon:

    (a) David H. Rainey
    (b) Frank D. Gorham
    (c) L. M. Stevens
    (d) Leon Wiederkehr
    (e) Frank Renard
    (f) George Eaton
    (g) Carl Smith
    (h) Joe Salmon

16. Notice of Motion to Modify Subpoena by David H. Rainey.

17. Affidavit by David H. Rainey.

18. Motion to Quash Subpoena by El Paso Natural Gas Company.

19. Certificate of Service.

20. Motion to Quash Subpoena by George Eaton.

21. Motion to Quash Subpoena by Pubco Petroleum Corporation.

22. Motion to Vacate Order No. R-2259-A by Marathon Oil Company.

23. Objections to order of Commission granting rehearing by Pubco Petroleum Corporation.

24. Docket of the September 13, 1962 hearing.

25. Ruling on Motions to Quash Subpoenas Duces Tecum.

26. Affidavit by Leon Wiederkehr.

27. Stipulation by Consolidated Oil & Gas, Inc., and Southwest Production Company.

28. Affidavits of Publication for the November 14, 1962 hearing.

29. Docket of the November 14, 1962 hearing.

30. Affidavits of Publication for the December 19, 1962 hearing.

31. Memorandum by A. L. Porter, Jr..

32. Docket of the December 19, 1962 hearing.

33. Affidavits of Publication for the February 14, 1963 hearing.

34. Docket of the February 14, 1963 hearing.

35. Statements of Position by:

    (a) Consolidated Oil & Gas, Inc.
    (b) Skelly Oil Company
    (c) Sunset International Petroleum Corporation and Caulkins Oil Company
    (d) Pubco Petroleum Corporation
    (e) Delhi-Taylor Oil Company
    (f) Humble Oil & Refining Company
    (g) Skelly Oil Company (Addendum)
    (h) Amerada Petroleum Corporation
    (i) Southwest Production Company
    (j) Southern Union Gas Company
    (k) El Paso Natural Gas Company
    (l) Sunray DX Oil Company
    (m) Texaco Inc.

36. Order No. R-1670.

37. Order No. R-1670-C.

38. Order No. R-2259-B.

39. Application for Rehearing by El Paso Natural Gas Company.

40. Application for Rehearing by Southwest Production Company.

41. Application for Rehearing by Pan American Petroleum Corporation, Marathon Oil Company, and Sunset International Petroleum Corporation.

42. Affidavits of Service.

43. Order No. R-2259-C.

44. Transcripts of the following hearings:

(a) March 14, 1962, pages 1-17.
(b) April 18, 1962, Volume I, pages 1-350, and index.
(c) April 19, 1962, Volume II, pages 351-695 and index.
(d) August 15, 1962, pages 1-2.
(e) September 14, 1962, pages 1-75.
(f) November 14, 1962, pages 2-8.
(g) December 19, 1962, pages 2-4.
(h) February 14, 1963, pages 2-247.

45. The following exhibits:

(a) April 18 and 19, 1962 hearing:

1. Consolidated Oil & Gas, Inc., Exhibits 1 through 9.
2. Ohio Oil Company, Exhibits A through F.
3. Southern Union Gas Company, Exhibits 1 and 2.
4. Oil Conservation Commission's Exhibits 1 through 4.
5. Pubco Petroleum Corporation, Exhibits 1 through 7.
6. El Paso Natural Gas Company, Exhibits 1 and 2.
7. Aztec Oil & Gas Company, Exhibits 1 and 2.
8. Sunset International Petroleum Corporation, Exhibits 1 and 2.
9. Caulkins Oil Company, Exhibit 1.

(b) February 14, 1963 hearing:

1. Consolidated Oil & Gas, Inc., Exhibits 1 through 9.
2. Pubco Petroleum Corporation, Exhibits R-1 through R-11.
3. Aztec Oil & Gas Company, Exhibit 1.

I certify that the above constitutes the entire record and proceedings in Case No. 2504 before the New Mexico Oil Conservation Commission and that all documents contained therein are original documents or a true and correct copy of the same to the best of my knowledge, information, and belief.

A. L. PORTER, Jr.
Secretary-Director

S E A L

February 28, 1964

IN WITNESS WHEREOF, I have affixed my hand and notarial seal this 28th day of February, 1964.

Notary Public

My Commission Expires:

September 22, 1965

STATE OF NEW MEXICO COUNTY OF SAN JUAN IN THE DISTRICT COURT

EL PASO NATURAL GAS COMPANY,
et al.,

Petitioners,

vs. No. 11,685

OIL CONSERVATION COMMISSION
OF NEW MEXICO, et al.,

Respondents.

STATEMENT OF POINTS RELIED ON BY
INTERVENER, SUNRAY DX OIL COMPANY

By reference SUNRAY DX OIL COMPANY adopts in toto the statement of points relied on by Respondent, Oil Conservation Commission of New Mexico.

Respectfully submitted

By Gilbert, White and Gilbert

s/

L. C. WHITE
P. O. Box 787, Santa Fe, New Mexico

JOHN CURTIS, Esquire
P. O. Box 2039
Tulsa 2, Oklahoma

Attorneys for Intervener

ILLEGIBLE

STATE OF NEW MEXICO COUNTY OF SAN JUAN IN THE DISTRICT COURT

EL PASO NATURAL GAS COMPANY, et al.,

Petitioners,

vs.

No. 11,689

OIL CONSERVATION COMMISSION OF NEW MEXICO, et al.,

Respondents.

STATEMENT OF POINTS RELIED ON BY INTERVENOR, TEXACO INC.

By reference TEXACO INC. adopts in toto the statement of points relied on by Respondent, Oil Conservation Commission of New Mexico.

TEXACO INC.

By GILBERT, WHITE AND GILBERT

By

L. C. WHITE
P. O. Box 787, Santa Fe, New Mexico

[illegible]
P. O. Box 2100
[illegible]

Attorneys for Intervenor

ILLEGIBLE

STATE OF NEW MEXICO)
)
COUNTY OF SAN JUAN)

IN THE DISTRICT COURT

EL PASO NATURAL GAS COMPANY,
a corporation, et al.,

Petitioners,

-vs-

No. 11,685

OIL CONSERVATION COMMISSION OF
NEW MEXICO, et al.,

Respondents.

O R D E R

This matter coming before the Court on the motion of Southern Union Gas Company for leave to appear before the Court as amicus curiae, and the Court having considered the same and having satisfied itself that the said Southern Union Gas Company, by its attorneys, can serve in such capacity and that such service would be helpful to the court,

It is, therefore, ORDERED, that the leave requested by the said Southern Union Gas Company to appear before this court in the capacity of amicus curiae for the purposes requested should be, and the same is hereby, granted in all things.

DISTRICT JUDGE

STATE OF NEW MEXICO)
)
COUNTY OF SAN JUAN)

IN THE DISTRICT COURT

EL PASO NATURAL GAS COMPANY,
a corporation, et al.,

Petitioners,

-vs-

No. 11,685

OIL CONSERVATION COMMISSION OF
NEW MEXICO, et al.,

Respondants.

M O T I O N

Comes now Southern Union Gas Company, a corporation duly admitted to do business in New Mexico, by its attorneys, and respectfully requests leave to appear before the court as amicus curiae and states that it was a participant in the case before the Oil Conservation Commission of New Mexico; that it was not named as a party in this proceeding, but will be affected by any decision therein; and that it seeks leave of the Court to appear as amicus curiae in support of the order of the Commission.

Respectfully submitted,

SOUTHERN UNION GAS COMPANY

By: A. S. Grenier
William S. Jameson
Fidelity Union Tower
Dallas 1, Texas

Kellahin & Fox
P. O. Box 1769
Santa Fe, New Mexico

Jason W. Kellahin

I hereby certify that a true copy of the foregoing instrument was mailed to opposing counsel of record this 18th day of Feb., 19 64.
Jason W. Kellahin

STATE OF NEW MEXICO COUNTY OF SAN JUAN

IN THE DISTRICT COURT

EL PASO NATURAL GAS COMPANY,
et al.,

Petitioners,

vs. No. 11,685

OIL CONSERVATION COMMISSION
OF NEW MEXICO, et al.,

Respondents.

STATEMENT OF POINTS RELIED ON BY RESPONDENT
OIL CONSERVATION COMMISSION OF NEW MEXICO

1. The order is prima facie valid and the Petitioners have the burden of establishing that the action of the Commission was fraudulent, arbitrary or capricious, that the order was not supported by substantial evidence, or that the Commission did not act within the scope of its authority.

2. The lack of a specific finding that waste is occurring under an existing gas allocation formula does not invalidate an order establishing a new formula; in the alternative, the order contains findings that waste was occurring under the prior gas allocation formula.

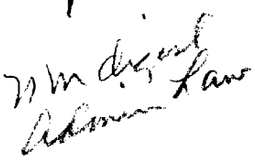
3. The lack of a specific finding that a change of condition has occurred does not invalidate an order changing a gas allocation formula; in the alternative, the order contains findings that a change of condition had occurred requiring a change in the formula.

4. The order contains the basic findings of jurisdictional facts required by statute.

5. The order contains findings which meet the statutory requirements for a valid allocation of gas production.

6. The Commission's findings and order are based on and supported by substantial evidence.

7. The Court does not have jurisdiction over the subject matter of this action as the Petitioners have failed to join indispensable parties.



J. M. DURRETT, Jr.
Special Assistant Attorney General
representing the Oil Conservation
Commission of New Mexico, P.O. Box
2088, Santa Fe, New Mexico

I hereby certify that on the
18th day of February,
1964, a copy of the fore-
going pleading was mailed to
opposing counsel of record.

STATE OF NEW MEXICO)
)
COUNTY OF SAN JUAN)

IN THE DISTRICT COURT

EL PASO NATURAL GAS COMPANY,
a corporation, et al.,

Petitioners,

-vs-

No. 11,685

OIL CONSERVATION COMMISSION OF
NEW MEXICO, et al.,

Respondents.

STATEMENT OF POINTS RELIED ON BY RESPONDENT

CONSOLIDATED OIL & GAS, INC.

The respondent Consolidated Oil & Gas, Inc., will argue the points raised in Petitioners' statement of points for argument on petition for review, and will specifically argue the following points:

1. The order of the Commission is valid and no specific finding that there was waste occurring under the original formula or that a change of conditions had occurred is necessary to a valid order. The lack of a specific finding that waste was occurring under the original formula does not invalidate an order allocating gas production, and if such a finding were necessary, it is contained in the order as entered by the Commission. In the alternative, a change of conditions did in fact exist, and the case file and record show such a change of conditions.

2. The order contains the basic findings of jurisdictional facts required by statute.

3. The order contains findings which meet the statutory requirements for a valid allocation of gas production.

4. The order is reasonable and lawful and is based upon and supported by substantial evidence.

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5. The Court is without jurisdiction to hear this appeal for the reason the petitioners failed to exhaust their administrative remedy in that their petition for rehearing before the Commission was not timely filed.

6. The Court is without jurisdiction of the subject matter of this action for failure of petitioners to name indispensable parties.

7. The order of the Commission is based upon the best available evidence, and the Commission has determined, insofar as may be practicably done, the recoverable reserves under each tract in the pool, and no evidence was offered by petitioners on which a different determination, or any determination of reserves could have been made.

8. There was no valid proration order in existence prior to the issuance of Order R-2259-B, and Order R-1670, as made applicable to gas prorationing in the Basin-Dakota Gas Pool by Order No. R-1670-C is invalid and void because it was issued without jurisdiction on the part of the Commission, and the Commission, in entering said order, failed to make the basic jurisdictional findings upon which such an order can be based, which renders said order void, which said fact was presented to and argued before the Commission.

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IN THE DISTRICT COURT OF SAN JUAN COUNTY

STATE OF NEW MEXICO

EL PASO NATURAL GAS COMPANY, a corporation, et al,	)	
Petitioners,	)	
vs.	)	No. 11,685
OIL CONSERVATION COMMISSION OF NEW MEXICO, et al,	)	
Respondents.	)	

STATEMENT OF PETITIONERS' POINTS FOR ARGUMENT ON PETITION FOR REVIEW

I.

The Order of the Commission changing the original gas proration formula applicable to the Basin Dakota Gas Pool is unreasonable and unlawful because it is not based upon a finding that waste was occuring under the original formula or that a change of condition had occurred requiring a change in the formula.

II.

The Order is unreasonable and unlawful because the Commission failed to make the basic findings of jurisdictional facts required by statute.

III.

The Order is unreasonable and unlawful because it is based on affirmative findings which do not meet statutory requirements for a valid

allocation of gas production.

IV.

The Order is unreasonable and unlawful because the Commission's Findings and Order are not based on or supported by substantial evidence:

A. The Findings as to the initial recoverable reserves under each tract are based on out-of-date data which was designed to determine the recoverable reserves in the pool as a whole and not the recoverable gas in place under the individual tracts in the pool. Such data was erroneously received in evidence over the timely objection of the petitioner, El Paso.

B. The Commission's Findings supporting the 60-40 formula are based upon a comparison of initial recoverable reserves for each tract in the pool with the current deliverabilities of the wells located upon said tracts. Such a comparison is not meaningful, is illusory and discriminatory and does not constitute substantial evidence to support the Commission's Findings based upon it.

C. There is not substantial evidence in the record to support a finding by the Commission that waste will be prevented by the use of 60-40 formula.

D. There is not substantial evidence in the record that the 60-40 formula will, insofar as it is practicable to do so, afford to the owners of each tract in the pool the opportunity to produce his just and equitable share of the gas in the pool.

E. There is not substantial evidence to support the Commission's

Finding that the 60-40 formula will more adequately protect correlative rights, and insofar as practicable prevent drainage between the producing tracts,, which is not equalized by counter-drainage.

IN THE ELEVENTH JUDICIAL DISTRICT COURT
SAN JUAN COUNTY
AZTEC, NEW MEXICO

NON-JURY TRIAL

C. C. McCULLOH, Presiding Judge

THURSDAY, MARCH 5, 1964:

9:00 A.M. El Paso Natural Gas Company, et al.
No. 11685

Seth, Montgomery, Federici & Andrews
Atwood & Malone
Verity, Burr, Cooley and Jones
Hervey, Dow & Hinkle
Gilbert, White & Gilbert
Keleher & McLeod

vs.

Oil Conservation Commission, et al.

J. M. Durrett, Jr.
Jason W. Kellahin

Please submit ~~simultaneous~~ briefs to the Court, in the above-entitled cause by February 25, 1964.

Counsel in the case will favor opposing counsel with points they are to rely upon, prior to trial of the case.

STATE OF NEW MEXICO COUNTY OF SAN JUAN

IN THE DISTRICT COURT

EL PASO NATURAL GAS COMPANY, et al.,

Petitioners,

vs. No. 11,665

OIL CONSERVATION COMMISSION OF NEW MEXICO, et al.,

Respondents.

ORDER

This matter having come before the Court on the Petition to Intervene filed by Pubco Petroleum Corporation, the petitioner, Pubco Petroleum Corporation, being represented by John B. Tittmann and William B. Keleher, the respondent, Consolidated Oil & Gas, Inc., being represented by Jason W. Kellahin, and the respondent, Oil Conservation Commission, being represented by James M. Durrett, Jr., and the Court having read the petition and having heard argument of counsel and being otherwise fully advised in the premises, FINDS:

1. That the Petition to Intervene should be denied.

2. That Pubco Petroleum Corporation should be permitted to participate in the above cause only as amicus curiae.

IT IS THEREFORE ORDERED:

1. That the Petition to Intervene filed by Pubco Petroleum Corporation shall be and the same hereby is denied.

2. That Pubco Petroleum Corporation shall be and it hereby is permitted to participate in the above cause only as amicus curiae.

To all of which petitioner, Pubco Petroleum Corporation, excepts and objects.

_____

District Judge

IN THE ELEVENTH JUDICIAL DISTRICT COURT
SAN JUAN COUNTY
AZTEC, NEW MEXICO

C. C. McCULLOH, Presiding Judge

M O T I O N S

TUESDAY, NOVEMBER 26, 1963:

9:00 A.M. No. 11120	Bruce P. Neil vs. 31 Flavors Stores Realty, Inc.	Marvin Baggett Modrall, Seymour, Sperling, Roehl & Harris Tansey, Wood, Rosebrough & Roberts
10:00 A.M. No. 11321	Robert O. Wenzel vs. Northwest Construction Co., et al.	Tansey, Wood, Rosebrough & Roberts Verity, Burr, Cooley & Jones
10:30 A.M. No. 11333	James Henry McCoy, et ux. vs. Brown Agency, Inc., et al.	Marvin Baggett Koogler & Smith
11:00 A.M. No. 11570	Myrtle E. Terrell vs. Jesse Dean, et ux.	Koogler & Smith Charles L. Craven
1:30 P.M. No. 11685	El Paso Natural Gas Company, et al. vs. Oil Conservation Commission, et al.	Seth, Mongtomery, Federici & Andrews Atwood & Malone Verity, Burr, Cooley & Jones Hervey, Dow & Hinkle Gilbert, White & Gilbert Keleher & McLeod J. M. Durrett, Jr. Jason W. Kellahin
2:30 P.M. No. 11695	W. A. Bouldin, et al. vs. Bruce M. Bernard, Inc., et al.	Smith, Kiker & Ransom Keleher & McLeod and Russell Moore
3:00 P.M. No. 11693	R. A. Trammell, et al. vs. E. B. David, et al.	Brown & Florance Cooney, Schlenker & Briones Charles L. Craven

WEDNESDAY, NOVEMBER 27, 1963:

9:00 A.M. No. 11519	The First National Bank of Farmington vs. Nettleton's, Inc., et al.	Jack M. Morgan Marvin Baggett Johnston Jeffries

STATE OF NEW MEXICO COUNTY OF SAN JUAN

IN THE DISTRICT COURT

PUBCO - PETITION TO INTERVENE

EL PASO NATURAL GAS COMPANY, a corporation; PAN AMERICAN PETROLEUM CORPORATION, a corporation; MARATHON OIL COMPANY, a corporation; SOUTHWEST PRODUCTION COMPANY, a partnership; and SUNSET INTERNATIONAL PETROLEUM CORPORATION, a corporation,

Petitioners,

vs. No. 11685

OIL CONSERVATION COMMISSION OF NEW MEXICO, JACK M. CAMPBELL, Chairman; E. S. WALKER, Member; A. L. PORTER, JR., Member and Secretary; CONSOLIDATED OIL & GAS, INC., a corporation,

Respondents.

PETITION TO INTERVENE

Comes now PUBCO PETROLEUM CORPORATION, a corporation, and respectfully seeks leave of Court to intervene in the above entitled cause, and in support thereof, states:

1. That it is an owner and operator of gas properties in the Basin-Dakota Gas Pool and will be directly affected by and subject to any Order entered by the Court in this proceeding.

2. That Pubco Petroleum Corporation should be permitted to adopt as its own, the pleading now filed by petitioners in this cause.

WHEREFORE, petitioner seeks leave to intervene in the above cause, and for such other and further relief as the Court may deem proper in the premises.

W. A. KELEHER, JOHN B. TITTMANN and WILLIAM B. KELEHER

By /s/ WILLIAM B. KELEHER

Attorneys for Petitioner
PUBCO PETROLEUM CORPORATION
First National Bank Bldg. W.
Albuquerque, New Mexico

I hereby certify that a copy of the foregoing Petition to Intervene has been forwarded by mail on this 23 day of October, 1963 to all counsel of record.

/s/ WILLIAM B. KELEHER

STATE OF NEW MEXICO COUNTY OF SAN JUAN

IN THE DISTRICT COURT

EL PASO NATURAL GAS COMPANY, a corporation; PAN AMERICAN PETROLEUM CORPORATION, a corporation; MARATHON OIL COMPANY, a corporation; SOUTHWEST PRODUCTION COMPANY, a partnership; and SUNSET INTERNATIONAL PETROLEUM CORPORATION, a corporation, Petitioners,	)	
-vs-	)	No. 11,685
OIL CONSERVATION COMMISSION OF NEW MEXICO, JACK M. CAMPBELL, Chairman; E. S. WALKER, Member; A. L. PORTER, JR., Member and Secretary; CONSOLIDATED OIL & GAS, INC., a corporation, Respondents.	)	

M O T I O N

Comes now Southwest Production Company, a co-partnership consisting of John Hill and Joseph P. Driscoll and Beta Development Co., a Texas corporation under the provisions of Rule 25 (c) of the Rules of Civil Procedure and moves the Court to substitute Beta Development Co. in the place of Southwest Production Company as a Petitioner in the captioned action and in support represents to the Court that Southwest Production Company has transferred all of the properties which gave it an interest in the captioned controversy to Beta Development Company.

VERITY, BURR, COOLEY & JONES

By _____
Geo. L. Verity

I hereby certify that a copy of the foregoing pleading was mailed to opposing counsel of record on
10/10, 1963
Signed: _____

VERITY, BURR, COOLEY & JONES
ATTORNEYS AND COUNSELORS AT LAW
SUITE 152 PETROLEUM CENTER BUILDING
FARMINGTON, NEW MEXICO

MAIN OFFICE OCC

1963 OCT 1 AM 8:23

STATE OF NEW MEXICO COUNTY OF SAN JUAN IN THE DISTRICT COURT

EL PASO NATURAL GAS COMPANY, a corporation; and AMERICAN PETROLEUM CORPORATION, a corporation; AMARON OIL COMPANY, a corporation; SOUTHWEST PRODUCTION CO-PANY, a partnership; and SUNRAY INTERNATIONAL PETROLEUM CORPORATION, a corporation,

Petitioners,

v. No. 11,665

OIL CONSERVATION COMMISSION OF NEW MEXICO, JACK M. CAMPBELL, Chairman; E. S. WALKER, Member; A. L. POWELL, Jr., Member and Secretary; CONSOLIDATED OIL & GAS, INC., a corporation,

Respondents.

AFFIDAVIT OF MAILING

The undersigned, as one of the attorneys for Pan American Petroleum Corporation and Amarada Hess Oil Company, hereby certifies that on the 30th day of September, 1963, a copy of the Petitioners' Petition to Intervene, Order granting Leave to Intervene, and Response to Petition for Review of the following:

Seth, Montgomery, Federici & Andrews, 300 Don Gaspar Avenue, Santa Fe, New Mexico, attorneys for El Paso Natural Gas Company and Sunray International Petroleum Company;

Atwood & Malone, P. O. Box 700, Roswell, New Mexico, attorneys for Pan American Petroleum Corporation and Amarada Oil Company;

Kellahin, Burr, Cooley & Jones, Petroleum Center Building, Farmington, New Mexico, attorneys for Southwest Production Company;

James M. Durrett, Jr., Esq., State Land Office Building, Santa Fe, New Mexico, Attorney for Oil Conservation Commission of New Mexico;

Williams & Fox, 324 Don Gaspar Building, Santa Fe, New Mexico, attorneys for Consolidated Oil & Gas, Inc.

on the 1st day of September, 1963.

L. C. White
Gilbert, White & Gilbert
Post Office Box 787
Santa Fe, New Mexico

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GILBERT, WHITE AND GILBERT
ATTORNEYS AT LAW
SANTA FE, NEW MEXICO

FILED 9/26/63

STATE OF NEW MEXICO COUNTY OF SAN JUAN IN THE DISTRICT COURT

EL PASO NATURAL GAS COMPANY, a corporation; PAN AMERICAN PETROLEUM CORPORATION, a corporation; MARATHON OIL COMPANY, a corporation; SOUTHWEST PRODUCTION COMPANY, a partnership; and SUNSET INTERNATIONAL PETROLEUM CORPORATION, a corporation,

Petitioners,

vs. No. 11,685

OIL CONSERVATION COMMISSION OF NEW MEXICO, JACK M. CAMPBELL, Chairman; E. S. WALKER, Member; A. L. PORTER, JR., Member and Secretary; CONSOLIDATED OIL & GAS, INC., a corporation,

Respondents.

PETITION TO INTERVENE

Comes now Sunray DX Oil Company, a corporation, formerly Sunray Mid-Continent Oil Company, and respectfully seeks leave of Court to intervene in the above-entitled cause, and in support thereof states:

1. That it is an owner and operator of gas properties in the Basin-Dakota Gas Pool and will be directly affected by and subject to any Order entered by the Court in this proceeding;

2. And for the further reason that it is an indispensable party to the cause whose interest in the controversy is such that no final judgment can be entered which will do justice between the parties without injuriously affecting the rights of Petitioner.

That a copy of Petitioner's Response which it seeks leave to file is attached hereto and marked Exhibit A.

WHEREFORE, Petitioner seeks leave to intervene in the above cause and that it be granted leave to file the proposed Response, and for such other and further relief as the Court may deem proper in the premises.

GILBERT, WHITE & GILBERT

By _____
L. C. White, PO Box 787, Santa Fe, N.M

John Curran, Esq. Attorney
Sunray DX Oil Co. PO Box 2039
Tulsa, Okla.

Filed 9/26/63

STATE OF NEW MEXICO COUNTY OF SAN JUAN IN THE DISTRICT COURT

EL PASO NATURAL GAS COMPANY, a corporation; PAN AMERICAN PETROLEUM CORPORATION, a corporation; MARATHON OIL COMPANY, a corporation; SOUTHWEST PRODUCTION COMPANY, a partnership; and SUNSET INTERNATIONAL PETROLEUM CORPORATION, a corporation,

Petitioners,

vs. No. 11,685

OIL CONSERVATION COMMISSION OF NEW MEXICO, JACK M. CAMPBELL, Chairman; E. S. WALKER, Member; A. L. PORTER, JR., Member and Secretary; CONSOLIDATED OIL & GAS, INC., a corporation,

Respondents.

ORDER GRANTING LEAVE TO INTERVENE AS RESPONDENT

This cause having come on for hearing upon the motion of Sunray DX Oil Company for leave to intervene in the above-entitled action as a party respondent thereof, and it appearing to the Court that Sunray DX Oil Company has an interest in the above-entitled proceeding sufficient to warrant it to become a party to this action:

IT IS THEREFORE ORDERED that Sunray DX Oil Company be and it hereby is granted leave to intervene in said proceeding as a party respondent and to file its response herein.

District Judge

GILBERT, WHITE AND GILBERT
ATTORNEYS AT LAW
SANTA FE, NEW MEXICO

Filed 9/26/63

STATE OF NEW MEXICO COUNTY OF SAN JUAN IN THE DISTRICT COURT

EL PASO NATURAL GAS COMPANY, a corporation, PAN AMERICAN PETROLEUM CORPORATION, a corporation, SUNRAY DX OIL COMPANY, a corporation, SOUTHWEST PRODUCTION COMPANY, a partnership, and SUNRAY INTERNATIONAL PETROLEUM CORPORATION, a corporation,

Petitioners,

vs No. 11,685

OIL CONSERVATION COMMISSION OF NEW MEXICO, JACK M. CAMPBELL, Chairman, E. S. WALKER, Member, A. L. PORTER, JR., Member and Secretary, CONSOLIDATED OIL & GAS INC., a corporation,

Respondents.

SUNRAY DX OIL CO ANSWER (No. 11,685)

GILBERT, WHITE AND GILBERT ATTORNEYS AT LAW SANTA FE, NEW MEXICO

RESPONSE TO PETITION FOR REVIEW

Comes now Sunray DX Oil Company, a corporation, formerly Sunray Mid-Continent Oil Company, intervenor herein and for its reply to petitioner's Petition for Review states:

First Defense

1. Intervenor admits the allegations of paragraphs 1, 2, and 5 of the petition for review.

2. Intervenor admits the allegations of paragraph 3 of the petition for review.

3. In answer to paragraph 4 of the petition for review intervenor states it is without knowledge or information sufficient to form a belief as to the truth thereof, and therefore denies the same.

4. Intervenor denies the allegations of paragraph 6 of the petition for review and each of them, and denies the allegations contained in each and every subdivision thereof, and denies those matters and things set forth in petitioners' respective applications for rehearing, attached to the

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petition for review and incorporated therein by reference. Intervenor further states in respect to the allegations of paragraph 6 a (1) that the record does, in fact, support finding 6 of Order No. R-2259-B and that if, in fact, the petitioner El Paso Natural Gas Company has or had revised and replaced by different data, any estimates of reserves it might have, such figures were not offered in evidence before the Commission. The petitioner El Paso Natural Gas Company having declined to produce any revised estimates of reserves before the Commission, cannot now be heard to complain of the use of other and different figures.

5. Intervenor denies the allegations of paragraph 7 and 8 of the petition for review, and each of them.

Second Defense

The Court is without jurisdiction of the subject matter of this action for the following reason :

1. Petitioners have failed to exhaust their administrative remedy in that their application for rehearing before the Oil Conservation Commission of New Mexico was not timely filed as required by law.

Third Defense

The petition fails to state a claim against intervenors upon which relief can be granted.

WHEREFORE, intervenor Aurray Oil Company, a corporation, formerly Aurray Mid-Continent Oil Company, prays:

1. That the petition for review be dismissed.

2. That Commission Orders No. R-2259-B and No. R-2259-C be affirmed

3. That the Court grant intervenor such other and further relief as the Court deems just.

CURRAY OIL COMPANY, a corporation, formerl
CURRAY MID-CONTINENT OIL COMPANY
By GILBERT, WHITE AND GILBERT

By _____
P.O.Box 787, Santa Fe, N.M.

MR. JOHN CURRAN
P.O. Box 2039
Tulsa 2, Oklahoma
Attorneys for Intervenor

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GILBERT, WHITE AND GILBERT
ATTORNEYS AT LAW
SANTA FE, NEW MEXICO

STATE OF NEW MEXICO COUNTY OF SAN JUAN IN THE DISTRICT COURT

EL PASO NATURAL GAS COMPANY, a corporation; PAN AMERICAN PETROLEUM CORPORATION, a corporation; MARATHON OIL COMPANY, a corporation; SOUTHWEST PRODUCTION COMPANY, a partnership; and SUNSET INTERNATIONAL PETROLEUM CORPORATION, a corporation,

Petitioners,

v. No. 11,685

OIL CONSERVATION COMMISSION OF NEW MEXICO, JACK M. CAMPBELL, Chairman; E. S. WALKER, Member; A. L. PORTER, JR., Member and Secretary; CONSOLIDATED OIL & GAS, INC., a corporation,

Respondents.

CERTIFICATE OF MAILING

The undersigned, as one of the attorneys for Texaco Inc. and Sunray DX Oil Company, hereby certifies that he mailed copies of the respective Petition to Intervene, Order granting Leave to Intervene, and Response to Petition for Review to the following:

Seth, Montgomery, Federici & Andrews,, 301 Don Gaspar Avenue, Santa Fe, New Mexico, attorneys for El Paso Natural Gas Company and Sunset International Petroleum Company;

Atwood & Malone, P. O. Box 700, Roswell, New Mexico, attorneys for Pan American Petroleum Corporation and Marathon Oil Company;

Verity, Burr, Cooley & Jones, Petroleum Center Building, Farmington, New Mexico, attorneys for Southwest Production Company;

James M. Durrett, Jr, Esq., State Land Office Building, Santa Fe, New Mexico, Attorney for Oil Conservation Commission of New Mexico;

Kellahin & Fox, 54½ East San Francisco, Santa Fe, New Mexico, attorneys for Consolidated Oil & Gas, Inc.

on the 30 day of September, 1963.

L. C. White
Gilbert, White & Gilbert
Post Office Box 787
Santa Fe, New Mexico

FILED 3/26/63

STATE OF NEW MEXICO COUNTY OF SAN JUAN IN THE DISTRICT COURT

EL PASO NATURAL GAS COMPANY, a corporation; PAN AMERICAN PETROLEUM CORPORATION, a corporation; MARATHON OIL COMPANY, a corporation; SOUTHWEST PRODUCTION COMPANY, a partnership; and SUNRAY INTERNATIONAL PETROLEUM CORPORATION, a corporation,

Petitioners,

vs.

OIL CONSERVATION COMMISSION OF NEW MEXICO, JACK M. CAMPBELL, Chairman; E. S. WALKER, Member; A. L. PORTER, JR., Member and Secretary; CONSOLIDATED OIL & GAS, INC., a corporation,

Respondents.

PETITION TO INTERVENE

Comes now Tenneco Inc., a corporation, and respectfully seeks leave of Court to intervene in the above-entitled cause, and in support thereof states:

1. That it is an owner and operator of gas properties in the Basin-Dakota Gas Pool and will be directly affected by and subject to any Order entered by the Court in this proceeding;

2. And for the further reason that it is an indispensable party to the cause whose interest in the controversy is such that no final judgment can be entered which will do justice between the parties without injuriously affecting the rights of Petitioner.

That a copy of Petitioner's Response which it seeks leave to file is attached hereto and marked Exhibit A.

WHEREFORE, Petitioner seeks leave to intervene in the above cause and that it be granted leave to file the proposed Response, and for such other and further relief as the Court may deem proper in the premises.

GILBERT, WHITE & GILBERT

BY .....
L. C. White, PO Box 787
Santa Fe, New Mexico

Walter E. Will, Esq.
Tenneco Inc.
PO Box 2100, Denver 1, Colorado.

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Filed 9/26/63

STATE OF NEW MEXICO COUNTY OF SAN JUAN IN THE DISTRICT COURT

EL PASO NATURAL GAS COMPANY, a corporation; PAN AMERICAN PETROLEUM CORPORATION, a corporation; MARATHON OIL COMPANY, a corporation; SOUTHWEST PRODUCTION COMPANY, a partnership; and SUNRAY INTERNATIONAL PETROLEUM CORPORATION, a corporation,

Petitioners,

vs. No. 11,685

OIL CONSERVATION COMMISSION OF NEW MEXICO, JACK M. CAMPBELL, Chairman; E. S. WALKER, Member; A. L. PORTER, JR., Member and Secretary; CONSOLIDATED OIL & GAS, INC., a corporation,

Respondents.

ORDER GRANTING LEAVE TO INTERVENE AS RESPONDENT

This cause having come on for hearing upon the motion of Texaco Inc. for leave to intervene in the above-entitled action as a party respondent thereof and it appearing to the Court that Texaco Inc. has an interest in the above-entitled proceeding sufficient to warrant it to become a party to this action:

IT IS THEREFORE ORDERED that Texaco Inc. be and it hereby is granted leave to intervene in said proceeding as a party respondent and to file its response herein.

District Judge

GILBERT, WHITE AND GILBERT
ATTORNEYS AT LAW
SANTA FE, NEW MEXICO

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Filed 9/26/63

STATE OF NEW MEXICO COUNTY OF SAN JUAN IN THE DISTRICT COURT

EL PASO NATURAL GAS COMPANY, a corporation, PAN AMERICAN PETROLEUM CORPORATION, a corporation, MARATHON OIL COMPANY, a corporation, SOUTHWEST PRODUCTION COMPANY, a partnership and SUNRAY INTERNATIONAL PETROLEUM CORPORATION, a corporation,

Petitioners,

vs No. 11603

OIL CONSERVATION COMMISSION OF NEW MEXICO, JACK M. CAMPBELL, Chairman, E. S. WALKER, Member, A. L. PORTER, JR., Member and Secretary, CONSOLIDATED OIL & GAS INC., a corporation,

Respondents.

TEXACO INC.
ANSWER (No. 11,685)

GILBERT, WHITE AND GILBERT
ATTORNEYS AT LAW
SANTA FE, NEW MEXICO

RESPONSE TO PETITION FOR REVIEW

Comes now Texaco Inc. intervenor herein and for its reply to petitioners' petition for review states:

First defense

1. Intervenor admits the allegations of paragraphs 1, 2 and 3 of the petition for review.

2. Intervenor admits the allegations of paragraph 3 of the petition for review.

3. In answer to paragraph 4 of the petition for review intervenor states it is without knowledge or information sufficient to form a belief as to the truth thereof, and therefore denies the same.

4. Intervenor denies the allegations of paragraph 6 of the petition for review and each of them, and denies the allegations contained in each and every subdivision thereof, and denies those matters and things set forth in petitioners' respective applications for rehearing, attached to the petition for review and incorporated therein by reference. Intervenor further states

in respect to the allegations of paragraph 6 a (1) that the record does, in fact, support finding 5 of Order No. R-2259-F and that if, in fact, the petitioner El Paso Natural Gas Company has or has revised and replaced by different data, any estimates of reserves it might have, such figures were not offered in evidence before the Commission. The petitioner El Paso Natural Gas Company having declined to produce any revised estimates of reserves before the Commission, cannot now be heard to complain of the use of other and different figures.

5. Intervenor denies the allegations of paragraph 7 and 8 of the petition for review, and each of them.

Second Defense

The Court is without jurisdiction of the subject matter of this action for the following reason: Petitioners have failed to exhaust their administrative remedy in that their application for rehearing before the Oil Conservation Commission of New Mexico was not timely filed as required by law.

Third Defense

The petition fails to state a claim against intervenors upon which relief can be granted.

WHEREFORE, intervenor Tenneco Inc. prays:

1. That the petition for review be dismissed.

2. That Commission Orders No. R-2259-F and R-2259-G be affirmed.

3. That the Court grant intervenor such other and further relief as the Court deems just.

TENNECO INC.
By GILBERT, WHITE AND GILBERT

By _____
P. O. Box 787, Santa Fe, New Mexico

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MR. WALKER B. MILLER
P. O. Box 2100
Denver, Colorado

Attorneys for Tenneco Inc.

GILBERT, WHITE AND GILBERT
ATTORNEYS AT LAW
SANTA FE, NEW MEXICO

STATE OF NEW MEXICO)
)
COUNTY OF SAN JUAN)

IN THE DISTRICT COURT

CONSOLIDATED
ANSWER (No. 11,685)

EL PASO NATURAL GAS COMPANY, a corporation, PAN AMERICAN PETROLEUM CORPORATION, a corporation, MARATHON OIL COMPANY, a corporation, SOUTHWEST PRODUCTION COMPANY, a partnership, and SUNRAY INTERNATIONAL PETROLEUM CORPORATION, a corporation,

Petitioners,

-vs- No. 11685

OIL CONSERVATION COMMISSION OF NEW MEXICO, JACK M. CAMPBELL, Chairman, E. S. WALKER, Member, A. L. PORTER, JR., Member and Secretary, CONSOLIDATED OIL & GAS INC., a corporation,

Respondents.

ANSWER TO PETITION FOR REVIEW

Comes now Consolidated Oil & Gas, Inc., named a respondent herein, and for its reply to petitioners petition for review, states:

First Defense

1. Respondent admits the allegations of paragraphs 1, 2, and 4 of the petition for review.

2. In answer to paragraph 3 of the petition for review, respondent denies that Order No. R-2239-A changing the proration formula for the Basin-Dakota Gas Pool was entered on July 9, 1963, and states the fact to be that said order, as appears on the face thereof, was entered on July 3, 1963. Respondent admits the other allegations of paragraph 3 of the petition for review.

3. In answer to paragraph 4 of the petition for review respondent states it is without knowledge or information

sufficient to form a belief as to the truth thereof, and therefore denies the same.

4. Respondent denies the allegations of paragraph 6 of the petition for review and each of them, and denies the allegations contained in each and every subdivision thereof, and denies those matters and things set forth in petitioners' respective applications for rehearing, attached to the petition for review and incorporated therein by reference. Respondent further states in respect to the allegations of paragraph 6 a (1) that the record does, in fact, support finding 6 of Order No. R-2259-B and that if, in fact, the petitioner El Paso Natural Gas Company has or had revised and replaced by different data, any estimates of reserves it might have, such figures were not offered in evidence before the Commission. The petitioner El Paso Natural Gas Company having declined to produce any revised estimates of reserves before the Commission, cannot now be heard to complain of the use of other and different figures. Respondent further states in respect to the allegations of paragraph 6, subdivisions d, e, f and j, that there was no valid proration order issued by the Oil Conservation Commission of New Mexico prior to the entry of Order No. R-2259-B on July 3, 1963.

5. Respondent denies the allegations of paragraph 7 and 8 of the petition for review, and each of them.

Second Defense

The Court is without jurisdiction of the subject matter of this action for the following reasons:

1. Petitioners have failed to exhaust their administrative

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remedy in that their application for rehearing before the Oil Conservation Commission of New Mexico was not timely filed as required by law.

2. Humble Oil & Refining Company, Shelly Oil Company, The Atlantic Refining Company, Southern Union Gas Company, Benjamin R. Morton & Associates, R & G Drilling Company, The United States Geological Survey, Tidewater Oil Company, Bruce Anderson Oil & Gas Properties, The Frontier Refining Company, Kay Kimball Oil Company, Texaco, Inc., Amarada Petroleum Corporation, Sunray Mid-Continent Oil Company, Continental Oil Company, Beard Oil Company, Delhi Oil Corporation, Western Natural Gas Company, Compass Exploration Co., Tennaco Oil Company, Caulkins Oil Company, Pioneer Production Co., and The British American Oil Producing Company are, and each of them is, an indispensable party to this action whose interest in the controversy is such that no final judgment can be entered which will do justice between the parties without injuriously affecting the rights of said parties. Said parties are owners and operators of gas properties in the Basin-Dakota Gas Pool and will be directly affected by and subject to any order entered by the Court in this proceeding.

Third Defense

The petition fails to state a claim against respondents upon which relief can be granted.

WHEREFORE, respondent Consolidated Oil & Gas, Inc., prays:

1. That the petition for review be dismissed.

2. That Commission Orders No. R-2259-B and No. R-2259-C be affirmed.

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3. That the Court grant respondent such other and further relief as the Court deems just.

CONSOLIDATED OIL & GAS, INC.

By /s/ Jason W. Kellahin
KELLAHIN & FOX
P. O. Box 1713
Santa Fe, New Mexico

T. F. STOCKMAR
Holme, Roberts, Owen & Owen
1700 Broadway
Denver 2, Colorado

ATTORNEYS FOR RESPONDENT,
CONSOLIDATED OIL & GAS, INC.

I hereby certify that a true copy of the for going instrument was mailed to opposing counsel of record this 24th day of Sept., 1963
Jason W. Kellahin

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STATE OF NEW MEXICO COUNTY OF SAN JUAN

IN THE DISTRICT COURT

OCC ANSWER (No. 11,685)

EL PASO NATURAL GAS COMPANY, et al.,

Petitioners,

vs. No. 11,685

OIL CONSERVATION COMMISSION OF NEW MEXICO, et al.,

Respondents.

ANSWER TO PETITION FOR REVIEW

Respondent, Oil Conservation Commission of New Mexico, answering the Petition for Review, states:

1. Respondent admits the allegations in paragraphs 1 and 2 of the Petition for Review.

2. Respondent denies the allegation in paragraph 3 of the Petition for Review that petitioner, El Paso Natural Gas Company, filed its application for re-hearing with the Commission on July 26, 1963, and states to the Court that said application for re-hearing was filed with the Commission on July 25, 1963; respondent admits all other allegations in paragraph 3 of the Petition for Review.

3. Respondent admits the allegations in paragraphs 4 and 5 of the Petition for Review.

4. Respondent denies each and every allegation in paragraphs 6, 7, and 8 of the Petition for Review, including all conclusions of fact and law stated therein.

WHEREFORE, Respondent prays:

1. That the Petition for Review be dismissed.

2. That Commission Orders No. R-2259-B and No. R-2259-C be affirmed.

3. That the Court grant respondent such other and further relief as the Court deems just.

AFFIRMATIVE DEFENSES

1. As its first affirmative defense, respondent states that petitioners have failed to state a claim upon which relief can be granted.

2. As its second affirmative defense, respondent states that the petitioners have failed to join indispensable parties.

WHEREFORE, Respondent prays:

1. That the Petition for Review be dismissed.

2. That Commission Orders No. R-2259-B and No. R-2259-C be affirmed.

3. That the Court grant respondent such other and further relief as the Court deems just.

J. M. Durrett, Jr.

J. M. DURRETT, Jr.
Special Assistant Attorney General
representing the Oil Conservation
Commission of New Mexico, P.O. Box
871, Santa Fe, New Mexico

I hereby certify that on the 25th day of September, 1963, a copy of the foregoing pleading was mailed to opposing counsel of record.

J. M. Durrett, Jr.

STATE OF NEW MEXICO COUNTY OF SAN JUAN

IN THE DISTRICT COURT

EL PASO NATURAL GAS COMPANY, et al.,

Petitioners,

vs. No. 11,685

OIL CONSERVATION COMMISSION OF NEW MEXICO, et al.,

Respondents.

OCC
ENTRY OF APPEARANCE

ENTRY OF APPEARANCE

J. M. Durrett, Jr., Special Assistant Attorney General, hereby enters his appearance on behalf of the respondent, Oil Conservation Commission of New Mexico, in the above entitled and numbered cause.

J. M. Durrett Jr.

J. M. DURRETT, Jr.
Special Assistant Attorney General
representing the Oil Conservation Commission of New Mexico, P.O. Box 871, Santa Fe, New Mexico

I hereby certify that on the 25th . . day of September . . , 1963 . . . . , a copy of the foregoing pleading was mailed to opposing counsel of record.

. . J. M. Durrett Jr. . . .

STATE OF NEW MEXICO COUNTY OF SAN JUAN

IN THE DISTRICT COURT

TIDEWATER
ANSWER (No. 11,685)

EL PASO NATURAL GAS COMPANY, a corporation; PAN AMERICAN PETROLEUM CORPORATION, a corporation; MARATHON OIL COMPANY, a corporation; SOUTHWEST PRODUCTION COMPANY, a partnership; and SUNSET INTERNATIONAL PETROLEUM CORPORATION, a corporation,

Petitioners,

-VS- NO. 11,685

OIL CONSERVATION COMMISSION OF NEW MEXICO, JACK M. CAMPBELL, Chairman; E. S. WALKER, Member; A. L. PORTER, JR., Member and Secretary; CONSOLIDATED OIL & GAS, INC., a corporation,

Respondents.

ANSWER OF TIDEWATER OIL COMPANY

COMES NOW TIDEWATER OIL COMPANY, one of the named Adverse Parties in the above-styled cause, and for answer in such cause would respectfully show the Court that at the hearing before the Oil Conservation Commission of New Mexico, which hearing preceded the issuance of Order No. R-2259-B, the said Tidewater Oil Company took the position that such order was justified by the evidence before the Commission, and that such order should be issued. Tidewater Oil Company continues to believe that the order is proper and valid and that it should not be suspended, stayed, or overruled by this Court.

Respectfully submitted,

TIDEWATER OIL COMPANY

ORIGINAL SIGNED BY:
CLYDE E. WILLBERN

By _____
Clyde E. Willbern

STATE OF NEW MEXICO COUNTY OF SAN JUAN

IN THE DISTRICT COURT

1958 AUG 27 AM 8 57

EL PASO NATURAL GAS COMPANY, a corporation; PAN AMERICAN PETROLEUM CORPORATION, a corporation; MARATHON OIL COMPANY, a corporation; SOUTHWEST PRODUCTION COMPANY, a partnership; and SUNSET INTERNATIONAL PETROLEUM CORPORATION, a corporation,

Petitioners,

-vs- No. 11,685

OIL CONSERVATION COMMISSION of NEW MEXICO, JACK M. CAMPBELL, Chairman; E. S. WALKER, Member; A. L. PORTER, JR., Member and Secretary; CONSOLIDATED OIL & GAS, INC., a corporation,

Respondents.

NOTICE OF APPEAL

TO THE FOLLOWING NAMED ADVERSE PARTIES:

OIL CONSERVATION COMMISSION OF NEW MEXICO
JACK M. CAMPBELL, Chairman
E. S. WALKER, Member
A. L. PORTER, JR., Member and Secretary
CONSOLIDATED OIL & GAS, INC.
HUMBLE OIL & REFINING COMPANY
SKELLY OIL COMPANY
THE ATLANTIC REFINING COMPANY
SOUTHERN UNION GAS COMPANY
BENJAMIN K. HORTON & ASSOCIATES
R & G DRILLING CO.
THE UNITED STATES GEOLOGICAL SURVEY
TIDEWATER OIL COMPANY
BRUCE ANDERSON OIL & GAS PROPERTIES
THE FRONTIER REFINING COMPANY
KAY KIMBELL OIL COMPANY
TEXACO, INC.
AMERADA PETROLEUM CORPORATION
SUNRAY MID-CONTINENT OIL COMPANY
CONTINENTAL OIL COMPANY
BEARD OIL COMPANY

TAKE NOTICE that the above named Petitioners, being dissatisfied with the Oil Conservation Commission of New Mexico's promulgation of Order No. R-2259-B, which changed the proration formula for the Basin Dakota Gas Pool, and with Order No. R-2259-C, which denied the above named parties a rehearing, have appealed therefrom in accord with the provisions of N.M.S.A. 65-3-22, having filed their Petition for review in the District

Court for San Juan County, New Mexico on the 20th day of August, 1963, said appeal being docketed under No. 11,685 in said Court; that by such petition for review the said petitioners have prayed the said District Court to review said orders, declare them to be erroneous, invalid and void and to suspend the operation of said orders during the pendency of the proceedings for review.

TAKE FURTHER NOTICE that said District Court has set Petitioners' prayer that said orders be suspended during the pendency of such proceedings for review for hearing at 9 o'clock A.M. on the 20th day of September, 1963 and that the Court will consider staying the effect of said orders at said time.

TAKE FURTHER NOTICE that the names and addresses of the attorneys representing said Petitioners are as follows:

Representing El Paso Natural Gas Company and Sunset International Petroleum Corporation:

SETH, MONTGOMERY, FEDERICI & ANDREWS,
Santa Fe, New Mexico

BEN HOWELL, El Paso, Texas

GARRETT C. WHITWORTH, El Paso, Texas

Representing Pan American Petroleum Corporation and Marathon Oil Company:

ATWOOD AND MALONE, Roswell, New Mexico

Representing Southwest Production Company:

VERITY, BURR, COOLEY & JONES,
Farmington, New Mexico

WITNESS the Honorable C. C. McCulloh, District Judge of the Eleventh Judicial District Court of the State of New Mexico and the seal of the District Court of San Juan County, this 22 day of August, 1963.

Virginia A. Kittell, Clerk

STATE OF NEW MEXICO COUNTY OF SAN JUAN IN THE DISTRICT COURT

EPNGC PETITION FOR REVIEW

EL PASO NATURAL GAS COMPANY, a corporation, PAN AMERICAN PETROLEUM CORPORATION, a corporation, MARATHON OIL COMPANY, a corporation, SOUTHWEST PRODUCTION COMPANY, a partnership, and SUNSET INTERNATIONAL PETROLEUM CORPORATION, a corporation,

Petitioners,

-vs-

No. 11685

OIL CONSERVATION COMMISSION OF NEW MEXICO, JACK M. CAMPBELL, Chairman, E. S. WALKER, Member, A. L. PORTER, JR., Member and Secretary, CONSOLIDATED OIL & GAS, INC., a corporation,

Respondents.

PETITION FOR REVIEW

Come now El Paso Natural Gas Company, Pan American Petroleum Corporation, Marathon Oil Company, Southwest Production Company and Sunset International Petroleum Corporation, by their attorneys, and state:

1. Petitioners El Paso Natural Gas Company, Pan American Petroleum Corporation and Sunset International Petroleum Corporation are corporations organized under the laws of the State of Delaware and authorized to do business in the state of New Mexico; petitioner Marathon Oil Company is a corporation organized under the laws of the State of Ohio and authorized to do business in the State of New Mexico; petitioner Southwest Production Company is a partnership consisting of Joseph P. Driscoll and John H. Hill, doing business as a partnership in the State of New Mexico.

2. Respondent Oil Conservation Commission of New Mexico

is a duly organized agency of the State of New Mexico, whose members are Jack M. Campbell, Chairman, E. S. Walker, and A. L. Porter, Jr., Secretary; respondent Consolidated Oil & Gas, Inc. is a corporation organized under the laws of the State of Colorado and authorized to do business in the State of New Mexico.

3. On April 18 through April 21, 1962, respondent Oil Conservation Commission of New Mexico considered at hearing the application of respondent Consolidated Oil & Gas, Inc. to change the proration formula for the Basin-Dakota Gas Pool located in San Juan, Rio Arriba and Sandoval Counties, New Mexico, from a formula based twenty-five percent upon acreage and seventy-five percent upon acreage multiplied by deliverability to a formula based sixty percent upon acreage and forty percent upon acreage multiplied by deliverability. By its Order No. R-2259, dated June 7, 1962, the Commission denied the application. Consolidated Oil & Gas, Inc. then applied for rehearing which was granted by Commission Order No. R-2259-A, dated July 7, 1962. On July 9, 1963, following rehearing, respondent Oil Conservation Commission of New Mexico, acting by its members, respondents herein, entered its Order No. R-2259-B changing the proration formula for the Basin-Dakota Gas Pool in accordance with the application of respondent Consolidated Oil & Gas, Inc. On July 26, 1963, petitioner

Admit all except July 8, 1963

El Paso Natural Gas Company filed with the Commission its Application for Rehearing setting forth the respect in which such Order was believed to be erroneous, which Application for Rehearing was denied by the Commission in its Order No. R-2259-C, dated August 1, 1963. On July 29, 1963, petitioners Pan American Petroleum Corporation, Marathon Oil Company, Southwest Production Company and Sunset International Petroleum Corporation filed with the Commission their Applications for Rehearing setting forth the respect in which Order No. R-2259-B was believed to be erroneous, which Applications for Rehearing also were denied by the Commission in its Order No. R-2259-C, dated August 1, 1963. Copies of said Orders Nos. R-2259-B and R-2259-C are attached hereto as Exhibits "A" and "B" respectively and are incorporated herein by reference. Copies of the Applications for Rehearing filed with the Commission by El Paso Natural Gas Company, Pan American Petroleum Corporation, Marathon Oil Company, Southwest Production Company and Sunset International Petroleum Corporation are attached hereto as Exhibits "C", "D", "E", "F" and "G" respectively and are incorporated herein by reference.

4. Petitioners, having filed their Applications for Rehearing, as stated above, are dissatisfied with the Commission's disposition of said applications and hereby appeal therefrom.

5. Petitioners each own property in San Juan County, New Mexico, which is affected by said Orders Nos. R-2259-B and R-2259-C.

6. Petitioners complain of said Order No. R-2259-B, attached hereto as Exhibit "A" and incorporated herein by reference, and as grounds for asserting the invalidity of said Order petitioners adopt the grounds set forth in their

respective Applications for Rehearing, attached hereto and incorporated herein by reference, and state:

a. Finding 6 of said Order No. R-2259-B, which Finding is to the effect that the initial recoverable gas reserves underlying each nonmarginal tract are the reserves shown in Column C of Exhibit "A" attached to said Order, is erroneous for the following reasons:

(1) The evidence in the record does not support such Finding and the Commission's determinations of individual tract figures are apparently obtained from calculations made on rehearing by Consolidated Oil & Gas, Inc. which were based upon data as to average reserves obtained at the time of the original Hearing by Consolidated Oil & Gas, Inc. from estimates in the files of El Paso Natural Gas Company, which data is shown by the undisputed evidence to have been revised and replaced by different data as more information became available from drilling of additional wells, resulting in changing the estimates of average reserves. The parameters used in making estimates for entire townships were often based upon core data obtained from one well which data was shown by core data obtained from subsequent wells not to be representative of the entire area.

(2) The conclusions offered by Consolidated Oil & Gas, Inc., which have been adopted as Findings by the Commission, were based upon estimates made by El Paso Natural Gas Company as a portion of a continuing reserve study of reserves underlying the entire Basin, which studies, as testified by the witness, David H. Rainey, are the best available for determining total pool reserves and for establishing the general relationship between well reserves and well deliverabilities for the pool but are not designed

for or accurate to determine the reserves underlying any particular tract.

(3) The determinations of fact are based solely upon the conclusions of Consolidated Oil & Gas, Inc.; are not supported by evidence in the record and such determinations are erroneously used by the Commission by reaching the further conclusions contained in Findings Nos. 7 and No. 10, thus basing one set of conclusions upon another set of conclusions without direct support in the record.

b. Since the initial recoverable gas reserves for each individual tract are in error, the percentages of pool reserves attributable to each nonmarginal tract and the tract acreage factors listed in said Exhibit "A" are also in error; accordingly, said Order No. R-2259-B fails to afford to the owner of each property in the pool the opportunity to produce his just and equitable share of the gas in the pool, insofar as this can be done without waste, and for such purpose to use his just and equitable share of the reservoir energy, and is therefore violative of correlative rights.

c. Findings Nos. 10, 12 and 13 of the Commission's Order are not supported by the evidence for the reason that the deliverabilities shown in Column B of Exhibit "A" of the Commission's Order are the most recent deliverabilities while the reserves shown in Column C of said Exhibit "A" are estimates of initial reserves and a comparison of the relationship between reserves and deliverability is discriminatory when the ratio of initial reserves to current deliverability of one tract which has produced over a period of several years is compared with the ratio of initial reserves to initial deliverability of another tract. Since the Commission has obviously used initial reserves

in comparison with current deliverabilities in making its Findings Nos. 10, 12 and 13, such Findings are clearly erroneous and are in conflict with undisputed evidence that such comparison is discriminatory.

d. The Commission's Order, which the statute requires be predicated upon the prevention of waste, is not based upon any evidence in the record that waste is occurring under the present 25-75 formula or that waste will be prevented by the 60-40 formula proposed by Consolidated and adopted by the Commission. The Commission's effort to predicate its Order upon waste in Finding No. 13 proceeds upon the erroneous theory, unsupported by evidence, that waste is being caused wherever a violation of correlative rights is found to exist. Finding No. 14 that waste will be prevented by the 60-40 formula is unsupported by any evidence in the record.

e. The Commission in its Order has failed to make a finding which under the law must be made in order to change an existing proration order, to-wit: the portion of each tract's proportion of the total pool reserves which can be recovered without waste. The record contains no evidence upon which such finding can be made.

f. The record does not contain evidence upon which the findings required by the statute to be made before changing the existing proration order can be based, and the rights acquired by the owners of tracts who have developed their properties under an existing order have been prejudiced by changing the basis of allocation without evidence to support such changes. Specifically, there is no evidence to support the Commission's finding as to the reserves underlying each individual tract; there is no evidence to support a finding,

and none was made, of the portion of each tract's proportion of the total pool reserves which can be recovered without waste; there is no evidence to support the Commission's finding that the protection of correlative rights is a necessary adjunct to the prevention of waste and that waste will result unless the Commission acts to protect correlative rights; and there is no evidence in the record that waste is occurring or will occur under the existing allocation formula.

g. That Order No. R-2259-B was improperly entered by the Commission contrary to the rules of the Commission and the law of the State of New Mexico.

h. That Order No. R-2259-B determines in Finding No. 10 that there is do direct correlation between acreage and reserves and yet such Order, irrespective of such finding, bases the proration formula sixty percent upon acreage. That this manifestly demonstrates the invalidity of such Order. That Finding No. 11 specifically determines that the formula in the Order is merely a makeshift so that the average tract in the pool will receive an allowable relatively close to that to which it is entitled and thereby manifestly demonstrates that the Order is invalid as to all tracts which do not happen to fit the average norm of the pool. That it is improper for the Commission to promulgate an order based on a determined improper factor and that a statement that the application of such improper factor will do justice in the average instance, does not lend validity to the Order based on such admitted improper factors.

i. That Order No. R-2259-B was entered by the Commission without proper findings as required by law and that such Order is not supported by evidence required to give the

Commission power and authority to enter and promulgate such Order.

j. That Order No. R-2259-B was entered by the Commission changing a previous proration order for the Basin-Dakota Pool without any showing that there was any change of condition between the entry of Order No. R-1670-C and the entry of said Order No. R-2259-B, or any showing that would justify the Commission in changing a proration order previously entered by the Commission after application and hearing. That it is improper for the Commission to promulgate a proration order after due and proper notice to all parties and hearing upon the merits and then later set such order aside without any showing of change of condition or any other grounds to justify the Commission in changing an order previously entered.

k. That this Commission improperly conducted the rehearing upon which Order No. R-2259-B was founded, in that it admitted improper evidence and testimony over the objection of petitioners, all of which renders said Order invalid.

l. That Order No. R-2259-B promulgates a proration order which will result in waste being committed and which does not protect the correlative rights of all producers in the Pool but to the contrary, destroys correlative rights and interferes with and destroys the correlative rights of petitioners.

7. Petitioners further complain of said Order No. R-2259-C, attached hereto as Exhibit "B" and incorporated by reference, which Order denies their Applications for Rehearing, and as grounds for asserting the invalidity of said Order show that Finding No. 3 of said Order "That Order No. R-2259-B is proper in all respects" is erroneous for the reasons set forth in said

Applications for Rehearing; said Order also is erroneous in failing to grant petitioners' Applications for Rehearing and the relief prayed for therein.

8. Inasmuch as Order No. R-2259-B is erroneous, invalid and void, and inasmuch as said Order will cause irreparable harm to petitioners, the operation of said Order should be stayed and suspended during the pendency of this proceeding to review.

WHEREFORE, petitioners pray:

1. That the Court review the Orders complained of and declare them erroneous, invalid and void.

2. That the Court stay and suspend the operation of said Orders during the pendency of this proceeding to review.

3. For such further relief as the Court deems proper.

SETH, MONTGOMERY, FEDERICI & ANDREWS
Santa Fe, New Mexico

By: _____

BEN HOWELL
El Paso, Texas

GARRETT C. WHITWORTH
El Paso, Texas

Attorneys for Petitioners
El Paso Natural Gas Company and
Sunset International Petroleum
Corporation.

ATWOOD AND MALONE
Roswell, New Mexico

By: _____

Attorneys for Petitioners
Pan American Petroleum Corporation
and Marathon Oil Company

VERITY, BURR, COOLEY & JONES
Farmington, New Mexico

By: _____

Attorneys for Petitioner
Southwest Production Company

GOVERNOR
JACK M. CAMPBELL
CHAIRMAN

State of New Mexico
Oil Conservation Commission

LAND COMMISSIONER
GUYTON B. HAYS
MEMBER

STATE GEOLOGIST
A. L. PORTER, JR.
SECRETARY - DIRECTOR

P. O. BOX 2088
SANTA FE

TO WHOM IT MAY CONCERN

I, A. L. PORTER, Jr., Secretary-Director of the New Mexico Oil Conservation Commission, do hereby certify that the attached is a true and correct copy of Commission Order No. R-2259-B.

A. L. PORTER, Jr.
Secretary-Director

February 19, 1965

IN WITNESS WHEREOF, I have affixed my hand and notarial seal this 19th day of February, 1965.

Notary Public

My Commission Expires:

September 22, 1965

GOVERNOR
JACK M. CAMPBELL
CHAIRMAN

State of New Mexico
Oil Conservation Commission

LAND COMMISSIONER
GUYTON B. HAYS
MEMBER

P. O. BOX 2088
SANTA FE

STATE GEOLOGIST
A. L. PORTER, JR.
SECRETARY - DIRECTOR

TO WHOM IT MAY CONCERN

I, A. L. PORTER, Jr., Secretary-Director of the New Mexico Oil Conservation Commission, do hereby certify that the attached is a true and correct copy of Commission Order No. R-2259-B.

A. L. PORTER, Jr.
Secretary-Director

February 17, 1965

IN WITNESS WHEREOF, I have affixed my hand and notarial seal this 17th day of February, 1965.

Notary Public

My Commission Expires:

September 22, 1965

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

EL PASO NATURAL GAS COMPANY, a corporation, PAN AMERICAN PETROLEUM CORPORATION, a corporation, MARATHON OIL COMPANY, a corporation, BETA DEVELOPMENT COMPANY, and SUNSET INTERNATIONAL PETROLEUM CORPORATION, a corporation,

Petitioners and Appellants,

v.

OIL CONSERVATION COMMISSION OF NEW MEXICO, JACK M. CAMPBELL, Chairman, E. S. WALKER, Member, A. L. PORTER, JR., Member and Secretary; CONSOLIDATED OIL & GAS, INC., a corporation,

Respondents and Appellees.

No. 7727

Appeal From The District Court of
San Juan County

C. C. McCulloh, District Judge
Division I

ANSWER BRIEF OF APPELLEES

Boston E. Witt
Attorney General

J. M. Durrett, Jr.
Special Assistant
Attorney General

Attorneys for Appellee Oil Conservation
Commission of New Mexico

Kellahin & Fox
Santa Fe, New Mexico

Holme, Roberts, More & Owen
Denver, Colorado

Attorneys for Appellee Consolidated
Oil & Gas, Inc.

INDEX TO ANSWER BRIEF OF APPELLEES

TABLE OF AUTHORITIES CITED

Statutes Cited Cont'd — Page

Miscellaneous Authorities Cited

OBJECTION TO APPELLANTS' STATEMENT OF THE CASE

Appellees offer no objection to appellants' Statement of the Case.

OBJECTION TO APPELLANTS' STATEMENT OF THE FACTS

Appellees object to the contents of appellants' Statement of the Facts, and submit that it is argumentative, incomplete, and contains a resume of evidence with emphasis against the Court's findings and conclusions, contrary to the intent of Supreme Court Rule 15, Subdivision 14(3).

In Henderson v. Texas-New Mexico Pipeline Co., 46 N.M. 458, 461, 131 P.2d 269 (1942), this Court stated the purpose of that portion of a brief known as the Statement of Facts, as follows:

> "The Statement of Facts required by the rule is intended to aid the court and counsel in determining, at the outset, through a brief and concise statement, the question or questions at issue, and the appraisal of the facts and disposition of the issues, by the trial court. Ordinarily, and except under certain circumstances, the testimony should not be reviewed at all under this head, and never, of course, with emphasis against the court's findings and conclusions."*

And in Provencio v. Price, 57 N.M. 40, 253 P.2d 582 (1953) this Court stated again that if the issue is tried to the court, the statement of facts required by Supreme Court Rule 15, Subdivision 14(3) must relate to the ultimate facts found in the decision of the court, and not to evidentiary facts.

Note: In the interest of uniform presentation to the Court, Appellees will use the same system of citation as that used by Appellants and described in the footnote appearing on page 1 of appellants' brief-in-chief.

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*In quoted material in this brief, emphasis is supplied unless otherwise stated.

It is readily apparent that nowhere in appellants' Statement of the Facts is there any reference to, or statement of the trial court's findings, nor even to the findings entered by the Oil Conservation Commission when it entered the order under attack in this appeal, as required by Supreme Court Rule 15(3) as interpreted by Henderson v. Texas-New Mexico Pipeline Co. and Provencio v. Price, supra.

The objectionable portions of appellants' Statement of the Facts are spread through that portion of their brief, and we shall make reference to pages in appellants' Brief-in-Chief where necessary.

At pages 3 and 4 of their brief, appellants discuss the number of wells drilled in the Basin-Dakota Gas Pool during the period the 25-75 formula was in effect. This statement is completely immaterial. There is no dispute between the parties to this appeal concerning the number of wells drilled during this period.

At page 4 of their brief, appellants would appear to show that sheer numbers entitle them to more consideration than other operators in the pool. Patently the number of operators on one side or the other of a gas prorationing case, or any other case, or the number of wells operated by them, is no measure of the legality, justice or equity of a proration formula, and is clearly irrelevant to this proceeding.

Appellants do not set out any of the findings they attack, but at page 5 of their brief assert, as a fact, that the "entire basis" for the Commission's findings in Order R-2259-B is contained in Exhibit A attached to the order. While appellees

agree that Exhibit A is an essential part of the order, the conclusions reached by the Commission based on voluminous testimony, are set out in the order itself, as may be readily ascertained (Comm. Tr., Inst. 38 attached to this brief as an Appendix), and it is apparent that many of the essential findings of the order are, of necessity, based on matters other than the information contained in Exhibit A.

At pages 6 and 7 of their brief, appellants attempt to analyze Exhibit A. The objectionable portions of this analysis consist of misinterpretations of the information contained in Exhibit A, and erroneous and unwarranted arguments and conclusions to which specific objection must be made:

1. At page 6 of their brief, in discussing Column C, appellants make the statement that the recoverable gas reserve figures presented there do not represent the portion of reserves which can be produced without waste. This is not a statement of fact; it is an unwarranted conclusion which is without support in the evidence.

2. Again on page 6, in discussing Column J - A/R Factor, appellants make the unwarranted assumption that this column shows the ratio between percentage of total pool allowable which would have been allocated to each well under the 60-40 formula and the percentage of the total pool reserves of non-marginal tracts in the pool attributable to each well, only for the month of December. The A/R factor, being based upon a percentage of the total pool allowable, as compared to its percentage of total pool reserves, would be constant for any given monthly allowable, and would change only if the

deliverability of an individual well or the acreage dedicated to the well were to be changed by subsequent determination of the Commission.

At page 7, as a part of their Statement of the Facts, appellants attempt to review certain testimony offered by appellee Consolidated as showing a reasonable basis for allocating production in the pool, but fail to point to the record wherein the Commission fully considered such evidence, found it satisfactory and based its Finding No. 11 of Order R-2259-B thereon:

> "(11) That the most reasonable basis for allocating production in the Basin-Dakota Gas Pool is to determine, for each proposed formula, the percentage of total pool allowable apportioned to each non-marginal tract as compared to its percentage of total pool reserves, said relationship hereinafter referred to as the tract's A/R Factor, and to select the allocation formula that will allow the maximum number of wells in the pool to produce with an ideal tract A/R Factor of 1.0, or with a tract A/R Factor of from 0.7 to 1.3, which, due to inherent variance in interpreting and computing reserves, is within a reasonable tolerance." (Comm. Tr., Inst. 38)

On page 7, appellants state that "It was conceded by Consolidated that its determination as to the reserves lying under each non-marginal tract could be in error by as much as 30% due to reasonable differences in interpretation of the data on which the estimates of the reserves was based." Consolidated at no time conceded that any error was involved, but rather the witness stated that as an engineering matter, the 30% figure was a reasonable range of interpretation. For convenience that testimony of the witness Trueblood is set out:

> "A. Yes. Based on our numbers for the reserves underlying each tract, and based on our thorough investigation of the wells which had been cored, and comparing same to the work

> we have presented, we found that in general we ranged between 70 percent and 130 percent of the numbers which we have deducted from this map, or were calculated originally by El Paso. This we interpret to be a reasonable interpretative range of reserves that engineers should be able to make from log calculations when compared with actual core data, and should be the range of accuracy wherein anything falling in that range, from a standpoint of reserves, of receiving percent of proper allowable, would not necessarily be an abuse of correlative rights." (Hearing 2-14-63, p. 26).

At page 8, appellants again refer to testimony, this time to the effect that "this change in formula from 25-75 to 60-40 would be to take roughly one-half million dollars annually from seventeen operators in the field and to redistribute it to thirty-three other operators." What they fail to state is that this allowable production would be taken from wells of high deliverability, and redistributed to wells of lower deliverability (Hearing 4-19-62, p. 413), and that such a transfer of the allowable production is supported by specific findings of the Commission in Order No. R-2259-B (Comm. Tr. Inst. 38), as we will point out in detail in our argument. If appellants' reference to this testimony in their Statement of the Facts is intended to create the implication that redistribution of gas or revenues is ipso facto improper, then it is argumentative and has no place in this portion of their brief. If this is not their intention, then the reference is irrelevant.

Since an independent statement of the facts by an appellee is not contemplated and will not be entertained (Supreme Court Rule 15(3)), we direct the Court's attention to the trial court's findings of fact (Tr. 123-129), and the findings of the Commission in its Order No. R-2259-B (Comm. Tr. Inst. 38) where the matters which should have been but were not contained in appellants' statement of the facts may be found.

THE POINTS RELIED UPON TO SUSTAIN THE TRIAL COURT'S DECISION

POINT I (Answer to Appellants' Point I)

COMMISSION ORDER NO. R-1670-C, AS AMENDED BY ORDER NO. R-2259-B, CONTAINS ALL BASIC FINDINGS OF FACT REQUIRED BY LAW.

A. The Commission, in its Findings 11 and 14 and Column J of Exhibit A of the Order explicitly found "what portion of the arrived at proportion can be recovered without waste" --even to the extent required by Appellants' demanding interpretation of the language in the Continental case.

B. Though it did make the quantitative finding insisted on by Appellants, the Commission's Order would have been valid without it, since neither the Statute nor the Continental case in fact requires it.

POINT II (Answer to Appellants' Point II)

COMMISSION ORDER NO. R-1670-C, AS AMENDED BY ORDER NO. R-2259-B, IS VALID AND CONTAINS ALL AFFIRMATIVE FINDINGS WHICH ARE REQUIRED BY LAW.

A. Contrary to Appellants' erroneous premise the Commission did not use computed reserve figures as the sole criterion for comparing the merits of alternative allocation formulae. Instead, they were appropriately used as one of several engineering tools, all of which led to the adoption of the 60-40 formula.

B. The Commission itself found that it was impracticable to use reserves as the sole basis for arriving at an equitable allocation formula, and thus did not do so. Appellants' contention as to the impropriety of thus using reserve computations therefore is moot.

C. Appellants' irrelevant well-count test overlooks the necessity of selecting a formula which unwastefully permits production of the most gas with maximum protection of correlative rights. The Commission did not make this mistake.

POINT III (Answer to Appellants' Point III)

ALL FINDINGS IN COMMISSION ORDER NO. R-1670-C, AS AMENDED BY ORDER NO. R-2259-B, ARE BASED UPON AND SUPPORTED BY SUBSTANTIAL EVIDENCE; FURTHERMORE, APPELLANTS HAVE FAILED TO COMPLY WITH RULES OF THE SUPREME COURT IN CHALLENGING THE SUFFICIENCY OF THE EVIDENCE.

A. Appellants' challenge to the the sufficiency of the evidence to support the Commission's Findings and Order should not be entertained nor considered by this Court since Appellants wholly failed to comply with the Rules of this Court.

B. In this case not only is there substantial evidence, but the great preponderance of the evidence supports the Findings and Order.

C. The Commission used all relevant criteria, each supported by voluminous and credible evidence, to compare the alternative formulae and to arrive at the 60-40 one as best preventing waste and protecting correlative rights.

POINT IV ~~(Answer to Appellants' Point IV)~~

APPELLANTS HAVE NOT MADE ANY ATTACK ON THE TRIAL COURT'S FINDINGS AS DISTINGUISHED FROM THOSE OF THE COMMISSION AND THE QUESTION OF SUFFICIENCY OF THE EVIDENCE TO SUPPORT THE FINDINGS OF THE TRIAL COURT HAS NOT BEEN RAISED, THEREFORE THE TRIAL COURT'S FINDINGS ARE CONCLUSIVE ON APPEAL.

ARGUMENT AND AUTHORITIES

POINT I.

(Answer to Appellants' Point I)

COMMISSION ORDER NO. R-1670-C, AS AMENDED BY ORDER NO. R-2259-B, CONTAINS ALL BASIC FINDINGS OF FACT REQUIRED BY LAW.

A. The Commission, in its Findings 11 and 14 and Column J. of Exhibit A of the Order explicitly found "what portion of the arrived at proportion can be recovered without waste"--even to the extent required by Appellants' demanding interpretation of the language in the Continental case.

In Continental Oil Company v. Oil Conservation Commission, 70 N.M. 310, 373, P.2d 809 (1962), this Court, in reviewing an order of the Oil Conservation Commission, made the following statement (70 N.M. 310, 319, 373 P.2d 809, 814):

> "In order to protect correlative rights, it is incumbent upon the commission to determine, 'so far as it is practical to do so,' certain foundationary matters, without which the correlative rights of the various owners cannot be ascertained. Therefore, the commission by 'basic conclusions of fact' (or what might be termed 'findings'), must determine, insofar as practicable, (1) the amount of recoverable gas under each producer's tract; (2) the total amount of recoverable gas in the pool; (3) the proportion that (1) bears to (2); and (4) what portion of the arrived at proportion can be recovered without waste. (Emphasis by the Court) That the extent of the correlative rights must first be determined before the commission can act to protect them is manifest."

The crux of appellants' quarrel with the validity of the Commission's Order,[1/] as set forth in Point I of their Brief-in-Chief, is simply this: That the Continental case lays upon the Commission a fourfold burden of findings, essential to the validity of any order to be entered by it

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1/ A certified copy of Commission Order No. R-2259-B (Tr. 10-28, 159-178, Comm. Tr., Inst. 38) is attached as an appendix to this brief for the Court's convenience. To avoid repetition references to findings contained in Order No. R-2259-B will be by finding number without specific reference to the page in the transcript where each finding appears.

A copy of Commission Order No. R-1670-C appears in the record as Instrument 37 in the Commission Transcript.

allocating gas production to the separate tracts in a pool; that three of the four findings were made in the instant case, but that the fourth is missing and thus the order collapses in jurisdictional invalidity.

The three findings conceded by appellants to be present in Order No. R-2259-B are:

> "(1) the amount of recoverable gas under each producer's tract (2) the total amount of recoverable gas in the pool; (3) the proportion that (1) bears to (2);"

As to none of these is there any dispute in this appeal. As appellants admit, "These preliminary findings constitute the first three steps of the four-step procedure. . . ." (Br. p. 13).

Let us turn then to the fourth finding. This Court said in the Continental case, supra at 70 N.M. 319, that "In order to protect correlative rights," the Commission must determine "so far as it is practical to do so," items (1), (2) and (3)

> "and (4) what portion of the arrived at proportion can be recovered without waste."

Appellants say that this fourth finding is missing from the Commission's Order in this case, and having created this premise, base themselves thereon and announce their conclusion that the order thus is void. Before turning to a discussion of appellants' conclusion, which we will later show is erroneous, let us examine their premise:

Appellants' premise that the fourth finding is missing is wholly wrong. Contrary to their assertion, the Commission made, and its order contains, the precise fourth finding contemplated by this Court's opinion in the Continental case.

The fourth finding, simply stated, arises out of Findings Nos. 11 and 14 of Order No. R-2259-B and is specifically itemized for each tract in Column J of Exhibit A which is attached to and made a part of the order by Finding No. 6.

In Finding No. 11 the Commission defines each tract's A/R factor as "the percentage of total pool allowable apportioned to each . . . tract as compared to its percentage of total pool reserve." Stated as an equation:

$$\frac{A}{R} = \frac{\text{\% of total pool allowable}}{\text{\% of total pool reserves}}$$

The Court will note that the A/R factor is substantially different from the ratio of each tract's reserves to the total pool reserves, which are conceded by appellants to be found in Column C of Exhibit A. That ratio could be expressed:

$$\frac{\text{Tract reserves}}{\text{Pool reserves}} \times 100 = \text{\% of total pool reserves}$$

and is obviously the denominator R of the A/R equation above. The numerator "A" equals the percentage of total pool allowable attributed to each well by application of a proration formula. Each month after hearing the total pool allowable is determined by the Commission upon the basis of market demand for gas.

It follows, under <u>any</u> allowable allocation formula, that the A/R factor for each tract is an exact definition of the ratio or "portion" of the recoverable gas under the tract which "can be recovered" from that tract under that allocation formula.

Stated even more exactly, the A/R factor for each tract is a mathematical definition of "what portion of the arrived at proportion can be recovered . . ." from that tract under that allocation formula. Thus, Column J of Exhibit A which sets forth the A/R factor for each well under the 60-40 allocation formula is a precise and complete fulfillment by the Commission of the above quoted portion of the fourth finding listed in the Continental case. It remains only to see whether in this case the Commission determined that the 60-40 formula meets the final language of the finding "without waste."

The allowable allocation formula which, consistent with practicalities, best prevents waste, would be the formula which meets the "without waste" test of the Continental fourth finding. That the 60-40 formula is the formula which meets that test is clear.

In Finding No. 14 the Commission expressly found that the production of the portion of the total pool allowable allocated to each tract under the 60-40 formula would "more adequately***prevent waste." That the 25-75 formula would not prevent waste is equally clear from Finding No. 13.

In summary, the four findings mentioned in the Continental case were fully made in Order No. R-2259-B. Expressed as equations, those findings are:

"(1) the amount of recoverable gas under each producer's tract;"	=	each tract's reserve (from Column C per Finding No. 6)
"(2) the total amount of recoverable gas in the pool;"	=	total pool reserve (total of Column C and Finding No. 5)
"(3) the proportion that (1) bears to (2);"	=	% of pool reserves in each tract (from Column D per Finding No. 7)

"and, (4) what portion of the arrived at proportion can be recovered" $= \frac{A}{R} =$ (Column G for the 25-75 formula - or - Column J for the 60-40 formula

"without waste." = Formula that will best "protect correlative rights and prevent waste" (from Finding No. 14)

Having made the four findings itemized above, the Commission had no choice except to select as proper the 60-40 formula. In fact, the 25-75 formula could not be continued in the face of Finding No. 13 which clearly finds that waste will occur if the 25-75 formula is continued.

Appellants may cavil in reply that "portion" can only mean some fraction less than one and that many A/R factors in Column J exceed one. As to this we reply simply that if a producer, under a formula devised to prevent waste, may properly be allowed to produce more than the amount of recoverable gas under his tract then the "portion" of his recoverable gas he may recover without waste is all of it.

Should appellants reply that Column J does not express the "portion" in cubic feet of gas, then we suggest that a simple multiplication of the line items in Column C times the line items in Column J gives that result.

Thus, when the Commission, following and based upon long hearings replete with testimony of experts, adopted and incorporated in its order by Finding No. 6 the detailed computations found in Exhibit A, it explicitly determined, as set forth in the Continental case, "what portion of the arrived at proportion can be recovered. . . ," and for each tract.

That the last two words of the fourth finding, "without waste," were considered by the Commission and

incorporated in its determination cannot be disputed. Order No. R-2259-B, on its face, shows that termination of waste, protection against waste and permanent prevention of waste were paramount considerations motivating the Commission to enter its order adopting the 60-40 formula and rescinding the 25-75 formula, and that it expressly and repeatedly found that its new order would prevent waste. Having done so, the fourth finding was completed. Column J is the "portion of the arrived at proportion /which/ can be recovered without waste." (Emphasis by Court)

Again, simply stated and with reference to Exhibit A to Order No. R-2259-B, the Commission found that waste was occurring under the 25-75 formula, and that it would be prevented under the 60-40 formula. Thus, it found that allocations in Column G, i.e., "the portion of the arrived at proportion" under the 25-75 formula (the counterpart of Column J under the 60-40 formula) caused waste, and that at least "insofar as can be determined" the allocations in Column J ("the portion of the arrived at proportion" under the 60-40 formula) will prevent waste.

In order that the foregoing shorthand statement of the Commission's finding will be clearly documented, we set forth below the specific findings of the Commission supporting these statements. It should be unnecessary to argue that if the Commission made findings that "the portion of the proportion" etc. under the 60-40 formula would prevent waste, this would be equivalent to a finding of "without" waste, as the words were used in the Continental case. Semantics could scarcely be stretched to a point sufficient to inject a substantive difference into the result of a long and careful

hearing and official act of an expert statutory administrative body, turning on some contrived difference between "without waste" and "prevent waste."

In considering the problem of waste, the Commission first turned to the 25-75 formula. Finding No. 13 of Order No. R-2259-B is such a cogent statement of the Commission's conclusion both as to correlative rights and to waste that it is here set forth in full:

> "(13) That under the present 25-75 formula, correlative rights are not being adequately protected; that the protection of correlative rights is a necessary adjunct to the prevention of waste, and that waste will result unless the Commission acts to protect correlative rights."

It is worth noting that the very phraseology of the foregoing statement stems directly from the language of the statute and the Continental case. The Continental case includes the phrases "the protection of correlative rights is a necessary adjunct to the prevention of waste" and "waste will result unless the Commission can also act to protect correlative rights." (70 N.M. 310, 324) The statute contains numerous references to the protection of correlative rights (Section 65-3-10, 65-3-13(c), 65-3-29(h), N.M.S.A., (1953) Comp.)). This demonstrates beyond doubt that the Commission had the statute and the Continental case before it and in the forefront of its consideration in issuing Order No. R-2259-B.

Having found that correlative rights were not being adequately protected under the 25-75 formula, that waste would result unless the Commission acted to protect correlative rights, and thus having inescapably found that waste was in fact occurring under the 25-75 formula, the Commission then turned to comparative consideration of the 25-75 formula and the 60-40

formula. This obviously was the scientific and mathematical method best suited to lead the Commission to an equitable determination of the rights of the tract owners as explicitly permitted and indeed required by the statute. The statute provides that "The Commission may give equitable consideration to acreage, . . . deliverabilities, . . . and . . . other pertinent factors," (Section 65-3-13(c), N.M.S.A. (1953 Comp.)) so that each owner may produce "his just and equitable share," (Section 65-3-29(h), N.M.S.A. (1953 Comp.))

In Finding No. 14 the Commission examines and compares the results which would be produced under the 25-75 formula versus the 60-40 formula. It then concludes from such examination that "the proposed formula /60-40/ will more adequately protect correlative rights and prevent waste. . . ." It is difficult to imagine how the Commission could have more clearly shown in its findings its consideration of the matter of waste.

Not content with the foregoing, the Commission, in Finding No. 15, further recognizes that the uncompensated drainage between tracts likewise could affect correlative rights and thus create waste, and again determines that the 60-40 formula would, in the language of the statute and of Finding No. 15 itself, "insofar as is practicable prevent drainage between producing tracts which is not equalized by counterdrainage." Even here the Commission does not stop in its meticulous attention to the criteria laid down by the Continental case and the statute as appropriate matters for the Commission's consideration. Thus in Finding No. 16 it considers the question of equitable use between property owners of reservoir energy and finds that the 60-40 formula would comply with the statutory injunction that each owner be afforded a just opportunity so to utilize this energy.

In the light of this analysis of the Commission's Findings and Order, it is obvious that the contention of appellants that the Commission failed "to make the basic jurisdictional finding as to what portion of the arrived at proportion could be produced without waste" (Br. p. 13) is a false premise. As we have shown, it did not fail.

B. Though it did make the quantitative finding insisted on by Appellants, the Commission's Order would have been valid without it, since neither the Statute nor the Continental case in fact requires it.

Although we have shown that the appellants' premise is false let us assume here, contrary to the foregoing showing, that appellants' premise is well taken. Such assumption requires an interpretation of the fourth finding entirely different from the interpretation used in the foregoing section of this brief.

The Court will have noted that appellants have not set forth their concept, if they have one, of what the Commission should have done in connection with the fourth finding. They simply assert and reassert as their basic premise that the Commission failed to do whatever it was that should have been done to determine what portion of the arrived at proportion could be produced without waste. If appellants think the Commission should have done something other than that which it did, they should have set it forth.

The only interpretation of the fourth finding which could make appellants' premise even superficially valid is that the Commission must, in addition to findings (1), (2) and (3), determine quantitatively, in some fashion different from the determination thereof made by the Commission, in cubic feet of gas, the exact fraction of the recoverable gas

in each tract which could be produced without waste.

We point out that the statute does not require the Commission, as a basic jurisdictional finding, or otherwise, to determine exactly that portion of the recoverable gas underlying each producer's tract which can be recovered without waste before it can act to protect correlative rights.

Even so, to avoid any chance of misconstruing the Court's meaning in the Continental case, and in spite of the difficulty of so doing, the Commission, insofar as possible, exceeded the statutory requirements and did arrive at such exact mathematical "portion of the arrived at proportion /which/ can be recovered without waste." This determination is set forth for each tract in Column J.

The Commission could have proceeded properly in the case at bar even without making the finding set forth in Column J. This is best illustrated by setting forth piecemeal the statutory definition of correlative rights in Section 65-3-29(h), N.M.S.A. (1953) Comp.) and parenthetically interpreting the parts of the definition:

> "'Correlative rights' means the opportunity afforded, so far as it is practicable to do so, to the owner of each property in a pool"
>
> (i.e., if it is not practicable to give each owner exactly equal opportunities then the Commission is not compelled to do so)

"to produce without waste"

(i.e., waste as defined by the statute)

"his just and equitable share of the oil or gas, or both, in the pool, being an amount,"

(i.e., recognition of the quantitative aspects of the property rights of each owner)

"so far as can be practically determined,"

(i.e., so far as such amount can be practically determined--such amount referring to "his just and equitable share of the . . . gas . . . in the pool.")

"and so far as can practicably be obtained without waste,"

(i.e., so far as such determined amount can practicably be obtained without waste.

(The clear concept is that within practicable limits a producer is entitled to protection of his opportunity to obtain such determined amount of gas only to the extent it can be produced without waste.

It should be noted that the statute requires only a determination of the recoverable gas under each tract but does not require the Commission to undertake the impossible task of making a quantitative determination of the precise amount of a

producer's recoverable gas that can be recovered without waste or the precise amount thereof that a producer is precluded from producing because waste would result. It merely directs the Commission to proceed in a fashion which, insofar as practicable, will result in an order which will permit each producer to obtain so much of the determined amount of recoverable gas as can be obtained at producing rates and otherwise in a manner which will not cause waste.)

"substantially in the proportion that the quantity of recoverable oil or gas, or both, under such property bears to the total recoverable oil or gas, or both, in the pool,"

(This part of the definition relates back and establishes guidelines for determining the "amount" which is the "just and equitable share" of each owner's gas in the pool. Note how clearly the two intervening phrases distinguish between determining that "amount" and obtaining it.

The statute does not guarantee that each producer will obtain, or be entitled to obtain, exactly the amount of recoverable gas determined to be under his tract, but merely establishes an ideal goal to be

sought by the Commission to the extent it can reasonably be achieved without causing or permitting preventable waste and to the extent a similar goal can reasonably be achieved for each other producer.)

"and for such purpose, to use his just and equitable share of the reservoir energy."

(recognition of each owner's property right to a proportionate share of the reservoir energy)

The pertinent clauses in Section 65-3-14(a), N.M.S.A. (1953 Comp.) relating to allocation of allowable production confirm the foregoing interpretation. That section requires the Commission, insofar as practicable in creating an order, to afford each owner the opportunity to produce his fair share of the gas in the pool,

> "being an amount, so far as can be practically determined, and so far as such can be practicably obtained without waste,"

substantially in proportion to his share of the recoverable gas in the pool.

The statute clearly requires the Commission only to determine the amount of each producer's recoverable gas in the reservoir and to afford him the opportunity to produce such amount so far as such amount can be obtained without waste. It does not require the Commission to determine how much of the recoverable gas can be recovered without waste.

As stated, appellants' failure to define their contention as to what procedure the Commission should have followed

in making the fourth finding leaves us in the position of having to speculate as to their theory.

Is it their contention that the Commission must follow some ritualistic sequence in order to make a valid order? Appellants' brief seems to make some such suggestion--that, for example, the Commission was obligated to determine the exact amount of recoverable gas in each tract which could be produced without waste before it could even consider a method of allocating production.

If this is appellants' argument, we believe its weakness becomes apparent on examination of the order and of the true meaning of the phrase which has been quoted from the Continental case, supra at 70 N.M. 319, "That the extent of the correlative rights must first be determined before the commission can act to protect them is manifest." The significant word in the quoted language is "act." It is clear that the Commission in this case did not "act" until it had made all of the necessary determinations. Its first action was the promulgation of the order, not the making of the eighteen findings therein. By the time the order was issued, as we have heretofore shown, the Commission had determined the "extent of the correlative rights" which its order would protect.

When viewed in the light of the foregoing statutory analysis it is seen that the steps taken by the Commission in establishing a foundation for Order No. R-2259-B would have fulfilled the statutory requirements even if the Commission had not, in Column J of Exhibit A to the Order, specifically determined the amount of recoverable gas under each tract that could be recovered without waste.

In discussing the appellants' contentions in Point I

of their Brief-in-Chief, it should be noted that it was not practicable for the Commission to proceed other than as it did. The Commission, having determined the recoverable gas under each tract, was faced with finding the producing mechanism that would, insofar as practicable, permit all or as much as possible of the recoverable gas under each tract to be produced without waste. The problem, simply stated, was that the wells on the various tracts were clearly capable of producing all the recoverable gas under their respective tracts but would, under each formula, do so at significantly different rates of production. Thus, if a high capacity well is allowed to produce its determined share of the recoverable gas before a neighboring low capacity well has done so, then underground migration of recoverable gas toward the high capacity well is inevitable. Not only does such avoidable underground migration cause waste by unnecessary consumption of reservoir energy but it causes preventable violations of correlative rights.

Viewed in this light, the findings of the Commission that correlative rights were not being protected under the existing 25-75 formula order and that waste would result from its continuance (Finding No. 13 of Order No. R-2259-B), that the 60-40 formula would prevent drainage between producing tracts (Finding No. 15 of Order No. R-2259-B) and that the 60-40 formula would afford each owner the opportunity to use his just and equitable share of the reservoir energy (Finding No. 16 of Order No. R-2259-B), all serve as clear evidence of the Commission's recognition of the problem facing it and its resolution of the problem by entering that order best designed to eliminate waste and, insofar as practicable, give full meaning to the concept that each producer should be

afforded the opportunity to produce his recoverable gas without waste.

To demand of the Commission that it determine the exact quantitative portion, in cubic feet of gas, of each producer's recoverable gas in place in the ground which can be recovered or brought to the surface without waste before it can proceed to consider various approaches and to devise an allocation formula protecting correlative rights is to confront it with a situation which is not only impracticable but is an insoluble anomaly.

The Commission is unable to determine the portion of recoverable gas which can actually be recovered by a producer, with or without waste, unless and until it assumes one or more allocation formulae and forecasts the production permissible thereunder. Then, and only then, is the Commission possessed of the requisite knowledge to permit it to proceed pursuant to Section 65-3-13(c), N.M.S.A. (1953 Comp.) "to allocate the allowable production . . . on a reasonable basis and recognizing correlative rights. . . ." by selecting as the most appropriate formula that one which best prevents waste, is reasonable and is practicable to administer.

It is obvious that the Commission recognized that the term "recoverable gas" does not necessarily include the concept that every cubic foot of the recoverable gas under a tract can and will be recovered without waste under any and all circumstances. It is equally obvious, however, that the Commission recognized and proceeded in the conviction that, insofar as practicable, all or as much as possible of the "recoverable gas" under a tract can be recovered without waste

if its recovery is permitted (within the larger confines of the field-wide market demand allowable) only under that allocation order which is best designed to protect correlative rights, prevent waste, prevent uncompensated drainage and afford to each producer an opportunity to use his fair share of the reservoir energy. Having proceeded as it did the Commission, insofar as practicable, measured the difference between the "recoverable gas" under a producer's tract and the "portion thereof which can be recovered without waste" in setting forth in Column J the fraction of the recoverable gas under each producer's tract which he was entitled to produce without waste.

POINT II.

(Answer to Appellants' Point II)

COMMISSION ORDER NO. R-1670-C, AS AMENDED BY ORDER NO. R-2259-B, IS VALID AND CONTAINS ALL AFFIRMATIVE FINDINGS WHICH ARE REQUIRED BY LAW.

A. Contrary to Appellants' erroneous premise, the Commission did not use computed reserve figures as the sole criterion for comparing the merits of alternative allocation formulae. Instead, they were appropriately used as one of several engineering tools, all of which led to the adoption of the 60-40 formula.

As was the case in Point I of the brief we are presented in appellants' Point II with erroneous conclusions based on inaccurate premises. Appellants' first conclusion is that if the Commission's determinations of the amount of recoverable gas under each producer's tract are so continuously subject to revision as new information becomes available that production cannot be allocated solely on the basis of the proportion of the recoverable gas thereunder, then such determinations are not suitable criteria for comparing alternate allocation formulae (Br. p. 16).

The erroneous premise from which appellants derive their conclusion is that the practicality or impracticality of using reserve determinations as the basis for an allocation formula is identical with that of making reserve calculations.

There is no question that it is impossible ever to make precise, exact and final determinations of the amount of recoverable reserves underlying each tract in the pool. Nonetheless, reserve calculations are universally recognized engineering tools used by petroleum engineers. They are subject to continuing refinement during the life of any gas pool because of the continuing acquisition of new information of the nature and capacity of the reservoir. A reserve calculation requires information on the porosity of the rock, permeability of the rock,

the pressures encountered, thickness of the reservoir and other factors. There is no question that each scrap of new information gained in the drilling of new wells and from daily field production data contributes to the ability of engineers to make increasingly accurate refinements of their prior reserve determinations.

But does this inescapable fact mean that it is impracticable, foolish and useless to make reserve determinations? Obviously not. We contend that it is eminently practicable, necessary and useful to do so. We contend that the Commission would be remiss in not doing so in any matter involving correlative rights. We contend that this Court held in the Continental case that the Commission must do so in any matter involving correlative rights. But, the best the Commission can do at any given time, and all that it is required to do under the statute, is to make the most accurate reserve determinations of which it is capable on the basis of the best evidence available to it. That it has done so in this case is abundantly clear from the record of the hearings and from Findings Nos. 5, 6 and 7 of Order No. R-2259-B.

Having made the best reserve determinations of which it is capable and in the full light of its knowledge of the degree of accuracy thereof, the state of the development and depletion of the reservoir and the complexities of the administration of any proration order, the Commission, as an expert technical agency, then has an obligation to use its reserve determinations in an appropriate way and give such weight thereto as it deems proper in the performance of its paramount function of preventing waste and its secondary function of protecting correlative rights. It should be borne in mind that Order No. R-2259-B does not allocate gas but establishes a formula for the allocation of gas. The Commission in speaking of gas allocation is referring to the monthly allocation

of the total pool allowable to each of the wells in the pool. It is clear that the Commission had in mind this situation when it made Finding No. 8. It was speaking in this sense when it said that reserve calculations which are subject to refinement from time to time as new information becomes available are not a practical basis for use as the sole criteria for the monthly allocation of gas.

The gas proration schedule which is issued each month by order of the Commission after notice and hearing specifically allocates production to individual wells. If this monthly allocation were based solely upon reserve calculations which can be refined as each new well is completed, it would frequently be necessary for the Commission to recalculate the entire formula in issuing the proration schedule rather than simply applying a predetermined formula to the market demand each month. This would place an impossible administrative burden upon the Commission and one which never was intended by the statute.

Contrary to the position taken by appellants that it was not the use of the reserve figures in a mechanical sense the Commission found to be impracticable (Br. p. 18), this administrative impracticability is exactly the reason the Commission rejected the use of reserve figures as the sole basis for making the allocation formula.

Having thus restored Finding No. 8 and the significance of reserve computations to the context of engineering, administrative and statutory realities, it becomes immediately evident that the Commission made an accurate and meaningful appraisal of both the usefulness of and the limitations upon the use of reserve computations when in Finding No. 8 it found:

> "(8) That it is impracticable to allocate production solely on the basis of the percentage of pool reserves due to the continuous fluctuation in reserve computations resulting from new completions in the pool and re-evaluation of reserves of existing wells."

This is a far cry from appellants' attempt to read out of Finding No. 8 a wholesale repudiation of the reserve computations by the Commission followed by what appellants contend is an indefensible and inconsistent reliance thereon by the Commission.

To adopt appellants' erroneous conclusion as law would be tantamount to a decision to eliminate reserve determinations as a factor to be considered in the protection of correlative rights. That such a decision would be in complete opposition to the statutory mandates with respect to correlative rights is clear from a reading of a portion of Section 65-3-13(c), N.M.S.A. (1953 Comp.):

> ". . . In protecting correlative rights the Commission may give equitable consideration to acreage, pressure, open flow, porosity, permeability, deliverability and quality of the gas and to such other pertinent factors as may from time to time exist, and in so far as is practicable, shall prevent drainage between producing tracts in a pool which is not equalized by counter-drainage. . . ."

The Court will see that the pertinent factors named in the statute include the very ones used by engineers and geologists in making reserve determinations, and were fully presented to the Commission, as the record shows (Hearing 4/18/62 pp. 22-23, 30-32, 34-35, 39-40, 77-78, 164-172, 198, 311, 321, 337, 481-489, 636-637; Hearing 2/14/63 pp. 15-20, 35-37, 40, 53-54, 82-85, 95-100, 102-105, 123, 125-126, 143, 187-189, 206-209).

B. The Commission itself found that it was impracticable to use reserves as the sole basis for arriving at an equitable allocation formula, and thus did not do so. Appellants' contention as to the impropriety of thus using reserve computations therefore is moot.

Appellants further contend in their brief that if the Commission's determinations of the amount of recoverable gas under each producer's tract are the correct measure of the correlative rights of the respective producers, then the Commission was obliged to use them as the sole basis for allocating the pool allowable unless it was impracticable to do so, and if impracticable, it was also impracticable to use such reserve determinations as criteria for comparing alternate allocation formulae (Br. p. 17).

Appellants' second contention is self-defeating insofar as they contend that the Commission was obligated by the statute to use its reserve determinations as the sole basis for allocating the pool allowable unless it was impracticable to do so. Finding No. 8 could not more clearly state that the Commission found such an approach impracticable.

When compared with the practicality and ease of management of a formula which is based upon the two accurately determinable factors of acreage and deliverability and which prevents waste and protects correlative rights, it is clear that the Commission had no choice except to reject as impracticable a formula based solely on reserves.

The remainder of appellants' second contention is the non sequitur that if it is impracticable to use reserve determinations as the sole criterion for allocating the pool allowable it is "equally impracticable" to use them as the sole criterion for comparing allocation formula (Br. p. 18).

In the first place, the Commission did not use reserves as the sole criterion for comparison. It compared

uncompensated drainage (Finding No. 15), use of reservoir energy (Finding No. 16), number of wells which would be within the area of tolerance on A/R factors (Finding No. 11), etc. Furthermore, appellants overlook that in its Finding No. 8 the Commission did not say that it is impracticable to determine reserves. It said that "it is impracticable to allocate production" solely on the basis of reserve determinations.

It does not follow that the reserve determinations made by the Commission have no value as criteria for measuring the effect of alternative formulae based on acreage and deliverability factors. They are in fact the best available tools for making such comparisons. The propriety of so doing is fully supported by expert testimony that even substantial changes in the reserve determinations would not materially change the results obtained by comparing the effect of various acreage and deliverability formulae on the prevention of waste and the protection of correlative rights (Hearing 2-14-65, pp. 205-206).

C. Appellants' irrelevant well-count test overlooks the necessity of selecting a formula which unwastefully permits production of the most gas with maximum protection of correlative rights. The Commission did not make this mistake.

The third contention made by appellants is that under the 60-40 formula more wells would receive more than their fair share of the pool allowable than would be the case under the 25-75 formula and, therefore, Order No. R-2259-B fails to protect correlative rights. (Br. p. 19)

This is yet another example of an erroneous conclusion, arising, in this instance, from two false premises. Appellants' minor false premise is that equity is better and better served as less and less wells receive more than their fair share of the pool allowable. Under this line of reasoning perfection is reached when no well receives more than its fair share of the pool allowable. This could occur only if all wells

received exactly their fair share or received less! We have above disposed of appellants' contention that all wells should have received exactly their fair share of the pool allowable and will not reargue that point. This reduces appellants' minor premise to the patently absurd argument that correlative rights are only protected if all wells receive less than their fair share of the pool allowable.

When exactness is not possible, is not equity best served by devising an allocation formula under which the allowables of the maximum number of the wells are brought as close to the ideal norm as possible? The Commission so believed and so found in Finding No. 11 where it said that

> "...the most reasonable basis for allocating production is... to select the allocation formula that will allow the maximum number of wells in the pool to produce with an ideal tract A/R Factor of 1.0, or with a tract A/R Factor of from 0.7 to 1.3,..."

That the Commission so believed and found is further confirmed in Finding No. 14 where it was said that:

> "...the proposed formula.../60-40/...will more adequately protect correlative rights and prevent waste by permitting more wells to receive their just and equitable share of the gas in the pool..."

Appellants' major false premise is that the considerations of the number of wells that receive more or less than their fair share of the allowable is, standing alone, relevant to the protection of correlative rights. What is relevant is consideration of the quantities of gas involved.

Appellants' conclusion that "Substantially increased drainage under the 60-40 formula is thus inevitable, . . ." (Br. p. 20) is patently false. The record contains undisputed evidence that under the 25-75 formula 69% of the non-marginal

wells in the pool were receiving only 38.8% of the total pool allowable and that the remaining 31% of such wells were receiving 61.2% of the total pool allowable and that drainage was occurring (Hearing 4-18-62, p. 39 and Consolidated 4-18-62 Exhibit No. 4).

Moreover, comparison of Columns E and H of Exhibit A of Order No. R-2259-B discloses that under the 60-40 formula the total quantity of gas which may be drained from tracts given A/R factors of less than 1.0 to those tracts having A/R factors greater than 1.0 is substantially less under the 60-40 formula than under the 25-75 formula.

These facts had obviously been considered by the Commission when it said in Finding No. 11 that under the "25-75 formula correlative rights are not being adequately protected; . . ." and when it said in Finding No. 14 that the 60-40 formula will "more adequately protect correlative rights and prevent waste by permitting more wells to receive their just and equitable share of the gas in the pool, . . ." and when it said in Finding No. 15:

> "(15) That numerous wells in the Basin-Dakota Gas Pool are capable of draining more than their just and equitable share of the gas in the pool, and that an allocation formula of 60 percent acreage plus 40 percent acreage times deliverability will, insofar as is practicable, prevent drainage between producing tracts which is not equalized by counter drainage."

POINT III.

(Answer to Appellants' Point III)

ALL FINDINGS IN COMMISSION ORDER NO. R-1670-C, AS AMENDED BY ORDER NO. R-2259-B, ARE BASED UPON AND SUPPORTED BY SUBSTANTIAL EVIDENCE; FURTHERMORE, APPELLANTS HAVE FAILED TO COMPLY WITH RULES OF THE SUPREME COURT IN CHALLENGING THE SUFFICIENCY OF THE EVIDENCE.

A. Appellants' challenge to the sufficiency of the evidence to support the Commission's Findings and Order should not be entertained nor considered by this Court since Appellants wholly failed to comply with the Rules of this Court.

Appellants' first contention in their Point III is that Order No. R-2259-B is not supported by substantial evidence.

Before discussing this contention, we point out that the Court should reject it summarily because of appellants' cavalier disregard of the Rules of the Supreme Court of New Mexico.

Appellants have ignored Rule 15(6) of the Rules of the Supreme Court wherein it is required that:

> "***A contention that a verdict, judgment or finding of fact is not supported by substantial evidence will not ordinarily be entertained, unless the party so contending shall have stated in his brief the substance of all evidence bearing upon the proposition, with proper references to the transcript***"

It will be noted that appellants have made not even one reference to the evidence bearing on their contentions nor have they made a single reference to the transcript in connection with such evidence. The annotations to Rule 15(6) (Section 21-2-1(15), N.M.S.A. (1953 Comp.) are succinct and to the point.

It should also be noted that appellants make no mention of Findings numbered 1, 2, 3, 4, 5, 6, 7, 8, 12 and 18;

that the only mention of Findings 9 and 10 are by reference to the findings of fact which appellants requested in the trial court (Br. p. 21); and that appellants' only discussion of Findings Nos. 15, 16 and 17 of Order No. R-2259-B is the bare and unsupported statement that they are under attack (Br. p. 22). They discuss only Findings, 11, 13 and 14. It follows that they have conceded that all findings except Nos. 11, 13 and 14 are supported by substantial evidence.

Of course an order of the Commission, to be valid, must be supported by substantial evidence. Continental Oil Co. v. Oil Conservation Commission, supra; Johnson v. Sanchez, 64 N.M. 478, 351 P.2d 449 (1960).

In the Johnson case, a case involving revocation of a driver's license by the motor vehicle commissioner, the court discussed the scope of review:

> "It has long been the policy in the State of New Mexico, as shown by the various decisions of this court, that on appeals from administrative bodies the questions to be answered by the court are questions of law and are actually restricted to whether the administrative body acted fraudulently, arbitrarily or capriciously, whether the order was supported by substantial evidence, and, generally, whether the action of the administrative head was within the scope of his authority."

Numerous cases are therein cited in support of this conclusion.

Applying the substantial evidence rule does not mean that the Court should or will weigh the evidence or substitute its judgment for the considered judgment of the administrative tribunal. 2 Am. Jur. 2d 469, Administrative Law, Sec. 621. That this is the rule in New Mexico is unquestioned. Continental Oil Co. v. Oil Conservation Commission, supra; Johnson v. Sanchez, supra; Ferguson-Steere Motor Co. v. State Corp.

Commission, 63 N.M. 137, 314 P.2d 894 (1957); Yarbrough v. Montoya, 54 N.M. 91, 214 P. 2d 769 (1950).

The rule is stated in 2 Am. Jur. 2d 555, Administrative Law, Sec. 675:

> "***even as to matters not requiring expertise a court may not displace the agency's choice between two fairly conflicting views, even though the court would justifiably have made a different choice had the matter been before it de novo."

Coupled with this is the generally recognized rule that the action of the Commission is presumed valid, which is specifically provided by Section 65-3-22(b), N.M.S.A. (1953 Comp.).

Petitioners, having asserted that there is no substantial evidence in the record to support Findings Nos. 11, 13 and 14 of Order No. R-2259-B, have the burden as required by Rule 15(6) supra of reviewing all of the evidence in the case, and discounting it completely as substantial evidence. They have totally failed to meet this burden.

B. In this case not only is there substantial evidence, but the great preponderance of the evidence supports the Findings and Order.

Appellants' second contention in Point III is that the record is "devoid of any evidence that waste was occurring under the 25-75 formula or that waste would be prevented more effectively by the 60-40 formula." (Br. p. 24).

In complete refutation of that statement the attention of the court is respectfully directed to the following:

(1) Witness Trueblood's testimony that uncompensated drainage between tracts would result from disproportionate withdrawals of gas (Hearing 4-18-62 pp. 22, 26-29, 31, 36, 39, Consol. Exhibit No. 1).

(2) Witness Trueblood's testimony that under the 25-75 formula drainage between tracts was occurring (Hearing 4-18-62 p. 39, Consol. Ex. No. 4).

(3) Witness Trueblood's testimony that continuance of the 25-75 formula would impair development of marginal areas in the pool thus leaving recoverable gas in the ground (Hearing 4-18-62 pp. 16-18, 24, 37-40, 52, 59, 81, 117-8, 155-6, 160).

(4) Witness Trueblood's testimony that the 25-75 formula was and would continue to permit violations of correlative rights and uncompensated drainage between tracts (Hearing 4-18-62 pp. 22-24, 28-30, 36, 39, 80, 128-9, 199-200, Consol. Exs. Nos. 1 and 4).

(5) Witness Wiedekehr's testimony that operations under the 25-75 formula were "gutting the heart of the field, gutting the good wells," causing economic waste and violating correlative rights (Hearing 4-18-62 p. 199-202).

(6) Witness Utz's testimony that the 25-75 formula did not, because of the small weight given to acreage, provide a sufficient allowable to prevent premature abandonment of low deliverability wells thus causing waste by leaving recoverable gas in the ground (Hearing 4-18-62 pp. 223-4, 248).

(7) Witness Trueblood's testimony that the 60-40 formula would prevent waste by permitting

the drilling of many wells which otherwise would be forecast as uneconomic and not be drilled, thus permitting the production of substantial quantities of gas which would otherwise be left in the ground (Hearing 4-18-62 pp. 16-18, 24, 37-40, 44, 52, 59, 67, 81, 117-8, 155-6, 160).

(8) Witness Trueblood's testimony that the 60-40 formula would aid in protecting correlative rights (Hearing 4-18-62 p. 27, 36, 39-41, 80, Consol. Exs. Nos. 1 and 4).

The foregoing is but a skeleton summary of testimony spread through approximately 40 pages of the record on these points. It completely refutes appellants' bald assertion that the record is "devoid of evidence."

C. The Commission used all relevant criteria, each supported by voluminous and credible evidence, to compare the alternative formulae and to arrive at the 60-40 one as best preventing waste and protecting correlative rights.

Appellants' third contention in Point III is that Findings 11, 13 and 14 of Order No. R-2259-B are not supported by substantial evidence because the Commission used current deliverabilities and initial recoverable reserves in comparing the two formulae (Br. p. 25).

Again we are faced with an erroneous premise leading to a false conclusion. The erroneous premise is that there is a direct relationship between deliverability and reserves. From this premise appellants reach the false conclusion that the use of current deliverabilities and initial reserves resulted in a meaningless comparison of the two formulae.

The Court will note that appellants have adopted this erroneous premise in complete disregard of Finding No. 10 of Order No. R-2259-B wherein the Commission stated:

> "(10) That in the Basin-Dakota Gas Pool there is no direct correlation between deliverability and reserves, or acreage and reserves, and that, therefore, neither should be used as the sole criterion for distributing the total pool allowable among the tracts."

This finding is clearly supported by the record. If one thing was conclusively established in the long and difficult proceedings before the Commission it was that there is no direct relationship between deliverabilities and reserves. The record shows that Finding No. 10 is supported by substantial evidence (4-18-62 Hearing pp. 165-6, 170-2, 628-644, Consol. Ex's Nos. 6, 7 and 8) (2-14-63 Hearing p. 28, pp. 199-206, Consol. Ex. No. 9).

It should also be noted that Finding No. 10 does not distinguish between current and initial deliverabilities or current and initial reserves. It is a categorical statement of fact broad enough to encompass any combination of past, present and future determination of deliverabilities and reserves.

In view of the Commission's finding, and particularly in view of its recognition that deliverabilities could not be used as the sole criterion, it is obvious that the Commission was not comparing deliverabilities and reserves but was using them independently in various formulae to test their relative value in the prevention of waste and the protection of correlative rights.

The use of current deliverabilities to compute percentages of pool allowable is not invalidated by the independent use of initial reserves to determine percentage of pool reserves; conversely the use of initial reserves to determine percentage of pool reserves is not invalidated by the independent use of

current deliverabilities to determine percentages of pool allowable. Therefore, appellants' argument must fall.

It is clear that the Commission's use of initial reserves and current deliverabilities had no quantitative effect on the allocation of gas under any of the formulae compared but was merely a useful test made by the Commission in appraising the comparative reasonableness of the formulae and their relative value in preventing waste and protecting correlative rights.

If appellants concede that there is no direct relationship between deliverabilities and reserves but still contend that the Commission erred in using initial reserves to evaluate the formulae, their contention can only be based upon the proposition that the Commission should have used current recoverable gas reserves and current deliverabilities in making its computations.

The fallacy of this argument is apparent in view of the language of Section 65-3-13(c), N.M.S.A. (1953 Comp.) which provides that "The Commission shall allocate the allowable production among the gas wells in the pool delivering to a gas transportation facility upon a reasonable basis and recognizing correlative rights . . ."

As the record shows, because of the relatively small amount of actual well production to the date of the hearings in the Basin-Dakota Pool, the result of using initial or current reserves would have been substantially the same and would not have resulted in more than a five per cent change. (Hearing 2-14-63, pp. 205-206).

Considering the Commission's Finding No. 11 of Order No. R-2259-B that an A/R Factor of from 0.7 to 1.3 was within

a reasonable tolerance of the ideal factor due to inherent variance in interpreting and computing reserves, it is readily apparent that a determination of current reserves would not have been a more meaningful computation. As the result of using initial or current reserves would have been substantially the same, clearly the use of either was reasonable. The Commission's use of initial recoverable gas reserves to determine percentage of pool reserves in comparing the two formulae resulted in the selection of a formula (60-40) which would allocate the allowable production upon a reasonable basis and recognizing correlative rights, thereby fully complying with the statutory mandate.

POINT IV.

APPELLANTS HAVE NOT MADE ANY ATTACK ON THE TRIAL COURT'S FINDINGS AS DISTINGUISHED FROM THOSE OF THE COMMISSION AND THE QUESTION OF SUFFICIENCY OF THE EVIDENCE TO SUPPORT THE FINDINGS OF THE TRIAL COURT HAS NOT BEEN RAISED, THEREFORE THE TRIAL COURT'S FINDINGS ARE CONCLUSIVE ON APPEAL.

Another critical matter should be brought to the attention of the Court. In their Brief-in-Chief appellants have relied on facts contrary to those found by the trial court and have failed to state the substance of all of the evidence in the record bearing upon their contentions. The same treatment, as shown in Answer to Appellants' Point III, was given the Commission findings. The Statement of Facts relates almost entirely to appellants' view of the evidence. Appellants omit any reference whatsoever to the findings and conclusions of the trial court.

This appeal is governed by the Rules of Civil Procedure and the Rules of this Court; Section 65-3-22(d), N.M.S.A., (1953 Comp.) provides:

> "(d) The applicable rules of practice and procedure in civil cases for the courts of this state shall govern the proceedings for review, and any appeal therefrom to the Supreme Court of this state, to the extent such rules are consistent with the provisions of this act."

No inconsistency with the Oil Conservation Act can be shown which would excuse compliance with Supreme Court Rule 15(6), (Section 21-2-1(15) 6 N.M.S.A. (1953 Comp.)).

It is well settled in New Mexico that the findings of fact made by the trial court are the findings upon which

the case must rest, and that this Court will not search the record in an effort to find facts with which to overturn the findings made by the lower court. Totah Drilling Company v. Abraham, 64 N.M. 380, 328 P. 2d 1083 (1958); Davies v. Rayburn, 51 N.M. 309, 183 P.2d 615 (1947); Entertainment Corporation of America v. Halberg, 69 N.M. 104, 364 P.2d 358 (1961); Hyde v. Anderson, 68 N.M. 50, 358 P.2d 619 (1961); State ex rel. State Highway Commission v. Tanny, 68 N.M. 117, 359 P.2d 350 (1961); and see Gore v. Cone, 70 N.M. 29, 287 P.2d 229 (1955); and Cross v. Ritch, 61 N.M. 175, 297 P.2d 319 (1956) and the cases cited therein.

Noting again that there has been no attack on the findings made by the trial court on appeal from the Oil Conservation Commission, as contemplated by Supreme Court Rule 15(6), all that appellants have done is to set forth the substance of the findings which they requested of the District Court. In Hyde v. Anderson, supra at 68 N.M. 52 this Court stated:

> "The appellant's proposed finding is in direct conflict with the finding made by the trial court, which was not attacked, and, being supported by substantial evidence, under our many decisions, must be accepted in this court."

The situation here is analogous to that presented in Swallows v. Sierra, 68 N.M. 338, 339, 362 P. 2d 391 (1961), where this Court, after pointing out that appellants' brief completely omitted any reference to the findings and conclusions of the trial court, and then set out in detail the requested findings of fact which were denied, stated:

> "The complete failure to follow proper appellate practice is determinative of this appeal. Supreme Court Rule 15, subds. 6 and 14.... The point relied upon does not submit an issue for our determination."

This rule was applied to an appeal from an administrative hearing in Floeck v. Bureau of Revenue, 44 N.M. 194, 100 P.2d 225 (1940) where this Court pointed to the necessity for compliance with Section 6 and Section 14 of Rule 15.

Is the district court nothing but an empty corridor through which appellants were obliged to pass in their journey from the Oil Conservation Commission to the Supreme Court? Are its findings without meaning or so insubstantial that they may be ignored on an appeal to the Supreme Court?

It is submitted that appellants, having made no attack on the findings entered by the district court, and indeed having made no citation to said findings nor to any of the evidence contained in the record before the Commission, are bound by the findings of the trial court. The findings are conclusive on appeal unless set aside by direct attack. Provencio v. Price, supra.

CONCLUSION

Based upon the argument and authorities presented in this brief, it is respectfully submitted that the judgment of the district court in affirming Order No. R-2259-B of the Oil Conservation Commission of New Mexico should be sustained.

In summary, the Commission, in entering its order, made all of the findings required by law, including the specific findings mentioned by this Court in Continental Oil Company v. Oil Conservation Commission, supra. In its Order No. R-2259-B, and Exhibit A attached to and made a part of that order, the Commission found the amount of recoverable gas under each producer's tract, the total amount of recoverable gas in the pool, and the proportion that one bears to the other. These findings are conceded. In Column J of Exhibit A, Order No. R-2259-B, the Commission found the proportion of the arrived at proportion that could be recovered without waste, and Finding 14 of the order determined that this amount could be recovered without waste.

In any event, the statute only requires the Commission, insofar as it is practicable, to determine the amount of each producer's recoverable gas in the reservoir, and to afford him the opportunity to produce such amount, insofar as he is able to obtain it without waste. Although in this instance the Commission did so, it was not required to determine quantitatively how much of the recoverable gas could be produced without waste.

"So far as it is practical to do so" the Commission has made all of the basic conclusions of fact or findings required by law.

In making its determinations the Commission relied upon the only tool available to it as a measure of the rights

of an individual operator--reserve calculations. This is in accordance with the provisions of statute and directions of this Court in the Continental case. While frequent recalculations would be required if reserve figures were used as the sole basis for allocating the monthly allowable assigned to the pool, that fact does not render a reserve calculation, carefully made by expert engineers, invalid as a measure of the rights of the owners in the pool, including correlative rights as defined by law.

As shown, the 60-40 formula substantially reduced the great disparity in allowables that would be assigned to wells of high deliverability as compared to wells of low deliverability with equal reserves, and it bunched allowables as closely as practicable around the ideal concept of an allowable/reserve factor of 1.0.

There is substantial evidence in the record to show that waste was occurring and would occur, as we have shown by reference to the transcript. Appellants, although contending the Commission's order was not supported by substantial evidence, have not stated in their brief the substance of all evidence bearing upon the proposition with proper references to the transcript.

The appellants have failed to attack the findings made by the trial court, or to raise the question of sufficiency of the evidence to support the findings of the trial court. These findings, then, are conclusive on this appeal.

Respectfully submitted,

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APPENDIX

TO ANSWER BRIEF OF APPELLEES

GOVERNOR
JACK M. CAMPBELL
CHAIRMAN

State of New Mexico
Oil Conservation Commission

LAND COMMISSIONER
GUYTON B. HAYS
MEMBER

P. O. BOX 2088
SANTA FE

STATE GEOLOGIST
A. L. PORTER, JR.
SECRETARY - DIRECTOR

TO WHOM IT MAY CONCERN

I, A. L. PORTER, Jr., Secretary-Director of the New Mexico Oil Conservation Commission, do hereby certify that the attached is a true and correct copy of Commission Order No. R-2259-B.

A. L. Porter, Jr.

A. L. PORTER, Jr.
Secretary-Director

February 19, 1965

IN WITNESS WHEREOF, I have affixed my hand and notarial seal this 19th day of February, 1965.

Notary Public

My Commission Expires:

September 22, 1965

BEFORE THE OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
COMMISSION OF NEW MEXICO FOR
THE PURPOSE OF CONSIDERING:

CASE No. 2504
Order No. R-2259-B

APPLICATION OF CONSOLIDATED OIL & GAS, INC.,
FOR AN AMENDMENT OF ORDER NO. R-1670-C,
CHANGING THE ALLOCATION FORMULA FOR THE
BASIN-DAKOTA GAS POOL, SAN JUAN, RIO ARRIBA
AND SANDOVAL COUNTIES, NEW MEXICO.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for rehearing at 9 o'clock a.m. on February 14, 1963, at Santa Fe, New Mexico, before the Oil Conservation Commission of New Mexico, hereinafter referred to as the "Commission."

NOW, on this 3rd day of July, 1963, the Commission, a quorum being present, having considered the testimony presented and the exhibits received at said hearing, and being fully advised in the premises,

FINDS:

(1) That due public notice having been given as required by law, the Commission has jurisdiction of this cause and the subject matter thereof.

(2) That Order No. R-1670-C, entered by the Commission on November 4, 1960, established Special Rules and Regulations for the Basin-Dakota Gas Pool and adopted, by reference, Rule 9(C) of the General Rules applicable to prorated gas pools in Northwest New Mexico, as set forth in Order No. R-1670.

(3) That Rule 9(C) of the General Rules applicable to prorated gas pools in Northwest New Mexico, as set forth in Order No. R-1670, allocates production on the basis of 25 percent acreage plus 75 percent acreage times deliverability, hereinafter referred to as the 25-75 formula.

(4) That the applicant, Consolidated Oil & Gas, Inc., seeks amendment of the Special Rules and Regulations for the Basin-Dakota Gas Pool to allocate production on the basis of 60 percent acreage plus 40 percent acreage times deliverability.

(5) That the initial recoverable gas reserves in the Basin-Dakota Gas Pool, insofar as can be determined, total approximately 2.255 trillion cubic feet, of which approximately 96 billion cubic feet is attributed to marginal wells, which are permitted to produce at capacity.

(6) That the initial recoverable gas reserves underlying each non-marginal tract in the Basin-Dakota Gas Pool are as shown in Column C, Tract Reserves, of Exhibit A attached hereto and made a part hereof.

(7) That the percent of the total pool reserves attributable to each non-marginal tract in the Basin-Dakota Gas Pool is as shown in Column D, Percent of Pool Reserves, of Exhibit A.

(8) That it is impracticable to allocate production solely on the basis of the percentage of pool reserves due to the continuous fluctuation in reserve computations resulting from new completions in the pool and re-evaluation of reserves of existing wells.

(9) That the tract acreage factor for each non-marginal well in the Basin-Dakota Gas Pool is as shown in Column A of Exhibit A; that the deliverability for each non-marginal well, insofar as can be determined, is as shown in Column B of Exhibit A.

(10) That in the Basin-Dakota Gas Pool there is no direct correlation between deliverability and reserves, or acreage and reserves, and that, therefore, neither should be used as the sole criterion for distributing the total pool allowable among the tracts.

(11) That the most reasonable basis for allocating production in the Basin-Dakota Gas Pool is to determine, for each proposed formula, the percentage of total pool allowable apportioned to each non-marginal tract as compared to its percentage of total pool reserves, said relationship hereinafter referred to as the tract's A/R Factor, and to select the allocation formula that will allow the maximum number of wells in the pool to produce with an ideal tract A/R Factor of 1.0, or with a tract A/R Factor of from 0.7 to 1.3, which, due to inherent variance in interpreting and computing reserves, is within a reasonable tolerance.

(12) That the percentage of deliverability and the percentage of acreage included in the allocation formula affect the percentage of the total pool allowable assigned to each non-marginal well in the pool, thereby affecting the number of wells in the pool producing with a tract A/R Factor of from 0.7 to 1.3.

(13) That under the present 25-75 formula, correlative rights are not being adequately protected; that the protection of correlative rights is a necessary adjunct to the prevention of waste, and that waste will result unless the Commission acts to protect correlative rights.

(14) That, based upon the December 1962 pool allowable, a comparison of the number of non-marginal wells producing with a tract A/R Factor of from 0.7 to 1.3 under each formula as identified by an asterisk in Columns G and J of Exhibit A, and of the total volume of gas allocated to the wells in the 0.7 to 1.3 range under each formula, establishes that the proposed formula of 60 percent acreage plus 40 percent acreage times deliverability will more adequately protect correlative rights and prevent waste by permitting more wells to receive their just and equitable share of the gas in the pool, insofar as can be determined.

(15) That numerous wells in the Basin-Dakota Gas Pool are capable of draining more than their just and equitable share of the gas in the pool, and that an allocation formula of 60 percent acreage plus 40 percent acreage times deliverability will, insofar as is practicable, prevent drainage between producing tracts which is not equalized by counter drainage.

(16) That an allocation formula of 60 percent acreage plus 40 percent acreage times deliverability will, insofar as it is practicable to do so, afford to the owner of each property in the pool the opportunity to use his just and equitable share of the reservoir energy.

(17) That Order No. R-1670-C should be amended to provide an allocation formula for the Basin-Dakota Gas Pool in San Juan, Rio Arriba, and Sandoval Counties, New Mexico, based 60 percent on acreage and 40 percent on acreage times deliverability.

(18) That, due to the time required to administer a new allocation formula for a prorated gas pool, this order should not be effective until August 1, 1963, the beginning of the next six-month proration period for the Basin-Dakota Gas Pool.

IT IS THEREFORE ORDERED:

(1) That the Special Rules and Regulations for the Basin-Dakota Gas Pool, as promulgated by Order No. R-1670-C, are hereby amended by adoption of the following:

RULE 9(C): The pool allowable remaining each month after deducting the total allowable assigned to marginal wells shall be allocated among the non-marginal wells entitled to an allowable in the following manner:

1. Forty percent (40%) of the pool allowable remaining to be allocated to non-marginal wells shall be allocated among such wells in the proportion that each well's "AD Factor" bears to the total "AD Factor" for all non-marginal wells in the pool.

2. Sixty percent (60%) of the pool allowable remaining to be allocated to non-marginal wells shall be allocated among such wells in the proportion that each well's acreage factor bears to the total acreage factor for all non-marginal wells in the pool.

(2) That Order No. R-2259 is hereby superseded.

(3) That jurisdiction of this cause is retained for the entry of such further orders as the Commission may deem necessary.

(4) That this order shall be effective August 1, 1963, the beginning of the next six-month proration period for the Basin-Dakota Gas Pool.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

s/ Jack M. Campbell

JACK M. CAMPBELL, Chairman

s/ E. S. Walker
E. S. WALKER, Member

s/ A. L. Porter, Jr.
A. L. PORTER, Jr., Member & Secretary

S E A L

esr/

EXHIBIT A

ORDER NO. R-2259-B

ALLOCATION FORMULAE 25 PERCENT ACREAGE 75 PERCENT ACREAGE TIMES DELIVERABILITY

AND

60 PERCENT ACREAGE 40 PERCENT ACREAGE TIMES DELIVERABILITY

BASIN DAKOTA TRACT/POOL RESERVES AND ALLOCATION

ARRANGED IN THE ORDER OF PIPELINE AND OPERATOR

DESCRIP.				COL A AF	COL B DAILY DELIV	COL C TRACT RES. MMCF	COL D PCT. POOL RES.	25—75 FORMULA			60—40 FORMULA		
								COL E MCF ALLOW	COL F PCT. POOL ALLOW	COL G A/R FACTOR	COL H MCF ALLOW	COL I PCT. POOL ALLOW	COL J A/R FACTOR
WELL	S	T	R										
EL PASO NATURAL GAS PIPELINE								SYSTEM					
ADOBE				COMPANY									
1	E	23	11W	9.92	330	947	.043866	3874	.056228	*1.288	6322	.091772	2.09
1	G	23	11W	1.992	333	3780	.175088	9477	.137555	*.799	9680	.140558	*.803
1	N	23	11W	9.92	337	9550	.044400	4111	.059707	1.336	6448	.093636	2.136
1	Z	23	11W	1.000	563	17335	.008036	5434	.007889	.981	7552	.109962	1.136
1	A	23	11W	1.000	558	15078	.009693	5539	.008033	*1.010	7557	.110050	*1.152
1	K	23	11W	1.000	438	12305	.009550	4778	.006933	*1.173	7174	.104158	*1.106
1	K	23	11W	.998	163	2300	.100652	3267	.047454	.744	6276	.091156	*.866
1	M	23	11W	1.000	375	2130	.098666	4447	.064455	.654	6998	.101553	*1.033
1	G	21	11W	1.000	551	1000	.046322	5371	.077799	1.688	7491	.108727	2.355
AINSLIE				CORRELATIVE INVESTMENT COMPANY									
1	M	20	9E	25	930	1200	.055588	7361	.106812	1.922	8552	.124122	2.232
AMERADA				PETROLEUM CORPORATION									
3	A	22	5E	1.000	168	5088	.235619	3360	.048821	.211	6418	.093124	.405
6	E	22	5E	1.000	395	5597	.112029	4552	.066115	.551	7054	.102446	*.855
6	D	22	5E	1.000	944	3381	.111028	5471	.079411	7.202	3380	.049066	4.455
9	A	22	5E	1.000	417	5000	.111579	2439	.035400	3.066	1763	.025592	2.212
9	A	22	5E	1.000	233	1500	.069447	1474	.021400	3.088	1248	.018122	2.612
AZTEC				OIL AND GAS COMPANY									
3	C	22	11W	1.000	458	3164	.146555	4883	.070900	.488	7230	.104909	*.726
4	D	22	11W	1.000	1233	3375	.156322	8942	.129888	*.833	9395	.136393	*.877
2	D	22	11W	1.000	258	3094	.143330	1605	.023321	1.633	1319	.191515	1.345
BAYVIEW				CORPORATION									
1	M	27	12W	4.8	186	3726	.172588	1658	.024107	.142	3105	.045107	.262
BENSON-MONTIN-GREER DRILLING CORPORATION													
X	A	22	6E	1.000	126	3302	.106773	3140	.045636	.433	6300	.091422	.867
X	C	22	6E	1.000	220	3599	.116203	5009	.108744	*.955	7796	.113122	*.914

DESCRIP WELL	S	T	R	COL A	COL B	COL C	COL D	COL E	COL F	COL G	COL H	COL I	COL J
1P	25	29	11	100	2159	3600	.16674	13815	.2005	*1.20	11994	.1740	*1.04
1D	27	26	11	100	2789	4192	.19416	17123	.2485	*1.28	13758	.1996	*1.03
1E	21	29	13	100	119	1900	.08800	3103	.0450	.51	6281	.0911	*1.04
1C	19	29	10	100	1013	2263	.10482	7797	.1131	*1.08	8784	.1275	*1.22
1A	9	27	9	100	747	2500	.11579	6400	.0929	*.80	8039	.1167	*1.01
1C	25	29	11	100	2214	2671	.12371	14103	.2047	1.65	12148	.1763	1.43
1D	30	29	10	100	2146	2600	.12042	13746	.1995	1.66	11957	.1735	1.44
D 1I	24	29	11	100	1880	3832	.17749	12350	.1792	*1.01	11212	.1627	*.92
TEXACO INC													
1F	12	30	12	100	191	3500	.16211	3481	.0505	.31	6482	.0941	.58
TEXAS EASTERN TRANSMISSION CORPORATION													
1P	35	30	12	100	767	2900	.13432	6505	.0944	*.70	8095	.1175	*.87
1M	20	30	12	100	758	1800	.08337	6458	.0937	*1.12	8070	.1171	1.40
1M	21	30	12	100	321	1742	.08068	4164	.0604	*.75	6846	.0994	*1.23
TIDEWATER OIL COMPANY													
1E	24	29	11	100	2157	6141	.28443	13804	.2003	*.70	11988	.1740	.61
1F	18	29	10	100	1047	6141	.28444	7976	.1157	.41	8880	.1289	.45
1A	19	29	10	100	1979	3663	.16966	12870	.1868	*1.10	11490	.1667	*.98
1J	12	29	11	100	1293	2439	.11296	9267	.1345	*1.19	9568	.1389	*1.23
1H	13	29	11	100	825	5000	.23159	6815	.0989	.43	8261	.1199	.52
J. GLENN TURNER													
11D	15	26	9	100	570	1700	.07874	5471	.0794	*1.01	7544	.1095	1.39
12J	15	26	9	100	1562	1700	.07873	10680	.1550	1.97	10322	.1498	1.90
13E	14	26	9	100	969	1700	.07874	7566	.1098	1.39	8661	.1257	1.60
14L	14	26	9	100	1197	1700	.07874	8763	.1272	1.62	9300	.1350	1.71
1N	17	29	10	100	2317	4310	.19963	14644	.2125	*1.06	12436	.1805	*.90
1L	8	29	10	100	1010	6572	.30439	7781	.1129	.37	8776	.1274	.42
2G	8	29	10	100	1185	2909	.13474	8700	.1263	*.94	9266	.1345	*1.00
2H	17	29	10	100	1410	3017	.13974	9882	.1434	*1.03	9896	.1436	*1.03
WESTERN NATURAL GAS CO.													
1M	32	28	11	100	1175	3300	.15284	8648	.1255	*.82	9238	.1341	*.88
1C	10	27	11	100	810	3414	.15813	6731	.0977	.62	8216	.1192	*.75
2M	3	27	11	100	1400	3000	.13895	9829	.1426	*1.03	9868	.1432	*1.03
WILSHIRE OIL CO OF TEXAS													
1D	27	25	9	102	296	2400	.11116	4113	.0597	.54	6912	.1003	*.90
2N	21	25	9	100	413	2000	.09263	4647	.0674	*.73	7104	.1031	*1.11
PAN AMERICAN GAS COMPANY PIPELINE SYSTEM													
PAN AMERICAN PETROLEUM CORPORATION													
960	18	29	12	100	3227	5735	.26563	19423	.2819	*1.06	14985	.2174	*.82
102C	13	29	13	100	838	5700	.26401	6878	.0998	.38	8294	.1204	.46
106A	24	29	13	100	2627	5700	.26400	16272	.2361	*.89	13304	.1931	*.73
107D	19	29	12	100	997	5700	.26401	7713	.1119	.42	8740	.1268	.48
108J	13	29	13	100	1797	5800	.26864	11914	.1729	.64	10980	.1593	.59
109M	18	29	12	100	337	5735	.26562	4248	.0616	.23	6891	.1000	.38
110G	19	29	12	100	2916	4900	.22696	17790	.2582	*1.14	14114	.2048	*.90
111K	20	29	12	100	1956	3800	.17600	12749	.1850	*1.05	11435	.1658	*.94
PAN AMERICAN PETROLEUM CORP. PIPELINE SYSTEM													
PAN AMERICAN PETROLEUM CORPORATION													
1L	9	26	11	100	4119	2700	.12506	24106	.3498	2.80	17483	.2537	2.03

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DESCRIPTION WELL S T R	COL A	COL B	COL C	COL D	COL E	COL F	COL G	COL H	COL I	COL J
2N 10 26 11	100	247	3000	.13395	3775	.0548	.39	6639	.0963	.69
PLATEAU INCORPARTED GAS PIPELINE SYSTEM										
PAN AMERICAN PETROLEUM CORPORATION										
1 12 29 11	100	1858	3700	.17137	12234	.1775	*1.04	11151	.1618	* .94
SOUTHERN UNION GAS PIPELINE SYSTEM										
ASPEN CRUDE PURCHASING COMPANY										
1J 5 31 13	100	76	900	.04169	2877	.0418	*1.00	6160	.0894	2.14
ATLANTIC REFINING COMPANY										
1N 16 29 10	100	1109	1900	.08800	8301	.1205	1.37	9053	.1314	1.49
1G 36 29 11	100	1676	3700	.17137	11278	.1637	* .96	10641	.1544	* .90
AZTEC OIL AND GAS COMPANY										
7I 14 28 11	100	7183	4623	.21412	40195	.5833	2.72	26063	.3782	1.77
8D 14 28 11	100	3193	3900	.18064	19244	.2793	1.55	14889	.2161	*1.20
9K 16 28 10	100	4559	5257	.24349	26417	.3833	1.57	18715	.2716	*1.12
10M 15 28 10	100	3658	5958	.27595	21686	.3147	*1.14	16192	.2350	* .85
11A 15 28 10	100	5201	6776	.31385	29788	.4323	1.38	20513	.2977	* .95
12A 16 28 10	100	3846	5800	.26863	22673	.3290	*1.22	16718	.2426	* .90
15MM 31 29 9	78	1428	1800	.08337	7781	.1129	1.35	7758	.1126	1.35
16MM 30 29 9	84	844	1500	.06948	5804	.0842	*1.21	6981	.1013	1.46
3L 6 29 11	96	955	3368	.15599	7193	.1044	.67	8277	.1201	* .77
1H 7 29 11	100	1212	3484	.16137	8842	.1283	* .80	9342	.1356	* .84
4B 18 29 11	100	1205	4300	.19917	8805	.1278	.64	9322	.1353	.68
6L 18 29 11	100	1043	4300	.19916	7955	.1154	.58	8868	.1287	.65
1E 20 29 11	100	1184	3500	.16211	8695	.1262	* .78	9263	.1344	* .83
3K 5 29 10	100	518	1900	.08800	5198	.0754	* .86	7398	.1074	*1.22
4G 4 29 10	100	786	1700	.07874	6605	.0959	*1.22	8149	.1182	1.50
11L 7 27 9	100	1985	2754	.12755	12901	.1872	1.47	11506	.1670	1.31
12H 7 27 9	98	2615	1836	.08504	15885	.2305	2.71	13005	.1887	2.22
13A 12 27 10	100	1669	2025	.09379	11242	.1631	1.74	10621	.1541	1.64
14M 12 27 10	100	1018	2800	.12969	7823	.1135	* .88	8798	.1277	* .98
15B 6 27 9	122	1109	1653	.07656	10128	.1470	1.92	11045	.1603	2.09
16K 6 27 9	109	1006	1561	.07230	8459	.1228	1.70	9554	.1386	1.92
17N 5 27 9	105	927	2203	.10204	7713	.1119	*1.10	8971	.1302	*1.28
18B 5 27 9	100	419	1744	.08078	4678	.0679	* .84	7121	.1033	*1.28
14K 10 29 10	100	635	1600	.07410	5812	.0843	*1.14	7726	.1121	1.51
15M 3 29 10	100	761	1500	.06948	6474	.0939	1.35	8079	.1172	1.69
16H 3 29 10	100	674	1400	.06484	6017	.0873	1.35	7835	.1137	1.75
1B 29 28 10	100	2689	3600	.16674	16598	.2409	1.44	13478	.1956	*1.17
4J 29 27 9	100	906	2020	.09356	7235	.1050	*1.12	8485	.1231	1.32
5C 29 27 9	100	350	4633	.21459	4316	.0626	.29	6928	.1005	.47
2C 23 28 11	100	3870	4500	.20843	22799	.3308	1.59	16785	.2436	*1.17
1P 32 29 11	98	2024	2555	.11834	12844	.1864	1.58	11383	.1652	1.40
4K 28 29 11	100	1189	4000	.18526	8721	.1266	.68	9277	.1346	* .73
5I 29 29 11	100	794	3700	.17138	6647	.0965	.56	8171	.1186	.69
14F 23 28 10	100	3674	4089	.18939	21770	.3159	1.67	16236	.2356	*1.24
15N 14 28 10	100	6793	4790	.22185	38147	.5536	2.50	24971	.3624	1.63
16L 24 28 10	100	3906	2570	.11904	22988	.3336	2.80	16886	.2450	2.06
17A 24 28 10	100	1604	2453	.11361	10900	.1582	1.39	10439	.1515	1.33
18A 13 28 10	100	1955	3154	.14609	12743	.1849	*1.27	11422	.1658	*1.13
19G 14 28 10	100	5918	4800	.22232	33553	.4869	2.19	22531	.3268	1.47
20N 13 28 10	100	2334	3200	.14821	14734	.2138	1.44	12484	.1812	*1.22
1M 17 29 11	100	1194	4200	.19453	8748	.1269	.65	9291	.1348	.69
1D 19 29 11	100	1198	4300	.19917	8769	.1272	.64	9302	.1350	.68

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