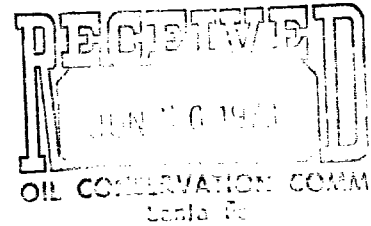


D. D. ARCHER
DISTRICT JUDGE
P. O. Box 98
CARLSBAD, NEW MEXICO
88240

June 25, 1973



Mr. Richard S. Morris
Attorney at Law
P. O. Box 2307
Santa Fe, New Mexico 87501

Mr. William F. Carr
Special Assistant Attorney General
P. O. Box 2088
Santa Fe, New Mexico 87501

Mr. William J. Cooley
Attorney at Law
152 Petroleum Center Building
Farmington, New Mexico 87401

Gentlemen:

Re: David Fasken vs. Oil Conservation Commission
Eddy County Nos. 28482 and 28483

I have set the above matters for hearing at 9:30 A.M.,
August 1, 1973, in the District Courtroom in the Eddy
County Courthouse, Carlsbad, New Mexico.

Very truly yours,

A handwritten signature in cursive script, appearing to read "D. D. Archer".

D. D. Archer

DDA/mg

OIL CONSERVATION COMMISSION

P. O. BOX 2088

SANTA FE, NEW MEXICO 87501

June 4, 1973

The Honorable D. D. Archer
District Judge
County Court House
Carlsbad, New Mexico 88220

Re: David Fasken vs. New Mexico
Oil Conservation Commission,
Eddy County Cause Nos.
28482 and 28483

Dear Judge Archer:

This letter will confirm our telephone conversation of May 31, 1973, in which I informed you that it is impossible for me to argue the motions in the above-captioned cases on June 12, 1973.

I have contacted Mr. Richard S. Morris, Attorney for David Fasken, and informed him of this problem. He has no objection to vacating the setting and resetting as soon as possible after June 15th.

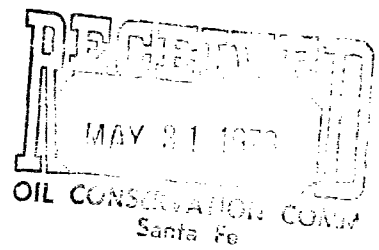
Very truly yours,

WILLIAM F. CARR
Special Assistant Attorney General
Oil Conservation Commission

WFC/ar

cc: Mr. Richard S. Morris
Mr. Wm. J. Cooley
Mrs. Frances M. Wilcox

NOTICE OF SETTING OF CASE



David Fasken

Plaintiff

vs.

No. 28482 & 28483

New Mexico Oil Conservation Commission

TO: Montgomery, Federici, Andrews, Hannahs & Morris
William F. Carr, Special Assistant Attorney General
Burr & Cooley

Hearings on Motions

You are hereby notified that the above entitled case has been set for trial at Carlsbad, New Mexico, on the 12th day of June, 1973 at 9:30 o'clock A. M.

FRANCES M. WILCOX

CLERK OF THE DISTRICT COURT

Mailed: May 30, 1973



OIL CONSERVATION COMMISSION

STATE OF NEW MEXICO
P. O. BOX 2088 - SANTA FE
87501

May 29, 1973

I. R. TRUJILLO
CHAIRMAN
LAND COMMISSIONER
ALEX J. ARMIJO
MEMBER
STATE GEOLOGIST
A. L. PORTER, JR.
SECRETARY - DIRECTOR

The Honorable D. D. Archer
District Judge
County Court House
Carlsbad, New Mexico 88220

Re: David Fasken vs. New Mexico Oil
Conservation Commission, Eddy
County Cause Nos. 28482 and
28483

Dear Judge Archer:

We have filed motions for Summary Judgment in the above-captioned cases.

On April 12, 1973, Richard S. Morris, attorney for David Fasken, also filed motions for Summary Judgment in these cases.

We would appreciate your setting Respondent's motions for hearing on the same day as those of Petitioner. I estimate our motions will require about two hours additional time to argue.

Very truly yours,

A handwritten signature in black ink, reading "William F. Carr", is written over the typed name.

WILLIAM F. CARR
Special Assistant Attorney General
Oil Conservation Commission

WFC/dr

cc: Mr. Richard Morris
Mr. William J. Cooley
Mrs. Frances Wilcox

OIL CONSERVATION COMMISSION

P. O. BOX 2088

SANTA FE, NEW MEXICO 87501

May 25, 1973

Mrs. Frances M. Wilcox
Clerk
District Court of the Fifth
Judicial District
Carlsbad, New Mexico

Re: David Fasken vs. New Mexico Oil
Conservation Commission, Eddy
County Cause Nos. 28482 and
28483

Dear Mrs. Wilcox:

I transmit herewith the Oil Conservation Commis-
sion's Motions for Summary Judgment in the above-
entitled cases.

Very truly yours,

WILLIAM F. CARR
Special Assistant Attorney General
Oil Conservation Commission

WFC/dx

encls.

MONTGOMERY, FEDERICI, ANDREWS, HANNAHS & MORRIS

ATTORNEYS AND COUNSELORS AT LAW

J. O. SETH (1883-1963)

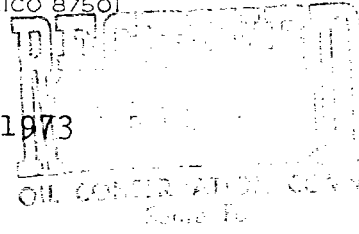
A. K. MONTGOMERY
WM. R. FEDERICI
FRANK ANDREWS
FRED C. HANNAHS
RICHARD S. MORRIS
SUMNER G. BUELL
SETH D. MONTGOMERY
FRANK ANDREWS III

OWEN M. LOPEZ
JEFFREY R. BRANNEN
JOHN BENNETT POUND

350 EAST PALACE AVENUE
SANTA FE, NEW MEXICO 87501

POST OFFICE BOX 2307
AREA CODE 505
TELEPHONE 982-3876

April 12, 1973



The Honorable D. D. Archer
District Judge
County Court House
Carlsbad, NM 88220

Re: David Fasken vs. New Mexico Oil Conservation
Commission, Eddy County Cause Nos. 28482 & 28483

Dear Judge Archer:

The subject cases are appeals from orders of the New Mexico Oil Conservation Commission which involve alternative applications covering the same lands and which pertain to the same problems.

We have filed Motions for Summary Judgment in both of these cases which we believe to be the appropriate procedure in as much as the District Court review is required to be on the record made before the Commission. We would appreciate your setting these motions for hearing and allowing approximately two hours for the Petitioner's argument. Although I can not speak for the Respondent, I would estimate it would require at least one hour for its argument in response to the motion.

Very truly yours,

Richard S. Morris

RSM:sp
5086-73-2

Enc. &

cc: Mrs. Frances Wilcox
Mr. William F. Carr
Mr. William J. Cooley
Mr. Richard S. Brooks

OIL CONSERVATION COMMISSION

P. O. BOX 2088

SANTA FE, NEW MEXICO 87501

January 30, 1973

Mrs. Frances M. Wilcox
Clerk
District Court of the Fifth
Judicial District
Carlsbad, New Mexico

Re: David Fasken vs Oil Conservation Commission
Cause No. 28482 in the District Court of
Eddy County, New Mexico.
David Fasken vs Oil Conservation Commission
Cause No. 28483 in the District Court of
Eddy County, New Mexico.

Dear Mrs. Wilcox:

We transmit herewith certified copies of the
transcripts of proceedings and all exhibits in the
above-entitled cases.

Sincerely,

WILLIAM F. CARR
Special Assistant Attorney General
Oil Conservation Commission

WFC/dr

enclosures

cc: Mr. Richard S. Morris

OIL CONSERVATION COMMISSION

P. O. BOX 2088

SANTA FE, NEW MEXICO 87501

INDEX OF DOCUMENTS

Re: David Fasken vs Oil Conservation Commission,
Cause No. 28482 in the District Court of
Eddy County, New Mexico.
David Fasken vs Oil Conservation Commission,
Cause No. 28483 in the District Court of
Eddy County, New Mexico.

Docket No. 12-72, June 7, 1972.

Transcript of Oil Conservation Commission examiner
hearing, June 7, 1972.

Applicant's Exhibits 1 through 9, Oil Conservation Commission
Case No. 4733, June 7, 1972.
Order No. R-4409.

Docket No. 27-72, November 21, 1972.

Transcript of de novo hearing before the New Mexico
Oil Conservation Commission, November 21, 1972.

Applicant's Exhibits 1 through 11, Oil Conservation Commission,
Case No. 4733, November 21, 1972.
Oil Conservation Commission Exhibit 1,
Oil Conservation Commission Case No. 4733, November 21, 1972.
Order No. R-4409-A.
Order No. R-4444.

OIL CONSERVATION COMMISSION

P. O. BOX 2088

SANTA FE, NEW MEXICO 87501

CERTIFICATE

Re: David Fasken vs Oil Conservation Commission,
Cause No. 28482 in the District Court of
Eddy County, New Mexico.
David Fasken vs Oil Conservation Commission,
Cause No. 28483 in the District Court of
Eddy County, New Mexico.

I, A. L. PORTER, Jr., Secretary-Director of the New Mexico Oil Conservation Commission, do hereby certify that the documents listed below are true and accurate copies of the documents in the above-entitled cases:

Docket No. 12-72, June 7, 1972.

Transcript of Oil Conservation Commission examiner hearing, June 7, 1972.

Applicant's Exhibits 1 through 9, Oil Conservation Commission Case No. 4733, June 7, 1972.
Order No. R-4409.

Docket No. 27-72, November 21, 1972.

Transcript of de novo hearing before the New Mexico Oil Conservation Commission, November 21, 1972.

Applicant's Exhibits 1 through 11, Oil Conservation Commission, Case No. 4733, November 21, 1972.
Oil Conservation Commission Exhibit 1,
Oil Conservation Commission Case No. 4733,
November 21, 1972.
Order No. R-4409-A.
Order No. R-4444.

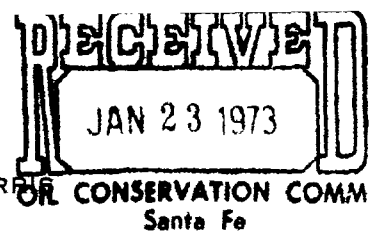
A. L. PORTER, Jr.
Secretary-Director
Oil Conservation Commission

IN WITNESS WHEREOF, I have affixed my hand and notarial seal this 30th day of January, 1973.

Notary Public

My Commission Expires:

October 28, 1973



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

J. O. SETH (1883-1963)
A. K. MONTGOMERY
WM. R. FEDERICI
FRANK ANDREWS
FRED C. HANNAHS
RICHARD S. MORRIS
SUMNER G. BUELL
SETH D. MONTGOMERY
FRANK ANDREWS III
OWEN M. LOPEZ
JEFFREY R. BRANNEN
JOHN BENNETT POUND

POST OFFICE BOX 2307
AREA CODE 505
TELEPHONE 982-3876

January 22, 1973

Mr. William F. Carr
Attorney at Law
New Mexico Oil Conservation Commission
State Land Office Building
Santa Fe, New Mexico 87501

RE: David Fasken vs Oil Conservation Commission,
Cause #28482 in the District Court of Eddy
County, New Mexico.
David Fasken vs Oil Conservation Commission,
Cause #28483 in the District Court of Eddy
County, New Mexico.

Dear Bill:

We hand you herewith copies of the Petitions for Review
in the subject cases which involve Commission Orders No.
R-4409-A and R-4444, respectively. The Petitions for Re-
view were filed in the District Court of Eddy County on
Thursday, January 19, 1973.

We would appreciate your accepting service on behalf of
the commission and for that purpose we also enclose here-
with an Acceptance of Service and Entry of Appearance.

We would appreciate your causing the commission to prepare
and certify the record and transcript of proceedings, in-
cluding all exhibits, to the District Court in each of these
cases.

Very truly yours,

RSM:mt
Enclosure
cc: Mr. Richard Brooks
5086-72-5

P.S. Copy of Notice of Appeal in each of the subject cases
also is enclosed. RSM.

DOCKET: EXAMINER HEARING - WEDNESDAY - JUNE 7, 1972

9 A.M. - OIL CONSERVATION COMMISSION CONFERENCE ROOM,
STATE LAND OFFICE BUILDING, SANTA FE, NEW MEXICO

The following cases will be heard before DANIEL S. NUTTER, Examiner,
or ELVIS A. UTZ, Alternate Examiner:

CASE 4716 (Readvertised):

Application of Union Oil Company of California for directional drilling, Lea County, New Mexico. Applicant, in the above-styled cause, seeks authority to directionally drill its Owens Well No. 2, having a surface location in Unit I of Section 34, Township 14 South, Range 35 East, East Morton-Wolfcamp Pool, Lea County, New Mexico. Applicant proposes to set a whipstock at approximately 7200 feet and to directionally drill to bottom the well in the Wolfcamp formation within 100 feet of a point in Unit H 1730 feet from the North line and 560 feet from the East line of said Section 34. Applicant proposes to dedicate the E/2 NE/4 of Section 34 to the well. In the absence of objection an order will issue based upon testimony received in this case on May 17, 1972.

CASE 4726: Application of Shenandoah Oil Corporation for a waterflood project, Eddy County, New Mexico. Applicant, in the above-styled cause, seeks authority to institute a waterflood project by the injection of water into the Grayburg-San Andres formations through one well located in the SE/4 NW/4 of Section 27, Township 18 South, Range 31 East, Shugart Pool, Eddy County, New Mexico.

CASE 4727: Application of Harper Oil Company for downhole commingling, Lea County, New Mexico. Applicant, in the above-styled cause, seeks authority to commingle oil production from the Blinebry, Drinkard, and Wantz-Abo Pools in the wellbore of its S. J. Sarkey Well No. 2 located in Unit H of Section 26, Township 21 South, Range 37 East, Lea County, New Mexico.

CASE 4728: Application of Texaco Inc. for special pool rules, Lea County, New Mexico. Applicant, in the above-styled cause, seeks the promulgation of special pool rules for the East Weir-Tubb Pool, Lea County, New Mexico, including provisions for 80-acre proration units and a limiting gas-oil ratio limitation of 4000 cubic feet of gas per barrel of oil.

CASE 4729: Application of American Trading and Production Corporation for a unit agreement, Eddy County, New Mexico. Applicant, in the above-styled cause, seeks approval of the Round Mountain Unit Agreement comprising 5,757 acres, more or less,

(Case 4729 continued)

of Federal, State and Fee lands in Sections 19, 20, 21, 28, 29, 30, 31, 32, and 33, Township 21 South, Range 25 East, Eddy County, New Mexico.

CASE 4730: Application of Stoltz, Wagner & Brown for salt water disposal, Lea County, New Mexico. Applicants, in the above-styled cause, seek authority to dispose of produced salt water into the Devonian formation in the interval from 11224 to 11234 feet in their Soldier Hill State AE Well No. 1 located 800 feet from the North line and 1800 feet from the West line of Section 23, Township 12 South, Range 32 East, East Caprock Devonian Pool, Lea County, New Mexico.

CASE 4731: Application of Continental Oil Company for rededication of acreage and simultaneous dedication, Lea County, New Mexico. Applicant, in the above-styled cause, seeks authority to dedicate a standard 640-acre gas proration unit comprising all of Section 14, Township 20 South, Range 36 East, Eumont Gas Pool, Lea County, New Mexico, to its Sanderson "A" Wells Nos. 12 and 13 located, respectively, in Units P and G of said Section 14. Applicant further seeks authority to produce the allowable for the unit from either well in any proportion. Applicant further seeks the establishment of a procedure whereby the allowable for the above-described proration unit may be produced by any or all Eumont gas wells located within said unit without the necessity of notice and hearing.

CASE 4732: Application of Continental Oil Company for downhole commingling, Lea County, New Mexico. Applicant, in the above-styled cause, seeks authority to commingle production from the Skaggs-Glorieta, East Weir-Blinebry, and Skaggs-Drinkard Pools in the wellbore of its Skaggs "B" Well No. 5 located 990 feet from the North line and 1700 feet from the West line of Section 12, Township 20 South, Range 37 East, Lea County, New Mexico.

CASE 4709: (Continued from the May 5, 1972, Examiner Hearing)

Application of Continental Oil Company for downhole commingling, Lea County, New Mexico. Applicant, in the above-styled cause, seeks authority to commingle production from the Eumont Gas Pool and the Penrose Skelly Oil Pool in the wellbore of its Lockhart A-17 Well No. 1 located in Unit L of Section 17, Township 21 South, Range 37 East, Lea County, New Mexico.

De novo
CASE 4733: Application of David Fasken for pool contraction and creation of a new gas pool, Eddy County, New Mexico. Applicant, in the above-styled cause, seeks the contraction of the horizontal limits of the Indian Basin-Morrow Gas Pool, Eddy County, New Mexico, by the deletion therefrom of all of Sections 4 and 5, Township 21 South, Range 24 East. Applicant further seeks the creation of a new gas pool with horizontal limits comprising all of said Section 4 and 5 for the production of gas from the Morrow formation.

CASE 4734: Application of Hanagan Petroleum Corporation for pool extension, non-standard spacing unit, and unorthodox location, Eddy County, New Mexico. Applicant, in the above-styled cause, seeks an order extending the horizontal limits of the Catclaw Draw-Morrow Gas Pool, Eddy County, New Mexico, to include all of Section 24, Township 21 South, Range 25 East and all of Section 19, Township 21 South, Range 26 East. Applicant further seeks approval of a 636.38-acre non-standard gas spacing unit comprising all of said Section 19 to be dedicated to its Nan-Bet Well No. 1 located at an unorthodox location for said pool 1980 feet from the North line and 660 feet from the West line of said Section 19.

CASE 4735: Application of El Paso Natural Gas Company for capacity production, San Juan County, New Mexico. Applicant, in the above-styled cause, seeks an exception to Rules 14 (A) 15 (A), and 15 (B) of the General Rules and Regulations for the prorated gas pools of Northwest New Mexico, to produce six wells located in Sections 29, 30, 31, and 32 of Township 32 North, Range 8 West and Section 36, Township 32 North, Range 9 West, Blanco-Mesaverde Pool, San Juan County, New Mexico, at full capacity for approximately one year from February 1, 1972.

Applicant further seeks authority to offset any overproduction accrued to the above-described six wells during the one-year period by underproduction attributable to any underproduced wells or marginal wells located within the participating area of the San Juan 32-9 Unit.

CASE 4736: Application of Dalport Oil Corporation for an exception to Order No. R-3221, as amended, Chaves County, New Mexico. Applicant, in the above-styled cause, seeks an exception to Order No. R-3221, as amended, to dispose into an unlined surface pit water produced from its Todhunter-Federal Well No. 1 located in the SE/4 NW/4 of Section 22, Township 15 South, Range 29 East, Double L Field, Chaves County, New Mexico.

MONTGOMERY, FEDERICI, ANDREWS, HANNAHS & MORRIS

J. O. SETH (1883-1963)

ATTORNEYS AND COUNSELORS AT LAW

350 EAST PALACE AVENUE

SANTA FE, NEW MEXICO 87501

POST OFFICE BOX 2307

AREA CODE 505

TELEPHONE 982-3876

A. K. MONTGOMERY
WM. R. FEDERICI
FRANK ANDREWS
FRED C. HANNAHS
RICHARD S. MORRIS
SUMNER G. BUELL
SETH D. MONTGOMERY
FRANK ANDREWS III

OWEN M. LOPEZ
JEFFREY R. BRANNEN
JOHN BENNETT POUND

May 1, 1972

Case 4733

New Mexico Oil Conservation Commission
State Land Office Building
Santa Fe, N.M. 87501

Gentlemen:

Enclosed is an application of David Fasken for contraction of the Indian Basin-Morrow Gas Pool to delete therefrom Sections 4 and 5, Township 21 South, Range 24 East, Eddy County, New Mexico.

If it is possible to handle this matter as part of the Commission's regular nomenclature case rather than as a separate hearing, we certainly have no objection to that procedure and will be willing to present evidence in support of the change at that time. Of course, if you wish to handle this matter at a separate hearing, that will be satisfactory.

Very truly yours,

Richard S. Morris

RSM:F
Encl.

cc &
Encl: Mr. James B. Henry
Henry Engineering
807 First National Bank Bldg.
Midland, Texas 79701

RECORDED

Date 5-24-72

STATE OF NEW MEXICO

COUNTY OF EDDY

IN THE DISTRICT COURT

DAVID FASKEN,)
)
) Petitioner,)
)
 vs.) Cause Nos. 28482 & 28483
)
 OIL CONSERVATION COMMISSION)
 OF THE STATE OF NEW MEXICO,)
)
 Respondent.)

RESPONDENT'S BRIEF

STATEMENT OF THE CASE

This case is a statutory petition for judicial review of an action of the Oil Conservation Commission of New Mexico under Section 65-3-22(b), NMSA 1953. The action in question involves motions for summary judgment filed by both Petitioner and Respondent in the appeal of David Fasken from Oil Conservation Commission Order Nos. R-4409-A and R-4444, which issued pursuant to a hearing before the Oil Conservation Commission on November 21, 1972.

Order R-4409-A denied Petitioner's request to have Sections 4 and 5, Township 21 South, Range 24 East, NMPM, Eddy County, New Mexico, declared a gas pool separate from the rest of the Indian Basin-Morrow Gas Pool. In issuing this order the Commission found:

1. Communication existed between said Sections 4 and 5 and the rest of the pool (Finding 4);
2. That these sections were part of a single common source of supply with the rest of the Indian Basin-Morrow Gas Pool (Finding 5);
3. That granting said application would cause unratable take and would violate the correlative rights of other mineral interest owners in the pool (Finding 6).

Order R-4444 denied Petitioner's alternative request for

a capacity allowable for both of Petitioner's wells in said Sections 4 and 5. The Commission found that both the David Fasken-Ross Federal Well No. 1 and the David Fasken-Shell Federal Well No. 1 were completed in the same single source of supply as other wells in the Indian Basin-Morrow Gas Pool (Finding 6) and that increasing their allowables would permit them to take an undue share of the recoverable gas reserves in the pool (Finding 7). This would have resulted in unratable take and would have violated the correlative rights of the other mineral interest owners in the pool (Finding 7). The Commission further found in this Order that the area in which the aforesaid two wells are located contains a substantial amount of productive acreage not dedicated to any well (Finding 4) and that the Petitioner might provide his own relief to any gas migration by further development of the gas reserves in this part of the Indian Basin-Morrow Gas Pool (Finding 5).

On December 22, 1972, the Petitioner made application for rehearing to the Commission with respect to Orders Nos. R-4409-A and R-4444. Pursuant to Section 65-3-22(a), NMSA 1953, the Commission took no action on the application for rehearing thereby denying it.

SCOPE OF REVIEW

This hearing involves motions for summary judgment filed by both the Petitioner and Respondent in this action. As such the court may only decide if there are any genuine issues as to any material fact and if either party is entitled to judgment as a matter of law (Rule 56(c) N.M.R.C.P.). The court may only grant or deny these motions. It may neither modify the orders nor grant alternative relief.

The scope of review is further limited by the fact that this is an appeal from administrative orders issued pursuant to

hearings before the Oil Conservation Commission. The court, therefore, may only look at the record made in the administrative hearing. Continental Oil Co. v. Oil Conservation Commission 70 NM 310, 373 P.2d 809. It should determine if the Commission acted arbitrarily, capriciously or unreasonably; acted outside the scope of its statutory responsibilities; or issued orders not supported by substantial evidence. Otero v. New Mexico State Police Board, 495 P.2d 374, 83 N.M. 594 (1972). In the absence of a determination that the Petitioner can reasonably show that the Commission acted in one of the above ways, the motion of the Respondent, Oil Conservation Commission, for summary judgment should be granted.

There is conflict in the technical evidence in these cases but in this proceeding, the real question is whether or not there is substantial evidence which supports the orders of the Commission.

Since this case must be decided by the Court solely on the basis of the record made before the Oil Conservation Commission without the aid of additional evidence, a review of that evidence is essential.

THE EVIDENCE

The evidence presented in this case consists of the testimony of Mr. Henry and twelve exhibits offered by the Petitioner, and the brief testimony of Mr. Nutter and one exhibit for the Respondent, Oil Conservation Commission. Petitioner's primary contention is set forth in Exhibit 1 (Tr. 10) which is a structure map of the Morrow formation that shows the possible presence of a water trough through the Indian Basin-Morrow Gas Pool. In support of this hypothesis the Petitioner offered Exhibit 2 (Tr. 13) which is a cross section of a series of gamma ray neutron logs through this portion of the Morrow formation and Exhibit 3 (Tr. 18) which is a map showing the thickness of the Indian Hills Sand interval in this area. Exhibit 4 (Tr. 20) is an expanded vertical

view of the Indian Hills Sand cut along a trace portrayed on Exhibit 1.

In addition to this information on the structure of the Indian Hills Sand interval, the Petitioner offered six exhibits that demonstrated pressure variations over a period of time in this formation. These exhibits indicated that originally between what Petitioner calls the north and south basins there was a pressure differential of 111 pounds (Tr. 30). The testimony further indicates that the pressure had varied and increased between these portions of the pool during the time records had been kept on wells in the pool.

Exhibit 10 (Tr. 40) is a comparison of the total gas in place in the north and south portions of this gas pool and is based on information drawn from Exhibits 8 and 9. The Petitioner showed that the indications of how much gas was in place fluctuated greatly over a period of time in the reservoirs and claimed that to correct the situation a capacity allowable was needed for the wells in the northern portion of this gas pool (Tr. 38-41). Exhibit 11 (Tr. 43) is the initial findings from bottom hole pressure build-up tests being conducted on certain wells in the area.

Although the Oil Conservation Commission offered little testimony of its own, on the cross-examination of Mr. Henry serious questions were raised as to these basic issues on which the Petitioner's applications rest: First, is there a trough running through this gas field which divides it into two separate sources of supply. Second, are the correlative rights of the Petitioner violated by reason of prorating and administering his two northern most wells in this pool under the special rules and regulations applicable to the Indian Basin-Morrow Gas Pool. Third, is any alleged waste a result of the policy of the Oil Conservation Commission or is it the result of operating practices of the Petitioner.

These are the basic issues in this case and will be discussed separately below.

SEPARATE SOURCE OF SUPPLY ISSUE

The powers of the Oil Conservation Commission are enumerated in Section 65-3-11, NMSA 1953. Subsection 12 of this statute confers on the Commission the following power:

To determine the limits of any pool or pools producing crude petroleum oil or natural gas or both, and from time to time to redetermine such limits.

On June 1, 1969, the Oil Conservation Commission issued Order No. R-3758, which pursuant to its statutory powers set out in Section 65-3-11 declared that the north and south Indian Basin-Morrow Gas Pools were one single source of supply and therefore one pool. This case represents a challenge to that order as well as to Orders No. R-4409-A and No. R-4444. It is important, therefore, to look at the basic weaknesses in the evidence presented by the Petitioner to establish the existence of a trough which separates the north and south portions of the Indian Basin-Morrow Gas Pool into separate sources of supply.

On the cross-examination by Mr. Nutter of Mr. Henry (Tr. 50), the sufficiency of the evidence establishing the existence of this trough was challenged. The transcript reads:

"Q Well, it's indeed necessary to do quite a bit of extrapolating to draw an abatement (sic) there between them, the Number 1 Well and the Marathon-North Indian Basin Number 2 Well, when they are three miles apart, is that not true?

"A That's not entirely true---That's not true. It did require some extrapolation, and I believe it is a reasonable engineering and geological extrapolation with the data we had at hand. Certainly the control is not complete, and not as good as where we have greater density of the wells. (emphasis added.)

"Q As a matter of fact, you don't have any well that actually shows you the gas-water contact for the north reservoir, as you call it, with the exception of the Mobil dry hole over there, is that correct?

"A That's correct...."

We therefore can see that the conclusions the Petitioner drew were based on somewhat sketchy information.

Mr. Nutter then inquired if the information might not just indicate that the formation merely sloped to the east.

At Page 50 the transcript reads:

"Q Whether the abatement (sic) is there, that Mobil Well isn't necessarily evidence of it, is it? I mean, it could be a low well on the east side of the structure whether the abatement (sic) was present or not, isn't that true?

"A That was our interpretation until the drilling of the Corinne Grace-Indian Hills Well in Township 21, 24 and that well indicated a substantial north dip over and above what we had seen between the David Fasken-Indian Hills Well No. 7 in Section 16, and the David Fasken-Skelly Federal Well in Section 9...."

It is apparent that the concept of a trough was devised based on information derived from the Corinne Grace-Indian Hills Well.

A question was raised as to the accuracy of this information on cross-examination by Mr. Cooley (Tr. 69).

Mr. Henry testified as follows:

"Q Mr. Henry, are you aware of all the perforations and the completion that was made with respect to the Grace Well?

"A I was aware of those that are on file with the New Mexico Oil Conservation Commission office in Artesia, New Mexico, prior to May 15th.

"Q Are you aware that the highest perforations in the Grace well would be in the same producing zone that you referred to here in most of your testimony if that zone is at least ten feet thick? Do I make myself clear?

"A No, would you say that again?

"Q The highest perforations for the Grace well would be, sir, in what you call the Indian Hills Zone if that zone is as much as ten feet thick.

"A I went through the Commission records and they have the perforations as of May 15th, and they had on file a log of the Grace well, and from the data that I had, this zone at that time was not perforated. If it has been perforated subsequent to May 15th when I checked the records, then I have no knowledge of that." (emphasis added)

At Page 71 the transcript continues:

(By Mr. Cooley)

"Q Are you aware of the fact that the Grace well initially produced a substantial quantity of gas?

"A No, sir.

"Q They tested the capability of producing a substantial quantity of gas.

"A They tested gas, but I would not call it substantial.

"Q Whatever gas it is capable of producing, where would it be coming from in your opinion?

"A It is coming out of the Avalon Zone. Under the first set of perforations, it was gas and water coming from the Avalon Zone, that is, from the first set of perforations reported to the Commission."

It is apparent that the conclusions drawn by the Petitioner as to the existence of a trough in this pool were based on information from the Corinne Grace-Indian Hills well. The problem is that the Petitioner relied on information that was not complete and may have been inaccurate. Further doubts were raised as to whether or not a trough exists in this formation on cross-examination by Mr. Nutter (Tr. 57):

(By Mr. Nutter)

"Q But when you draw a straight line from the Skelly Federal Well Number 1 to the Ross Federal Number 1, we simply see a dipping generally from the south to the north, and we don't have this tremendous sincline in between the wells, is that correct?

"A (By Mr. Henry) If you ignore the Corinne Grace Well, but--

"Q I said if we went from the Skelly Federal Number 1 to the Ross Federal Number 1, just straight across.

"A That's right...."

It is apparent that in attempting to show a trough through the Indian Hills Morrow Gas Pool the Petitioner relied upon certain information which was incomplete and in the case of the Grace well probably incorrect. If Petitioner's evidence is correct, it still fails to establish the existence of a trough for on cross-examination by Mr. Stamets (Tr. 67) it was revealed that the evidence submitted by Petitioner could be interpreted in many different ways:

"Q This map (structure map, Petitioner Exhibit No. 1) could be interpreted in a number of different ways. We could accentuate this saddle, or we could of sort of diminish the effect of the saddle just by the interpretation of these points, and for the interpretation to be one hundred percent cooperated (sic) by the pressure data, you would have to place this thing about fifty feet deeper, isn't that right?

"A (Mr. Henry) Or you would have to place the gas-water contact above the Skelly-Federal Well.

"Q Just ignoring the water-gas contact, isn't it a matter of connecting the geological points on the map and by doing this, we could interpret it in a variety of ways?

"A Well, as I mentioned earlier, we have included in this isopack (sic) map and the structure map all of the data we have accumulated.

"Q Mr. Henry, I realize that--

"A You will notice the zero limit of the sand.

"Q --You mentioned that several times. I would just like to ask you a question, and I would just like you to answer whether or not we could interpret this structural map in different ways?

"A Different people would draw different maps with the same points." (emphasis added)

It should be noted at this point, that when the Petitioner appeared before the Commission with the original applications in this case, the burden of proof was on him to establish that a trough ran through this formation which was an effective barrier between the north and south portions of the pool. In view of the fact that Petitioner relied on information that was inaccurate and incomplete, and further that Petitioner reached one of a variety of conclusions that could be drawn from this information, the Commission could not, based on the evidence, reach the conclusion that the northern portion of the pool was a separate source of supply.

In support of Petitioner's theorized trough, Exhibit 4 was offered which is an expanded vertical view of the Indian Hills Sand. Plotted on this cross-section are various wells. Petitioner's Exhibit No. 1, the structure map, has a red line or

trace across it. This trace shows where the vertical cut reflected in Exhibit 4 would lie. Now if Oil Conservation Commission Exhibit 1 is examined, it reflects the actual line connecting the wells which are plotted on Petitioner's Exhibit 4. It is important to look at Petitioner's Exhibit 1 and pay special attention to the wells which lie close to the suggested water trough. First we should look at the David Fasken-Skelly Federal Well No. 1 in Section 9, Township 21 South, Range 24 East, which is on the trace on Petitioner's Exhibit No. 1. To get to the next well plotted on Petitioner's Exhibit 4 we would have to move to the west on the structure map more than one-half of a mile to the Corinne Grace-Indian Hills Well in Section 8 of said Township 21 South, Range 24 East. To get to the next well we would then have to move east almost two miles to the Mobil Federal No. 1 in Section 10, and then we must go more than two miles to the west to the next well which is the David Fasken-Shell Federal Well No. 1 in Section 5, and finally to the east again about a mile to the David Fasken-Ross Federal Well No. 1 in Section 4. It is apparent that Petitioner had to resort to a considerable amount of zig-zagging in preparing this exhibit. The transcript on Pages 54 and 55 reveals that without this zig-zagging pattern quite a different picture would be portrayed. It reads as follows:

"Q (By Mr. Nutter) Now, Mr. Henry, if we look at your straight line that you have drawn between the Skelly Federal Number 1 and the Ross Federal Number 1, and if we ignored the zig-zagging back and forth, and we connected those two wells on Exhibit Number Four, I believe we would go from this point on the Skelly Federal Number 1 to this point on the Ross Federal Number 1, is that correct?

"A That's correct.

"Q And we wouldn't show the big U-tube connecting the two wells?

"A Not if you are on the structure map."

In view of the fact there was considerable manipulating of the information in the preparation of the Exhibit 4, the Oil

Conservation Commission found that it could give it little weight for it did not, in the opinion of the Commission, indicate the existence of a water trough in the Indian Basin-Morrow Gas Pool.

THE CORRELATIVE RIGHTS ISSUE

The power of the Oil Conservation Commission to protect the correlative rights of all operators in any oil or gas pool is set forth in Section 65-3-10, NMSA 1953, which reads:

65-3-10. POWER OF COMMISSION TO PREVENT WASTE AND PROTECT CORRELATIVE RIGHTS.--The Commission is hereby empowered, and it is its duty, to prevent the waste prohibited by this act and to protect correlative rights, as in this act provided. To that end, the Commission is empowered to make and enforce rules, regulations and orders, and to do whatever may be reasonably necessary to carry out the purposes of this act, whether or not indicated or specified in any section hereof.

Correlative rights is defined on Page A-2 of the Commission Rules as follows:

CORRELATIVE RIGHTS shall mean the opportunity afforded, as far as it 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 practicably 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.

The wells in the Indian Basin-Morrow Gas Pool are on 640-acre spacing. An exception has been made, however, for the two David Fasken wells in the northern portion of this pool, and these wells have over 920 acres in each proration unit. It should be noted that the allocations of allowables in this pool are on a straight acreage basis, and therefore Fasken is able to produce considerably more from each of these wells than are other operators in the pool. Ten wells produce from the Indian Hills Morrow Sand in this pool. The two Fasken wells in the Northern portion of this pool constitute 20 percent of the

wells producing from the Indian Basin-Morrow Gas Pool (Tr. 58). These wells have produced almost 40 percent of the gas from this pool (Tr. 59). As has been noted earlier in this brief, the Petitioner is seeking a capacity allowable for the two Fasken wells in the northern portion of the pool. The present allowable for each of the David Fasken wells in the northern portion of the Indian Basin-Morrow Gas Pool is approximately 3,000,000 cubic feet of gas per day (Tr. 76-77). What Mr. Fasken is attempting to do with the applications in these cases is to increase production from each of the subject wells to approximately 9,000,000 cubic feet of gas per day and then to eventually to as much as 11,000,000 cubic feet of gas per day (Tr. 76). Mr. Henry testified (Tr. 76-77) that the Petitioner, Mr. Fasken, could increase the allowable and thereby the amount of gas he could produce in the northern portion of the Indian Hills-Morrow Gas Pool by reasonably developing that portion of the pool. The transcript reads as follows:

"Q (By Mr. Utz) Mr. Stamets asked you about drilling another well up in Section 31. What is the reason you don't want to develop that acreage?

"A (By Mr. Henry) Well, to date, my client has not provided the money to do it with, he maintains very strict budgetary control on what I drill and don't drill, and he's not provided the money. We have recommended it and discussed it from time to time, and he does own the lease on that acreage.

"Q Do you think it is productive?

"A Yes, sir.

"Q And that would increase your allowable by almost a third, wouldn't it?

"A I would hope so."

It is apparent that if Mr. Fasken would reasonably develop the acreage which he leases in this pool, his allowable would be increased and he could substantially correct the problem of which he complains in these cases. It is also apparent that if

his correlative rights are being impaired, it is not a result of Commission policy but a result of his unwillingness to adequately develop the acreage he has under lease.

ISSUE OF WASTE

Section 65-3-2, NMSA 1953, reads as follows:

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.

Waste is defined in Section 65-3-3, NMSA 1953. The portion of this definition relevant to this case is quoted below:

65-3-3. WASTE--DEFINITIONS.--As used in this act the term "waste," in addition to its ordinary meaning, shall include:

- A. "Underground waste" as those words are generally understood in the oil and gas business, and in any event to embrace the inefficient, excessive, or improper, use or dissipation of the reservoir energy, including gas energy and water drive, of any pool, and the locating, spacing, drilling, equipping, operating, or producing, of any well or wells in a manner to reduce or tend to reduce the total quantity of crude petroleum oil or natural gas ultimately recovered from any pool, and the use of inefficient underground storage of natural gas.

- 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 products thereof, or both such natural gas and products.

These statutory provisions are recited again in the rules and regulations of the Oil Conservation Commission.

The Petitioner in this case alleges that underground waste is occurring due to underground gas migration and a loss

of gas into the alleged water trough. The Petitioner alleges that this waste is caused by administering and regulating the pool in accordance with the Rules and Regulations of the New Mexico Oil Conservation Commission which prorate the pool. A close review of the evidence reveals, however, that:

1. Petitioner failed to establish that waste is occurring in this pool and
2. if waste is occurring, it is not the result of regulation by the Oil Conservation Commission, but instead is a result of imprudent operating procedures.

First, we will recall that serious questions have been raised as to whether or not a water trough runs through the Indian Basin-Morrow Gas Pool. If it does not, it is very doubtful that the theories advanced by the Petitioner on the issue of waste are valid.

A change in the rules of the New Mexico Oil Conservation Commission in relationship to this pool will not provide real relief to the operator for at the time of the hearing the operator was producing in excess of market demand. On cross-examination by Mr. Cooley, Mr. Henry testified (Tr. 72):

"Q (By Mr. Cooley) Referring to your testimony on cross-examination, it came out that you have certain gas purchase contract problems with respect to what you describe as the north pool, is that correct?

"A We have them with respect to all of the connections in the Indian Basin.

"Q The entire pool has a greater capacity to produce than Mr. Fasken is able to pass on to the pipe line company?

"A We have an excess capacity to produce, yes.

"Q If the present capacity under the present allowable is in excess of your present market, what is to be gained by giving capacity allowables or increasing the allowable for any well in the field or giving the capacity allowable as you suggest?

"A (No response)

"Q Are you already capable of producing more gas than you can sell?

"A That's right."

The testimony also shows (Tr. 74) that certain allowables have already been cancelled and reallocated in the pool because of the contract problems Mr. Fasken has had with the purchaser. It would appear from the record, therefore, that the Commission could not and cannot offer any real relief to the Petitioner for he is already producing more than the market demand and already allowables have had to be cancelled in this pool.

As was noted earlier in this brief, Mr. Fasken could provide his own relief in this situation by reasonably developing the northern portion of the Indian Basin-Morrow Gas Pool.

Not only has the Petitioner not properly developed the field, he is, in fact, aggravating the very problem of which he complains. It should be recalled that the Petitioner alleges that there is migration of gas from the northern reservoir toward the southern reservoir caused by greater pressure in the northern reservoir. He further alleges that this pressure differential is caused by the fact that there is greater production in the south than in the north.

If we assume these alleged facts to be true, it appears that the Petitioner in this case is practicing imprudent operating procedures for he is overproducing a well in the southern portion of the pool (Tr. 60) and at the same time, due to contract problems, has reduced production on certain wells in the northern portion of the pool, as reflected on Petitioner's Exhibit No. 6. Certainly it is not the duty of the Oil Conservation Commission to protect imprudent operators from their own operating practices. And if waste is occurring, it is not a result of the reasonable standards imposed by the Commission on operators in this gas pool.

SUFFICIENCY OF FINDINGS

Petitioner alleges that Orders R-4409-A and R-4444 are invalid in that they contain no findings to explain, support or indicate the reasoning of the Commission in concluding that Petitioner's applications should be denied in order to prevent waste.

If Petitioner's reasoning that there must be findings on the issue of waste is carried to its logical conclusion, it would appear that he should insist that all other considerations recited in statute be made findings of fact as a condition precedent to the validity of any Commission order.

It should be further observed that the New Mexico statutes relating to oil and gas (with an exception for underground storage reservoirs) make no requirement that the Commission make any findings whatever.

In entering Orders R-4409-A and R-4444, the Commission made general findings which effectively show that the Commission concluded that it would be contrary to the statutory responsibilities of the Commission to grant either the Petitioner's application for capacity allowable for his wells in the Indian Basin-Morrow Gas Pool or his application to declare the northern portion of this pool to be a separate source of supply.

The United States Supreme Court held in United States et al. v. Louisiana et al., 290 U.S. 70 (1933), that findings were not essential to the validity of an administrative order where an agency was operating under a statute which was indefinite on the question of findings of fact and did not require them.

In Truck Insurance Exchange v. Industrial Accident Commission, 226 P.2d 583 (1951), the Supreme Court of California found that where an ultimate finding has been made a subordinate

finding results by necessary implication.

Where the scope of the review of the District Court encompasses the entire record as it does under the Oil Conservation Commission statutes, findings are not necessary to sustain the order of the Commission and are not binding on the reviewing court. Seward v. Denver and Rio Grande Railroad Co., 131 P. 980, 17 N.M. 557 (1913); Harris v. State Corporation Commission, 129 P.2d 323, 46 N.M. 352 (1942).

If the Petitioner had requested a finding on the question of waste, it could then raise objection to the absence of such finding. Ferguson-Steere Motor Co. v. State Corporation Commission, 288 P.2d 440, 60 N.M. 114 (1955).

In Ferguson-Steere Motor Co. v. State Corporation Commission, the New Mexico Supreme Court cited with approval Railroad Commission v. Great Southern Railway Co., 185 Ala. 354, 64 So. 15, where it was stated that the Court accepts the making of an order by the Commission as a finding by the Commission that the circumstances are such as to justify the order.

It appears, therefore, that there is no statutory requirement that the Commission make any particular finding of fact in denying either of Petitioner's applications. Since the Petitioner did not request any specific findings when this matter was heard, under New Mexico law, he cannot object to the order on appeal to the District Court on the grounds of insufficient findings of fact.

CONCLUSION

Respondent, Oil Conservation Commission, respectfully submits that the record sustains each of the findings upon which the orders in question rest. The evidence shows that Petitioner's conclusion that a trough exists in this gas pool may in fact be erroneous. Close review of the evidence further shows that

Petitioner failed to establish that this trough, if it exists, is an effective barrier. If it is not, the Fasken wells in the northern portion of the Indian Basin-Morrow Gas Pool are not completed in a separate source of supply.

As to the issue of correlative rights, the record clearly shows that the two Fasken wells in the northern portion of this pool, through August of 1972, had produced 40 percent of the total production from this pool. This is more than twice as much production as the average of the remaining wells in the pool. The record further shows that the allowable attributable to the land leased by Mr. Fasken could be increased if the Petitioner was only willing to drill enough wells, reasonably develop the area and dedicate the acreage that he leases to these wells. It is clear from the record that if any waste is occurring it is not the result of the prorationing of the pool under the Commission Rules and Regulations but the result of imprudent operating procedures by the Petitioner.

There are sufficient findings to support the orders. The allegations of Petitioner in Paragraph 6-C of the Petition for Review of Order R-4444 are simply erroneous. For on careful reading, the findings challenged do not recognize a pressure differential as alleged in the Petition for Review.

In Paragraph 6-C of the Petition for Review challenging Order R-4409-A, the Petitioner notes that the original order (R-4409) finds that a water trough, in fact, does exist. Careful reading here again is required. The finding recognizes that there may be a water trough but says it does not constitute an effective barrier and that the real question in this case is whether or not there is a barrier which causes the northern portion of this pool to in fact be a separate source of supply.

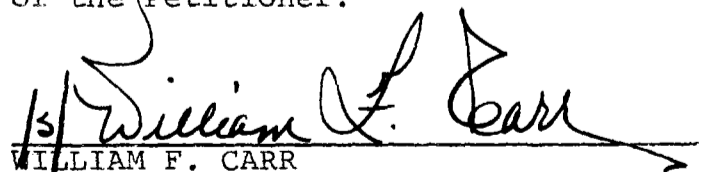
The Petition for Review alleges that the Commission has not carried out its statutory responsibilities in this case. It should be noted that the Commission is a statutory body vested with jurisdiction over matters relating to the conservation of

crude oil and natural gas in New Mexico, the prevention of waste, the protection of correlative rights and the enforcement of the Conservation Act of the State of New Mexico. Pursuant to these responsibilities, the Commission promulgates rules and regulations. When an applicant appears before the Commission and requests a change in the rules and regulations applying to an oil or gas field, the burden is on the applicant to prove their case. When they fail to do so, they cannot hope to compensate for it by going to the district court. For in court, the burden of proof is again on the applicant. He must show that what he seeks is in fact justified by the facts and that the Commission acted contrary thereto at the administrative hearing.

It is important to remember in closing that this case involves motions for Summary Judgment. The question is, therefore, are there any genuine issues as to any material fact and is either party entitled to judgment as a matter of law.

For Petitioner to succeed on his motion, he must show that the Orders in question of the Oil Conservation Commission are not supported by substantial evidence, are arbitrary, capricious, or unreasonable, or involve matters outside the scope of the statutory responsibilities of the Commission.

The Commission is convinced that there is no such reasonable chance and there are no reasonable grounds on which the Petitioner can succeed on its motion. The Commission is further convinced that it is entitled to judgment as a matter of law and, therefore, the Respondent, Oil Conservation Commission, prays this Court to grant its motion for Summary Judgment and to deny the motion for Summary Judgment of the Petitioner.


WILLIAM F. CARR
General Counsel
Oil Conservation Commission

1 IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

2 MANDATE

NO. 9958

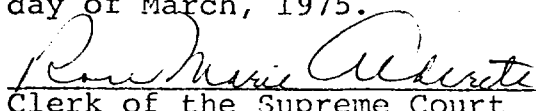
3 THE STATE OF NEW MEXICO TO THE DISTRICT COURT sitting within
4 and for the County of Eddy, GREETING:

5 WHEREAS, in a certain cause lately pending before you,
6 numbered 28482 on your Civil Docket, wherein David Fasken was
7 Petitioner and Oil Conservation Commission of the State of New
8 Mexico was Respondent, by your consideration in that behalf judg-
9 ment was entered against said Petitioner; and

10 WHEREAS, said cause and judgment were afterwards brought into
11 our Supreme Court for review by Petitioner by appeal, whereupon
12 such proceedings were had that on February 28, 1975, an opinion
13 was handed down and the judgment of said Supreme Court was entered
14 reversing your judgment aforesaid, and remanding said cause to you.

15 NOW, THEREFORE, this cause is hereby remanded to you with
16 directions to the district court to remand to the Commission for
17 the making of additional findings of fact based upon the record
18 as it presently exists, and the entry of new orders.

19 WITNESS, The Honorable John B. McManus, Jr.,
20 Chief Justice of the Supreme Court
21 of the State of New Mexico, and
22 the seal of said Court this 21st
23 day of March, 1975.

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26 Clerk of the Supreme Court
27 of the State of New Mexico
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R-4409-A
R-4444

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IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

DAVID FASKEN,

Petitioner-Appellant,

vs.

NO. 9 9 5 8

OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO,

Respondent-Appellee.

APPEAL FROM THE DISTRICT COURT OF EDDY COUNTY

ARCHER, Judge

Montgomery, Federici, Andrews,
Hannans & Buell
Santa Fe, New Mexico

Attorneys for Petitioner-Appellant,

William F. Carr
Special Assistant Attorney General
Santa Fe, New Mexico

Attorney for Respondent-Appellee.

O P I N I O N

STEPHENSON, J.

This appeal is from two summary judgments entered by the Eddy County District Court which affirmed two orders of the Oil Conservation Commission (Commission). Appellant (Fasken) had filed two applications with the Commission seeking either the establishment of certain property (under lease to Fasken) within the Indian Basin - Morrow Gas Pool as a separate and distinct pool with special pool rules for production or, as an alternative, the exemption of Fasken's wells from prorationing within the Indian Basin - Morrow Gas Pool and the establishment of special production allowables. After a trip up the statutory hearing ladder (see §§ 65-3-11.1, -22 (a), (b), N.M.S.A. 1953) resulting in the denial of the applications, Fasken appeals, complaining first, that the findings of fact relied upon by the Commission are not supported by substantial evidence and second, that the Commission's orders are invalid because they do not contain any findings to show the reasoning behind the determination that waste was not occurring.

Fasken elicited evidence from his sole witness indicating that the northern portion of the Indian Basin-Morrow Gas Pool was a separate and distinct source of supply from the southern portion of the same pool. The witness attempted to support this assertion by proof of a "saddle" or "trough" in the Morrow sand dividing the pool. It was also asserted that because of the pressure differentials between the northern and southern portions of the pool, the water plug in the "saddle" was migrating south causing a premature watering out of wells on the north flank of the southern portion of the pool. Additionally, the witness testified that gas from the north pool was being trapped in the water making it non-recoverable and, consequently, gas was being wasted.

The Commission did not put on any testimony. Some of the Commission's expert staff cross-examined Fasken's witness but,

1 other than emitting a general tenor of suspicion and disbelief of
2 the proffered testimony, the record fails to provide any illumina-
3 tion as to why the testimony was wrong and should be disregarded.
4 Nevertheless, the Commission found there was a single common
5 source of supply, that granting the applications would violate
6 correlative rights, and, that their denial was necessary to prevent
7 waste.

8 Fasken acknowledges he has the burden of establishing the
9 invalidity of the Commission's orders. § 65-3-22 (b), N.M.S.A.
10 1953. But he contends that the Commission could not summarily
11 disregard the uncontradicted evidence, enter the orders and main-
12 tain they are supported by substantial evidence. *Medler v. Henry*,
13 44 N.M. 275, 101 P.2d 398 (1940); *Board of Education v. State*
14 *Board of Education*, 79 N.M. 332, 443 P.2d 502 (Ct. App. 1968). He
15 dwells on the Commission's failure to put on any evidence. The
16 Commission says that the Fasken testimony was tainted with all of
17 the deficiencies which, according to *Medler*, justify disregarding
18 it, that Fasken failed in his proof, and the orders have sustaining
19 support.

20 In their argument in this court, each party attempts to explain
21 precisely what is transpiring 5700 feet below the surface of Eddy
22 County. Certainly we do not want for theories. We suffer from a
23 plethora of theories. The theories of each party sound equally
24 logical and reasonable and each is diametrically opposed to those
25 of the other party. The difficulty with them is that they emanate
26 from the lips and pens of counsel and are not bolstered by the
27 expertise of the Commission to which we give special weight and
28 credence, (*Grace v. Oil Conservation Com'n*, [No. 9821 decided
29 January 31, 1975]); (*Rutter & Wilbanks Corporation v. Oil Conservation*
30 *Com'n*, [No. 9907 decided February 21, 1975]), nor included in its
31 findings.

32 We will not attempt to traverse this bog. We are not fact

1 finders or weighers. Rather, we consider whether, as a matter of
2 law, the action of the Commission was consistent with and within
3 the scope of its statutory authority and whether the administrative
4 order is supported by substantial evidence. *Grace v. Oil*
5 *Conservation Com'n; Rutter & Wilbanks Corporation v. Oil Conserva-*
6 *tion Com'n.*

7 Nor will we be drawn into a discussion of how the Commission
8 should have put on its case, if it had one.

9 All of the issues of this case may be resolved by simple rules,
10 clearly stated by this court on several occasions. In cases where
11 the sufficiency of the Commission's findings is in issue or their
12 substantial support is questioned, after the dust of the Commission
13 hearing has settled, the following must appear:

14 A. Findings of ultimate facts which are material to the issues.
15 Such findings were characterized as "foundational matters",
16 "basic conclusions of fact" and "basic findings" in *Continental Oil*
17 *Co. v. Oil Conservation Com'n*, 70 N.M. 310, 373 P.2d 809 (1962).
18 These findings have to do with such ultimate factors as whether a
19 common source of supply exists, the prevention of waste, the
20 protection of correlative rights and matters relative to net
21 drainage. Whether the ultimate findings in this case are sufficient
22 we do not decide. Their sufficiency is not disputed by Fasken in
23 this appeal.

24 B. Sufficient findings to disclose the reasoning of the
25 Commission in reaching its ultimate findings. In *Continental*,
26 it was said that although elaborate findings are not necessary,
27 nevertheless:

28 " * * * Administrative findings by an expert administrative
29 commission should be sufficiently extensive to show * * *
30 the basis of the commission's order." *id.* at 321, 373 P.2d
816.

31 Such findings are utterly lacking here and reversal is thereby
32 required. We do not have the vaguest notion of how the Commission

1 reasoned its way to its ultimate findings. We have only the
2 theories stated in argument of counsel which we are ill-equipped to
3 gauge.

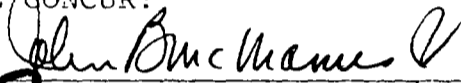
4 C. The findings must have substantial support in the record.
5 This requirement was recently discussed and redefined in Grace, but
6 we do not reach this question owing to the deficiencies in the
7 findings themselves.

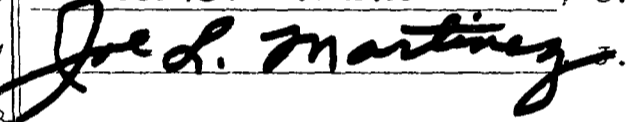
8 The summary judgments are reversed. The orders of the
9 Commission are set aside. The cases are remanded to the Commission
10 for the making of additional findings of fact based upon the record
11 as it presently exists, and the entry of new orders.

12 IT IS SO ORDERED.

13 
14 JUSTICE

15 WE CONCUR:

16  , C. J.

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IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

Cases to be Submitted

Tuesday
October 22, 1974
9:00 A. M.

No. 9958

David Fasken, Appellant

Montgomery, Federici, Andrews,
Hannahs & Buell
Sumner G. Buell

vs.

Oil Conservation Commission of the
State of New Mexico Appellee

William F. Carr, Special Asst. Atty.
General

No. 9953

State of New Mexico, Appellee

David L. Norvell, Attorney General
George A. Morrison, Special Asst.
Attorney General

vs.

David G. Vigil, Appellant

Jones, Gallegos, Snead & Wertheim
John Wentworth

THE CALL OF THE DOCKET FOR THE FOLLOWING CASES WILL BE AT 1:30 O'CLOCK P.M. AND
COUNSEL NEED NOT BE PRESENT UNTIL THAT TIME:

No. 9838

Jimmy Lee Black, Appellant

Caton & Hynes
Byron Caton

vs.

Board of Education of Jemez Mountain
School District No. 53, et al.,
Appellees

Solomon & Roth
Charles Solomon

No. 9936

James H. Thompson, d/b/a J. H. Thompson
Construction Co., Appellee

Shipley, Durrett, Conway & Sandenaw

vs.

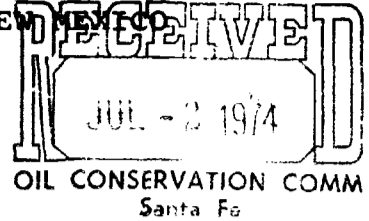
George Graham, Appellee

vs.

E. E. Anderson, Appellant

Donald Brown
Paul R. Dillard

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO



DAVID FASKEN,

Petitioner, Appellant,

vs.

OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO,

NO. 9958

Respondent-Appellee.

CERTIFICATE OF SERVICE

This will certify that on this date I served a true
copy of Answer Brief

by mailing such copy to:

Sumner G. Buell, Esquire
Attorney at Law
P. O. Box 2307
Santa Fe, N. M. 87501

by first class mail with postage thereon fully prepaid.

Dated at Santa Fe, New Mexico, this 1st day of
July, 1974.

ROSE MARIE ALDERETE
Clerk of the Supreme Court
of the State of New Mexico

By: Laura R. Vachey
Deputy Clerk

OIL CONSERVATION COMMISSION

P. O. BOX 2088

SANTA FE, NEW MEXICO 87501

May 14, 1974

C
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Y

Mrs. Rose Marie Alderete
Clerk of the Supreme Court
of the State of New Mexico
Supreme Court Building
Santa Fe, New Mexico 87501

Dear Mrs. Alderete:

Please file the attached Notice in Case No.
9958.

Thank you.

Very truly yours,

WILLIAM F. CARR
Special Assistant Attorney General

WFC/dr

enclosure

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

DAVID FASKEN,)	
)	
Petitioner-Appellant,)	
)	
vs.)	No. 9958
)	
OIL CONSERVATION COMMISSION OF)	
THE STATE OF NEW MEXICO,)	
)	
Respondent-Appellee.)	

MOTION

COMES NOW Oil Conservation Commission of The State of New Mexico, Respondent-Appellee, in the above styled and numbered cause and respectfully moves the Court for a thirty-day extension of time, to June 30, 1974, within which to file its Answer Brief in said cause, by reason of the fact that counsel will undergo surgery on May 8, 1974, and will be out of the office most of the month of May making it impossible to file the Commission Answer Brief by May 30, 1974.

WILLIAM F. CARR, Special Assistant
Attorney General, representing the
Oil Conservation Commission of the
State of New Mexico, P. O. Box 2088
Santa Fe, New Mexico 87501

We hereby certify that we have
mailed a copy of the foregoing
pleading to Sumner Buell, opposing
counsel of record, this 7th day of
May, 1974.

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

DAVID FASKEN,)
)
) Petitioner-Appellant,)
)
 vs.) No. 9958
)
) OIL CONSERVATION COMMISSION OF)
) THE STATE OF NEW MEXICO,)
)
) Respondent-Appellee.)


NOTICE

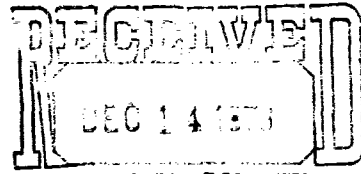
TO: Sumner Buell
Montgomery, Federici, Andrews,
Hannahs & Buell
350 E. Palace Avenue
Santa Fe, New Mexico 87501

NOTICE IS HEREBY GIVEN that notice has been received from the Clerk of the Supreme Court, postmarked ~~May 7, 1974,~~ that Respondent-Appellee's Motion for extension of time to file Answer Brief on behalf of Oil Conservation Commission of the State of New Mexico has been granted.

This Notice is given in accordance with Rule 15 of the New Mexico Rules of Civil Procedure.

Dated this ~~14th~~ day of May, 1974.


WILLIAM F. CARR
Special Assistant Attorney General
Oil Conservation Commission
P. O. Box 2088
Santa Fe, New Mexico 87501



STATE OF NEW MEXICO

OIL CONSERVATION COMMISSION OF EDDY
Santa Fe

IN THE DISTRICT COURT

DAVID FASKEN,

Petitioner,

-vs-

Cause No. 28482 and
Cause No. 28483

OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO,

Respondent.

NOTICE OF APPEAL

Comes now David Fasken, the Petitioner in the above entitled and numbered cause, and appeals to the Supreme Court of the State of New Mexico from the final judgment entered in this action.

MONTGOMERY, FEDERICI, ANDREWS,
HANNAHS & BUELL

By /s/ SUMNER G. BUELL
P. O. Box 2307
Santa Fe, New Mexico 87501
Attorneys for Petitioner

CERTIFICATE OF MAILING

I hereby certify that on this 13th day of December, 1973, I caused a true and correct copy of the above and foregoing Notice of Appeal to be mailed to opposing counsel of record, William F. Carr, Special Assistant Attorney General for the New Mexico Oil Conservation Commission, P. O. Box 2088, Santa Fe, New Mexico 87501.

/s/ SUMNER G. BUELL

J. O. SETH (1883-1962)
A. K. MONTGOMERY
WM. FEDERICI
FRANK ANDREWS
FRED C. HANNAHS
SUMNER G. BUELL
SETH D. MONTGOMERY
FRANK ANDREWS III
OWEN M. LOPEZ

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

POST OFFICE BOX 2307
AREA CODE 505
TELEPHONE 982-3676

JEFFREY R. BRANNEN
JOHN BENNETT POUND

December 19, 1973

Mrs. Frances M. Wilcox
Clerk of the District Court
Fifth Judicial District
P. O. Box 98
Carlsbad, New Mexico 88220

Re: Fasken v. Oil Conservation Commission:
Nos. 28482 and 28483, Eddy County

Dear Mrs. Wilcox:

We are enclosing herewith a Praecipe and Certificates of Satisfactory Arrangements for signature by you and the Court Reporter to be filed in the above entitled and numbered causes.

Please let me know what type of arrangements you would like to make for payment in order to obtain the signatures on the Certificates.

Very truly yours,



SGB/jc

Enclosures as noted

cc: Mr. Herman M. Linneveh
Official Court Reporter
Eighth Judicial District
P. O. Box 98
Carlsbad, New Mexico 88220

Mr. William F. Carr
Special Assistant Attorney General
New Mexico Oil Conservation Commission
P. O. Box 2088
Santa Fe, New Mexico 87501

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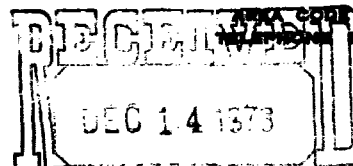
J. O. SETH (1988-1989)

A. K. MONTGOMERY
Wm. FEDERICI
FRANK ANDREWS
FRED C. HANNAHS
SUMNER G. BUELL
SETH D. MONTGOMERY
FRANK ANDREWS III
OWEN M. LOPEZ

JEFFREY R. BRANNEN
JOHN BENNETT POUND

MONTGOMERY, FEDERICI, ANDREWS, HANNAHS & BUELL
ATTORNEYS AND COUNSELORS AT LAW
390 EAST PALACE AVENUE
SANTA FE, NEW MEXICO 87501

POST OFFICE BOX 2807



EDDY COUNTY 808
NEW MEXICO 882-3876

December 13, 1973

Mrs. Frances M. Wilcox
Clerk of the District Court
Division I
Fifth Judicial District
P. O. Box 98
Carlsbad, New Mexico 88220

Re: Fasken v. Oil Conservation Commission
Nos. 28482 and 28483, Eddy County

Dear Mrs. Wilcox:

I am enclosing herewith our Notice of Appeal
to the Supreme Court of the above two Eddy
County causes.

Very truly yours,

A handwritten signature in cursive script, appearing to be "SGB".

SGB/jc

Enclosure as noted

cc: Mr. William Carr
Special Assistant Attorney General
New Mexico Oil Conservation Commission
P. O. Box 2088
Santa Fe, New Mexico 87501

5086-73-2(3)

C
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STATE OF NEW MEXICO

COUNTY OF EDDY

IN THE DISTRICT COURT

DAVID FASKEN,

Petitioner,

-vs-

Cause No. 28482 and
Cause No. 28483

OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO,

Respondent.

P R A E C I P E

TO: THE CLERK OF THE DISTRICT COURT
OF THE FIFTH JUDICIAL DISTRICT
P. O. BOX 98
CARLSBAD, NEW MEXICO 88220

and

THE OFFICIAL COURT REPORTER
OF THE FIFTH JUDICIAL DISTRICT
P. O. BOX 98
CARLSBAD, NEW MEXICO 88220

You are each requested to prepare for an appeal to the Supreme Court of the State of New Mexico a record proper which shall include all pleadings, motions, entries, requested findings of fact and conclusions of law, if any, orders and rulings of the Court with a record proper and, as necessary, all testimony, objections, rulings, exhibits and other evidence and pleadings in this matter which may not be in the record proper as a transcript to be brought into the record by a bill of exceptions and as a transcript of the proceedings herein. Please include within the record proper a certificate of each of you that satisfactory arrangements have been made for the payment of your services and other costs.

MONTGOMERY, FEDERICI, ANDREWS,
HANNAHS & BUELL

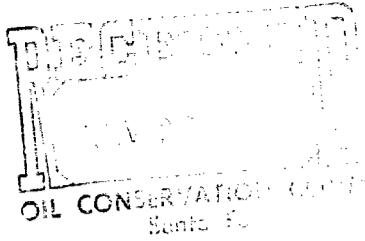
By

P. O. Box 2307
Santa FE, New Mexico 87501

CERTIFICATE OF MAILING

I hereby certify that on this _____ day of December, 1973, I caused a true and correct copy of the above and foregoing Praecipe to be mailed to The Official Court Reporter of the Eighth Judicial District Court, P. O. Box 98, Carlsbad, New Mexico 88220 and to opposing counsel of record, William F. Carr, Special Assistant Attorney General for the New Mexico Oil Conservation Commission, P. O. Box 2088, Santa Fe, New Mexico 87501.

/s/ SUMNER G. BUELL



D
DISTRICT COURT
STATE OF NEW MEXICO
COUNTY OF EDDY

FILED NOV 28 1973 IN MY
9:38 am OFFICE
FRANCIS M. WILCOX
Clerk of the District Court

IN THE DISTRICT COURT OF EDDY COUNTY
STATE OF NEW MEXICO


DAVID FASKEN,)	
)	
Petitioner,)	
)	
vs.)	Cause No. 28482
)	
OIL CONSERVATION COMMISSION)	
OF THE STATE OF NEW MEXICO,)	
)	
Respondent.)	

SUMMARY JUDGMENT

This matter having come before the Court upon Motions for Summary Judgment filed herein by petitioner and by respondent; and the Court having considered the said Motions and arguments of counsel together with the Petition for Review, the respondent's Answer to Petition for Review and the transcript of de novo hearing held before the respondent on November 21, 1972, together with all exhibits introduced into evidence during that hearing, all of which have been filed with the Court in this action, finds that there are no factual issues involved, that respondent is entitled to judgment as a matter of law, and that the Court should grant summary judgment in favor of respondent affirming respondent's Orders Nos. R-4409 and R-4409-A.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that summary judgment be, and it hereby is, granted in favor of the respondent affirming respondent's Orders Nos. R-4409 and R-4409-A.

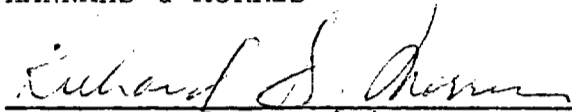
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that petitioner's Motion for Summary Judgment be, and the same hereby is, denied.




DISTRICT JUDGE

APPROVED AS TO FORM:

MONTGOMERY, FEDERICI, ANDREWS,
HANNAHS & MORRIS



Attorneys for Petitioner



WILLIAM F. CARR
Special Assistant Attorney General

OIL CONSERVATION COMMISSION

P. O. BOX 2088

SANTA FE, NEW MEXICO 87501

September 18, 1973

C The Honorable D. D. Archer
District Judge, Division I
Fifth Judicial District Court
Eddy County Courthouse
P. O. Box 93
Carlsbad, New Mexico 88220

Re: David Fasken v. Oil Conservation Commission,
Eddy County Causes Nos. 28482 and 28483

O Dear Judge Archer:

P I have received a copy of Mr. Morris' letter to you dated
September 6, 1973, in which he expressed his opinion that findings
of fact and conclusions of law made by the district court would
be "superfluous" in the above-captioned cases or any other case
involving an appeal from an order of an administrative agency.
Y In support of his position, Mr. Morris cited to the court Hardin v.
State Tax Commission, 78 N.M. 477, 432 P.2d 833. This case involved
an appeal of an order of the Tax Commission. The district court
after hearing the case filed findings of fact and conclusions of
law. Although this opinion states that the appellant court must
"...make the same review of the administrative agency's action as
did the district court," it does not say that findings of fact and
conclusions of law are either inappropriate or superfluous. If no
such findings and conclusions are made in these cases, it is diffi-
cult to see what possible benefit was derived from the hearing in
district court.

Certainly no dispute arising from an order of an administrative
agency will ever be resolved at the district court level if, in fact,
an identical review is available at the appellant level. Only costs
in terms of time and money would prevent such an appeal, for the
appellant court will be in the same position as the district court
and will not have the benefit of the reasoning of the district court
in reaching its decision.

J. O. SETH (1883-1983)

MONTGOMERY, FEDERICI, ANDREWS, HANNAH & MORRIS

A. K. MONTGOMERY

ATTORNEYS AND COUNSELORS AT LAW

WM. FEDERICI

350 EAST PALACE AVENUE

FRANK ANDREWS

SANTA FE, NEW MEXICO 87501

FRED C. HANNAH

POST OFFICE BOX 2307

RICHARD S. MORRIS

AREA CODE 505

SUMNER G. BUELL

TELEPHONE 982-3876

SETH D. MONTGOMERY

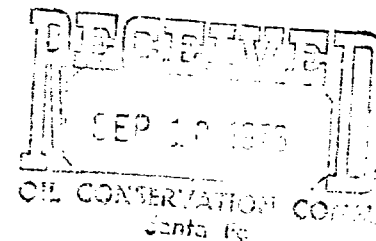
FRANK ANDREWS III

OWEN M. LOPEZ

September 6, 1973

JEFFREY R. BRANNEN

JOHN BENNETT POUND



The Honorable D. D. Archer
District Judge, Division I
Fifth Judicial District Court
Eddy County Courthouse
Post Office Box 98
Carlsbad, New Mexico 88220

Re: David Fasken v. Oil Conservation Commission;
Eddy County Causes Nos. 28482 and 28483

Dear Judge Archer:

We are in receipt of a copy of Mr. Carr's letter to you of August 31 transmitting the summary judgments in the subject cases and requesting that you enter findings of fact and conclusions of law.

We do not believe it appropriate for the Court to make findings of fact in an appeal from an administrative agency since the scope of review in the District Court is limited to matters of law. Also, the Supreme Court of New Mexico has held that in reviewing a District Court's judgment, it must make the same review of the administrative agency's action as did the District Court. Hardin v. State Tax Commission, 78 N.M. 477, 432 P.2d 833. Accordingly, the Supreme Court of New Mexico will review the Order of the administrative agency and not the findings and conclusions of the District Court, and any such findings and conclusions by the District Court would be superfluous.

If an appeal is taken in these cases, it will be much more straightforward for all parties to argue on the merits and demerits of the Commission's orders rather than also to be required to argue about the findings and conclusions of the District Court. We, therefore, recommend that the Court proceed to enter summary judgments in these cases and take no action with respect to the Commission's suggested findings of fact and conclusions of law.

COPY

Very truly yours,

RSM:alb

5086

cc: William F. Carr

OIL CONSERVATION COMMISSION

P. O. BOX 2088

SANTA FE, NEW MEXICO 87501

The Honorable D. D. Archer

September 17, 1973
Page 2

We therefore request the Court to enter Summary Judgments in these cases and to adopt the suggested Findings of Fact and Conclusions of Law offered by the Oil Conservation Commission.

Very truly yours,

WILLIAM F. CARR
Special Assistant Attorney General

WFC/dr

cc: Mr. Richard Morris

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OIL CONSERVATION COMMISSION

P. O. BOX 2088

SANTA FE, NEW MEXICO 87501

August 31, 1973

C
O
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Y
The Honorable D. D. Archer
District Judge, Division I
Fifth Judicial District Court
Eddy County Courthouse
P. O. Box 98
Carlsbad, New Mexico 88220

Re: David Fasken v. Oil Conservation
Commission, Nos. 28482 and 28483,
Eddy County, New Mexico

Dear Judge Archer:

I am forwarding to you herewith the Summary Judgment sent to me by Richard S. Morris in each of the above-captioned cases approved by us as to form pursuant to your letter of August 8, 1973.

I am also transmitting Suggested Findings of Fact and Conclusions of Law for the New Mexico Oil Conservation Commission.

If these cases are appealed, it will be important for the Court of Appeals to have more than just the Summary Judgment upon which to base its review. I, therefore, consider it both necessary and appropriate to make such findings and conclusions.

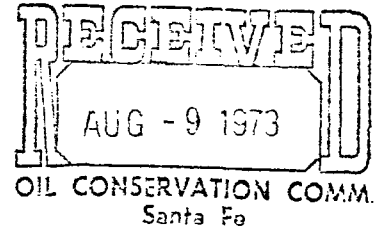
Very truly yours,

WILLIAM F. CARR
General Counsel

WFC/dr
cc: Mr. Richard S. Morris
enclosures

D. D. ARCHER
DISTRICT JUDGE
P. O. Box 98
CARLSBAD, NEW MEXICO
83220

August 8, 1973



Hon. Richard S. Morris
Montgomery, Federici, Andrews,
Hannahs & Morris
P.O. Box 2307
Santa Fe, New Mexico 87501

Hon. William F. Carr
Special Assistant Attorney General
Box 2088
Santa Fe, New Mexico 87501

Re: David Fasken vs. Oil Conservation Commission,
Nos. 28482 and 28483

Gentlemen:

With reference to the above causes of action, I have decided to find the issues in favor of the Commission and against the Petitioner. A judgment may be prepared by the Respondent accordingly for my signature.

If the Petitioner desires to file requested findings and conclusions, he will be granted 20 days to do so and the Respondent allowed 10 days thereafter to reply.

Sincerely,

A handwritten signature in cursive script, appearing to read "D. D. Archer".

D. D. Archer
District Judge

J. O. SETH (1983-1989)

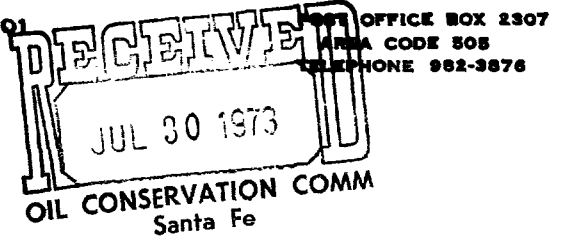
MONTGOMERY, FEDERICI, ANDREWS, HANNAHS & MORRIS

A. K. MONTGOMERY
WM. FEDERICI
FRANK ANDREWS
FRED C. HANNAHS
RICHARD S. MORRIS
SUMNER G. BUELL
SETH D. MONTGOMERY
FRANK ANDREWS III
OWEN M. LOPEZ

ATTORNEYS AND COUNSELORS AT LAW

380 EAST PALACE AVENUE
SANTA FE, NEW MEXICO 87501

JEFFREY R. BRANNEN
JOHN BENNETT POUND



July 27, 1973

Honorable D. D. Archer
District Judge, Division I
Fifth Judicial District Court
Eddy County Courthouse
Post Office Box 98
Carlsbad, New Mexico 88220

Re: David Fasken v. Oil Conservation Commission
of the State of New Mexico; Eddy County
Cause Nos. 28482 and 28483, District Court

Dear Judge Archer:

Enclosed is a Memorandum in Support of Petitioner's
Motions for Summary Judgment in the subject cases, which
Motions are set for hearing before you at 9:30 A.M. on
Wednesday, August 1. A copy of this Memorandum is being
furnished to Mr. Carr, attorney for the New Mexico Oil
Conservation Commission.

Very truly yours,

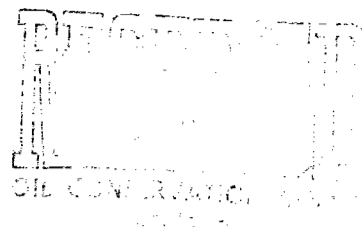
RSM:alb
enclosure
5086-73-2

cc: William F. Carr, Esquire w/enc. ✓

COPY

IN THE DISTRICT COURT OF EDDY COUNTY

STATE OF NEW MEXICO



DAVID FASKEN,)
)
Petitioner,)
)
-vs-)
)
OIL CONSERVATION COMMISSION)
OF THE STATE OF NEW MEXICO,)
)
Respondent.)

Cause Nos. 28482 and 28483

MEMORANDUM IN SUPPORT OF
PETITIONER'S MOTIONS FOR
SUMMARY JUDGMENT

These proceedings involve two appeals from Orders of the New Mexico Oil Conservation Commission which denied the petitioner's applications seeking recognition of the northerly portion of the Indian Basin-Morrow Gas Pool in Eddy County as a separate, non-prorated gas pool or, in the alternative, seeking the establishment of special allowables for the wells in the northerly portion of the pool in order to prevent waste and protect the petitioner's lands from drainage.

At the hearing before the Commission the petitioner supported his applications by testimony and exhibits prepared by Mr. James B. Henry, a consulting petroleum engineer whose qualifications as an expert were acknowledged. Mr. Henry's testimony, which will be reviewed in detail at the hearing before the Court on the Motions for Summary Judgment, was not contradicted in any manner, and no other evidence was offered with the exception of a brief presentation by Mr. Nutter of the Commission staff to the effect that one of Mr. Henry's exhibits might have been prepared in a different manner (Transcript, pages 77-78).

In brief, Mr. Henry's testimony established:

- (1) that a water-filled trough exists between the north and south reservoirs of the area the Commission is presently designating as one pool;
- (2) that the accumulations of gas in the two reservoirs are not in direct communication with each other except through this water-filled trough;
- (3) that the quantity of gas produced from the north reservoir, in relation to the quantity of gas produced from the south reservoir, has not been sufficient to maintain pressure equilibrium between the two reservoirs;
- (4) that the pressure differential between the two reservoirs has resulted in expansion of gas from the north reservoir into a portion of the area formerly occupied by the water-filled trough and a displacement of water from the trough into the south reservoir;
- (5) that gas is migrating from beneath the petitioner's lands in the north reservoir into the water-saturated trough formation from which it cannot be produced by any well;
- (6) that water encroachment into the south reservoir is threatening the ability of the wells in that area to continue producing gas;
- (7) that increased withdrawals of gas from the north reservoir are required in order to equalize pressures between the reservoirs and alleviate the present conditions under which waste and drainage are occurring; and
- (8) that increased withdrawals of gas from the north reservoir could be achieved by approval of the petitioner's applications.

As to the application for designation of the north reservoir as a separate, non-prorated pool, the Commission refused to recognize the distinctly diverse characteristics of the two gas accumulations and insisted upon treating them as a "common source of supply" subject to continued administration as a single pool (Order No. R-4409-A). As to the alternative application for special allowables to be assigned to wells in the north reservoir, the Commission found that approval of the application would cause unratable take (Order No. R-4444). In the Orders denying both applications the Commission found that its action was necessary in order to prevent waste and protect correlative rights, yet it offered no explanation as to how it had arrived at such conclusions or what justification it had to reject petitioner's uncontroverted evidence to the contrary.

The Commission's principal statutory duties are to prevent the waste of oil and gas and to protect the correlative rights of the owners of oil and gas interests. Section 65-3-10, N.M.S.A., 1953. In the exercise of these duties, the Commission's duty to prevent waste is paramount over its duty to protect correlative rights inasmuch as the definition of the term "correlative rights" limits an individual's rights to that amount of his share of oil or gas which can be produced without waste. As stated in Continental Oil Co. v. Oil Conservation Commission, 70 N.M. 310, 318, 373 P.2d 809 (1962):

"The Oil Conservation Commission is a creature of statute, expressly defined, limited and empowered by the laws creating it. The commission has jurisdiction over matters related to the conservation of oil and gas in New Mexico, but the basis of its powers is founded on the duty to prevent waste and to protect correlative rights. See, § 65-3-10,

supra. Actually, the prevention of waste is the paramount power, inasmuch as this term is an integral part of the definition of correlative rights."

In the Continental case and in Sims v. Mechem, 72 N.M. 186, 382 P.2d 183 (1963), which also involved the appeal of an order of the Oil Conservation Commission, the Court closely scrutinized the findings made by the Commission in its orders and in both cases held the orders invalid when it appeared that they did not demonstrate compliance with the duties imposed upon the Commission by statute.

In order to demonstrate compliance with its statutory duties the Commission must explain its conclusions concerning waste and correlative rights. As stated in City of Roswell v. New Mexico Water Quality Control Commission, 84 N.M. 561, 565, 505 P.2d 1237 (Ct.App. 1972):

"This record reveals only the notice of the public hearing, the testimony of the various experts and others, some exhibits and the regulations. We have no indication of what the Commission relied upon as a basis for adopting the regulations. As was stated in McClary v. Wagoner, 16 Mich.App. 326, 167 N.W.2d 800 (1969), 'We need to know the path the board has taken through the conflicting evidence. The appeal board should indicate the testimony adopted, the standard followed and the reasoning it used in reaching its conclusion.' These regulations are conclusions without reasons.

"There are some very practical reasons for this.

"2 Davis Administrative Law Treatise, § 16.05 (1958): 'The reasons have to do with facilitating judicial review, avoiding judicial usurpation of administrative functions, assuring more careful administrative consideration, helping parties plan their cases for rehearings and judicial review, and keeping agencies within their jurisdiction.' In making regulations, § 75-39-4(D), supra, states the

Water Quality Control Commission '...shall give weight it deems appropriate to all facts and circumstances...' including six categories stated in that statute. We cannot effectively perform the review authorized by § 75-39-6, supra, unless the record indicates what facts and circumstances were considered and the weight given to those facts and circumstances. We do not hold that formal findings are required. We do hold the record must indicate the reasoning of the Commission and the basis on which it adopted the regulations. The regulations were not adopted in accordance with law. Accordingly, the regulations are set aside."

In St. Louis County Water Co. v. State Highway Commission, 386 S.W.2d 119, 125 (Mo. 1964), the Supreme Court of Missouri, on motion for rehearing, carefully explained the nature and extent of findings required in an administrative order, as follows:

"...the Commission argues that the findings which it made in this case were sufficient. The motion asserts: 'The only ultimate fact which the Commission was required to find was whether or not the water mains in question would interfere with the construction, maintenance or use of the highway.' Insofar as the finding of ultimate fact is concerned, we can agree with this contention. We do not agree, however, that such ultimate finding, couched in the statutory language, is the only finding the Commission was required to make. The Commission must also have found the basic facts from which such ultimate fact might be inferred. 'Courts do not want agencies to include detailed summaries of testimony in their findings; they want what they call the basic facts. ***The basic findings are those on which the ultimate finding rests; the basic findings are more detailed than the ultimate finding but less detailed than a summary of the evidence.' 2 Davis, Administrative Law Treatise, Section 16.06, pages 450, 451. Only when the administrative agency makes such basic findings can a court properly perform its limited function of review of the administrative action. To repeat Judge Hyde's statement in Michler v. Krey Packing Co., 363 Mo. 707, 253 S.W.2d 136, 142, 'In any case, finding should be sufficient to show how the controlling issues have been decided.'"

A decision very closely in point is Pan American Petroleum Corp. v. Wyoming Oil & Gas Conservation Commission, 446 P.2d 550, (Wyo. 1968), in which the Supreme Court of Wyoming reversed a judgment of the district court which had affirmed a Commission order denying Pan American an exception to the Commission's well location requirements in an oil pool. As in the case at bar, Pan American based its case on evidence that an exception to the general rules was required in order to prevent waste and drainage and to protect its correlative rights. As stated in the opinion (446 P.2d 550 at p. 554):

"...Pan American's application, as stated, was predicated upon the claim that Marathon's wells, particularly those on the adjoining Wiley lease to the east, were draining and would continue to drain oil underlying Pan American's tract to such an extent that unless the exception well were granted Pan American would be deprived of recovering the oil remaining under its tract, or to state the claim more precisely in keeping with its theory of protecting its 'correlative rights' it would be deprived of an opportunity to recover its just and equitable share--without waste--of the oil in that part of the field where the properties are located."

The Court then recognized that opinion evidence is required in resolving such cases and that the Commission should utilize its own expertise in resolving conflicts in such evidence (no conflict exists in the case at bar), but also recognized that the Commission must indicate the basis upon which such evidence is accepted or rejected. In this regard, the opinion states (446 P.2d 550 at pp. 554-555):

"In developing the factors involved the courts recognize that resort to the opinions of experts experienced in such matters is usually necessary and essential. *** It is true, as the commission indicates, that such evidence may be somewhat speculative. Nevertheless, if the expertise of the witness is established, the evidence so presented is competent and the best available

with respect to the conditions prevailing in oil 'pools' or reservoirs underlying the surface. Its ultimate weight is for the commission, as the trier of facts, to determine in the light of the expertise and experience of its members in such matters. *** However, the subject matter of such expert testimony is highly technical; must receive careful consideration; and the courts will see to it that the acceptance or rejection of such evidence, in whole or in part, is on a reasonable and proper basis." (Emphasis supplied, citations omitted).

As to the findings required of the Commission in this type of case, the Court held (446 P.2d 550 at p. 555) that there was "...the duty to make findings of basic facts upon all of the material issues in the proceeding and upon which its ultimate findings of fact or conclusions are based. Unless that is done there is no rational basis for judicial review." (Emphasis added). Continuing, the Court said:

"...one of the duties charged to courts, on review of agency action, is to ascertain whether or not such findings of fact are supported by substantial evidence. To afford the court an opportunity informatively and intelligently to discharge that function it must first be known what underlying evidentiary facts the agency relied upon for a finding or conclusion of ultimate facts. Findings of those basic facts will not be implied from ultimate findings. *** ...if that were not true there could be no assurance that an agency has made a 'reasoned analysis' of all the material evidence. *** ...orderly review requires that the primary basic facts must be settled before it can be determined that ultimate facts found by an agency conform to law. Failure of an agency to meet its responsibilities in the premises makes its determination susceptible to the charge that the order entered is contrary to law." (Emphasis added, citations omitted).

In holding the Commission's order involved, the Court stated (446 P.2d 550 at pp. 555-557):

"In the instant case Pan American has made such a charge and with good reason. Although the commission's order, as stated above, contained a heading, 'FINDINGS,' the matters stated thereunder pertaining to the pivotal factual issues presented with respect to the necessity of an exception well for protection of Pan American's

correlative rights are nothing more than ultimate findings of fact or conclusions of law and do not purport to be basic findings of fact.

* * *

"While we do not profess to be skilled in such scientific matters, and absent technical guidance by the commission by way of adequate findings or otherwise, it would appear that the witness was qualified by training and experience to present the evidence submitted; that for purposes of his study he utilized all of the information available on the field; that such data was that ordinarily utilized for purposes of determining whether or not migration was taking place in the 'pool,' particularly in that portion here involved; that the method used to calculate the extent, if any, of such migration to Marathon's Wiley lease was well recognized as a 'tool of the trade'; and that such evidence was substantial evidence, sufficient in the first instance to make out a prima facie case.

"If, on the other hand, the term 'burden of proof' was used in the sense that Pan American failed to keep its prima facie case 'good,' First National Bank of Morrill v. Ford, 30 Wyo. 110, 216 P. 691, 694, 31 A.L.R. 1441, in the face of the countervailing testimony of Marathon's witness Thomas B. Harvey, whose expertise as a petroleum engineer was also conceded, then a different approach must be taken. All of the material evidence offered by the parties must be carefully weighed by the agency as the trier of the facts; conflicts in the evidence must be resolved, and the underlying or basic facts which prompt the ultimate conclusion on issues of fact drawn by the agency in sustaining the prima facie case made, or in rejecting it for the reason it has been satisfactorily met or rebutted by countervailing evidence, must be sufficiently set forth in the decision rendered. Otherwise the proceeding is not ripe for review.

"In the instant proceeding and regardless of which view is taken on the matter of burden of proof, the commission has not met its responsibilities in connection therewith.

* * *

"For the reasons stated the judgment of the trial court is reversed with instructions to enter a judgment vacating the order of the commission and remanding the proceeding to the commission for further consideration consistent with this opinion with the condition, however, that the commission in its discretion may grant a rehearing or reargument if it so desires."

In the Pan American case the Commission order was set aside even though there was conflicting evidence presented by Marathon upon which the Commission might have based its decision to deny Pan American's application. Significantly, in the case at bar neither the Commission staff nor any operator offered evidence contrary to that introduced by the petitioner. We recognize that such uncontroverted evidence may not be absolutely binding on the Commission, but at least the Commission is under a duty to offer a rational explanation as to why it was rejected. Where there is no finding that the credibility of uncontroverted evidence is lacking, such testimony cannot be ignored by the Commission. See State v. State Tax Commission, 393 S.W.2d 460 (Mo. 1965).

Petitioner therefore submits that Commission Orders Nos. R-4409, R-4409-A, and R-4444 should be set aside on the grounds that the orders did not set forth the basis of the Commission's decisions and that the findings in which the Commission stated that denial of the applications would prevent waste and protect correlative rights are not supported by substantial evidence.

MONTGOMERY, FEDERICI, ANDREWS,
HANNAHS & MORRIS

By Richard S. Morris
Post Office/Box 2307
Santa Fe, New Mexico
Attorneys for David Fasken

IN THE DISTRICT COURT OF EDDY COUNTY

STATE OF NEW MEXICO

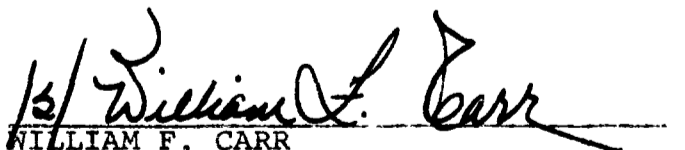
DAVID FASKEN,)
)
 Petitioner,) Cause No. 28482
)
 vs.)
)
 OIL CONSERVATION COMMISSION)
 OF THE STATE OF NEW MEXICO,)
)
 Respondent.)

MOTION FOR SUMMARY JUDGMENT

Comes now the Respondent, Oil Conservation Commission of the State of New Mexico, by its attorney, and moves the Court, pursuant to Rule 56 (b) of the Rules of Civil Procedure for the District Courts of the State of New Mexico, to enter Summary Judgment in its favor against Petitioner as to all issues in this action, and in support of his motion states that there are no factual issues involved and that Respondent is entitled to judgment as a matter of law based upon Petitioner's Petition for Review, Respondent's Answer to Petition for Review, and the transcript of the de novo hearing held before the Respondent, New Mexico Oil Conservation Commission, on November 21, 1972, together with all exhibits introduced into evidence during that hearing, all of which have been filed in this action.

WHEREFORE, Respondent prays that the Court enter Summary Judgment affirming Order No. R-4409-A which properly includes Sections 4 and 5, Township 21 South, Range 24 East, Eddy County, New Mexico, as part of the Indian Basin-Morrow Gas Pool.

DAVID L. NORVELL
Attorney General


WILLIAM F. CARR
Special Assistant Attorney General
representing the Oil Conservation
Commission of New Mexico, P. O.
Box 2088, Santa Fe, New Mexico 87501

I hereby certify that on the 25th
day of May, 1973, a true and correct
copy of the foregoing Motion for Summary
Judgment was mailed to Richard S. Morris
and William J. Cooley, opposing counsel
of record.

15/ William L. Carr

IN THE DISTRICT COURT OF EDDY COUNTY

STATE OF NEW MEXICO

DAVID FASKEN,

Petitioner,

vs.

Cause No. 28482

OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO,

Respondent.

MOTION FOR SUMMARY JUDGMENT

Comes now the Petitioner, David Fasken, by his attorneys, and moves the Court to enter Summary Judgment in his favor as to all issues in this action, and in support of his motion states that there are no factual issues involved and that Petitioner is entitled to judgment as a matter of law based upon his Petition for Review, the Respondent's Answer to Petition for Review, and the Transcript of de novo hearing held before the Respondent, New Mexico Oil Conservation Commission, on November 21, 1972, together with all exhibits introduced into evidence during that hearing, all of which have been filed in this action.

WHEREFORE, Petitioner prays that the Court enter Summary Judgment setting aside Respondent's Order No. R-4409-A for the reasons set forth in the Petition for Review and that the Court direct the Respondent to enter a proper order superseding Order No. R-4409-A and establishing Sections 4 and 5, Township 21 South, Range 24 East, Eddy County, New Mexico, as a separate gas pool for production from the Morrow formation.

MONTGOMERY, FEDERICI, ANDREWS,
HANNAHS & MORRIS

by Richard S. Morris
Attorneys for Petitioner

CERTIFICATE OF MAILING

I hereby certify that I caused a true and correct copy of the foregoing Motion for Summary Judgment to be mailed to William F. Carr, Attorney for the Oil Conservation Commission of the State of New Mexico, P.O. Box 2088, Santa Fe, New Mexico 87501 and William J. Cooley, Attorney for Michael P. Grace, II and Corrine Grace, 152 Petroleum Center Building, Farmington, New Mexico 87401 on this 12 day of April, 1973.

Richard J. Morris

IN THE DISTRICT COURT OF EDDY COUNTY

STATE OF NEW MEXICO

DAVID FASKEN,

Petitioner,

vs.

Cause No. 28482

OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO,

Respondent.

ANSWER TO PETITION FOR REVIEW


Respondent, Oil Conservation Commission of New Mexico,
answering the Petition for Review states:

1. Respondent admits the allegations contained in Paragraphs 1 and 2 of the Petition for Review.
2. Respondent denies each and every allegation in Paragraph 3 of the Petition for Review.
3. Respondent admits the allegation in Paragraph 4 that production from Petitioner's said wells has been restricted by reason of being administered and prorated under the special rules and regulations applicable to the Indian Basin-Morrow Gas Pool. Respondent denies all other allegations contained in Paragraph 4 of the Petition for Review.
4. Respondent admits the allegations in Paragraph 5 of the Petition for Review.
5. Respondent denies each and every allegation contained in Paragraph 6 of the Petition for Review.
6. Respondent admits Paragraph 7 of the Petition for Review.

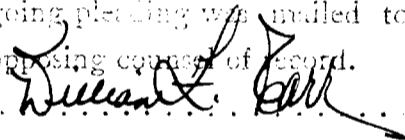
WHEREFORE, Respondent prays:

1. That the Petition for Review be dismissed.
2. That Commission Order No. R-4409-A be affirmed.

3. That the Court grant Respondent such other and further relief as the Court deems just.


WILLIAM F. CARR
Special Assistant Attorney General
representing the Oil Conservation
Commission of New Mexico, P. O.
Box 2088, Santa Fe, New Mexico 87501

I hereby certify that on the
26th day of FEBRUARY, 1973
a copy of the fore-
going pleading was mailed to
opposing counsel of record.



STATE OF NEW MEXICO

COUNTY OF EDDY

IN THE DISTRICT COURT

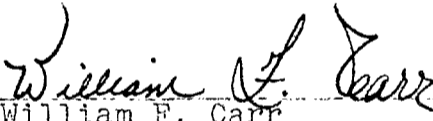
DAVID FASKEN,)
)
 Petitioner,)
)
 vs.)
)
 OIL CONSERVATION COMMISSION)
 OF THE STATE OF NEW MEXICO,)
)
 Respondent.)

No. 28482

ACCEPTANCE OF SERVICE
and ENTRY OF APPEARANCE

The undersigned hereby accepts service of a copy of Notice of Appeal with Petition for Review attached thereto in the above styled cause and hereby enters his appearance as Attorney for the Respondent Oil Conservation Commission of the State of New Mexico in this cause.

Dated this 29th day of January, 1973.



 William F. Carr
 Special Assistant, Attorney General
 for the State of New Mexico and
 Attorney for the Oil Conservation
 Commission of the State of New Mexico

STATE OF NEW MEXICO

COUNTY OF EDDY

IN THE DISTRICT COURT

DAVID FASKEN,)
)
 Petitioner,)
)
 vs.)
)
 OIL CONSERVATION COMMISSION)
 OF THE STATE OF NEW MEXICO)
)
 Respondent.)

No. 28482

NOTICE OF APPEAL

TO: Oil Conservation Commission
of the State of New Mexico,
Respondent

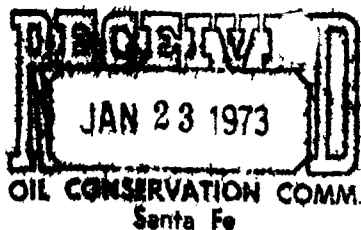
Michael P. Grace, II and
Corrine Grace

Please take notice that on the 18th day of January, 1973,
David Fasken, the Petitioner in the above styled cause, filed a
Petition for Review of Oil Conservation Commission of New Mexico
Order No. R-4409-A in the District Court of Eddy County, New Mex-
ico.

Dated this 22 day of January, 1973.

MONTGOMERY, FEDERICI, ANDREWS,
HANNAHS & MORRIS

by Richard S. Morris
 P.O. Box 2307
 Santa Fe, New Mexico 87501
 Attorneys for David Fasken,
 Petitioner



STATE OF NEW MEXICO

COUNTY OF EDDY

IN THE DISTRICT COURT

DAVID FASKEN,

Petitioner,

vs.

Cause No. 28482

OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO,

Respondent.

PETITION FOR REVIEW

Comes now David Fasken, by his attorneys, and petitions the Court for review of Oil Conservation Commission of New Mexico Order No. R-4409-A, and in support of his petition states:

1. Petitioner is the assignee of oil and gas leases covering all of Sections 4 and 5, Township 21 South, Range 24 East, Eddy County, New Mexico and is the owner and operator of the following-described wells which are completed in the Morrow formation and which presently are designated by the Respondent Commission as being within the Indian Basin-Morrow Gas Pool:

David Fasken Ross Federal Well No. 1, located 1980 feet from the South line and 1980 feet from the West line of Section 4, Township 21 South, Range 24 East, Eddy County, New Mexico.

David Fasken Shell Federal Well No. 1, located 1980 feet from the South line and 1980 feet from the West line of Section 5, Township 21 South, Range 24 East, Eddy County, New Mexico.

2. At the time Petitioner drilled and completed the above-described wells, the lands upon which they were located were designated by the Commission as being within the North Indian Basin-Morrow Gas Pool; however, by Order No. R-3758, effective June 1, 1969, the said lands and the Petitioner's

above-described wells were redesignated by the Commission as being within the Indian Basin-Morrow Gas Pool.

3. The drilling and completion of additional wells in the Morrow formation since the time the Petitioner's above-described lands and wells were redesignated in the Indian Basin-Morrow Gas Pool has provided information which establishes that the Petitioner's said wells are completed in a source of supply separate and distinct from the source of supply for all other wells in the Indian Basin-Morrow Gas Pool.

4. By reason of being administered and prorated under the special rules and regulations applicable to the Indian Basin-Morrow Gas Pool, the production from the Petitioner's said wells has been restricted and a pressure imbalance has been created which has caused, is causing, and, unless this Petition is granted, will continue to cause migration of gas from beneath the Petitioner's lands, thereby causing waste and violating the Petitioner's correlative rights. In addition, the pressure differential that exists between the Petitioner's said wells and wells to the South thereof is causing water encroachment into those wells thereby causing waste and impairing the correlative rights of the various owners of interest in those wells and lands, including the State of New Mexico as the owner of a royalty interest therein.

5. On May 1, 1972, Petitioner applied to the Commission for an order establishing Sections 4 and 5, Township 21 South, Range 24 East, Eddy County, New Mexico, as a separate gas pool for production from the Morrow formation and deleting the said acreage from the Indian Basin-Morrow Gas Pool. By such application, the Petitioner sought to remove his said acreage from administration and proration under the special rules and

regulations applicable to the Indian Basin-Morrow Gas Pool and thereby be enabled to produce his said wells in such a manner as to prevent the migration of gas from beneath his lands and the encroachment of water into the wells lying South thereof. Hearing was held upon the said application on June 7, 1972 before Daniel S. Nutter, an Examiner appointed by the Commission, and on September 27, 1972 the Commission entered its Order No. R-4409 denying the application. On October 24, 1972, Petitioner applied to the Commission for hearing de novo upon his original application; hearing de novo was held before the Commission on November 21, 1972, and on December 6, 1972 the Commission entered its Order No. R-4409-A again denying the application. On December 22, 1972, Petitioner made Application for Rehearing to the Commission with respect to its Order No. 4409-A and, the Commission having failed to act thereon within ten days after filing, the Application for Rehearing is deemed to have been refused pursuant to § 65-3-22(a) NMSA 1953.

6. Petitioner is adversely affected by the said Commission Order No. R-4409-A and by the Commission's refusal to grant Petitioner's Application for Rehearing with respect thereto, and believes the said Order No. R-4409-A to be erroneous and invalid for the following reasons:

A. Finding No. 5 of the said order is not supported by substantial evidence. To the contrary, the evidence clearly establishes that the Morrow formation underlying said Sections 4 and 5 is effectively separated by a water-filled structural trough from the Morrow formation underlying the remainder of the Indian Basin-Morrow Gas Pool and, therefore, the said Sections 4 and 5 should be designated by the Commission as a separate source of gas supply.

B. Finding No. 6 of the said order is not supported by substantial evidence. To the contrary, the evidence clearly establishes that production of the Petitioner's wells in said Sections 4 and 5 at their capacity is necessary to achieve pressure equilibrium across the trough, thereby preventing the migration of gas from beneath the Petitioner's lands and protecting his correlative rights.

C. Finding No. 7 of the said order is not supported by substantial evidence. To the contrary, the evidence clearly establishes that under present circumstances waste is occurring and correlative rights are being violated.

D. The said order is invalid in that it contains no findings to explain, support or indicate the reasoning of the Commission in concluding that the application should be denied in order to prevent waste.

E. The said order is erroneous as a matter of law. Order No. R-4409-A reaffirmed in its entirety Order No. R-4409, which order recognized the presence of the water-filled structural trough separating the Petitioner's lands from the other lands presently designated as constituting the Indian Basin-Morrow Gas Pool (Finding No. 6, Order No. R-4409 dated September 27, 1972); however, both orders Nos. R-4409 and R-4409-A erroneously concluded that the Petitioner's lands lying North of the trough should not be established as a separate pool.

F. The said order is erroneous, invalid and void in that the effect of the said order will be to cause waste and violate the correlative rights of the Petitioner and of other mineral interest owners, contrary to the duties imposed upon the Commission by the oil and gas statutes of the State of New Mexico.

7. This Petition for Review is brought pursuant to § 65-3-22(b) NMSA 1953. Copies of Commission Order No. R-4409-A and of Petitioner's Application for Rehearing with respect thereto are attached hereto as Exhibits "A" and "B", respectively, and are incorporated herein by reference.

WHEREFORE, Petitioner prays that the Court review Commission Order No. R-4409-A and the evidence upon which the Commission purported to base such order, and that the Court enter judgment declaring such order to be invalid and vacating the same. Petitioner further prays for such further relief as may be just and proper in this cause.

MONTGOMERY, FEDERICI, ANDREWS,
HANNAHS & MORRIS

BY: /s/ Richard S. Morris
P. O. Box 2307
Santa Fe, New Mexico 87501
Attorneys for Petitioner

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. 4733
Order No. R-4409-A

APPLICATION OF DAVID FASKEN FOR
POOL CONTRACTION AND CREATION
OF A NEW GAS POOL, EDDY COUNTY,
NEW MEXICO.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing de novo at 9 a.m. on November 21, 1972, at Santa Fe, New Mexico, before the Oil Conservation Commission of New Mexico, hereinafter referred to as the "Commission."

NOW, on this 6th day of December, 1972, 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 after an examiner hearing, Commission Order No. R-4409, dated September 27, 1972, was entered in Case No. 4733 denying the application of David Fasken for the contraction of the Indian Basin-Morrow Gas Pool by the deletion therefrom of all of Sections 4 and 5, Township 21 South, Range 24 East, NMPM, Eddy County, New Mexico, and the creation of a new gas pool comprising said lands.

(3) That David Fasken requested and was granted a hearing de novo of Case No. 4733.

* (4) That the evidence presented at the hearing de novo clearly establishes that there is communication within the Morrow formation between the aforesaid Sections 4 and 5 and the remainder of the Indian Basin-Morrow Gas Pool.

* (5) That the Morrow formation underlying said Sections 4 and 5 and the Morrow formation underlying the remainder of the Indian Basin-Morrow Gas Pool constitute a single common source of gas supply.

pressure communication - no disagreement migration

(6) That to separate the Indian Basin-Morrow Gas Pool into two parts and to permit the wells in said Sections 4 and 5 to produce at unrestricted rates would afford said wells an undue share of the recoverable gas reserves in the pool and would result in unratable take and would violate the correlative rights of other mineral interest owners in the pool.

(7) That in order to prevent unratable take and protect correlative rights and prevent waste, the Indian Basin-Morrow Gas Pool should not be contracted, a separate pool should not be created, and Order No. R-4409 should be reaffirmed.

IT IS THEREFORE ORDERED:

(1) That Commission Order No. R-4409, dated September 27, 1972, be and the same is hereby reaffirmed in its entirety.

(2) That jurisdiction of this cause is retained for the entry of such further orders as the Commission may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

BRUCE KING, Chairman

ALEX J. ARMIJO, Member

A. L. PORTER, Jr., Member & Secretary

S E A L

dr/

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. 4733
Order No. R-4409

APPLICATION OF DAVID FASKEN FOR
POOL CONTRACTION AND CREATION
OF A NEW GAS POOL, EDDY COUNTY,
NEW MEXICO.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9 a.m. on June 7, 1972, at Santa Fe, New Mexico, before Examiner Daniel S. Nutter.

NOW, on this 27th day of September, 1972, the Commission, a quorum being present, having considered the testimony, the record, and the recommendations of the Examiner, 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 the applicant, David Fasken, seeks the contraction of the horizontal limits of the Indian Basin-Morrow Gas Pool, by the deletion therefrom of all of Sections 4 and 5, Township 21 South, Range 24 East, NMPM, Eddy County, New Mexico.
- (3) That the applicant further seeks the creation of a new non-prorated gas pool comprising all of said Sections 4 and 5 for the production of gas from the Morrow formation.
- (4) That by Order No. R-2441, dated February 28, 1963, the Commission created the Indian Basin-Morrow Gas Pool, Eddy County, New Mexico, for the production of gas from the Morrow formation.
- (5) That the horizontal limits of the Indian Basin-Morrow Gas Pool have been extended from time to time by order of the Commission.
- (6) That while the evidence presented does indicate the presence of a trough existing in the area of the proposed separation, the evidence does not indicate that it is an effective barrier.

-2-

CASE NO. 4733
Order No. R-4409

(7) That there is substantial evidence that there is communication between the areas to the north and south of the trough.

(8) That the areas proposed to be separated constitute a single source of supply and should not be separated.

(9) That the applicant has failed to prove that the Indian Basin-Morrow Gas Pool should be contracted and that a new Morrow Gas Pool should be created.

(10) That in order to prevent waste and protect correlative rights, the application should be denied.

IT IS THEREFORE ORDERED:

(1) That the application of David Fasken for the contraction of the Indian Basin-Morrow Gas Pool and for the creation of a new gas pool for Morrow production is hereby denied.

(2) That jurisdiction of this cause is retained for the entry of such further orders as the Commission may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

BRUCE KING, Chairman

ALEX J. ARMIJO, Member

A. L. PORTER, Jr., Member & Secretary

S E A L

dr/

BEFORE THE OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO

IN THE MATTER OF THE APPLICATION
OF DAVID FASKEN FOR POOL CONTRAC-
TION AND CREATION OF A NEW GAS
POOL, EDDY COUNTY, NEW MEXICO.

CASE No. 4733

APPLICATION FOR REHEARING

Comes now David Fasken and makes application to the New Mexico Oil Conservation Commission for rehearing in respect of all matters determined by Order No. R-4409-A entered by the Commission in this case on December 6, 1972, and in support thereof states:

1. That David Fasken is the assignee of oil and gas leases covering all of Sections 4 and 5, Township 21 South, Range 24 East, Eddy County, New Mexico and is the owner and operator of the following-described wells which are completed in the Morrow formation and which presently are designated by the Commission as being within the Indian Basin-Morrow Gas Pool:

David Fasken Ross Federal Well No. 1, located 1980 feet from the South line and 1980 feet from the West line of Section 4, Township 21 South, Range 24 East, Eddy County, New Mexico.

David Fasken Shell Federal Well No. 1, located 1980 feet from the South line and 1980 feet from the West line of Section 5, Township 21 South, Range 24 East, Eddy County, New Mexico.

2. At the time David Fasken drilled and completed the above-described wells the lands upon which they were located were designated by the Commission as being within the North Indian Basin-Morrow Gas Pool; however, by Order No. R-3758, effective June 1, 1969, the said lands and the applicant's above-described wells were redesignated by the Commission as being within the Indian Basin-Morrow Gas Pool.

3. The drilling and completion of additional wells in the Morrow formation since the time the applicant's above-described lands and wells were redesignated in the Indian Basin-Morrow Gas Pool has provided information which establishes that the applicant's said wells are completed in a source of supply separate and distinct from the source of supply for all other wells in the Indian Basin-Morrow Gas Pool.

4. By reason of being administered and prorated under the special rules and regulations applicable to the Indian Basin-Morrow Gas Pool, the production from the applicant's said wells has been restricted and a pressure imbalance has been created which has caused, is causing, and, unless this application is granted, will continue to cause migration of gas from beneath the applicant's lands, thereby causing waste and violating the applicant's correlative rights. In addition, the pressure differential that exists between the applicant's said wells and wells to the South thereof is causing water encroachment into those wells thereby causing waste and impairing the correlative rights of the various owners of interest in those wells and lands, including the State of New Mexico as the owner of a royalty interest therein.

5. On May 1, 1972, David Fasken applied to the New Mexico Oil Conservation Commission for an order establishing Sections 4 and 5, Township 21 South, Range 24 East, Eddy County, New Mexico, as a separate gas pool for production from the Morrow formation and deleting the said acreage from the Indian Basin-Morrow Gas Pool. By such application, the applicant sought to remove his said acreage from administration and proration under the special rules and regulations applicable to the Indian Basin-Morrow Gas Pool and thereby be enabled to produce

his said wells in such a manner as to prevent the migration of gas from beneath his lands and the encroachment of water into the wells lying South thereof. Hearing was held upon the said application on June 7, 1972 before Daniel S. Nutter, an Examiner appointed by the Commission, and on September 27, 1972 the Commission entered its Order No. R-4409 denying the application. On October 24, 1972 David Fasken applied to the Commission for hearing de novo upon his original application; hearing de novo was held before the Commission on November 21, 1972, and on December 6, 1972 the Commission entered its Order No. R-4409-A again denying the application.

6. David Fasken is adversely affected by the said Commission Order No. R-4409-A and believes it to be erroneous and invalid for the following reasons:

A. Finding No. 5 of the said order is not supported by substantial evidence. To the contrary, the evidence clearly establishes that the Morrow formation underlying said Sections 4 and 5 is effectively separated by a water-filled structural trough from the Morrow formation underlying the remainder of the Indian Basin-Morrow Gas Pool and, therefore, the said Sections 4 and 5 should be designated by the Commission as a separate source of gas supply.

B. Finding No. 6 of the said order is not supported by substantial evidence. To the contrary, the evidence clearly establishes that production of the applicant's wells in said Sections 4 and 5 at their capacity is necessary to achieve pressure equilibrium across the trough, thereby preventing the migration of gas from beneath the applicant's lands and protecting his correlative rights.

C. Finding No. 7 of the said order is not supported

by substantial evidence. To the contrary, the evidence clearly establishes that under present circumstances waste is occurring and correlative rights are being violated.

D. The said order is invalid in that it contains no findings to explain, support or indicate the reasoning of the Commission in concluding that the application should be denied in order to prevent waste.

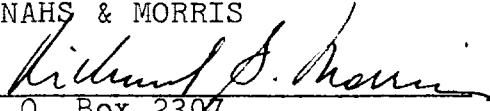
E. The said order is erroneous as a matter of law. Order No. R-4409-A reaffirmed in its entirety Order No. R-4409, which order recognized the presence of the water-filled structural trough separating the applicant's lands from the other lands presently designated as constituting the Indian Basin-Morrow Gas Pool (Finding No. 6, Order No. R-4409 dated September 27, 1972); however, both orders Nos. R-4409 and R-4409-A erroneously concluded that the applicant's lands lying North of the trough should not be established as a separate pool.

F. The said order is erroneous, invalid and void in that the effect of the said order will be to cause waste and violate the correlative rights of the applicant and of other mineral interest owners, contrary to the duties imposed upon the Commission by the oil and gas statutes of the State of New Mexico.

WHEREFORE, the Commission should enter its order granting this Application for Rehearing, superseding orders Nos. R-4409 and R-4409-A, and establishing Sections 4 and 5, Township 21 South, Range 24 East, Eddy County, New Mexico as a separate gas pool for production from the Morrow formation.

MONTGOMERY, FEDERICI, ANDREWS,
HANNAHS & MORRIS

BY:

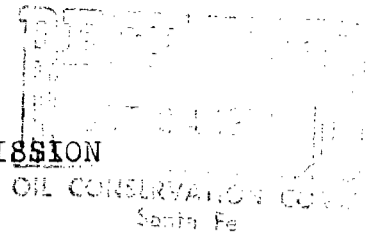

P. O. Box 2307
Santa Fe, New Mexico 87501
Attorneys for David Fasken

CERTIFICATE OF MAILING

I hereby certify that I caused a true and correct copy of the foregoing Application for Rehearing to be mailed to Jack Cooley, Petroleum Center Building, Farmington, New Mexico 87401 on this 22 day of December, 1972.

Michael S. Morris

BEFORE THE OIL CONSERVATION COMMISSION
OF THE
STATE OF NEW MEXICO



APPLICATION OF DAVID FASKEN)
FOR CONTRACTION OF THE)
HORIZONTAL LIMITS OF THE) Case No. 4733
INDIAN BASIN-MORROW GAS POOL)
AND FOR CREATION OF A NEW)
GAS POOL, EDDY COUNTY,)
NEW MEXICO)

APPLICATION FOR HEARING DE NOVO

Comes now David Fasken, by his attorneys, and applies to the New Mexico Oil Conservation Commission for an Order contracting the horizontal limits of the Indian Basin-Morrow Gas Pool and for the creation of a new gas pool, Eddy County, New Mexico, and for a hearing de novo in connection with this Application, and in support thereof states:

1. Applicant is the owner and operator of the following described wells which are completed in the Morrow Formation and which presently are designated by the Commission as being within the Indian Basin-Morrow Gas Pool:

David Fasken Ross Federal Well No. 1, located 1980 feet from the South line and 1980 feet from the West line of Section 4, Township 21 South, Range 24 East, Eddy County, New Mexico.

David Fasken Shell Federal Well No. 1, located 1980 feet from the South line and 1980 feet from the West line of Section 5, Township 21 South, Range 24 East, Eddy County, New Mexico.

2. The above described wells originally were included within the North Indian Basin-Morrow Gas Pool, but were included within the Indian Basin-Morrow Gas Pool at the time the temporary Special Rules and Regulations for the North Indian Basin-Morrow Gas Pool expired.

3. The drilling of additional wells to the Morrow formation since the time the above described wells were included in the

Indian Basin-Morrow Gas Pool has provided information which proves that the above described wells are completed in a source of supply separate and apart from the source of supply for wells located in the Indian Basin-Morrow Gas Pool.

4. In order to protect the correlative rights of the Applicant and in order properly to define the Morrow production in the area of the above described wells, the Commission should enter an order deleting Sections 4 and 5, Township 21 South, Range 24 East, Eddy County, New Mexico, from the Indian Basin-Morrow Gas Pool and establishing those Sections as a separate gas pool for Morrow production.

5. On or about May 1, 1972, the applicant made Application to the Commission as set forth in paragraphs 1 through 4 above. Hearing was held upon the said Application on June 7, 1972 before Daniel S. Nutter, an Examiner duly appointed by the Commission, and on September 27, 1972, the Commission entered its Order No. R-4409 denying the Application.

6. Contrary to Finding No. 10 of the said Order No. R-4409 denial of the Application has caused waste and has impaired the correlative rights of the Applicant, and will continue to do so unless this Application is granted.

7. David Fasken is a party adversely affected by the said Order No. R-4409 and hereby makes Application for hearing de novo pursuant to Section 65-3-11.1 New Mexico Statutes Annotated and Commission Rule 1220.

8. Approval of this Application will prevent waste and protect correlative rights.

WHEREFORE, the Applicant requests that this Application for hearing de novo be set for hearing before the Commission at its

next regular hearing date and that the Commission enter its Order contracting the horizontal limits of the Indian Basin-Morrow Gas Pool and creating a new gas pool for Morrow production, all as set forth herein.

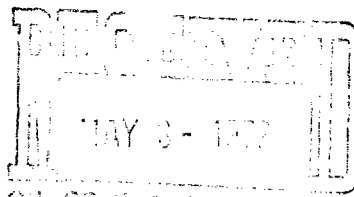
MONTGOMERY, FEDERICI, ANDREWS,
HANNAHS & MORRIS

By


P.O. Box 2307

Santa Fe, N.M. 87501

Attorneys for David Fasken.



BEFORE THE NEW MEXICO OIL CONSERVATION COMMISSION

APPLICATION OF DAVID FASKEN)
FOR AN ORDER CONTRACTING THE)
HORIZONTAL LIMITS OF THE)
INDIAN BASIN-MORROW GAS POOL,)
EDDY COUNTY, NEW MEXICO)

Case No. 4733

APPLICATION

Comes now David Fasken, by his attorneys, and applies to the New Mexico Oil Conservation Commission for an order contracting the horizontal limits of the Indian Basin-Morrow Gas Pool, Eddy County, New Mexico, and in support of his application states:

1. Applicant is the owner and operator of the following described wells which are completed in the Morrow Formation and which presently are designated as lying within the Indian Basin-Morrow Gas Pool:

David Fasken Ross Federal Well No. 1, located 1980 feet from the South line and 1980 feet from the West line of Section 4, Township 21 South, Range 24 East, Eddy County, New Mexico.

David Fasken Shell Federal Well No. 1, located 1980 feet from the South line and 1980 feet from the West line of Section 5, Township 21 South, Range 24 East, Eddy County, New Mexico.

2. The above described wells originally were included within the North Indian Basin-Morrow Gas Pool, but were included within the Indian Basin-Morrow Gas Pool at the time the temporary Special Rules and Regulations for the North Indian Basin-Morrow Gas Pool expired.

3. The drilling of additional wells to the Morrow formation since the time the above described wells were included in the Indian Basin-Morrow Gas Pool has provided information which proves that the above described wells are completed in a source of supply separate and apart from the source of supply for wells located in the Indian basin-Morrow Gas Pool.

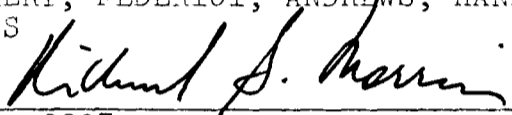
4. In order to protect the correlative rights of the applicant and in order properly to define the Morrow production in the

area of the above described wells, the Commission should enter an order deleting Sections 4 and 5, Township 21 South, Range 24 East, Eddy County, New Mexico, from the Indian Basin-Morrow Gas Pool and establishing those Sections as a separate gas pool for Morrow production.

WHEREFORE, applicant requests that this application be set for hearing before the Commission, or one of its examiners, and that the Commission enter its order contracting the Indian Basin-Morrow Gas Pool in accordance with this application.

MONTGOMERY, FEDERICI, ANDREWS, HANNAHS
& MORRIS

By



P.O. Box 2307

Santa Fe, N.M. 87501

Attorneys for Applicant, David Fasken.