

IN THE DISTRICT COURT OF EDDY COUNTY  
STATE OF NEW MEXICO

DAVID FASKEN, )  
 )  
 Petitioner, )  
 )  
 vs. ) Cause No. 29482  
 )  
 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.

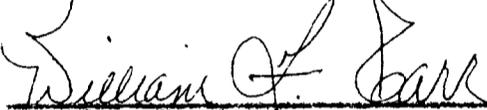
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that petitioner's Motion for Summary Judgment be, and the same hereby is, denied.

\_\_\_\_\_  
DISTRICT JUDGE

APPROVED AS TO FORM:

MONTGOMERY, FEDERICI, ANDREWS,  
HANNAH & MORRIS

  
\_\_\_\_\_  
Attorneys for Petitioner

  
\_\_\_\_\_  
WILLIAM F. CARR  
Special Assistant Attorney General

J. D. SETH (1883-1983)

MONTGOMERY FEDERICI, ANDREWS, HANNA & MORRIS

A. K. MONTGOMERY  
WM. FEDERICI  
FRANK ANDREWS  
FRED C. HANNAHS  
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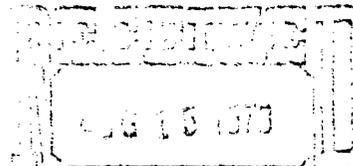
ATTORNEYS AND COUNSELORS AT LAW

350 EAST PALACE AVENUE

SANTA FE, NEW MEXICO 87501

POST OFFICE BOX 2307  
AREA CODE 505  
TELEPHONE 932-3376

August 14, 1973



OIL CONSERVATION COMM.  
Santa Fe

JEFFREY R. BRANNEN  
JOHN BENNETT POUND

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, Nos. 28482 and 28483  
Eddy County, New Mexico

Dear Judge Archer:

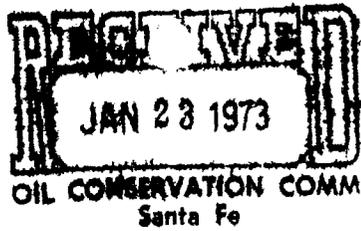
We have your letter of August 8 in which you announced your decision to find the issues in favor of the Commission and against the petitioner. Since this matter was before you on Motions for Summary Judgment filed both by the petitioner and the Commission, we do not believe it necessary or appropriate to make requested findings and conclusions. Therefore, in order to expedite the conclusion of this matter, we have prepared, and are forwarding to Mr. Carr herewith, a Summary Judgment, approved by us as to form, in accordance with your decision. We assume Mr. Carr will be forwarding this Summary Judgment to you within the next few days.

Very truly yours,

COPY

RSM:alb  
5086-73-2

cc: William F. Carr ✓  
Richard S. Brooks



STATE OF NEW MEXICO

COUNTY OF EDDY

IN THE DISTRICT COURT

DAVID FASKEN,

Petitioner,

vs.

Cause No. 28-183

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-4444, 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 October 25, 1972, Petitioner applied to the Commission for an order exempting its said wells from prorationing or, in the alternative, for the assignment of special allowables to the said wells in order to avoid aggravation of the pressure differential that existed, and continues to exist, between the Petitioner's said wells and the wells located South thereof in the Indian Basin-Morrow Gas Pool. Hearing on this application

was held before the Commission on November 21, 1972 and on December 6, 1972 the Commission entered its Order R-4444 denying the application. On December 22, 1972, Petitioner made Application for Rehearing to the Commission with respect to its Order No. R-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-4444 and by the Commission's refusal to grant Petitioner's Application for Rehearing with respect thereto, and believes the said Order No. R-4444 to be erroneous and invalid for the following reasons:

A. 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.

B. Finding Nos. 6, 7 and 8 of the said order are not supported by substantial evidence.

C. The said order is erroneous and invalid as a matter of law. Finding No. 5 of the said order recognizes the existence of the pressure differential between the area in which the Petitioner's wells are located and that area of the Indian Basin-Morrow Gas Pool to the South of the Petitioner's said wells and recognizes that gas migration is occurring due to the said pressure differential; however, on the spurious grounds that the Petitioner could drill additional wells (at considerable additional expense to the Petitioner) the Commission refused to afford relief which would prevent the occurrence of waste as well as the protection of the Petitioner's correla-

tive rights and the correlative rights of other mineral interest owners.

D. 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-4444 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-4444 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.

MONTCOMERY, FEDERICI, ANDREWS,  
HANNAHS & MORRIS

BY: *15/ Richard J. Morris*  
P. O. Box 2307  
Santa Fe, New Mexico 87501  
Attorneys for Petitioner

IN THE DISTRICT COURT OF EDDY COUNTY  
STATE OF NEW MEXICO

DAVID FASKEN, )  
 )  
 Petitioner, )  
 )  
 vs. ) Cause No. 28482  
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 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.

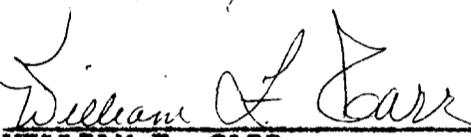
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that petitioner's Motion for Summary Judgment be, and the same hereby is, denied.

\_\_\_\_\_  
DISTRICT JUDGE

APPROVED AS TO FORM:

MONTGOMERY, FEDERICI, ANDREWS,  
HANNAHS & MORRIS

  
\_\_\_\_\_  
Attorneys for Petitioner

  
\_\_\_\_\_  
WILLIAM F. CARR  
Special Assistant Attorney General

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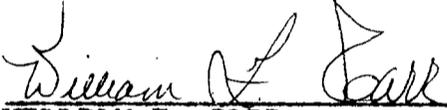
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that petitioner's Motion for Summary Judgment be, and the same hereby is, denied.

\_\_\_\_\_  
DISTRICT JUDGE

APPROVED AS TO FORM:

MONTGOMERY, FEDERICI, ANDREWS,  
HANNAHS & MORRIS

  
\_\_\_\_\_  
Attorneys for Petitioner

  
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WILLIAM F. CARR  
Special Assistant Attorney General

J. O. SETH (1983-1983)

**MONTGOMERY, FEDERICI, ANDREWS, HANNAHS & MORRIS**

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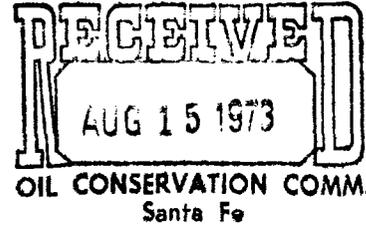
**ATTORNEYS AND COUNSELORS AT LAW**

350 EAST PALACE AVENUE

SANTA FE, NEW MEXICO 87501

POST OFFICE BOX 2307  
AREA CODE 505  
TELEPHONE 982-3676

August 14, 1973



JEFFREY R. BRANNEN  
JOHN BENNETT POUND

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, Nos. 28482 and 28483  
Eddy County, New Mexico

Dear Judge Archer:

We have your letter of August 8 in which you announced your decision to find the issues in favor of the Commission and against the petitioner. Since this matter was before you on Motions for Summary Judgment filed both by the petitioner and the Commission, we do not believe it necessary or appropriate to make requested findings and conclusions. Therefore, in order to expedite the conclusion of this matter, we have prepared, and are forwarding to Mr. Carr herewith, a Summary Judgment, approved by us as to form, in accordance with your decision. We assume Mr. Carr will be forwarding this Summary Judgment to you within the next few days.

Very truly yours,

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cc: William F. Carr ✓  
Richard S. Brooks

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IN THE DISTRICT COURT OF EDDY COUNTY  
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 Petitioner, )  
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 vs. ) Cause No. 28483  
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 OIL CONSERVATION COMMISSION )  
 OF THE STATE OF NEW MEXICO, )  
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 Respondent. )

SUMMARY JUDGMENT

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IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that summary judgment be, and it hereby is, granted in favor of the respondent affirming respondent's Order No. R-4444.

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

*Lillian S. Morris*

\_\_\_\_\_  
Attorneys for Petitioner

*William F. Carr*

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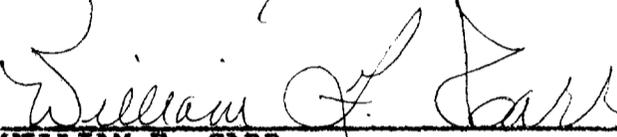
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that petitioner's Motion for Summary Judgment be, and the same hereby is, denied.

\_\_\_\_\_  
DISTRICT JUDGE

APPROVED AS TO FORM:

MONTGOMERY, FEDERICI, ANDREWS,  
HANNAHS & MORRIS

  
\_\_\_\_\_  
Attorneys for Petitioner

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

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DISTRICT JUDGE

APPROVED AS TO FORM:

MONTGOMERY, FEDERICI, ANDREWS,  
HANNAHS & MORRIS

*Richard S. Morris*  
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Attorneys for Petitioner

*William F. Carr*  
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