

STATE OF NEW MEXICO

COUNTY OF EDDY

IN THE DISTRICT COURT

DAVID FASKEN,

Petitioner,

v.

OIL CONSERVATION COMMISSION  
OF THE STATE OF NEW MEXICO,

Respondent.

Cause No. \_\_\_\_\_

PETITION FOR REVIEW

Comes now DAVID FASKEN, by his attorneys, and petitions the Court to review Oil Conservation Commission Order No. R-4409-B, and in support thereof, 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 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 §65-3-22A, NMSA, 1953.

6. This matter was then reviewed by this Court as its Cause No. 28482 and an Order entered by The District Court of Eddy County, granting summary judgment in favor of the Oil Conservation Commission of the State of New Mexico, which summary judgment was entered November 29, 1973. Whereupon, an appeal was taken to the Supreme Court of the State of New Mexico, and the matter has been reviewed by that Court and its Mandate directed the Commission to make new findings of fact based upon the record before it. The new findings have been made, as appear in the Order R-4409-B, entered May 22, 1975, and new findings made under §0. of said order, and that your Petitioner believes the Order to be erroneous and invalid for the following reasons:

A. Finding No. 4 of said Order is not supported by substantial evidence. To the contrary, the evidence establishes that the Morrow formation underlying Sections 4 and 5 is effectively separated by a water-filled structural trough from the remainder of the Indian Basin-Morrow Gas Pool.

B. Findings 6, 7 and 8 are without support in the evidence, and to the contrary, the evidence clearly shows that no communication exists between the North Portion of the Indian Basin-Morrow Gas Pool and the Southern-designated portion of the Indian Basin-Morrow Gas Pool, and that the two pools are separate and distinct sources of supply.

C. Finding No. 18 is without support in the evidence and is contrary to the evidence that withdrawals from the Northern Portion of the Indian Basin-Morrow Gas Pool would have no effect on the operators in the Southern part, and in addition would be beneficial to the operators in the Southern portion of the Pool in that additional production from the Northern portion would prevent the watering-out of wells to the South.

D. Findings No. 23, 24, 25, 26, 29 and 30 are without support in the evidence and contrary to the evidence, which shows that additional facilities for the transportation of natural gas are available and that the market demand is such that any additional production from the Fasken wells in question could be purchased and transported.

E. The Order is erroneous, invalid and void, in that the effect of the Order would be to cause waste and to violate the correlative rights of the Petitioner and other mineral interest owners, contrary to the duties imposed upon the Commission by the laws of the State of New Mexico.

7. This Petition for Review is brought pursuant to §65-3-22B, NMSA, 1953. Copies of Commission Order No. R-4409-B are

attached. Application for Rehearing, filed with the Commission June 11, 1975, is attached hereto, and ten (10) days have passed without Commission action on the Application for Rehearing, therefor automatically denying the same.

WHEREFORE, Petitioner asks that the Court review Commission Order No. R-4409-B and the evidence upon which the Commission purported to base such order, and that the Court enter a Judgment declaring the Order invalid, and vacating the same.

MONTGOMERY, FEDERICI, ANDREWS, HANNAHS & BUELL

By *Samuel Buell*  
Attorneys for Petitioner  
Post Office Box 2307  
Santa Fe, New Mexico 87501  
(Telephone [505] 982-3875)

BA E THE OIL CONSERVATION ( ISSION  
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-B

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 22nd day of May, 1975, 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:

(A) That due public notice having been given as required by law, the Commission has jurisdiction of this cause and the subject matter thereof.

(B) 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 non-prorated gas pool comprising said lands.

(C) That David Fasken requested and was granted a de novo hearing before the Commission on his application in Case No. 4733.

(D) That the application of David Fasken was again denied by the Commission on December 6, 1972.

(E) That Fasken filed an Application for Rehearing of the decision in Case 4733 on December 22, 1972.

(F) That the Commission took no action on the Application for Rehearing thereby denying it.

(G) That David Fasken appealed this decision of the Commission to the District Court of Eddy County.

(H) That the Commission moved for Summary Judgment.

(I) That on November 29, 1973, the Commission's Motion for Summary Judgment was granted by the District Court.

(J) That David Fasken appealed this decision to the Supreme Court of New Mexico in December, 1973.

(K) That the Supreme Court reversed the District Court and remanded the cause back to the Commission on February 28, 1975.

(L) That in reaching its decision, the Supreme Court stated it did not want for theories in this case but that the problem with the theories advanced by counsel was that they were not bolstered by the expertise of the Commission.

(M) That in reversing the District Court, the Supreme Court found that sufficient findings to disclose the reasoning of the Commission were lacking and reversal was thereby required.

(N) That the case was "...remanded to the Commission for the making of additional findings of fact based upon the record as it presently exists, and the entry of new orders."

(O) That pursuant to this decision of the New Mexico Supreme Court and upon further review of the record the Commission finds:

(1) That the Commission is empowered by Sub-section (12) of Section 65-3-11 NMSA, 1953 Comp., as amended, "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;"

(2) That on June 1, 1969, the Commission entered Order No. R-3758 which pursuant to its statutory powers abolished the North Indian Hills-Morrow Gas Pool and extended the Indian Basin-Morrow Gas Pool to include acreage formerly included in said North Indian Hills-Morrow Gas Pool because the Commission concluded that this area comprised a single source of supply.

(3) That Fasken contends that the Indian Basin-Morrow Gas Pool is divided into two separate pools by a water trough.

(4) That the evidence used to support the water trough concept was shown to be incomplete, misleading, and probably inaccurate.

(5) That the evidence showed that the withdrawal of gas from a well in the north part of the Indian Basin-Morrow Gas Pool affects the pressure and gas migration in the south part of the pool and that the withdrawal of gas in the south part of the pool affects pressure and gas migration in the north part of this pool.

(6) That communication therefore exists throughout the pool.

(7) That communication throughout a reservoir is one of the means used to determine that a pool constitutes a single source of gas supply.

(8) That the Indian Basin-Morrow Gas Pool constitutes a single source of gas supply.

(9) That the Commission is empowered by Section 65-3-10 NMSA, 1953 Comp., as amended, to prevent waste and protect correlative rights.

(10) That Fasken is seeking with this application higher rates of production from each of his wells in the northern portion of the Indian Basin-Morrow Gas Pool.

(11) That the wells in the northern portion of the pool could produce at higher rates if they were removed from said pool and their production, thereby, no longer prorated in accordance with the allowables set for the Indian Basin-Morrow Gas Pool.

(12) That the allocation of allowables in the Indian Basin-Morrow Gas Pool is on a straight acreage basis.

(13) That because of variations in the United States Public Lands Surveys, more acreage is dedicated to each of Fasken's wells in the northern portion of the pool than is dedicated to other wells in the pool, and he therefore receives larger allowables for his two wells and is authorized to produce considerably more from each of these wells than are other operators in the pool.

(14) That ten wells produce from the Indian Basin-Morrow Gas Pool.

(15) That the two Fasken wells in the northern portion of said pool constitute 20 percent of the wells producing from the pool.

(16) That the two Fasken wells in the north of said pool have produced almost 40 percent of the gas from the pool.

(17) That Fasken has an opportunity equal to that of other producers in the pool to produce his just and equitable share of gas from said pool.

(18) That granting the application of David Fasken for pool contraction and creation of a new non-prorated gas pool would increase the amount of gas Fasken could withdraw, giving him an advantage over the other operators producing from this single source of supply thereby impairing their correlative rights.

(19) That granting the application of David Fasken would have the same affect as de-prorating the northern portion of the Indian Basin-Morrow Gas Pool but not de-prorating the remainder of the pool and would authorize greater rates of production for the Fasken wells in the north part of the pool than for other wells in the pool.

(20) That granting the application of David Fasken would authorize production practices which would impair the correlative rights of other mineral interest owners and, therefore, is contrary to the duties of the Commission as set out in Section 65-3-10 NMSA, 1953 Comp., as amended.

(21) That in order to protect correlative rights, the application should be denied.

(22) That Section 65-3-3 E NMSA, 1953 Comp., as amended, defines waste as follows:

"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 . . . ." (Emphasis added)

(23) That Fasken's witness testified that the entire pool has a greater capacity to produce gas than the producers in said pool are able to sell to the pipeline.

(24) That this limited ability to sell gas from the pool may be termed a "restricted demand."

(25) That this restricted demand for gas from the pool must logically be concluded to result from either:

- (a) a limited demand for gas from the pool because of market conditions; or
- (b) a limited demand for gas from the pool because of limited physical facilities to handle and transport the gas.

(26) That this restricted demand may be considered the "reasonable market demand" for gas from the pool.

(27) That production of gas from the pool in excess of the reasonable market demand imposed by either of the conditions described in Finding No. (24) above would cause waste. (See Finding No. (21) above.)

(28) That the other producers in the pool are entitled to produce their just and equitable share of the gas in the pool and to be permitted their just and equitable share of the reasonable market demand for gas from the pool.

(29) That granting the application of Fasken for pool contraction and creation of a new non-prorated gas pool would authorize production from his two wells in the northern portion of the pool in excess of his share of the reasonable market demand for gas from the pool and would by definition (Section 65-3-3 E NMSA 1953 Comp.) cause waste.

(30) That in order to prevent waste, the application should be denied.

IT IS THEREFORE ORDERED:

(1) That the application of David Fasken for pool contraction and creation of a new non-prorated gas pool be and the same is hereby denied.

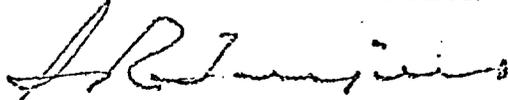
(2) That jurisdiction of this cause is retained for the entry of such further orders as the Commission may deem necessary.

Case No. 4733

Order No. R-4409-B

DONE at Santa Fe, New Mexico, on the day and year herein-  
above designated.

STATE OF NEW MEXICO  
OIL CONSERVATION COMMISSION



I. R. TRUJILLO, Chairman



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

S E A L

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 to all matters determined by Order No. R-4409-B entered by this Commission in this case on May 22, 1975, and in support thereof, 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 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 §65-3-22A, N.M.S.A., 1953.

6. After the entry of Order No. R-4409-A, this matter was reviewed by the District Court of Eddy County, as Cause No. 28482 on that Court's Docket, and from an adverse decision to your Applicant, the matter then was appealed to the Supreme Court of the State of New Mexico. Mandate of the Supreme Court has been issued, directing this Commission to make additional findings based upon the record as it presently exists in those additional findings, which have been made in ¶0. of the above-referred to Order. Applicant is adversely affected by those findings and the entry of the Order, and believes it to be erroneous and invalid for the following reasons:

A. Findings 4, 5, 6, 7 and 8 are not supported by substantial evidence and are contrary to the evidence that exists and appears in the record. The uncontradicted evidence shows that the Morrow formation underlying Sections 4 and 5 is effectively separated by waterfill structural troughs from the Morrow formation underlying the remainder of the Indian Basin-Morrow Gas Pool.

B. Finding No. 18 is not supported by substantial evidence and is again contrary to the uncontradicted testimony as appearing in the record.

C. Findings 23, 24, 25 and 26 are not supported by substantial evidence and indeed are contrary to the evidence that there is the necessary facilities, demand and market available for any gas that would be produced.

D. Findings 29 and 30 are not supported by substantial evidence and are contrary to the evidence as appears in the record.

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

WHEREFORE, the Commission should enter its order granting this Application for Rehearing, superseding Order No. R-4409-B, and establishing Sections 4 and 5 of 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 & BUELL

By 

Attorneys for Applicant  
Post Office Box 2307  
Santa Fe, New Mexico 87501  
(Telephone [505] 982-3875)

CERTIFIED, that I mailed a true and correct copy of the foregoing Application for Rehearing to: Jack Cooley, Esq., Petroleum Center Building, Farmington, New Mexico 87401 this 11th day of June, 1975.

  
Attorney for Applicant

J. O. SETH (1883-1963)

**MONTGOMERY, FEDERICI, ANDREWS, HANNAHS & BUELL**

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

ATTORNEYS AND COUNSELORS AT LAW

350 EAST PALACE AVENUE

SANTA FE, NEW MEXICO 87501

POST OFFICE BOX 2307  
AREA CODE 505  
TELEPHONE 982-3875

JEFFREY R. BRANNEN  
JOHN BENNETT POUND  
GARY R. KILPATRICK

July 18, 1975

Mrs. Frances M. Wilcox, Clerk  
Fifth Judicial District Court  
County of Eddy  
Eddy County Courthouse  
Carlsbad, New Mexico 88220

Re: Fasken v. Oil Conservation Commission,  
No. 30665; and Fasken v. Oil Conserva-  
tion Commission, No. 30666; Eddy County  
District Court, New Mexico

Dear Mrs. Wilcox:

We are submitting the enclosed Notices of Appeal  
for filing in the above-referenced causes.

Yours truly,

SGB/vt  
Enclosures  
#5086-72-5

cc: William F. Carr, Esq.  
Special Assistant Attorney General  
State of New Mexico  
Post Office Box 2088  
Santa Fe, New Mexico 87501  
(with enclosures)

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STATE OF NEW MEXICO

COUNTY OF EDDY

IN THE DISTRICT COURT

DAVID FASKEN,

Petitioner,

v.

OIL CONSERVATION COMMISSION  
OF THE STATE OF NEW MEXICO,

Respondent.

Cause No. 30666

NOTICE OF APPEAL

TO: OIL CONSERVATION COMMISSION OF  
THE STATE OF NEW MEXICO, Respondent.  
Post Office Box 2088  
Santa Fe, New Mexico 87501

PLEASE TAKE NOTICE that on the 18th day of July, 1975,  
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-B, in the District Court of  
Eddy County, New Mexico.

DATED this 18th day of July, 1975.

MONTGOMERY, FEDERICI, ANDREWS, HANNAHS & BUELL

By *Sumner Buell*  
Attorneys for Petitioner  
Post Office Box 2307  
Santa Fe, New Mexico 87501  
(Telephone [505] 982-3875)

CERTIFIED, that I mailed a true and correct copy of the  
foregoing Notice of Appeal to above Respondent at above address,  
this 18th day of July, 1975.

*Sumner Buell*  
Attorney for Petitioner

STATE OF NEW MEXICO

COUNTY OF EDDY

IN THE DISTRICT COURT

DAVID FASKEN,

Petitioner,

v.

OIL CONSERVATION COMMISSION  
OF THE STATE OF NEW MEXICO,

Respondent. Cause No. 30665

NOTICE OF APPEAL

TO: OIL CONSERVATION COMMISSION OF THE STATE OF NEW MEXICO,  
Respondent  
Post Office Box 2088  
Santa Fe, New Mexico 87501

PLEASE TAKE NOTICE that on the 18th day of July, 1975,  
DAVID FASKEN, The Petitioner in the above-styled case, filed  
a Petition for Review of Oil Conservation Commission of New  
Mexico Order No. R-4444-A, in the District Court of Eddy  
County, New Mexico.

DATED this 18th day of July, 1975.

MONTGOMERY, FEDERICI, ANDREWS,  
HANNAHS & BUELL

By *Ernest Buell*  
Attorneys for Petitioner  
Post Office Box 2307  
Santa Fe, New Mexico 87501  
Telephone [505] 982-3875

CERTIFIED, that I mailed a true and correct copy of the  
foregoing Notice of Appeal to above Respondent at above  
address this 18th day of July, 1975.

*Ernest Buell*  
Attorney for Petitioner

J. O. SETH (1883-1963)

A. K. MONTGOMERY  
WM. FEDERICI  
FRANK ANDREWS  
FRED C. HANNAHS  
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GARY R. KILPATRICK

**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 982-3875

July 17, 1975



Frances M. Wilcox, Clerk  
Fifth Judicial District Court  
County of Eddy  
Eddy County Courthouse  
Carlsbad, New Mexico 88220

Re: David Fasken v. Oil Conservation Commission  
of the State of New Mexico

Dear Madam:

We are enclosing for filing two suits, each in the above styled matter, by Petition for review.

Also enclosed is our check for \$40.00 to cover the cost of the filing fees.

Please advise by returning the enclosed copy of this letter, as to when the suits were filed.

Yours very truly,

A handwritten signature in cursive script, appearing to read "Sumner G. Buell".

SGB/vt  
Enclosures  
#5086-7 -

cc: William F. Carr, Esq.  
Special Assistant Attorney General  
State of New Mexico  
Post Office Box 2088  
Santa Fe, New Mexico 87501

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RECEIVED

JUL 17 1975

OIL CONSERVATION COMMISSION

STATE OF NEW MEXICO

COUNTY OF EDDY

IN THE DISTRICT COURT

DAVID FASKEN,

Petitioner,

v.

OIL CONSERVATION COMMISSION  
OF THE STATE OF NEW MEXICO,

Respondent.

Cause No. \_\_\_\_\_

PETITION FOR REVIEW

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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, 1959, 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 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 §65-3-22A, NMSA, 1953.

6. This matter was then reviewed by this Court as its Cause No. 28482 and an Order entered by The District Court of Eddy County, granting summary judgment in favor of the Oil Conservation Commission of the State of New Mexico, which summary judgment was entered November 29, 1973. Whereupon, an appeal was taken to the Supreme Court of the State of New Mexico, and the matter has been reviewed by that Court and its Mandate directed the Commission to make new findings of fact based upon the record before it. The new findings have been made, as appear in the Order R-4409-B, entered May 22, 1975, and new findings made under ¶0. of said order, and that your Petitioner believes the Order to be erroneous and invalid for the following reasons:

A. Finding No. 4 of said Order is not supported by substantial evidence. To the contrary, the evidence establishes that the Morrow formation underlying Sections 4 and 5 is effectively separated by a water-filled structural trough from the remainder of the Indian Basin-Morrow Gas Pool.

B. Findings 6, 7 and 8 are without support in the evidence, and to the contrary, the evidence clearly shows that no communication exists between the North Portion of the Indian Basin-Morrow Gas Pool and the Southern-designated portion of the Indian Basin-Morrow Gas Pool, and that the two pools are separate and distinct sources of supply.

C. Finding No. 18 is without support in the evidence and is contrary to the evidence that withdrawals from the Northern Portion of the Indian Basin-Morrow Gas Pool would have no effect on the operators in the Southern part, and in addition would be beneficial to the operators in the Southern portion of the Pool in that additional production from the Northern portion would prevent the watering-out of wells to the South.

D. Findings No. 23, 24, 25, 26, 29 and 30 are without support in the evidence and contrary to the evidence, which shows that additional facilities for the transportation of natural gas are available and that the market demand is such that any additional production from the Fasken wells in question could be purchased and transported.

E. The Order is erroneous, invalid and void, in that the effect of the Order would be to cause waste and to violate the correlative rights of the Petitioner and other mineral interest owners, contrary to the duties imposed upon the Commission by the laws of the State of New Mexico.

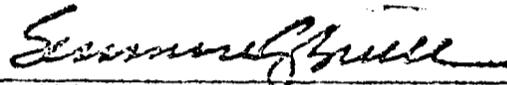
7. This Petition for Review is brought pursuant to §65-3-22B, NMSA, 1953. Copies of Commission Order No. R-4409-B are

attached. Application for Rehearing, filed with the Commission June 11, 1975, is attached hereto, and ten (10) days have passed without Commission action on the Application for Rehearing, therefor automatically denying the same.

WHEREFORE, Petitioner asks that the Court review Commission Order No. R-4409-B and the evidence upon which the Commission purported to base such order, and that the Court enter a Judgment declaring the Order invalid, and vacating the same.

MONTGOMERY, FEDERICI, ANDREWS, HANNAHS & BUELL

By



---

Attorneys for Petitioner  
Post Office Box 2307  
Santa Fe, New Mexico 87501  
(Telephone [505] 982-3875)

BOARD OF 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-B

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 22nd day of May, 1975, 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:

- (A) That due public notice having been given as required by law, the Commission has jurisdiction of this cause and the subject matter thereof.
- (B) 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 non-prorated gas pool comprising said lands.
- (C) That David Fasken requested and was granted a de novo hearing before the Commission on his application in Case No. 4733.
- (D) That the application of David Fasken was again denied by the Commission on December 6, 1972.
- (E) That Fasken filed an Application for Rehearing of the decision in Case 4733 on December 22, 1972.
- (F) That the Commission took no action on the Application for Rehearing thereby denying it.

(G) That David Fasken appealed this decision of the Commission to the District Court of Eddy County.

(H) That the Commission moved for Summary Judgment.

(I) That on November 29, 1973, the Commission's Motion for Summary Judgment was granted by the District Court.

(J) That David Fasken appealed this decision to the Supreme Court of New Mexico in December, 1973.

(K) That the Supreme Court reversed the District Court and remanded the cause back to the Commission on February 28, 1975.

(L) That in reaching its decision, the Supreme Court stated it did not want for theories in this case but that the problem with the theories advanced by counsel was that they were not bolstered by the expertise of the Commission.

(M) That in reversing the District Court, the Supreme Court found that sufficient findings to disclose the reasoning of the Commission were lacking and reversal was thereby required.

(N) That the case was "...remanded to the Commission for the making of additional findings of fact based upon the record as it presently exists, and the entry of new orders."

(O) That pursuant to this decision of the New Mexico Supreme Court and upon further review of the record the Commission finds:

(1) That the Commission is empowered by Sub-section (12) of Section 65-3-11 NMSA, 1953 Comp., as amended, "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;"

(2) That on June 1, 1969, the Commission entered Order No. R-3758 which pursuant to its statutory powers abolished the North Indian Hills-Morrow Gas Pool and extended the Indian Basin-Morrow Gas Pool to include acreage formerly included in said North Indian Hills-Morrow Gas Pool because the Commission concluded that this area comprised a single source of supply.

(3) That Fasken contends that the Indian Basin-Morrow Gas Pool is divided into two separate pools by a water trough.

(4) That the evidence used to support the water trough concept was shown to be incomplete, misleading, and probably inaccurate.

(5) That the evidence showed that the withdrawal of gas from a well in the north part of the Indian Basin-Morrow Gas Pool affects the pressure and gas migration in the south part of the pool and that the withdrawal of gas in the south part of the pool affects pressure and gas migration in the north part of this pool.

(6) That communication therefore exists throughout the pool.

(7) That communication throughout a reservoir is one of the means used to determine that a pool constitutes a single source of gas supply.

(8) That the Indian Basin-Morrow Gas Pool constitutes a single source of gas supply.

(9) That the Commission is empowered by Section 65-3-10 NMSA, 1953 Comp., as amended, to prevent waste and protect correlative rights.

(10) That Fasken is seeking with this application higher rates of production from each of his wells in the northern portion of the Indian Basin-Morrow Gas Pool.

(11) That the wells in the northern portion of the pool could produce at higher rates if they were removed from said pool and their production, thereby, no longer prorated in accordance with the allowables set for the Indian Basin-Morrow Gas Pool.

(12) That the allocation of allowables in the Indian Basin-Morrow Gas Pool is on a straight acreage basis.

(13) That because of variations in the United States Public Lands Surveys, more acreage is dedicated to each of Fasken's wells in the northern portion of the pool than is dedicated to other wells in the pool, and he therefore receives larger allowables for his two wells and is authorized to produce considerably more from each of these wells than are other operators in the pool.

(14) That ten wells produce from the Indian Basin-Morrow Gas Pool.

(15) That the two Fasken wells in the northern portion of said pool constitute 20 percent of the wells producing from the pool.

(16) That the two Fasken wells in the north of said pool have produced almost 40 percent of the gas from the pool.

(17) That Fasken has an opportunity equal to that of other producers in the pool to produce his just and equitable share of gas from said pool.

(18) That granting the application of David Fasken for pool contraction and creation of a new non-prorated gas pool would increase the amount of gas Fasken could withdraw, giving him an advantage over the other operators producing from this single source of supply thereby impairing their correlative rights.

(19) That granting the application of David Fasken would have the same affect as de-prorating the northern portion of the Indian Basin-Morrow Gas Pool but not de-prorating the remainder of the pool and would authorize greater rates of production for the Fasken wells in the north part of the pool than for other wells in the pool.

(20) That granting the application of David Fasken would authorize production practices which would impair the correlative rights of other mineral interest owners and, therefore, is contrary to the duties of the Commission as set out in Section 65-3-10 NMSA, 1953 Comp., as amended.

(21) That in order to protect correlative rights, the application should be denied.

(22) That Section 65-3-3 E NMSA, 1953 Comp., as amended, defines waste as follows:

"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 . . . ." (Emphasis added)

(23) That Fasken's witness testified that the entire pool has a greater capacity to produce gas than the producers in said pool are able to sell to the pipeline.

(24) That this limited ability to sell gas from the pool may be termed a "restricted demand."

(25) That this restricted demand for gas from the pool must logically be concluded to result from either:

(a) a limited demand for gas from the pool because of market conditions; or

(b) a limited demand for gas from the pool because of limited physical facilities to handle and transport the gas.

(26) That this restricted demand may be considered the "reasonable market demand" for gas from the pool.

(27) That production of gas from the pool in excess of the reasonable market demand imposed by either of the conditions described in Finding No. (24) above would cause waste. (See Finding No. (21) above.)

(28) That the other producers in the pool are entitled to produce their just and equitable share of the gas in the pool and to be permitted their just and equitable share of the reasonable market demand for gas from the pool.

(29) That granting the application of Fasken for pool contraction and creation of a new non-prorated gas pool would authorize production from his two wells in the northern portion of the pool in excess of his share of the reasonable market demand for gas from the pool and would by definition (Section 65-3-3 E NMSA 1953 Comp.) cause waste.

(30) That in order to prevent waste, the application should be denied.

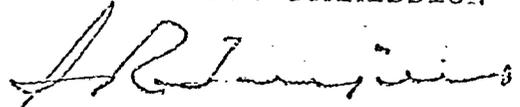
IT IS THEREFORE ORDERED:

(1) That the application of David Fasken for pool contraction and creation of a new non-prorated gas pool be and the same is hereby denied.

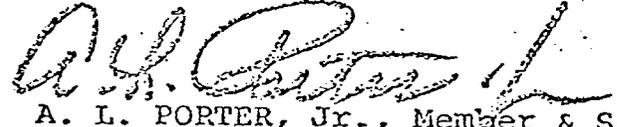
(2) That jurisdiction of this cause is retained for the entry of such further orders as the Commission may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year herein-  
above designated.

STATE OF NEW MEXICO  
OIL CONSERVATION COMMISSION



I. R. TRUJILLO, Chairman



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

S E A L

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 to all matters determined by Order No. R-4409-B entered by this Commission in this case on May 22, 1975, and in support thereof, 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 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 §65-3-22A, N.M.S.A., 1953.

6. After the entry of Order No. R-4409-A, this matter was reviewed by the District Court of Eddy County, as Cause No. 28482 on that Court's Docket, and from an adverse decision to your Applicant, the matter then was appealed to the Supreme Court of the State of New Mexico. Mandate of the Supreme Court has been issued, directing this Commission to make additional findings based upon the record as it presently exists in those additional findings, which have been made in ¶0. of the above-referred to Order. Applicant is adversely affected by those findings and the entry of the Order, and believes it to be erroneous and invalid for the following reasons:

A. Findings 4, 5, 6, 7 and 8 are not supported by substantial evidence and are contrary to the evidence that exists and appears in the record. The uncontradicted evidence shows that the Morrow formation underlying Sections 4 and 5 is effectively separated by waterfill structural troughs from the Morrow formation underlying the remainder of the Indian Basin-Morrow Gas Pool.

B. Finding No. 18 is not supported by substantial evidence and is again contrary to the uncontradicted testimony as appearing in the record.

C. Findings 23, 24, 25 and 26 are not supported by substantial evidence and indeed are contrary to the evidence that there is the necessary facilities, demand and market available for any gas that would be produced.

D. Findings 29 and 30 are not supported by substantial evidence and are contrary to the evidence as appears in the record.

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

WHEREFORE, the Commission should enter its order granting this Application for Rehearing, superseding Order No. R-4409-B, and establishing Sections 4 and 5 of 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 & BUELL

By



Attorneys for Applicant  
Post Office Box 2307  
Santa Fe, New Mexico 87501  
(Telephone [505] 982-3875)

CERTIFIED, that I mailed a true and correct copy of the foregoing Application for Rehearing to: Jack Cooley, Esq., Petroleum Center Building, Farmington, New Mexico 87401 this 11th day of June, 1975.



Attorney for Applicant

*Send Bill Carr - CAC*

J. O. SETH (1883-1963)

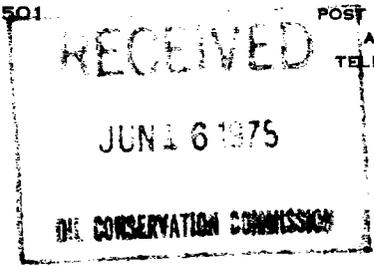
**MONTGOMERY, FEDERICI, ANDREWS, HANNAHS & BUELL**

A. K. MONTGOMERY  
WM. FEDERICI  
FRANK ANDREWS  
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350 EAST PALACE AVENUE  
SANTA FE, NEW MEXICO 87501

POST OFFICE BOX 2307  
AREA CODE 505  
TELEPHONE 982-3875



JEFFREY R. BRANNEN  
JOHN BENNETT POUND  
GARY R. KILPATRICK

June 10, 1975

*E-4409-B*

VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Frances M. Wilcox, Clerk  
Fifth Judicial District Court  
County of Eddy  
Eddy County Courthouse  
Carlsbad, New Mexico 88220

Re: David Fasken v. Oil Conservation Commission  
of The State Of New Mexico

Dear Madam:

Enclosed for filing please find two Petitions for Review from two Oil Conservation Commission Orders. This matter was previously before the District Court in Cause Numbers 28482 and 28483, and were consolidated at that time.

If you find it convenient to consolidate these two Petitions in one case, it would be perfectly agreeable with me. Enclosed please find our check for \$40.00 for the filing fee.

Very truly yours,

SGB/vt  
Enclosures

✓ cc: (with enclosures)  
William F. Carr, Esq.  
Special Assistant Attorney General  
State of New Mexico  
237 Don Gaspar Avenue  
Santa Fe, New Mexico 87501

COPY

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

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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:

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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 and lands, including the State of New Mexico as the owner of a royalty interest therein.

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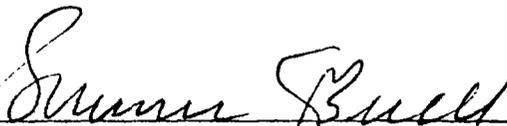
E. The said Order is erroneous, invalid and void in that the effect of said order will be to cause waste and violate correlative rights of the Applicant and of other mineral interest owners, contrary to the duties imposed upon the Commission by the laws of the State of New Mexico.

WHEREFORE, the Commission should enter its order granting this Application for Rehearing, superseding Order No. R-4409-B, and establishing Sections 4 and 5 of 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 & BUELL

By   
Attorneys for Applicant  
Post Office Box 2307  
Santa Fe, New Mexico 87501  
(Telephone [505] 982-3875)

CERTIFIED, that I mailed a true and correct copy of the foregoing Application for Rehearing to: Jack Cooley, Esq., Petroleum Center Building, Farmington, New Mexico 87401, this 11th day of June, 1975.

  
Attorney for Applicant

J. O. SETH (1883-1963)

**MONTGOMERY, FEDERICI, ANDREWS, HANNAHS & BUELL**

A. K. MONTGOMERY  
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JEFFREY R. BRANNEN  
JOHN BENNETT POUND  
GARY R. KILPATRICK

June 11, 1975

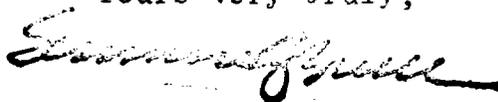
Frances M. Wilcox, Clerk  
Fifth Judicial District Court  
County of Eddy  
Eddy County Courthouse  
Carlsbad, New Mexico 88220

Re: Fasken v. O. C. C., Causes No. 30555  
and 30556

Dear Madam:

We are enclosing two Notices of Appeal in the above-referenced causes for filing, addressed to The Oil Conservation Commission of the State of New Mexico, Respondent therein.

Yours very truly,



SGB/vt  
Enclosures

cc: Oil Conservation Commission  
of The State of New Mexico  
Post Office Box 2088  
Santa Fe, New Mexico 87501  
(with enclosures)

C  
O  
P  
Y

STATE OF NEW MEXICO

COUNTY OF EDDY

IN THE DISTRICT COURT

DAVID FASKEN,

Petitioner,

v.

OIL CONSERVATION COMMISSION  
OF THE STATE OF NEW MEXICO,

Respondent.

Cause No. 30555

NOTICE OF APPEAL

TO: OIL CONSERVATION COMMISSION OF THE STATE OF  
NEW MEXICO, Respondent.  
Post Office Box 2088  
Santa Fe, New Mexico 87501

PLEASE TAKE NOTICE that on the 11th day of June, 1975,  
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-B in the District Court of Eddy County, New  
Mexico.

DATED this 11th day of June, 1975.

MONTGOMERY, FEDERICI, ANDREWS,  
HANNAHS & BUELL

By   
Attorneys for Petitioner  
Post Office Box 2307  
Santa Fe, New Mexico 87501  
(Telephone [505] 982-3875)

CERTIFIED, that I mailed a true and correct copy of the  
foregoing Notice of Appeal to above respondent at above address,  
this 11th day of June, 1975.

  
Attorney for Petitioner

STATE OF NEW MEXICO

COUNTY OF EDDY

IN THE DISTRICT COURT

DAVID FASKEN,

Petitioner,

v.

OIL CONSERVATION COMMISSION  
OF THE STATE OF NEW MEXICO,

Respondent.

Cause No. 30555

NOTICE OF APPEAL

TO: OIL CONSERVATION COMMISSION OF THE STATE OF  
NEW MEXICO, Respondent.  
Post Office Box 2088  
Santa Fe, New Mexico 87501

PLEASE TAKE NOTICE that on the 11th day of June, 1975,  
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- B in the District Court of Eddy County, New  
Mexico.

DATED this 11th day of June, 1975.

MONTGOMERY, FEDERICI, ANDREWS,  
HANNAHS & BUELL

By



Attorneys for Petitioner  
Post Office Box 2307  
Santa Fe, New Mexico 87501  
(Telephone [505] 982-3875)

CERTIFIED, that I mailed a true and correct copy of the  
foregoing Notice of Appeal to above respondent at above address,  
this 11th day of June, 1975.



Attorney for Petitioner

STATE OF NEW MEXICO

COUNTY OF EDDY

IN THE DISTRICT COURT

DAVID FASKEN,

Petitioner,

v.

OIL CONSERVATION COMMISSION  
OF THE STATE OF NEW MEXICO,

Respondent.

Cause No. 30556

PETITION FOR REVIEW

Comes now DAVID FASKEN, by his attorneys, and petitions the Court to review Oil Conservation Commission of New Mexico order No. R-4444-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 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 allowances 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 No. 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 §65-3-22A, N.M.S.A., 1953.

6. Petitioner is adversely affected by the Commission Order No. R-4444A, and believes said order to be erroneous and invalid. This matter was previously before this Court in Cause No. 28483 for review of a previous order entered by this Commission. Upon motions for summary judgment, the matter was decided adversely to your Petitioner, and a Judgment entered on April 13, 1973. Whereupon, an appeal was taken to the Supreme Court of the State of New Mexico, and a decision was rendered, reversing the previous decision of this Court, and remanding the case to the Commission to enter new findings upon the record presently existing before it. A new order has been entered as directed by the Supreme Court, and new findings were made under ¶M thereof, and your petitioner feels that the findings are erroneous, as follows:

A. Findings 3, 4 and 6 are without support in the evidence and, in fact, are contrary to the evidence presently existing in the record that shows there is no communication between the Northern portion of the Indian Basin-Morrow Gas Pool and the designated Southern portion of said pool.

B. Findings 18, 19 and 20 are without support in the evidence, and again, are contrary to the evidence presently in the record showing that additional production from the

Northern portion of the Pool would not affect the correlative rights of the other operators in the Southern portion of the Pool, and in fact would prevent waste by the prevention of the watering-out in the Southern portion of the pool, and in fact, would prevent waste by the prevention of the watering-out of the presently existing gas well.

C. Findings of Fact 22, 23, 24, 25, 26, and 28 are without support in the evidence are in fact contrary to the evidence, which is to the effect that additional transportation of facilities and purchasers are available to take any increased production that may occur, and that there is full market demand for all production from the Pool.

D. The Order is erroneous and invalid and void, in that the effect of the Order would be to cause waste and violate the correlative rights of your Petitioner and other mineral interest owners, contrary to the duties imposed upon the Commission by the statutes and laws of the State of New Mexico.

7. This Petition for Review is brought pursuant to §65-3-22B, N.M.S.A., 1953. Copies of the Commission Order No. R-4444-A are attached hereto. Since the Mandate of the Supreme Court instructed the Commission to enter the new order based upon the record presently before it, no application for rehearing is attached, but a copy of the Mandate of the Supreme Court is attached hereto.

WHEREFORE, Petitioner asks that this Court review Commission Order No. R-4444-A and the evidence upon which the Commission purported to base that Order, and that the Court enter its Judgment requiring such Order to be invalid and vacating the same.

MONTGOMERY, FEDERICI, ANDREWS, HANNAHS  
& BUELL

By s/SUMNER G. BUELL  
Attorneys for Petitioner  
Post Office Box 2307 (Telephone 982-3875)  
Santa Fe, New Mexico 87501

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. 4865  
Order No. R-4444-A

APPLICATION OF DAVID FASKEN  
FOR SPECIAL ALLOWABLES, EDDY  
COUNTY, NEW MEXICO.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing 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 22nd day of May, 1975, 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:

(A) That due public notice having been given as required by law, the Commission has jurisdiction of this cause and the subject matter thereof.

(B) That after hearing, Commission Order No. R-4444, dated December 6, 1972, was entered in Case No. 4865 denying the application of David Fasken for an exception to the general rules and regulations governing prorated gas pools in Southeast New Mexico, promulgated by Order No. R-1670, as amended, to permit the production of his Ross Federal Well No. 1, located 1980 feet from the South line and 1980 feet from the West line of Section 4, and his Shell Federal Well No. 1, located 1980 feet from the South line and 1980 feet from the West line of Section 5, both in Township 21 South, Range 24 East, Indian Basin-Morrow Gas Pool, Eddy County, New Mexico, at the capacity of the wells to produce, or in the alternative, to permit the production of said wells at a rate in excess of the allowables assigned to said wells.

(C) That David Fasken filed an Application for Rehearing of the decision in Case No. 4865 on December 22, 1972.

(D) That the Commission took no action on the Application for Rehearing thereby denying it.

(E) That David Fasken appealed this decision of the Commission to the District Court of Eddy County.

(F) That the Commission moved for Summary Judgment.

(G) That on November 29, 1973, the Commission's Motion for Summary Judgment was granted by the District Court.

(H) That David Fasken appealed this decision to the Supreme Court of New Mexico in December, 1973.

(I) That the Supreme Court reversed the District Court and remanded the cause back to the Commission on February 28, 1975.

(J) That in reaching its decision, the Supreme Court stated it did not want for theories in this case but that the problem with the theories advanced by counsel was that they were not bolstered by the expertise of the Commission.

(K) That in reversing the District Court, the Supreme Court found that sufficient findings to disclose the reasoning of the Commission were lacking and reversal was thereby required.

(L) That the case was "...remanded to the Commission for the making of additional findings of fact based upon the record as it presently exists, and the entry of new orders."

(M) That pursuant to this decision of the New Mexico Supreme Court and upon further review of the record the Commission finds:

(1) That the Commission is empowered by Subsection (12) of Section 65-3-11 NMSA, 1953 Comp., as amended, "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;"

(2) That on June 1, 1969, the Commission entered Order No. R-3758 which pursuant to its statutory powers abolished the North Indian Hills-Morrow Gas Pool and extended the Indian Basin-Morrow Gas Pool to include acreage formerly included in said North Indian Hills-Morrow Gas Pool because the Commission concluded that this area comprised a single source of supply.

(3) That the evidence showed that the withdrawal of gas from a well in the north part of the Indian Basin-Morrow Gas Pool affects the pressure and gas migration in the south part

of the pool and that the withdrawal of gas in the south part of the pool affects pressure and gas migration in the north part of this pool.

(4) That communication therefore exists throughout the pool.

(5) That communication throughout a reservoir is one of the means used to determine that a pool constitutes a single source of gas supply.

(6) That the Indian Basin-Morrow Gas Pool constitutes a single source of gas supply.

(7) The Commission is empowered by Section 65-3-10 NMSA, 1953 Comp., as amended, to prevent waste and protect correlative rights.

(8) That pursuant to the provisions of Section 65-3-10 NMSA, 1953 Comp., as amended, it is the duty of the Commission to protect the correlative rights of all mineral interest owners in an oil or gas pool.

(9) That Section 65-3-29 H. NMSA, 1953 Comp., as amended, defines correlative rights as the opportunity afforded, so far as it is practicable to do so, to the owner of each property in the pool to produce without waste his just and equitable share of the oil or gas, or both, in the pool...." (Emphasis added)

(10) That Fasken is seeking with this application higher rates of production from each of his wells in the northern portion of the Indian Basin-Morrow Gas Pool.

(11) That the wells in the northern portion of the pool could produce at higher rates if their production was no longer prorated in accordance with the allowables set for the Indian Basin-Morrow Gas Pool and they received larger or capacity allowables.

(12) That the allocation of allowables in the Indian Basin-Morrow Gas Pool is on a straight acreage basis.

(13) That because of variations in the United States Public Lands Surveys, more acreage is dedicated to each of Fasken's wells in the northern portion of the pool than is dedicated

to other wells in the pool, and he therefore receives larger allowables for his two wells and is authorized to produce considerably more from each of these wells than are other operators in the pool.

(14) That ten wells produce from the Indian Hills Morrow Gas Pool.

(15) That the two Fasken wells in the northern portion of said pool constitute 20 percent of the wells producing from the pool.

(16) That the two Fasken wells in the north of said pool have produced almost 40 percent of the gas from the pool.

(17) That Fasken has an opportunity equal to that of other producers in the pool to produce his just and equitable share of gas from said pool.

(18) That granting the application of David Fasken for special allowables would increase the amount of gas Fasken could withdraw, giving him an advantage over other operators producing from this single source of supply thereby impairing their correlative rights.

(19) That granting the application of David Fasken for capacity allowables would authorize production practices which would impair the correlative rights of other mineral interest owners and, therefore, is contrary to the duties of the Commission as set out in Section 65-3-10 NMSA, 1953 Comp., as amended.

(20) That in order to protect correlative rights, the application should be denied.

(21) That Section 65-3-3 E NMSA, 1953 Comp., as amended, defines waste as follows:

"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...."

(Emphasis added)

(22) That Fasken's witness testified that the entire pool has a greater capacity to produce gas than the producers in said pool are able to sell to the pipeline.

(23) That this limited ability to sell gas from the pool may be termed a "restricted demand."

(24) That this restricted demand for gas from the pool must logically be concluded to result from either:

- (a) a limited demand for gas from the pool because of market conditions; or
- (b) a limited demand for gas from the pool because of limited physical facilities to handle and transport the gas.

(25) That this restricted demand may be considered the "reasonable market demand" for gas from the pool.

(26) That production of gas from the pool in excess of the reasonable market demand imposed by either of the conditions described in Finding No. (24) above would cause waste. (See Finding No. (21) above.)

(27) That the other producers in the pool are entitled to produce their just and equitable share of the gas in the pool and to be permitted their just and equitable share of the reasonable market demand for gas from the pool.

(28) That granting the application of Fasken for special allowables would authorize production in excess of his share of the reasonable market demand for gas from the pool and would by definition (Section 65-3-3 E NMSA 1953 Comp.) cause waste.

(29) That in order to prevent waste, the application should be denied.

IT IS THEREFORE ORDERED:

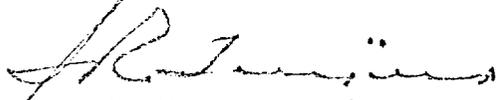
(1) That the application of David Fasken for special allowables for his Ross Federal Well No. 1 and his Shell Federal Well No. 1, both in the Indian Basin-Morrow Gas Pool, Eddy County, New Mexico, be and the same is hereby denied.

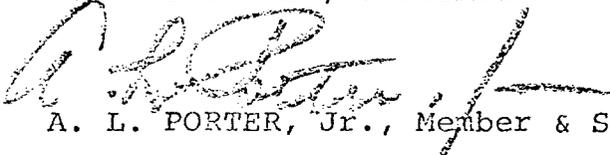
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Case No. 4865  
Order No. R-4444-A

(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

  
I. R. TRUJILLO, Chairman

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

S E A L

dr/

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

MANDATE

RECEIVED  
MONTICELLO, N.M.  
NO. 9958

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

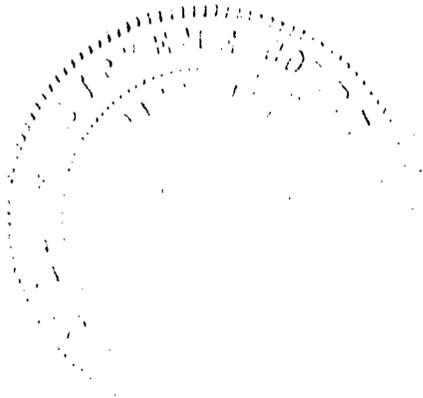
WHEREAS, in a certain cause lately pending before you,  
numbered 28482 on your Civil Docket, wherein David Fasken was  
Petitioner and Oil Conservation Commission of the State of New  
Mexico was Respondent, by your consideration in that behalf judg-  
ment was entered against said Petitioner; and

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

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

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

Paul Muri Aldrete  
Clerk of the Supreme Court  
of the State of New Mexico



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STATE OF NEW MEXICO

COUNTY OF EDDY

IN THE DISTRICT COURT

DAVID FASKEN,

Petitioner,

v.

OIL CONSERVATION COMMISSION  
OF THE STATE OF NEW MEXICO,

Respondent.

Cause No. \_\_\_\_\_

R-4409-B

PETITION FOR REVIEW

Comes now DAVID FASKEN, by his attorneys, and petitions the Court to review Oil Conservation Commission Order No. R-4409-B, and in support thereof, 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 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 §65-3-22A, N.M.S.A., 1953.

6. This matter was then reviewed by this Court as its Cause No. 28482 and an Order entered by The District Court of Eddy County, granting summary judgment in favor of the Oil Conservation Commission of the State of New Mexico, which summary judgment was entered November 29, 1973. Whereupon, an appeal was taken to the Supreme Court of the State of New Mexico, and the matter has been reviewed by that Court and its Mandate directed the Commission to make new findings of fact based upon the record before it. The new findings have been made, as appear in the Order R-4409-B, entered May 22, 1975, and new findings made under ¶0. of said order, and that your Petitioner believes the Order to be erroneous and invalid for the following reasons:

A. Finding No. 4 of said Order is not supported by substantial evidence. To the contrary, the evidence establishes that the Morrow formation underlying Sections 4 and 5 is effectively separated by a water-filled structural trough from the remainder of the Indian Basin-Morrow Gas Pool.

B. Findings 6, 7 and 8 are without support in the evidence, and to the contrary, the evidence clearly shows that no communication exists between the North Portion of the Indian Basin-Morrow Gas Pool and the Southern designated portion of the Indian Basin-Morrow Gas Pool, and that the two pools are separate and distinct sources of supply.

C. Finding No. 18 is without support in the evidence and is contrary to the evidence that withdrawals from the Northern portion of the Indian Basin-Morrow Gas Pool would have no effect on the operators in the Southern part, and in addition would be beneficial to the operators in the Southern portion of the Pool in that additional production from the Northern portion would prevent the watering-out of wells to the South.

D. Findings No. 23, 24, 25, 26, 29 and 30 are without support in the evidence and contrary to the evidence, which shows that additional facilities for the transportation of natural gas are available and that the market demand is such that any additional production from the Fasken wells in question could be purchased and transported.

E. The Order is erroneous, invalid and void, in that the effect of the Order would be to cause waste and to violate the correlative rights of the Petitioner and other mineral interest owners, contrary to the duties imposed upon the Commission by the Laws of the State of New Mexico.

7. This Petition for review is brought pursuant to §65-3-22B, N.M.S.A., 1953. Copies of Commission Order No. R-4409-B

are attached. An Application for Rehearing is not attached in that the Mandate of the Supreme Court instructed the Commission to enter new findings based upon the presently-existing record. A copy of the Mandate of the Supreme Court is attached hereto.

WHEREFORE, Petitioner asks that the Court review Commission Order No. R-4409-B and the evidence upon which the Commission purported to base such Order, and that the Court enter a Judgment declaring the Order invalid, and vacating the same.

MONTGOMERY, FEDERICI, ANDREWS, HANNAHS  
& BUELL

By

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Attorneys for Petitioner  
Post Office Box 2307  
Santa Fe, New Mexico 87501  
(Telephone [505] 982-3875)

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-B

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 22nd day of May, 1975, 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:

- (A) That due public notice having been given as required by law, the Commission has jurisdiction of this cause and the subject matter thereof.
- (B) 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 non-prorated gas pool comprising said lands.
- (C) That David Fasken requested and was granted a de novo hearing before the Commission on his application in Case No. 4733.
- (D) That the application of David Fasken was again denied by the Commission on December 6, 1972.
- (E) That Fasken filed an Application for Rehearing of the decision in Case 4733 on December 22, 1972.
- (F) That the Commission took no action on the Application for Rehearing thereby denying it.

(G) That David Fasken appealed this decision of the Commission to the District Court of Eddy County.

(H) That the Commission moved for Summary Judgment.

(I) That on November 29, 1973, the Commission's Motion for Summary Judgment was granted by the District Court.

(J) That David Fasken appealed this decision to the Supreme Court of New Mexico in December, 1973.

(K) That the Supreme Court reversed the District Court and remanded the cause back to the Commission on February 28, 1975.

(L) That in reaching its decision, the Supreme Court stated it did not want for theories in this case but that the problem with the theories advanced by counsel was that they were not bolstered by the expertise of the Commission.

(M) That in reversing the District Court, the Supreme Court found that sufficient findings to disclose the reasoning of the Commission were lacking and reversal was thereby required.

(N) That the case was "...remanded to the Commission for the making of additional findings of fact based upon the record as it presently exists, and the entry of new orders."

(O) That pursuant to this decision of the New Mexico Supreme Court and upon further review of the record the Commission finds:

(1) That the Commission is empowered by Sub-section (12) of Section 65-3-11 NMSA, 1953 Comp., as amended, "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;"

(2) That on June 1, 1969, the Commission entered Order No. R-3758 which pursuant to its statutory powers abolished the North Indian Hills-Morrow Gas Pool and extended the Indian Basin-Morrow Gas Pool to include acreage formerly included in said North Indian Hills-Morrow Gas Pool because the Commission concluded that this area comprised a single source of supply.

(3) That Fasken contends that the Indian Basin-Morrow Gas Pool is divided into two separate pools by a water trough.

(4) That the evidence used to support the water trough concept was shown to be incomplete, misleading, and probably inaccurate.

(5) That the evidence showed that the withdrawal of gas from a well in the north part of the Indian Basin-Morrow Gas Pool affects the pressure and gas migration in the south part of the pool and that the withdrawal of gas in the south part of the pool affects pressure and gas migration in the north part of this pool.

(6) That communication therefore exists throughout the pool.

(7) That communication throughout a reservoir is one of the means used to determine that a pool constitutes a single source of gas supply.

(8) That the Indian Basin-Morrow Gas Pool constitutes a single source of gas supply.

(9) That the Commission is empowered by Section 65-3-10 NMSA, 1953 Comp., as amended, to prevent waste and protect correlative rights.

(10) That Fasken is seeking with this application higher rates of production from each of his wells in the northern portion of the Indian Basin-Morrow Gas Pool.

(11) That the wells in the northern portion of the pool could produce at higher rates if they were removed from said pool and their production, thereby, no longer prorated in accordance with the allowables set for the Indian Basin-Morrow Gas Pool.

(12) That the allocation of allowables in the Indian Basin-Morrow Gas Pool is on a straight acreage basis.

(13) That because of variations in the United States Public Lands Surveys, more acreage is dedicated to each of Fasken's wells in the northern portion of the pool than is dedicated to other wells in the pool, and he therefore receives larger allowables for his two wells and is authorized to produce considerably more from each of these wells than are other operators in the pool.

(14) That ten wells produce from the Indian Basin-Morrow Gas Pool.

(15) That the two Fasken wells in the northern portion of said pool constitute 20 percent of the wells producing from the pool.

(16) That the two Fasken wells in the north of said pool have produced almost 40 percent of the gas from the pool.

(17) That Fasken has an opportunity equal to that of other producers in the pool to produce his just and equitable share of gas from said pool.

(18) That granting the application of David Fasken for pool contraction and creation of a new non-prorated gas pool would increase the amount of gas Fasken could withdraw, giving him an advantage over the other operators producing from this single source of supply thereby impairing their correlative rights.

(19) That granting the application of David Fasken would have the same affect as de-prorating the northern portion of the Indian Basin-Morrow Gas Pool but not de-prorating the remainder of the pool and would authorize greater rates of production for the Fasken wells in the north part of the pool than for other wells in the pool.

(20) That granting the application of David Fasken would authorize production practices which would impair the correlative rights of other mineral interest owners and, therefore, is contrary to the duties of the Commission as set out in Section 65-3-10 NMSA, 1953 Comp., as amended.

(21) That in order to protect correlative rights, the application should be denied.

(22) That Section 65-3-3 E NMSA, 1953 Comp., as amended, defines waste as follows:

"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 . . . ." (Emphasis added)

(23) That Fasken's witness testified that the entire pool has a greater capacity to produce gas than the producers in said pool are able to sell to the pipeline.

(24) That this limited ability to sell gas from the pool may be termed a "restricted demand."

(25) That this restricted demand for gas from the pool must logically be concluded to result from either:

- (a) a limited demand for gas from the pool because of market conditions; or
- (b) a limited demand for gas from the pool because of limited physical facilities to handle and transport the gas.

(26) That this restricted demand may be considered the "reasonable market demand" for gas from the pool.

(27) That production of gas from the pool in excess of the reasonable market demand imposed by either of the conditions described in Finding No. (24) above would cause waste. (See Finding No. (21) above.)

(28) That the other producers in the pool are entitled to produce their just and equitable share of the gas in the pool and to be permitted their just and equitable share of the reasonable market demand for gas from the pool.

(29) That granting the application of Fasken for pool contraction and creation of a new non-prorated gas pool would authorize production from his two wells in the northern portion of the pool in excess of his share of the reasonable market demand for gas from the pool and would by definition (Section 65-3-3 E NMSA 1953 Comp.) cause waste.

(30) That in order to prevent waste, the application should be denied.

IT IS THEREFORE ORDERED:

(1) That the application of David Fasken for pool contraction and creation of a new non-prorated gas pool be and the same is hereby denied.

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

-6-

Case No. 4733

Order No. R-4409-B

DONE at Santa Fe, New Mexico, on the day and year herein-  
above designated.

STATE OF NEW MEXICO  
OIL CONSERVATION COMMISSION

  
I. R. TRUJILLO, Chairman

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

S E A L

jr/

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  
the seal of said Court this 21st  
day of March, 1975.

22 Paul Marie Aldrete  
23 Clerk of the Supreme Court  
24 of the State of New Mexico  
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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 to all matters determined by Order No. R-4409-B entered by this Commission in this case on May 22, 1975, and in support thereof, 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 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 §65-3-22A, N.M.S.A., 1953.

6. After the entry of Order No. R-4409-A, this matter was reviewed by the District Court of Eddy County, as Cause No. 28482 on that Court's Docket, and from an adverse decision to your Applicant, the matter then was appealed to the Supreme Court of the State of New Mexico. Mandate of the Supreme Court has been issued, directing this Commission to make additional findings based upon the record as it presently exists in those additional findings, which have been made in ¶0. of the above-referred to Order. Applicant is adversely affected by those findings and the entry of the Order, and believes it to be erroneous and invalid for the following reasons:

A. Findings 4, 5, 6, 7 and 8 are not supported by substantial evidence and are contrary to the evidence that exists and appears in the record. The uncontradicted evidence shows that the Morrow formation underlying Sections 4 and 5 is effectively separated by waterfill structural troughs from the Morrow formation underlying the remainder of the Indian Basin-Morrow Gas Pool.

B. Finding No. 18 is not supported by substantial evidence and is again contrary to the uncontradicted testimony as appearing in the record.

C. Findings 23, 24, 25 and 26 are not supported by substantial evidence and indeed are contrary to the evidence that there is the necessary facilities, demand and market available for any gas that would be produced.

D. Findings 29 and 30 are not supported by substantial evidence and are contrary to the evidence as appears in the record.

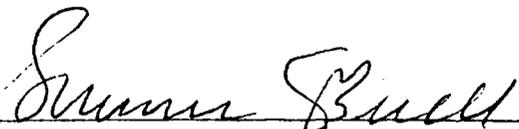
E. The said Order is erroneous, invalid and void in that the effect of said order will be to cause waste and violate correlative rights of the Applicant and of other mineral interest owners, contrary to the duties imposed upon the Commission by the laws of the State of New Mexico.

WHEREFORE, the Commission should enter its order granting this Application for Rehearing, superseding Order No. R-4409-B, and establishing Sections 4 and 5 of 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 & BUELL

By   
Attorneys for Applicant  
Post Office Box 2307  
Santa Fe, New Mexico 87501  
(Telephone [505] 982-3875)

CERTIFIED, that I mailed a true and correct copy of the foregoing Application for Rehearing to: Jack Cooley, Esq., Petroleum Center Building, Farmington, New Mexico 87401, this 11th day of June, 1975.

  
Attorney for Applicant