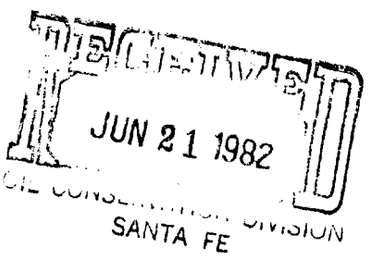


IN THE SUPREME COURT

STATE OF NEW MEXICO

ROBERT CASADOS; MANUEL GONZALES; MARY C. GONZALES; KATHRINE HEIMANN; LINDA LAMBERT; T. E. MITCHELL & SON, INC.; GLENN TOMPKINS; ELIZABETH TOMPKINS; OLIVAN CARTER; ROBERT CARTER; D. E. CARTER; VERNA DAVES; LEWIS JAMES; NEWT JAMES; TOM TAYLOR JAMES; DELTON JUDD; PHOEBE LAWRENCE; MARGARET POLING; BOBBY D. ADEE; JOHNANN ADEE, INDIVIDUALLY AND AS TRUSTEE FOR SHARON ADEE AND BOWLEN ADEE; ESTATE OF FRED P. HEIMANN; J. HEIMANN, INDIVIDUALLY AND AS TRUSTEE FOR RUSSELL GARY HEIMANN, RANDALL LYNN HEIMANN, JAY DEE HEIMANN AND GENE ALVIN HEIMANN; HOWARD ROBERTSON; PAULINE ROBERTSON; JUDY ROBERTSON; VAN ROBERTSON; DIANA SHUGART; ADDISON CAMMACK; KATHRINE CAMMACK; DON KUPER; MARY HELEN KUPER; RED ROCK LAND & CATTLE COMPANY, INC.; MATT D. IRWIN, BETTY J. IRWIN, DAVID G. IRWIN, STEVEN E. IRWIN; DORA LEE BATES; TOMMY BATES; WINIFRED BLAKELY; VADA DAVES; DEMMING DOAK; DRAGGIN S CATTLE, INC., DONAVAN DELLINGER, CECIL DELLINGER; GLENN GODFREY; POLLY GODFREY; F. B. MAPES; VERNA MAPES; KEITH MOCK; OPAL MOCK; JACK PAGETT; POOLE CHEMICAL, JIM POOLE, KAREN POOLE; BETTY SOWERS; JAMES A. SOWERS; ESTATE OF L. C. SOWERS; VIRGIL SOWERS; MRS. VIRGIL SOWERS (JIMMIE NELL); BOB DAVES, Plaintiffs-Appellants, VS. OIL CONSERVATION COMMISSION; AMOCO PRODUCTION COMPANY; AMERADA HESS CORPORATION; AND CITIES SERVICE COMPANY, Defendants-Appellees,	§	NO. _____

WMK:klV 5/17/82

AND ALEX J. ARMIJO, COMMISSIONER OF PUBLIC LANDS,	§
	§
Intervenor-Appellee	§

COUNTY OF TAOS

CALDWELL, J.

SKELETON TRANSCRIPT

ERNEST L. CARROLL
KERR, FITZ-GERALD & KERR
P. O. Box 511
Midland, Texas 79702

ATTORNEY FOR
PLAINTIFFS-APPELLANTS

CERTIFICATE OF SERVICE

On this the 18th day of ~~May~~ June, 1982, true and correct copies of this Skeleton Transcript were placed in the United States Mail, in properly stamped envelopes, addressed to each of counsel as follows:

W. Perry Pearce, Esquire
New Mexico Oil Conservation Division
P. O. Box 2088
Santa Fe, New Mexico 87501

ATTORNEY FOR OIL CONSERVATION COMMISSION

William F. Carr, Esquire
Campbell, Byrd & Black
P. O. Box 2208
Santa Fe, New Mexico 87501

ATTORNEY FOR DEFENDANT
AMOCO PRODUCTION COMPANY

WMK:klV 5/17/82

W. Thomas Kellahin, Esquire
Kellahin & Kellahin
P. O. Box 1769
Santa Fe, New Mexico 87501

ATTORNEY FOR DEFENDANTS
AMERADA HESS CORPORATION AND
CITIES SERVICE COMPANY

J. Scott Hall, Esquire
P. O. Box 1148
Santa Fe, New Mexico 87501

ATTORNEY FOR ALEX J. ARMIJO,
COMMISSIONER OF PUBLIC LANDS

Ernest L. Carroll

ERNEST L. CARROLL

SKELETON TRANSCRIPT

1. Title Page and names and mailing addresses of counsel:
   See Exhibit "A" attached hereto.

2. Judgment appealed:
   See Exhibit "B" attached hereto.

3. Notice of Appeal.
   See Exhibit "C" attached hereto.

4. Proof of Service of Notice of Appeal:
   See Exhibit "C" attached hereto and made a part hereof.

5. Certificates of Satisfactory Arrangements with Clerk and Reporter:
   See Exhibits "D" and "E" attached hereto.

6. Jurisdiction:
   See Exhibit "F" attached hereto.

WMK:Emer 1-E 6/11/82

IN THE DISTRICT COURT OF TAOS COUNTY

STATE OF NEW MEXICO

ROBERT CASADOS; MANUEL GONZALES; MARY C. GONZALES; KATHRINE HEIMANN; LINDA LAMBERT; T. E. MITCHELL & SON, INC.; GLENN TOMPKINS; ELIZABETH TOMPKINS; OLIVAN CARTER; ROBERT CARTER; D. E. CARTER; VERNA DAVES; LEWIS JAMES; NEWT JAMES; TOM TAYLOR JAMES; DELTON JUDD; PHOEBE LAWRENCE; MARGARET POLING; BOBBY D. ADEE; JOHNANN ADEE, INDIVIDUALLY AND AS TRUSTEE FOR SHARON ADEE AND BOWLEN ADEE; ESTATE OF FRED P. HEIMANN; J. HEIMANN, INDIVIDUALLY AND AS TRUSTEE FOR RUSSELL GARY HEIMANN, RANDALL LYNN HEIMANN, JAY DEE HEIMANN AND GENE ALVIN HEIMANN; HOWARD ROBERTSON; PAULINE ROBERTSON; JUDY ROBERTSON; VAN ROBERTSON; DIANA SHUGART; ADDISON CAMMACK; KATHRINE CAMMACK; DON KUPER; MARY HELEN KUPER; RED ROCK LAND & CATTLE COMPANY, INC.; MATT D. IRWIN, BETTY J. IRWIN, DAVID G. IRWIN, STEVEN E. IRWIN; DORA LEE BATES; TOMMY BATES; WINIFRED BLAKELY; VADA DAVES; DEMMING DOAK; DRAGGIN S CATTLE, INC., DONAVAN DELLINGER, CECIL DELLINGER; GLENN GODFREY; POLLY GODFREY; F. B. MAPES; VERNA MAPES; KEITH MOCK; OPAL MOCK; JACK PAGETT; POOLE CHEMICAL, JIM POOLE, KAREN POOLE; BETTY SOWERS; JAMES A. SOWERS; ESTATE OF L. C. SOWERS; VIRGIL SOWERS; MRS. VIRGIL SOWERS (JIMMIE NELL); BOB DAVES,	§	
PLAINTIFFS,	§	
VS.	§	
OIL CONSERVATION COMMISSION; AMOCO PRODUCTION COMPANY;	§	

NO. _____

EXHIBIT "A"

WMK:Emer 1-E 6/11/82

AMERADA HESS CORPORATION; AND CITIES SERVICE COMPANY,	§
DEFENDANTS,	§
AND ALEX J. ARMIJO, COMMISSIONER OF PUBLIC LANDS,	§
INTERVENOR.	§

ERNEST L. CARROLL
KERR, FITZ-GERALD & KERR
P. O. Box 511
Midland, Texas 79702

ATTORNEYS FOR PLAINTIFFS

W. Perry Pearce, Esquire
New Mexico Oil Conservation Division
P. O. Box 2088
Santa Fe, New Mexico 87501

ATTORNEY FOR OIL CONSERVATION COMMISSION

William F. Carr, Esquire
Campbell, Byrd & Black
P. O. Box 2208
Santa Fe, New Mexico 87501

ATTORNEY FOR DEFENDANT AMOCO PRODUCTION COMPANY

W. Thomas Kellahin, Esquire
Kellahin & Kellahin
P. O. Box 1769
Santa Fe, New Mexico 87501

ATTORNEY FOR DEFENDANTS AMERADA HESS CORPORATION AND CITIES SERVICE COMPANY

J. Scott Hall, Esquire
P. O. Box 1148
Santa Fe, New Mexico 87501

ATTORNEY FOR ALEX J. ARMIJO, Commissioner OF PUBLIC LANDS

STATE OF NEW MEXICO
COUNTY OF TAOS

IN THE DISTRICT COURT

ROBERT CASADOS, et al,

Plaintiffs,

vs.

OIL CONSERVATION COMMISSION, et al,

Defendants.

CONSOLIDATED CAUSE
No. 81-176

JUDGMENT

This matter came before the Court on December 7, 1981, for judicial review of the New Mexico Oil Conservation Commission Order No. R-6446 and R-6446-B approving the Bravo Dome Carbon Dioxide Unit Agreement.

The Court having considered the pleadings on file, the record of the hearing before the Commission, arguments and briefs of counsel, and having entered its Memorandum Decision on April 5, 1982, finds: that the Commission's findings of fact are supported by substantial evidence; that the conclusions reached in the orders of the Commission are supported by the findings of fact; that the Commission acted within its authority in approving the preliminary unitization agreement; that the decision of the Oil Conservation Commission should be sustained; and that the defendants are entitled to their costs.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Orders No. R-6446 and R-6446-B approving the Bravo Dome Carbon Dioxide Unit Agreement are affirmed and that defendants are entitled to recover their costs.

EXHIBIT "B"

198

DONE BY THE COURT this 07 day of May,

1982.

DISTRICT JUDGE

APPROVED:

W. PERRY PEARCE
Special Assistant Attorney
General for Defendant
Oil Conservation Commission

ERNEST L. CARROLL
Kerr, Fitz-Gerald and Kerr
For Plaintiffs
Whose Approval is as to Form Only

WILLIAM F. CARR
Campbell, Byrd and Black
For Defendant
Amoco Production Company

J. SCOTT HALL
Intervenor
Commissioner of Public Lands

W. THOMAS KELLAHIN
Kellahin & Kellahin
For Defendants
Amerada Hess Corporation and
Cities Service Corporation

IN THE DISTRICT COURT OF TAOS COUNTY

STATE OF NEW MEXICO

ROBERT CASADOS; MANUEL GONZALES; MARY C. GONZALES; KATHRINE HEIMANN; LINDA LAMBERT; T. E. MITCHELL & SON, INC.; GLENN TOMPKINS; ELIZABETH TOMPKINS; OLIVAN CARTER; ROBERT CARTER; D. E. CARTER; VERNA DAVES; LEWIS JAMES; NEWT JAMES; TOM TAYLOR JAMES; DELTON JUDD; PHOEBE LAWRENCE; MARGARET POLING; BOBBY D. ADEE; JOHNANN ADEE, INDIVIDUALLY AND AS TRUSTEE FOR SHARON ADEE AND BOWLEN ADEE; ESTATE OF FRED P. HEIMANN; J. HEIMANN, INDIVIDUALLY AND AS TRUSTEE FOR RUSSELL GARY HEIMANN, RANDALL LYNN HEIMANN, JAY DEE HEIMANN AND GENE ALVIN HEIMANN; HOWARD ROBERTSON; PAULINE ROBERTSON; JUDY ROBERTSON; VAN ROBERTSON; DIANA SHUGART; ADDISON CAMMACK; KATHRINE CAMMACK; DON KUPER; MARY HELEN KUPER; RED ROCK LAND & CATTLE COMPANY, INC.; MATT D. IRWIN, BETTY J. IRWIN, DAVID G. IRWIN, STEVEN E. IRWIN; DORA LEE BATES; TOMMY BATES; WINIFRED BLAKELY; VADA DAVES; DEMMING DOAK; DRAGGIN S CATTLE, INC., DONAVAN DELLINGER, CECIL DELLINGER; GLENN GODFREY; POLLY GODFREY; F. B. MAPES; VERNA MAPES; KEITH MOCK; OPAL MOCK; JACK PAGETT; POOLE CHEMICAL, JIM POOLE, KAREN POOLE; BETTY SOWERS; JAMES A. SOWERS; ESTATE OF L. C. SOWERS; VIRGIL SOWERS; MRS. VIRGIL SOWERS (JIMMIE NELL); BOB DAVES, Plaintiffs VS. OIL CONSERVATION COMMISSION; AMOCO PRODUCTION COMPANY; AMERADA HESS CORPORATION; AND CITIES SERVICE COMPANY, Defendants,	§	FILED IN MY OFFICE TAOS COUNTY, NEW MEXICO 3:00 PM MAY 27 1982 Dolores G. Gonzales District Court Clerk CONSOLIDATED CAUSE NO. 81-176

EXHIBIT "C"

WMK:klv 5/15/82

AND ALEX J. ARMIJO, COMMISSIONER OF PUBLIC LANDS,	§
Intervenor.	§

NOTICE OF APPEAL

Notice is hereby given that the Plaintiffs named in the caption appeal to the New Mexico Supreme Court from the Judgment of the District Court filed May 6, 1982.

ERNEST L. CARROLL
P. O. Box 511
Midland, Texas 79702

ATTORNEY FOR PLAINTIFFS

OF COUNSEL:

WILLIAM L. KERR
of KERR, FITZ-GERALD & KERR
P. O. Box 511
Midland, Texas 79702

WMK:klV 5/15/82

CERTIFICATE

On this the 20 day of May, 1982, a true and correct copy of the foregoing was placed in the United States Mails in properly stamped envelopes, addressed to each of counsel for Defendants and Intervenor as follows:

W. Perry Pearce, Esquire
New Mexico Oil Conservation Division
P. O. Box 2088
Santa Fe, New Mexico 87501

ATTORNEY FOR OIL CONSERVATION COMMISSION

William F. Carr, Esquire
Campbell, Byrd & Black
P. O. Box 2208
Santa Fe, New Mexico 87501

ATTORNEY FOR DEFENDANT
AMOCO PRODUCTION COMPANY

W. Thomas Kellahin, Esquire
Kellahin & Kellahin
P. O. Box 1769
Santa Fe, New Mexico 87501

ATTORNEY FOR DEFENDANTS
AMERADA HESS CORPORATION AND
CITIES SERVICE COMPANY

J. Scott Hall, Esquire
P. O. Box 1148
Santa Fe, New Mexico 87501

ATTORNEY FOR ALEX J. ARMIJO,
COMMISSIONER OF PUBLIC LANDS

Ernest L. Carroll
ERNEST L. CARROLL

IN THE DISTRICT COURT OF TAOS COUNTY

STATE OF NEW MEXICO

FILED IN MY OFFICE
TAOS COUNTY, NEW MEXICO
3:00 PM
MAY 27 1982
Dolores G. Gonzales
District Court Clerk

ROBERT CASADOS, ET AL,	§	
	§	
Plaintiff,	§	
	§	
VS.	§	
	§	
OIL CONSERVATION COMMISSION, ET AL,	§	CONSOLIDATED CAUSE NO. 81-176
	§	
Defendants,	§	
	§	
AND ALEX J. ARMIJO, COMMISSIONER OF PUBLIC LANDS,	§	
	§	
Intervenor.	§	

CERTIFICATE THAT SATISFACTORY ARRANGEMENTS HAVE BEEN MADE FOR PAYMENT OF COST OF THE TRANSCRIPT OF THE RECORD

This is to certify that the Appellants named in the Notice of Appeal in this case have made satisfactory arrangements for the payment of the costs of providing the transcript of the record in this case.

Dated May 27th, 1982.

DOLORES G. GONZALES
Clerk of the District Court of
Taos County, New Mexico

BY: Ruby V. Martinez
DEPUTY

EXHIBIT "D"

WMK:klV 5/17/82

IN THE DISTRICT COURT OF TAOS COUNTY

STATE OF NEW MEXICO

ROBERT CASADOS, ET AL,	§	
	§	
Plaintiff,	§	
	§	
VS.	§	
	§	
OIL CONSERVATION COMMISSION, ET AL,	§	CONSOLIDATED CAUSE NO. 81-176
	§	
Defendants,	§	
	§	
AND ALEX J. ARMIJO, COMMISSIONER OF PUBLIC LANDS,	§	
	§	
Intervenor.	§	

FILED IN MY OFFICE
TAOS COUNTY, NEW MEXICO
3:10 PM
JUN 14 1982
Dolores G. Gonzales
District Court Clerk

CERTIFICATE THAT SATISFACTORY ARRANGEMENTS HAVE BEEN MADE FOR PAYMENT OF COST OF THE TRANSCRIPT OF PROCEEDINGS

This is to certify that the Plaintiffs-Appellants in this case have made satisfactory arrangements for the payment of the costs of the transcript of proceedings in this case.

Dated ~~May~~ June 7, 1982.

Angela M. Albarez
ANGELA M. ALBAREZ,
Certified Shorthand Reporter

Court Reporter

EXHIBIT "E"

JURISDICTIONAL STATEMENT

This is a civil action seeking judicial review of an Order entered on re-hearing by the Oil Conservation Commission. The original jurisdiction of this civil action in the District Court and of this Appeal in the The Supreme Court is conferred by Section 70-2-25B, N.M.S.A., 1978, as amended.

ERNEST L. CARROLL
KERR, FITZ-GERALD & KERR
P. O. BOX 511
Midland, Texas 79702

ATTORNEY FOR
PLAINTIFFS-APPELLANTS

EXHIBIT "F"

STATE OF NEW MEXICO

IN THE DISTRICT COURT

COUNTY OF TAOS

CLERK'S CERTIFICATE

I, Dolores G. Gonzales, Clerk of the District Court of the Eighth Judicial District, within and for the County of Taos, State of New Mexico, DO HEREBY CERTIFY that the above and foregoing xeroxed and typewritten matter, constitutes a full, true and correct skeleton transcript of the record in CAUSE NO. 81-176 on the Civil Docket of said Court entitled ROBERT CASADOS, et al., vs. OIL CONSERVATION COMMISSION, et al., all as shown from the files and records of my said office.

WITNESS my hand as Clerk of the said Court, and the seal thereof, at Taos County, New Mexico this 14th day of June, 1982.

DOLORES G. GONZALES
DISTRICT COURT CLERK

BY: Ruby V. Martinez
DEPUTY

LAW OFFICES
KERR, FITZ-GERALD & KERR
III MIDLAND TOWER BUILDING
MIDLAND, TEXAS 79701

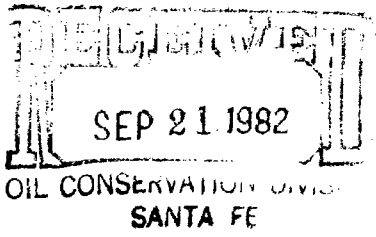
WILLIAM L. KERR (1904-1978)
GERALD FITZ-GERALD (1906-1980)
WM. MONROE KERR
THEODORE M. KERR
HARRIS E. KERR
MICHAEL T. MORGAN
WILLIAM E. WARD
EVELYN UNDERWOOD
H. W. LEVERETT

POST OFFICE BOX 511
MIDLAND, TEXAS 79702
TELEPHONE 915 683-5291

WARREN D. BARTON
COUNSEL

September 15, 1982

FEDERAL EXPRESS



Mrs. Rose Marie Alderete
Clerk of the Supreme Court
of the State of New Mexico
P. O. Box 948
Santa Fe, New Mexico 87501

Re: Robert Casados, et al, v. Oil Conservation Commission, et al, Cause No. 14,359

Dear Mrs. Alderete:

Here are eleven (11) duplicate originals of the Appellants' Brief in Chief for filing, copies of which have been served on Counsel for the other parties as per the certificate appearing at the end of the Brief, which certificate reflects copies sent as shown below.

Thank you very much.

Very truly yours,

ERNEST L. CARROLL

By: _____
Wm. M. Kerr, Of Counsel

ELC/WMK/rm

Enclosures

cc: W. Perry Pearce, Esquire
New Mexico Oil Conservation Commission
P. O. Box 2088
Santa Fe, New Mexico 87501

ATTORNEY FOR OIL CONSERVATION COMMISSION

William F. Carr, Esquire
P. O. Box 2208
Santa Fe, New Mexcio 87501

ATTORNEY FOR DEFENDANT AMOCO PRODUCTION COMPANY

W. Thomas Kellahin, Esquire
Kellahin & Kellahin
P. O. Box 1769
Santa Fe, New Mexico 87501

ATTORNEY FOR DEFENDANTS AMERADA HESS CORPORATION AND CITIES SERVICE COMPANY

J. Scott Hall, Esquire
P. O. Box 1148
Santa Fe, New Mexico 87501

ATTORNEY FOR ALEX J. ARMIJO, COMMISSIONER OF PUBLIC LANDS

STATE OF NEW MEXICO COUNTY OF TAOS

IN THE DISTRICT COURT

ROBERT E. CASADOS, et al.,

Plaintiff,

v.

Consolidated Cause No. 81-176.

OIL CONSERVATION COMMISSION, et al.,

Defendants,

ALEX J. ARMIJO, Commissioner of Public Lands,

Intervenor.

DESIGNATION OF ADDITIONAL PARTS OF RECORD PROPER

To: Delores G. Gonzales,
Clerk of the District Court:

Appellants designate the following to be included in the record proper:

1. The transcript on appeal filed by the Oil Conservation Commission on July 28, 1981, together with the instruments referred to therein including the following:

a. Certified copy of Affidavits of Publication for Oil Conservation Commission Case No. 6967;

b. Exhibits 1 through 11, introduced by Amoco Production Company at July 21, 1980 hearing;

c. Exhibits marked "B" and "C" introduced by Protestants at July 21, 1980 hearing;

d. Certified copy of Affidavits of Publication for Rehearing of Oil Conservation Commission Case No. 6967;

e. Exhibits Nos. RH-1 through RH-9 and Exhibit 11A, introduced by Amoco Production Company at October 8, 1980 hearing;

f. Exhibits Nos. 1 through 3, introduced by Cities Service Company at October 9, 1980 hearing.

2. This Designation of Additional Parts of Record Proper.

3. The Transcript of Proceedings ordered by Appellees.

W. Perry Pearce, Esquire
New Mexico Oil Conservation Division
P. O. Box 2088
Santa Fe, New Mexico 87501

ATTORNEY FOR OIL CONSERVATION COMMISSION

William F. Carr, Esquire
Campbell, Byrd & Black, P.A.
P. O. Box 2208
Santa Fe, New Mexico 87501

ATTORNEY FOR DEFENDANT
AMOCO PRODUCTION COMPANY

W. Thomas Kellahin, Esquire
Kellahin & Kellahin
P. O. Box 1769
Santa Fe, New Mexico 87501

ATTORNEY FOR DEFENDANTS
AMERADA HESS CORPORATION AND
CITIES SERVICE COMPANY

J. Scott Hall, Esquire
P. O. Box 1148
Santa Fe, New Mexico 87501

ATTORNEY FOR ALEX J. ARMIJO,
COMMISSIONER OF PUBLIC LANDS

ATTORNEYS FOR DEFENDANTS-APPELLEES.

Certificate of Service

I hereby certify that true and correct copies of the foregoing pleading were mailed to Ernest L. Carroll, Post Office Box 511, Midland, Texas 79702, attorney for Plaintiffs-Appellants this _____ day of June, 1982.

William F. Carr

LAW OFFICES
KERR, FITZ-GERALD & KERR
III MIDLAND TOWER BUILDING
MIDLAND, TEXAS 79701

WILLIAM L. KERR (1904-1978)
GERALD FITZ-GERALD (1905-1980)
WM. MONROE KERR
THEODORE M. KERR
HARRIS E. KERR
MICHAEL T. MORGAN
WILLIAM E. WARD
EVELYN UNDERWOOD
H. W. LEVERETT

POST OFFICE BOX 511
MIDLAND, TEXAS 79702
TELEPHONE 915 683-5291

WARREN D. BARTON
COUNSEL

May 17, 1982

Ms. Dolores G. Gonzales
Clerk of the District Court
Box 1715
Taos, New Mexico 87571

Re: Consolidated Cause No. 81-176, In the District Court of Taos County, New Mexico, Robert Casados, et al, Plaintiffs, vs. Oil Conservation Commission, et al, Defendants, and Alex J. Armijo, Commissioner of Public Lands

Dear Ms. Gonzales:

Here for filing is the Plaintiffs' Notice of Appeal to the New Mexico Supreme Court. Also, here for filing are:

(1) Appellants' Request for Preparation of Transcript of Proceedings directed to the Court Reporter (a copy of which is being sent directly to the Court Reporter).

(2) Request for the Preparation of Record Proper.

(3) I enclose the check of Kerr, Fitz-Gerald & Kerr, made payable to your order, with the amount left blank.

The purpose of the check is to pay your costs in preparing the transcript in hopes that this is an arrangement satisfactory to you for the payment such costs. If it is, I would appreciate your executing the enclosed certificate pertaining to satisfactory arrangements for the payment of such costs and returning it to me for inclusion in

the Skeleton Transcript. If this is not satisfactory, I would appreciate your calling me or Bill Kerr, collect, at Area Code 915 683-5291, so that we might proceed forthwith to make arrangements satisfactory to you pertaining to such costs. I would appreciate it very much if you would furnish to me at your early convenience, for use in preparing the Skeleton Transcript to be filed in the Supreme Court, a certified copy of the Judgment, reflecting the file mark or otherwise containing notation of the date of filing of the same, and a certified copy of the notice of appeal with either the file mark or a notation of the date of filing, including thereon the certificate of service.

I have ordered from the Court Reporter a transcript of proceedings, exclusive of argument of counsel. This should be along shortly, at which time I will send the same to you for filing. In the preparation of the transcript, we will, of course, need three copies for filing with the Court and one copy for each of the counsel to whom copies of this letter is being sent as shown below and, of course, one copy for ourselves.

If there are questions or problems, I would appreciate your calling either me or Mr. Kerr at the number set forth above.

Thank you very much.

Very truly yours,

Ernest L. Carroll

ELC:kl

Encl:

cc: W. Perry Pearce, Esquire
New Mexico Oil Conservation Division
P. O. Box 2088
Santa Fe, New Mexico 87501

cc: William F. Carr, Esquire
Campbell, Byrd & Black
P. O. Box 2208
Santa Fe, New Mexico 87501

W. Thomas Kellahin, Esquire
Kellahin & Kellahin
P. O. Box 1769
Santa Fe, New Mexico 87501

J. Scott Hall, Esquire
P. O. Box 1148
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MICHAEL T. MORGAN
WILLIAM E. WARD
EVELYN UNDERWOOD
H. W. LEVERETT

WARREN D. BARTON
COUNSEL

May 17, 1982

Ms. Angela Albarez, CSR
Albuquerque Deposition Service
222 Broadway Boulevard, Southeast
Albuquerque, New Mexico 87102

Re: Consolidated Cause No. 81-176, In the District Court of Taos County, New Mexico, Robert Casados, et al, Plaintiffs, vs. Oil Conservation Commission, et al, Defendants, and Alex J. Armijo, Commissioner of Public Lands

Dear Ms. Albarez:

You will recall that you acted as Court Reporter at the hearing in the captioned case held in Santa Fe on December 7, 1981. The Court has now entered its Judgment and the Plaintiffs are in the process of perfecting their appeal to the Supreme Court.

I enclose a copy directed to you of the Appellants' Request for Preparation of a Transcript of Proceedings, eliminating argument of counsel. The purpose of this actually is to establish of record that the hearing consisted almost entirely of argument of counsel. I enclose a copy of the transcript that you sent me in March. In preparing the transcript, I would request that this transcript be recast somewhat as follows:

(1) On page 1, under the Appearances, the reference to "Earl M. Craig, Jr., Corporation, Attorneys at Law" be eliminated.

(2) On page 4, toward the bottom of the page, after Mr. Kerr says "Yes" to the question of the Court, I

would ask if you would state only that here follows argument of counsel by Messrs. Kerr, Pearce, Hall, Carr and Kellahin which is not here transcribed, following which the following transpired: then pick up on page 70 with the reminder of the Court "Gentlemen, let me thank you for your presentations, etc.", continuing through page 72.

When the enclosed copy of the Transcript has served its purpose, I would appreciate your returning it to me.

This abbreviated Transcript of Proceedings needs to be in three copies for the Supreme Court, one copy each for Messrs. Pearce, Carr, Kellahin, Hall and myself. A bill for the preparation, marked "Paid by Plaintiffs", needs to be submitted with the Transcript. I enclose a check of Kerr, Fitz-Gerald & Kerr, made payable to your order, with the amount left blank, to cover the costs of the requested transcript of proceedings. You are, of course, authorized to complete the same for the amount of your charges.

I also include a Certificate prepared for your signature certifying that satisfactory arrangements have been made for the payment of the costs of the preparation of this Transcript. If payment by the check enclosed is satisfactory, I would appreciate your executing the enclosed certificate and returning it as soon as practicable so that it may be included in the Skeleton Transcript to be filed with the Supreme Court. If this mode of handling these costs of this Transcript is not satisfactory, I would appreciate your calling collect either Mr. Kerr or myself at Area Code 915 683-5291 to discuss the arrangement for payment that you would prefer to make.

Thank you very much.

Very truly yours,

Ernest L. Carroll

ELC:kl

Encl

cc: W. Perry Pearce, Esquire
New Mexico Oil Conservation Division
P. O. Box 2088
Santa Fe, New Mexico 87501

William F. Carr, Esquire
Campbell, Byrd & Black
P. O. Box 2208
Santa Fe, New Mexico 87501

W. Thomas Kellahin, Esquire
Kellahin & Kellahin
P. O. Box 1769
Santa Fe, New Mexico 87501

J. Scott Hall, Esquire
P. O. Box 1148
Santa Fe, New Mexico 87501

IN THE DISTRICT COURT OF TAOS COUNTY

STATE OF NEW MEXICO

ROBERT CASADOS, ET AL,	§	
	§	
Plaintiff,	§	
	§	
VS.	§	
	§	
OIL CONSERVATION COMMISSION, ET AL,	§	
	§	CONSOLIDATED CAUSE
	§	NO. 81-176
Defendants,	§	
	§	
AND ALEX J. ARMIJO, COMMISSIONER OF PUBLIC LANDS,	§	
	§	
Intervenor.	§	

APPELLANTS' REQUEST FOR PREPARATION OF TRANSCRIPT OF PROCEEDINGS

TO: ANGELA M. ALBAREZ, CSR, COURT REPORTER.

Please prepare a transcript of proceedings for the appeal of this case consisting of:

(1) The entire transcript of proceedings before the Court; and

(2) All exhibits, both Plaintiffs' and Defendants', admitted into evidence.

Please exclude the transcript of argument of counsel for the parties.

Inasmuch as this case involves only the review of the record made before the Oil Conservation Commission and filed with the Clerk of the Court, it would appear to be appropriate to merely certify that at the trial of the case, the Court heard only argument of counsel and received no

other evidence, either oral or in the form of exhibits in evidence.

ERNEST L. CARROLL
P. O. Box 511
Midland, Texas 79702

ATTORNEY FOR PLAINTIFFS-
APPELLANTS

CERTIFICATE OF SERVICE

On this the _____ day of May, 1982, a true and correct copy of the foregoing was placed in the United States Mails in properly stamped envelopes, addressed to each of counsel for Defendants and Intervenor as follows:

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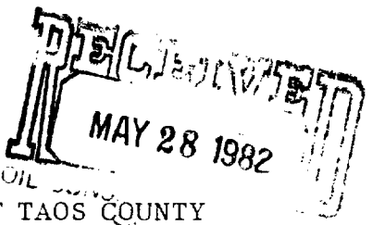
ATTORNEY FOR ALEX J. ARMIJO,
COMMISSIONER OF PUBLIC LANDS

ERNEST L. CARROLL



IN THE DISTRICT COURT OF TAOS COUNTY

STATE OF NEW MEXICO

ROBERT CASADOS; MANUEL GONZALES; MARY C. GONZALES; KATHRINE HEIMANN; LINDA LAMBERT; T. E. MITCHELL & SON, INC.; GLENN TOMPKINS; ELIZABETH TOMPKINS; OLIVAN CARTER; ROBERT CARTER; D. E. CARTER; VERNA DAVES; LEWIS JAMES; NEWT JAMES; TOM TAYLOR JAMES; DELTON JUDD; PHOEBE LAWRENCE; MARGARET POLING; BOBBY D. ADEE; JOHNANN ADEE, INDIVIDUALLY AND AS TRUSTEE FOR SHARON ADEE AND BOWLEN ADEE; ESTATE OF FRED P. HEIMANN; J. HEIMANN, INDIVIDUALLY AND AS TRUSTEE FOR RUSSELL GARY HEIMANN, RANDALL LYNN HEIMANN, JAY DEE HEIMANN AND GENE ALVIN HEIMANN; HOWARD ROBERTSON; PAULINE ROBERTSON; JUDY ROBERTSON; VAN ROBERTSON; DIANA SHUGART; ADDISON CAMMACK; KATHRINE CAMMACK; DON KUPER; MARY HELEN KUPER; RED ROCK LAND & CATTLE COMPANY, INC.; MATT D. IRWIN, BETTY J. IRWIN, DAVID G. IRWIN, STEVEN E. IRWIN; DORA LEE BATES; TOMMY BATES; WINIFRED BLAKELY; VADA DAVES; DEMMING DOAK; DRAGGIN S CATTLE, INC., DONAVAN DELLINGER, CECIL DELLINGER; GLENN GODFREY; POLLY GODFREY; F. B. MAPES; VERNA MAPES; KEITH MOCK; OPAL MOCK; JACK PAGETT; POOLE CHEMICAL, JIM POOLE, KAREN POOLE; BETTY SOWERS; JAMES A. SOWERS; ESTATE OF L. C. SOWERS; VIRGIL SOWERS; MRS. VIRGIL SOWERS (JIMMIE NELL); BOB DAVES, Plaintiffs VS. OIL CONSERVATION COMMISSION; AMOCO PRODUCTION COMPANY; AMERADA HESS CORPORATION; AND CITIES SERVICE COMPANY, Defendants,	§	CONSOLIDATED CAUSE NO. 81-176

WMK:klV 5/15/82

AND ALEX J. ARMIJO, COMMISSIONER OF PUBLIC LANDS,	§
Intervenor.	§

NOTICE OF APPEAL

Notice is hereby given that the Plaintiffs named in the caption appeal to the New Mexico Supreme Court from the Judgment of the District Court filed May 6, 1982.

ERNEST L. CARROLL
P. O. Box 511
Midland, Texas 79702

ATTORNEY FOR PLAINTIFFS

OF COUNSEL:

WILLIAM L. KERR
of KERR, FITZ-GERALD & KERR
P. O. Box 511
Midland, Texas 79702

WMK:klV 5/15/82

CERTIFICATE

On this the _____ day of May, 1982, a true and correct copy of the foregoing was placed in the United States Mails in properly stamped envelopes, addressed to each of counsel for Defendants and Intervenor as follows:

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CITIES SERVICE COMPANY

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Santa Fe, New Mexico 87501

ATTORNEY FOR ALEX J. ARMIJO,
COMMISSIONER OF PUBLIC LANDS

_____
ERNEST L. CARROLL

IN THE DISTRICT COURT OF TAOS COUNTY

STATE OF NEW MEXICO

ROBERT CASADOS, ET AL,	§	
	§	
Plaintiff,	§	
	§	
VS.	§	
	§	
OIL CONSERVATION COMMISSION, ET AL,	§	CONSOLIDATED CAUSE NO. 81-176
	§	
Defendants,	§	
	§	
AND ALEX J. ARMIJO, COMMISSIONER OF PUBLIC LANDS,	§	
	§	
Intervenor.	§	

REQUEST FOR THE PREPARATION OF THE RECORD PROPER

TO: DOLORES G. GONZALES, CLERK OF THE DISTRICT COURT:

Please prepare a transcript of portions of the record proper to consist of the following:

(1) Plaintiffs' Petitions, one of which was filed in Union County as Case No. CV 81-18, one of which was filed in Quay County as Case No. CV 81-00015, and one of which was filed in Harding County as Case No. CV 81-00001.

(2) The Responses to the Petition filed by the Oil Conservation Commission, Amoco Production Company, Amerada Hess Corporation and Cities Service Company in the Union, Quay and Harding Counties cases.

(3) The Order consolidating the three cases commenced by the Petitions mentioned in Paragraph (1).

(4) The Orders designating Honorable Joe Caldwell to try, hear and determine these cases.

(5) The Order docketing the consolidated causes in Taos County, New Mexico.

(6) The Response of the Intervenor, Commissioner of Public Lands.

(7) The transcript on appeal filed by the Oil Conservation Commission on July 28, 1981, together with the instruments referred to therein, except the following:

(a) Certified copy of Affidavits of Publication for Oil Conservation Commission Case No. 6967;

(b) Exhibits 1 through 11, introduced by Amoco Production Company at July 21, 1980 hearing;

(c) Exhibits marked "B" and "C", introduced by Protestants at July 21, 1980 hearing;

(d) Certified copy of Affidavits of Publication for Rehearing of Oil Conservation Commission Case No. 6967;

(e) Exhibits Nos. RH-1 through RH-9, and Exhibit 11A, introduced by Amoco Production Company at October 8, 1980 hearing;

(f) Exhibits Nos. 1 through 3, introduced by Cities Service Company at October 9, 1980 hearing;

(8) The Court's Memorandum Decision dated April 5, 1982.

(9) The Judgment entered May 6, 1982.

(10) Notice of Appeal.

(11) Appellants' Request for Preparation of Transcript of Proceedings.

(12) This Request for the Preparation of Record Proper.

(13) The Transcript of Proceedings ordered by Appellant.

(14) Your Certificate of the costs of the transcript and the designation of the parties paying the same.

ERNEST L. CARROLL
P. O. Box 511
Midland, Texas 79702

ATTORNEY FOR PLAINTIFFS-APPELLANT

CERTIFICATE

On this the _____ day of May, 1982, a true and correct copy of the foregoing was placed in the United States Mails in properly stamped envelopes, addressed to each of counsel for Defendants and Intervenor as follows:

W. Perry Pearce, Esquire
New Mexico Oil Conservation Division
P. O. Box 2088
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AMERADA HESS CORPORATION AND
CITIES SERVICE COMPANY

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ATTORNEY FOR ALEX J. ARMIJO,
COMMISSIONER OF PUBLIC LANDS

_____
ERNEST L. CARROLL

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

BRUCE KING
GOVERNOR

LARRY KEHOE
SECRETARY

May 3, 1982

POST OFFICE BOX 2088
STATE LAND OFFICE BUILDING
SANTA FE, NEW MEXICO 87501
(505) 827-2434

The Honorable Joseph E. Caldwell
District Judge
Eighth Judicial District
P. O. Box 1715
Taos, New Mexico 87571

Re: Robert Casados et. al., v. Oil Conservation Commission et. al., Taos County Cause No. 81-176 (Consolidated)

Dear Judge Caldwell:

Enclosed is a form of Judgment which has been prepared in furtherance of your Memorandum Decision in the above-referenced action. This Judgment has been circulated to all counsel who have approved it as to form. If this Judgment meets with your approval, I would appreciate your causing it to be entered and having a conformed copy returned to me in the enclosed envelope.

Thank you for your attention to this matter. If I can be of further assistance, please contact me.

Sincerely,

W. PERRY PEARCE
Assistant Attorney General
for the Oil Conservation Commission

WPP/dr

cc: Ernest L. Carrol, w/enc.
William F. Carr, w/enc.
W. Thomas Kellahin, w/enc.
J. Scott Hall, w/enc.

CHAMBERS OF
JOSEPH E. CALDWELL
DISTRICT JUDGE
DIVISION II

STATE OF NEW MEXICO
EIGHTH JUDICIAL DISTRICT

P. O. BOX 1715
TAOS, NEW MEXICO
87571
PHONE: 758-3173
758-4547

April 6, 1982

Mr. W. Perry Pearce
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P. O. Box 1148
Santa Fe, New Mexico 87501

Mr. William F. Carr
Campbell, Byrd and Black
Attorneys at Law
P. O. Box 2208
Santa Fe, New Mexico 87501

Re: Robert Casados, et al vs. Oil Conservation Commission, et al
Taos County Cause No. 81-176

Gentlemen:

Enclosed herewith please find a conformed copy of the Memorandum Decision entered April 5, 1982 in the above-entitled cause. Mr. Pearce will prepare a Judgment in conformance with the Decision, submit it to opposing counsel for approval, thence to the Court.

Thank you.

Cordially yours,

Joseph E. Caldwell

Joseph E. Caldwell
District Judge

JEC:cp

Enclosure

STATE OF NEW MEXICO

COUNTY OF TAOS

IN THE DISTRICT COURT

ROBERT CASADOS, et al,
Plaintiffs,

vs.

OIL CONSERVATION COMMISSION, et al,

Defendants.

CONSOLIDATED CAUSE NO. 81-176

FILED IN MY OFFICE
COUNTY, NEW MEXICO
6:00 PM
APR 5 1982
District Court Clerk

MEMORANDUM DECISION

This is an appeal for a review from Orders No. R-6446 and R-6446-B of the Oil Conservation Commission of New Mexico, which approved in its Cause 6967 the proposed Bravo Dome Carbon Dioxide unit over the Tubb geological formation which contains marketable carbon dioxide gas. The plaintiff raises essentially three points for this appeal:

I. Is there substantial evidence to support the findings of the Commission?

Plaintiffs challenge in their Petition whether substantial evidence exists on the record of Cause 6967 to support the findings of the Commission contained in the Orders objected to. Without repeating the totality of those findings, they are essentially to the effect that:

A. There is sufficient data to conclude as a geological probability the outer perimeters of the formation within the unitized area containing marketable carbon dioxide deposits;

B. There is insufficient data to conclude as a geological probability the location of the gas within the unitized area in order to determine the best method to protect the correlative rights of the parties and distribution of royalties but there exists sufficient data to determine the two best methods of such distribution.

C. Data can only be collected through exploration and development within the unitized area.

II. Do the findings support the conclusions included by the Commission in the protested Orders?

Appellants also argue that, even though sufficient evidence might exist to support the findings of the Commission, those findings do not support the conclusions of the Commission that:

A. The proposed unit is the best method to provide for orderly development of the gas deposit to prevent waste; and

B. The alternative methods for royalty determination to protect correlative rights set forth in the Orders are the best methods; and

C. The Commission's retaining of jurisdiction would protect the correlative rights of fee owners as development should continue.

III. Did the Commission have authority to approve the unit at its present stage of development?

The appellants were granted leave of the Court at oral argument to raise the issue of the constitutional and statutory authority of the Commission to approve the unit in the manner contemplated in the protested Orders. Specifically, the appellants argue that even though substantial evidence may exist before the Commission to sustain the findings in the Orders, and even though the conclusions should naturally flow from such findings, the Commission has no statutory or constitutional authority to approve what is a preliminary unit at a stage where the Commission concedes in its findings insufficient information exists to determine as a geological probability the actual location of marketable gas within the Tubb formation.

In reference to the above arguments, the Court, having heard the arguments of counsel, having read the transcripts of proceedings before the Commission, having read the briefs submitted by the parties, and otherwise being fully advised in the premises, makes the following:

FINDINGS OF FACT

1. The plaintiffs are all owners of carbon dioxide property rights within the proposed unit area, either in Union, Quay or Harding Counties in New Mexico.

2. The defendant Oil Conservation Commission is a New Mexico regulatory agency empowered under Section 70-2-1 et. seq. to regulate and control

production or handling of natural gas, oil, and, in particular for this case carbon dioxide (Section 70-2-2 and Section 70-2-34 N.M.S.A., 1978 Comp.).

3. The primary mandate of the Commission is to prevent waste in developing natural resources, and in doing so, protecting the correlative rights of owners of land or minerals during exploitation of such natural resources.

4. The defendants Amoco Production Company, Amerada Hess Corporation and Cities Service Company are all foreign corporations licensed to do business in New Mexico and are holders of oil and gas (including carbon dioxide) leases within the area of the proposed unit and/or participants in the proposed unitization, with Amoco being the applicant before the Commission in Cause No. 6967.

5. The intervenor Commissioner of Public Lands and State Land Commissioner is the holder in public trust of fee title to substantial lands within the proposed unit and also is required by law to approve the unitization agreement as it should affect such lands.

6. The Petition to the defendant Commission arose out of agreements contained in oil and gas leases with fee owners of land, some of which are plaintiffs in this case, requiring review and approval of unitization agreements by the Commission. The effort to unitize in this case is therefore characterized as a voluntary unitization where all parties concede that land belonging to fee owners not part of such lease agreements is not included as part of the unit.

7. The transcipts of record before the Commission show that the following evidence was presented at hearing:

A. Adequate geological data to show that the Tubb formation is within the unitized area as a reasonable geological probability.

B. Inadequate geological data exists to show the various underground meanderings of the formation and therefore determine as a geological probability whether certain fee owners are or are not entitled to royalities because of the location of that formation, and in what distribution.

C. The data needed for such determination will occur during the very expiration and production contemplated within the challenged Commission's Orders and at which time much of the waste to protect against would likely occur.

D. The Commission was unable to determine which method of guarantee of correlative rights would be best, because the information does not exist on which to reasonably calculate the best method at this time, and therefore alternative methods subject to subsequent review by the Commission were approved.

8. The Commission retained jurisdiction over the unit, to reasonably respond as information develops.

9. The Commission followed in all respects its rules required by Section 70-2-7 N.M.S.A., 1978 Comp.

Based upon the foregoing findings of fact, the Court makes the following:

CONCLUSIONS OF LAW

1. Substantial evidence exists on the record of proceedings before the New Mexico Oil Conservation Commission in Cause No. 6967 to support the findings of fact contained in Orders R-6446 and R-6446-B of that Commission.

2. The conclusions reached in those Orders by the Commission in approving the Bravo Dome unitization agreement are supported by the findings of fact.

3. The Commission acted within its authority in approving the preliminary unitization agreement set forth in its Orders and properly within its mandate to provide an opportunity for property owners to produce insofar as practicable to do so, without waste, a proportion of gas in the formation insofar as can practically be determined and obtained without waste. (See Continental Oil Co. v. Oil Conservation Commission, 70 NM 310, 373 P2d 809 (1962).

4. The decision of the Oil Conservation Commission should be sustained.

5. The defendants in this case are entitled to their costs.

DONE BY THE COURT this 5th day of April ,1982.

DISTRICT JUDGE

KELLAHIN and KELLAHIN
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Jason Kellahin
W. Thomas Kellahin
Karen Aubrey

Telephone 982-4285
Area Code 505

December 21, 1981

Honorable Joseph E. Caldwell
District Judge
8th Judicial District
P.O. Box 1715
Taos, New Mexico 87571

RE: Cases No. 81-176 (Consolidated)
Robert Casados et al. vs. Oil
Conservation Commission et al.

Dear Judge Caldwell:

On behalf of Defendants Cities Service Company and Amerada Hess Corporation, we hereby adopted and support the Supplemental Trial Briefs of Defendants, Amoco Production Company, the Oil Conservation division, and the Intervenor, Commissioner of Public Lands.

Very truly yours,

W. Thomas Kellahin

WTK:jm
cc: Ernest L. Carroll, Esq.
Perry Pierce, Esq.
William F. Carr, Esq.
J. Scott Hall, Esq.
WynDee Baker, Esq.

CHAMBERS OF
JOSEPH E. CALDWELL
DISTRICT JUDGE
DIVISION II

STATE OF NEW MEXICO
EIGHTH JUDICIAL DISTRICT

April 6, 1982

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Mr. William F. Carr
Campbell, Byrd and Black
Attorneys at Law
P. O. Box 2208
Santa Fe, New Mexico 87501

Re: Robert Casados, et al vs. Oil Conservation Commission, et al
Taos County Cause No. 81-176

Gentlemen:

Enclosed herewith please find a conformed copy of the Memorandum Decision entered April 5, 1982 in the above-entitled cause. Mr. Pearce will prepare a Judgment in conformance with the Decision, submit it to opposing counsel for approval, thence to the Court.

Thank you.

Cordially yours,

Joseph E. Caldwell

Joseph E. Caldwell
District Judge

JEC:cp

Enclosure

IN THE DISTRICT COURT OF TAOS COUNTY

STATE OF NEW MEXICO

ROBERT CASADOS, et al,

Petitioners,

vs. Cause No. 81-176

(Consolidated)

OIL CONSERVATION COMMISSION, et al,

Respondents.

SUPPLEMENTAL BRIEF OF RESPONDENT

OIL CONSERVATION COMMISSION

This supplemental brief is submitted in response to request of the court at a hearing held in this matter on December 7, 1981. It is the purpose of this brief to respond to that request and to supplement the presentation made by respondent Oil Conservation Commission in a trial brief submitted to the court in this matter, and also in arguments presented to the court at the December 7, 1981, hearing on this matter.

The question posed by the court at the hearing related to the power of respondent Oil Conservation Commission to enter orders R-6446 and R-6446-B in response to the application of Co-respondent Amoco Production Company, for approval of the Bravo Dome Carbon Dioxide Unit Agreement and proceedings which followed that application. The question posed is:

> Whether the Commission has the power to approve a voluntary preliminary exploratory unitization agreement or a final unitization agreement with preliminary findings before the limitations of a field have been determined to a geologic probability.

This inquiry contains two separable elements which will be addressed. The first relates to the propriety of issuing the order prior to more definite geologic data becoming available and the second relates to the propriety of the Commission continuing to review unit operations. The two questions may be stated:

> 1. Whether the New Mexico Oil Conservation Commission acted within the scope of its authority in issuing these orders prior to all data and factual materials relating to the subject matter of the application becoming available?
>
> 2. Whether the respondent Oil Conservation Commission exceeded the scope of its statutory authority in issuing orders which retained continuing jurisdiction over the applicant, the Bravo Dome Carbon Dioxide Unit Agreement, and matters related thereto?

In order for this court to accurately answer either of these questions, it is necessary that a brief review be given of exactly what action was taken by the respondent Oil Conservation Commission and exactly what orders were entered. Contrary to the statements set out in the brief of petitioners, the provisions of Order No. R-6446-B are not "czar-like" and do not purport to grant to the Commission the far-reaching powers which petitioners claim the Commission may not exercise.

Petitioners attempt to reverse the test for review of administrative orders by claiming that in this instance the findings portion of the administrative decision must be supported by the order portion of that administrative decision. Petitioners argue that the findings contain matters which are not set forth in the order portion of the decision and therefore the orders are invalid. This mistaken and inverted view of administrative orders is then tested and the argument is made that since the orders fail to meet the inappropriate

and illogical standard of review, that the orders should be stricken.

The operative (order) portion of Order No. R-6446-B contains eleven subsections which: 1) approve the unit agreement; 2) approve the initial plan as a proper conservation measure; 3) require reports to the Commission by the operator of any expansions or contractions of the unit area; 4) require periodic demonstrations by the operator that the unit agreement is operating to prevent waste and protect correlative rights; 5) require that the demonstration of the prevention of waste and protection of correlative rights be made at a public hearing at least every four years; 6) require the submission of all plans of development of the unit area to be submitted to the Commission for approval; 7) require that the operator file tentative four-year plans; 8) specify that the four-year plans shall be for informational purposes only; 9) set forth the requirement of filing the first operating plan; 10) set the effective date of the unit agreement; and 11) state that the Commission retains jurisdiction over this matter. Nowhere in these provisions is there any indication that the operator of the unit or any party participating in the unit is required to submit any of its contractual relationships to the Commission for modification.

I.

THE COMMISSION HAS A STATUTORY DUTY TO ENTER THESE ORDERS WHICH ACT TO PREVENT WASTE PRIOR TO MORE GEOLOGICAL INFORMATION BECOMING AVAILABLE

Orders No. R-6446 and R-6446-B entered by the Oil Conservation Commission find that the approval of the Bravo Dome Carbon Dioxide Unit Agreement would act to prevent waste (see Trial Briefs of respondents for citation of substantial evidence supporting this finding). In addition, Orders No. R-6446 and R-6446-B find that the Bravo Dome Carbon Dioxide Unit Agreement operates to protect correlative rights. This finding is also supported by substantial evidence as demonstrated by briefs and arguments of respondents previously submitted in this matter.

Petitioners complain that respondent Oil Conservation Commission entered its order in this matter prior to all detailed factual data becoming available and in support of such position refers this court to several instances in Order No. R-6446-B in which the Commission states that "at least initially" or "at this time" the orders act to protect correlative rights. Petitioner than argues that since the data is not available to enter an order resolving for all time the correlative rights of all parties in the Bravo Dome Carbon Dioxide Unit, that the Commission is barred from entering any order.

This position is directly contrary to statutory mandates and case law authority in the State of New Mexico placing

requirements on the New Mexico Oil Conservation Commission. A similar argument was made in the case of Grace v. Oil Conservation Commission, 87 N.M. 205, 531 P.2d 939. In that case the court held that the Commission had made findings of fact "insofar as can be practicably determined" and that it would be inappropriate to delay the entry of orders which would act to prevent waste simply because there was insufficient data presently available to accurately and permanently set forth the correlative rights of the respective parties. In that case the court said:

> The prime objective of the statutes under consideration is, "in the interest of the public welfare, to prevent waste of an irreplaceable natural resource." El Paso Natural Gas Co. v. Oil Conservation Com'n, supra. The Graces would have us hold that the Commission is powerless to enter proration orders in respect to newly discovered pools until sufficient data has been gleaned to make the reserve computations. We do not agree. Prevention of waste is paramount, and private rights, such as prevention of drainage not offset by counter drainage and correlative rights must stand aside until it is practicable to determine the amount of gas underlying each producer's tract or in the pool. 87 N.M. at 212. (emphasis added)

The New Mexico Oil Conservation Commission has entered an order directly in line with its statutory mandate as interpreted by the New Mexico Supreme Court in this case. The Commission approved a unit agreement which it found would act to prevent waste, that unit agreement presently acts in an equitable way to protect correlative rights, and that unit agreement provides for subsequent adjustment of the equities as additional information becomes available. (Article 5.2 of Exhibit 1 to the Hearing)

This finding in Grace that the Oil Conservation Commission must accept as its primary responsibility the prevention of waste and must act to prevent waste in situations where detailed factual data may not be available with regard to doing exact

equity between all parties in regard to correlative rights has been followed and explicitly re-adopted in the case of Rutter and Wilbanks Corp. v. the Oil Conservation Commission, 87 N.M. 286, 532 P.2d 582 (1975). In addition the primary case relied upon by petitioners in support of the necessity of detailed findings relating to correlative rights is Continental Oil Co. v. the Oil Conservation Commission, 70 N.M. 310, 373 P.2d 809 (1962) supports this position. In that case the court was presented with an order which did not refer to the prevention of waste but relied upon only the duty of protection of correlative rights to support the Commission's action. The court found that in order to support the order under such circumstances, more detailed correlative rights related findings were required but despite such finding that detailed findings were desirable, that court stated that the prevention of waste was "the paramount power" (Continental Oil Co. v. Oil Conservation Commission, 70 N.M. at 318).

That this authority is granted by the statutes is clear, not only from court decision interpreting those statutes, but from the statutes themselves. Section 70-2-11 sets forth the powers of the Oil Conservation Commission to prevent waste and protect correlative rights. That section provides in part that the Commission:

> ...is hereby empowered, and it is its duty, to prevent waste prohibited by this act and to protect correlative rights, as in this act provided. To that end, the Division is empowered to make and enforce rules, regulations and orders, and to do whatever may be reasonably necessary to carry out the purpose of this act, whether or not indicated or specified in any section hereof.

For additional statutory authority this court is referred to briefs previously filed in this matter.

In response to the statutory mandate imposed upon it, and by the interpretation of that statutory mandate rendered by the courts of this state in various proceedings, the Oil Conservation Commission in entering Orders No. R-6446 and R-6446-B has acted to prevent waste and has acted to protect correlative rights to the extent practicable. Such action was not only within the statutory authority of the agency, but such action was in fact the duty of the agency.

II.

THE NEW MEXICO OIL CONSERVATION DIVISION IS EMPOWERED TO MAINTAIN CONTINUING JURISDICTION OVER MATTERS PRESENTED FOR ITS CONSIDERATION.

In view of the possibility of changing circumstances, as additional information becomes available, both Orders R-6446 and R-6446-B entered by the New Mexico Oil Conservation Division approving the Bravo Dome Carbon Dioxide Unit Agreement by their own terms retain jurisdiction in this matter "for the entry of such further orders as the Commission may deem necessary." (Order Paragraph No. (11) of Order No. R-6446-B.) The authority of the Commission to retain such jurisdiction is once again found in New Mexico Statutes, New Mexico case law, and is supported by the general rules of administrative law.

Although the power of the New Mexico Oil Conservation Division to exercise continuing jurisdiction has not in the past in reported cases been directly attacked, there is in several cases the implication that the exercise of such jurisdiction is appropriate. Once again this court is specifically referred to the cases Grace v. Oil Conservation Commission, 87 N.M. 205, 531

P.2d 939 (1975) and Rutter and Wilbanks Corporation v. Oil Conservation Commission, 87 N.M. 286, 532 P.2d 582 (1975). In both of these cases the court found that in view of the Commission's primary responsibility for preventing waste that orders entered which acted in the near term to protect correlative rights were appropriate until additional information relative to correlative rights was obtained. In neither of these cases did the court either insist upon the imposition of a formula initially which would be ultimately supportable nor did the court in either of these cases determine that the parties would be permanently and ultimately bound by the formula adopted.

In addition, the court is once again referred to Section 70-2-11 NMSA, 1978, which grants to the Commission the powers necessary to accomplish its duties whether or not specified by statute. The nature of the exploration for, development of, and production of natural resources is by its very nature a complex, long-term operation which cannot be planned with finality at its initial stages. To require the Oil Conservation Commission to adopt or impose, at this time, plans which could not be subsequently amended would prevent the Oil Conservation Commission from performing its duties of preventing waste and protecting correlative rights. By the same token, refusal to allow the Oil Conservation Commission to act at this time would deny to the Oil Conservation Commission the power to perform its statutory duty of preventing waste. The mechanism most suitable in instances of this sort for allowing the Commission to act to perform its statutory duties is the mechanism of allowing the Commission to act presently while retaining jurisdiction for subsequent review and action.

Although this matter has not been directly challenged in New Mexico, there are in the federal system several cases which address the continuing jurisdiction of administrative agencies. In the case of the Environmental Defense Fund v. The Environmental Protection Agency, 465 F.2d 528 (D.C. Ct. App. 1972) the District of Columbia Court of Appeals was confronted with a challenge to an interim decision of the Environmental Protection Agency which decision provided that its interim decision would be reviewed on receipt of additional information. In discussing the propriety of this exercise of continuing jurisdiction, the Court of Appeals stated:

> "That course is sound practice, and indeed is an implicit requirement of law, for the administrative process is a continuing one, and calls for continuing re-examination at significant junctures. Citations omitted. 465 F.2d at 541.

The Environmental Defense Fund case, supra. relied upon American Airline, Inc. v. CAB, 359 F.2d 624 (en banc), cert. denied, 385 U.S. 843, 87 S. Ct.73, 172 Ed.2d 75 (1966) which had a somewhat more extended discussion of the ability of administrative agencies to continue their jurisdiction over matters and subsequently review and possibly amend their decisions. The court in the American Airlines case found that the question before them for review was one which involved expert opinions and forecasts which could not be decisively resolved by testimony and that in light of that type of problem the administrative process was particularly useful because of its ability to continue to oversee and supervise matters. The court said:

> "It is part of the genius of the administrative process that its flexibility permits adoption of approaches subject to expeditious adjustment in light of experience....In any event, it is the obligation of

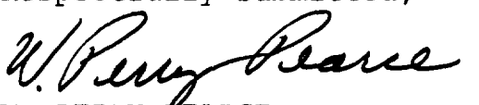
an.... agency to make re-examinations and adjustments in the light of experience." 559 F.2d 624 at 633

It is particularly significant that the ruling of the CAB being challenged in the American Airlines case contained the language "at this time" in referring to certain of its findings. This is precisely the method adopted by the Oil Conservation Commission in the matter presently under review and it is particularly appropriate in situations in which to allow parties to proceed without this order being entered would cause waste and yet to prohibit them from proceeding at all would cause a failure to develop the natural resources in question.

CONCLUSION

In view of the matters presented to this court for its review, both in initial briefs and arguments and in this supplemental brief, the respondent New Mexico Oil Conservation Commission has acted within its statutory authority. The Commission has acted to approve this voluntary unit agreement which acts to prevent waste and to protect correlative rights. Therefore the Commission requests that its orders Nos. R-6446 and R-6446-B be affirmed and that petitioners be denied the relief sought.

Respectfully submitted,



W. PERRY PEARCE
Assistant Attorney General
State of New Mexico
Oil Conservation Commission
P. O. Box 2088
Santa Fe, New Mexico 87501

CERTIFICATE

I HEREBY CERTIFY THAT A TRUE AND CORRECT COPY OF THE FOREGOING BRIEF WAS MAILED TO OPPOSING COUNSEL OF RECORD THIS 17th DAY OF DECEMBER, 1981.

_____

STATE OF NEW MEXICO

IN THE DISTRICT COURT

COUNTY OF TAOS

ROBERT CASADOS, et al,

Plaintiffs,

CONSOLIDATED CAUSE
No. 81-176

vs.

OIL CONSERVATION COMMISSION,
et al,

Defendants.

JUDGMENT

This matter came before the Court on December 7, 1981, for judicial review of the New Mexico Oil Conservation Commission Order No. R-6446 and R-6446-B approving the Bravo Dome Carbon Dioxide Unit Agreement.

The Court having considered the pleadings on file, the record of the hearing before the Commission, arguments and briefs of counsel, and having entered its Memorandum Decision on April 5, 1982, finds: that the Commission's findings of fact are supported by substantial evidence; that the conclusions reached in the orders of the Commission are supported by the findings of fact; that the Commission acted within its authority in approving the preliminary unitization agreement; that the decision of the Oil Conservation Commission should be sustained; and that the defendants are entitled to their costs.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Orders No. R-6446 and R-6446-B approving the Bravo Dome Carbon Dioxide Unit Agreement are affirmed and that defendants are entitled to recover their costs.

DONE BY THE COURT this_____day of _____,

1982.

_____
DISTRICT JUDGE

APPROVED:

W. PERRY PEARCE
Special Assistant Attorney
General for Defendant
Oil Conservation Commission

_____
ERNEST L. CARROLL
Kerr, Fitz-Gerald and Kerr
For Plaintiff

_____
WILLIAM F. CARR
Campbell, Byrd and Black
For Defendant
Amoco Production Company

_____
J. SCOTT HALL
Intervenor
Commissioner of Public Lands

_____
W. THOMAS KELLAHIN
Kellahin & Kellahin
For Defendants
Amerada Hess Corporation and
Cities Service Corporation

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

ROBERT CASADOS, et al.,

Plaintiffs-Appellants,

vs.

NO. 14359

OIL CONSERVATION COMMISSION, et al.,

Defendants-Appellees,

ALEX J. ARMIJO, Commissioner
of Public Lands,

Intervenor-Appellee.

NOTICE

TO:

Kerr, Fitz-Gerald & Kerr
Ernest L. Carroll
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Midland, Texas 79703

Campbell, Byrd & Black
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J. Scott Hall, Esq.
Attorney at Law
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Santa Fe, NM 87501

You are hereby notified that Skeleton Transcript was filed in the above entitled cause this 21st day of June, 1982.

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

Dorothy Gaines
Deputy

SUPREME COURT OF NEW MEXICO

DOCKET NO. 14359

ROBERT CASADOS, et al.,

Plaintiffs-Appellants,

VS.

OIL CONSERVATION COMMISSION, et al.,

Defendants-Appellees,

ALEX J. ARMIJO, Commissioner of Public Lands,

Intervenor-Appellee.

ATTORNEYS

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Midland, TX 79702

FOR

Campbell, Byrd & Black
William F. Carr
Bx 2208
SF 87501

W. Perry Pearce
NM Oil Conservation Di
BX 2088 SF 87501

FOR

CIVIL
CRIMINAL APPEAL FROM DISTRICT COURT Taos COUNTY.
(81-176)

Judgment 5/6/82

Notice of Appeal

Joseph Caldwell

** Kellahin & Kellahin
W. Thomas Kellahin
Bx 1769 SF for Amerada & Cities Ser.

***J. Scott Hall
Bx 1148 SF for Armijo

CITATIONS

N. MEX.

PAC. 2ND

RECEIVED
AUG 23 1982
OIL C.

CASH ACCOUNT FOR COSTS

DATE 1982		RECEIVED FROM OR PAID TO	RECEIVED	DISBURSED
June	21	Kerr, Fitz-Gerald & Kerr	$20.00	
		State Treasurer		$16.00

DATE 1982		PROCEEDINGS
June	21	Skeleton Transcript
July	6	Request for Oral ARgument
August	18	3 Transcript on Appeal (2 volumes)
		Original Exhibits (1 Lg Envelope #5 Jacket)

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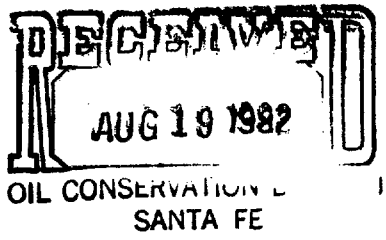
WARREN D. BARTON
COUNSEL

August 11, 1982



Ms. Rose Marie Alderete
Clerk of the Supreme Court
of the State of New Mexico
P. O. Box 948
Santa Fe, New Mexico 87501

Re: Robert Casados, et al, Vs.
Oil Conservation Commission, et al;
Appealed from the District Court of
Taos County, New Mexico;
Your Cause No. 14,559

Dear Ms. Alderete:

By Federal Express, we are sending to you for filing the Transcript on Appeal in this case, consisting of:

(1) Three copies of the Transcript of the Record Proper, designated as Volume 1 of two volumes, containing Pages 1 - 202;

(2) Three copies of the Transcript of Proceedings in the Trial Court, described as Volume 2 of two volumes, containing Pages 203 - 276;

(3) The Transcript of Proceedings before the Oil Conservation Commission filed in the Trial Court by the Oil Conservation Commission on July 28, 1981, including all Exhibits introduced in hearings in the matter before the Oil Conservation Commission, except Exhibits 11 and 11A.

I certify that with copies of this letter, a copy of the Transcript of the Record Proper has been placed in the United States mails in properly stamped envelopes, addressed to counsel to the other parties as follows:

W. Perry Pearce, Esq.
New Mexico Oil Conservation Division
P. O. Box 2088
Santa Fe, New Mexico 87501

ATTORNEY FOR OIL CONSERVATION COMMISSION

William F. Carr, Esq.
P. O. Box 2208
Santa Fe, New Mexico 87501

ATTORNEY FOR DEFENDANT AMOCO PRODUCTION COMPANY

W. Thomas Kellahin, Esq.
Kellahin & Kellahin
P. O. Box 1769
Santa Fe, New Mexico 87501

ATTORNEY FOR DEFENDANTS AMERADA HESS CORPORATION
AND CITIES SERVICE COMPANY

J. Scott Hall, Esq.
P. O. Box 1148
Santa Fe, New Mexico 87501

ATTORNEY FOR ALEX J. ARMIJO, COMMISSIONER
OF PUBLIC LANDS

and that counsel for such other parties already have obtained for their own use copies of the Transcipt of Proceedings in the Trial Court from the Court Reporter, and that such parties during the pendency of the matter before the Oil Conservation Commission obtained copies of Transcripts of the Hearing and Rehearing conducted by the Oil Conservation Commission, and copies of such of the Exhibits introduced during that proceeding as such parties desired.

I also enclose the Request of Plaintiffs - Appellants for Oral Argument.

Would you please advise counsel in the case, including myself, of the date of the filing of the Transcript on Appeal.

If there are questions or problems, please call me, or, in my absence, William M. Kerr, Jr., collect, at Area Code 915/683-5291.

Very truly yours,

Ernest L. Carroll

ELC/WMK/kr

Enclosures

cc: W. Perry Pearce, Esq.
New Mexico Oil Conservation Division
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Santa Fe, New Mexico 87501

William F. Carr, Esq.
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J. Scott Hall, Esq.
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CAUSE NO. 14,359

ROBERT CASADOS, ET AL	§	IN THE SUPREME COURT OF
	§	
PLAINTIFFS-APPELLANTS	§	
	§	
V.	§	
	§	
OIL CONSERVATION COMMISSION, ET AL,	§	
	§	
DEFENDANTS-APPELLEES	§	
	§	
AND	§	
	§	
ALEX J. ARMIJO, COMMISSIONER OF PUBLIC LANDS,	§	
	§	
INTERVENOR-APPELLEE	§	THE STATE OF NEW MEXICO

REQUEST OF APPELLANTS FOR ORAL ARGUMENT

Appellants hereby request oral argument before the Court prior to submission of the case to the Court.

Ernest L. Carroll
Kerr, Fitz-Gerald & Kerr
P. O. Box 511
Midland, Texas 79702

ATTORNEYS FOR PLAINTIFFS-APPELLANTS

WMK:kr KMISC3 08/10/82

Certificate of Service

On this the 17th day of August, 1982, true copies of this Request of Appellants for Oral Argument were placed in the United States mails in properly stamped envelopes, addressed to each of counsel as follows:

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ATTORNEY FOR ALEX J. ARMIJO, COMMISSIONER OF PUBLIC LANDS

Ernest L. Carroll

Ernest L. Carroll

IN THE SUPREME COURT

STATE OF NEW MEXICO

ROBERT CASADOS, et al,

Plaintiffs-Appellants

vs.

OIL CONSERVATION COMMISSION, et al,

Defendants-Appellees,

and

ALEX J. ARMIJO, COMMISSIONER OF PUBLIC LANDS

Intervenor-Appellee

Filed
12-17-82

No. 14,359

COUNTY OF TAOS

CALDWELL, J.

ANSWER BRIEF

of

DEFENDANT-APPELLEE

OIL CONSERVATION COMMISSION

W. PERRY PEARCE
Special Assistant Attorney General
Oil Conservation Commission
P. O. Box 2088
Santa Fe, New Mexico 87501

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATEMENT OF THE CASE

This appeal is brought pursuant to Section 70-2-25, NMSA 1978, for judicial review of orders entered by the New Mexico Oil Conservation Commission on August 14, 1980, and modified and affirmed on January 23, 1981. By Judgment filed May 6, 1982, the District Court for the County of Taos, Judge Caldwell presiding, affirmed these orders.

STATEMENT OF PROCEEDINGS

Defendant-Appellee Oil Conservation Commission received application from Defendant-Appellee Amoco Production Company on May 28, 1980, for approval of the Bravo Dome Carbon Dioxide Unit Agreement. This agreement provided for the unitized operation of approximately 1,035,000 acres of federal, state and fee lands located in Harding, Quay and Union Counties, New Mexico. A public hearing was held on July 21, 1980, after notice was given.

The Commission entered Order No. R-6446 on August 14, 1980, (Record p. 8) approving the unit. The findings contained in that order which are material to this review are:

> 1) That all plans of development, plans of operations and all expansions or contractions of the unit should be submitted to the Director of the Oil Conservation Division for approval. (Order No. R-6446, Finding 3, Record p. 8)
>
> 2) That the proposed unit agreement should promote the prevention of waste and the protection of correlative rights. (Order No. R-6446, Finding 4, Record p. 8)

Based upon these findings, as supported by the record of proceedings, the Commission ordered:

> 1) That the proposed unit agreement is approved as a proper conservation measure specifically subject to any present or future right, duty or obligation of the Division to supervise and control operations. (Order No. R-6446, Ordering Paragraph 2, Record p. 9)

2) That all plans of development and operation and all expansions and contractions of the unit area shall be submitted to the Director of the Oil Conservation Division for approval. (Order No. R-6446, Ordering Paragraph 4, Record p. 9)

3) That jurisdiction of the cause is retained for entry of such further orders as the Commission may deem necessary. (Order No. R-6446, Ordering Paragraph 6, Record p. 9)

As is provided by Section 70-2-25, NMSA 1978, Plaintiffs-Appellants, who appeared at the July 21, 1980, public hearing in opposition to the requested approval, filed an Application for Rehearing and Request for Additional Findings (Record p. 16). The Application for Rehearing contained five main bases for rehearing stated in nine points. These bases were:

1) Lack of substantial evidence to support the findings and orders. (App. for Rehearing, paragraphs 1 and 7, Record pps. 17-19, 22-23)

2) Lack of sufficient findings (App. for Rehearing, paragraph 1, Record p. 17-19)

3) Failure of order to prevent waste and protect correlative rights. (App. for Rehearing paragraphs 2, 3, 4, 5, and 6, Record p. 19-22)

4) That the Order is premature. (App. for Rehearing, paragraph 8, Record p. 23)

5) That the Order is arbitrary and capricious. (App. for Rehearing paragraph 9, Record p. 24)

By order No. R-6446-A, entered September 12, 1980, (Record p. 32), the Commission granted the Application for

Rehearing. The issues to be addressed at the Rehearing were stated in that order.

They were:

1) prevention of waste within the unit area

2) protection of correlative rights

3) prematurity of the unit agreement

Rehearing was held on October 9, 1980, and on January 23, 1981, the Commission entered Order No. R-6446-B (Record p. 34) which affirmed the approval of the unit agreement and made certain additional clarifying findings.

The material findings contained in this order, each of which is challenged in Point I, are:

1) That unitized operation is a more efficient and economic method of exploration and operation of the carbon dioxide area. (Finding 8, Record p. 35)

2) That the advantages of efficiency and improved economy prevent waste. (Finding 9, Record p. 35)

3) That the proposed unit area has carbon dioxide potential. (Finding 10, Record p. 35)

4) That there are two primary methods of unit participation which would allocate the proceeds of production in a manner to protect correlative rights. (Finding 14, Record p. 36) They are:

1) Unit wide participation under which all unit production is allocated in the ratio that each participating owners acreage bears to the total unit acreage.

2) Participating acreage allocation under which productive acreage is grouped into participating acreage and each interest owner in the participating area shares in the area

production in the ratio of his acreage to the participating area acreage.

5) That the method set forth in the unit agreement, unit wide participation (method No. 1 above), is presently reasonable and appropriate. (Finding 17, Record p. 36)

6) That the projected carbon dioxide production is necessary for enhanced oil recovery operations (Finding 18, Record p. 37)

7) That approval of the unit will not make carbon dioxide prematurely available. (Finding 19, Record p. 37)

8) That the unit agreement at least initially provides for operations which will operate to prevent waste and fairly allocate the proceeds of production. (Finding 25, Record p. 37)

9) That information presently available does not allow finding that the unit agreement is the best long-term method of operation to prevent waste and fairly allocating production proceeds. (Finding 26, Record p. 37)

10) That the Commission should exercise continuing jurisdiction to prevent waste and protect correlative rights. (Finding 29, Record p. 38)

11) That some methods of exercising such continuing jurisdiction may be changes in well spacing, requiring additional well drilling, eliminating acreage which is undeveloped or dry and modification of the unit agreement. (Finding 30, Record p. 38)

12) That at least every four years and more frequently if required by the Commission, the unit operator must demonstrate at a public hearing that its operations are working to prevent waste and protect correlative rights. (Finding 31 and 32, Record p. 38)

13) That all plans of development and operation are to be submitted to the Commission for approval. (Finding 33, Record p. 38)

Notice of Appeal from this order on rehearing was filed on February 11, 1981, in the District Courts of Harding, Quay and Union Counties, New Mexico (Record pps. 1, 46, 92). These appeals were consolidated and transferred to the District Court for Taos County, J. Caldwell presiding. (Record p. 166, 168, 170)

After considering the record on appeal, briefs and argument, the District Court for Taos County affirmed the orders of the Oil Conservation Commission. Judgment was entered by the District Court on May 6, 1982. (Record p. 184)

Notice of Appeal to this Court was filed on May 27, 1982. (Record p. 186)

Following the filing of Plaintiff-Appellants Brief-in-Chief, a Motion to Strike Issues on Appeal was filed by Defendant-Appellee Amoco Production Company. By order entered on November 30, 1982, this Court granted such motion and thereby restricted the issue in this appeal to those raised in Plaintiff-Appellant's Motion for Rehearing before the Commission.

ARGUMENT AND AUTHORITIES

The following sections of discussion and analysis of evidence and authorities will be presented in a way which addresses the errors claimed in Plaintiff-Appellant's Application for Rehearing and Request for Additional Findings. A point-by-point response to Plaintiff-Appellant's Brief-in-Chief will not be possible since the Brief-in-Chief contained only one point and the order entered on the Motion to Strike Issues on Appeal relieved this record of certain improperly raised issues.

A review of the Proceeding as summarized above indicates that the allegation that the findings in Order No. R-6446, if it was correct, has been answered by the expanded findings in Order No. R-6446-B. This order on Rehearing detailed the basis of the Commission's order and the discussion of this alleged error will therefore be contained in the discussion of whether or not there is in the record substantial evidence to support the decision.

The Issues addressed in this Answer Brief will therefore be:

I

WHETHER ORDER NO. R-6446-B CONTAINS SUFFICIENT FINDINGS AND IS SUPPORTED BY SUBSTANTIAL EVIDENCE

The Oil Conservation Commission and the District Court have found that it did and that it was.

II

WHETHER ORDER NO. R-6446-B IS ARBITRARY AND CAPRICIOUS

The Oil Conservation Commission and the District Court found that it was not.

III

WHETHER ORDER NO. R-6446-B WAS ENTERED PREMATURELY

The Oil Conservation Commission and the District Court found that it was not.

POINT I

ORDER NO. R-6446-B CONTAINS ADEQUATE FINDINGS AND IS SUPPORTED BY SUBSTANTIAL EVIDENCE.

PRIMARY DUTY OF COMMISSION IS TO PREVENT WASTE

Section 70-2-34 NMSA 1978 sets forth the duties of the Commission. The primary duty is to prevent waste. It states in part:

> "A. The oil conservation division is hereby vested with the authority and duty of regulation and conserving the production of and preventing waste of carbon dioxide gas within this state in the same manner, insofar as is practicable as it regulates, conserves and prevents waste of natural or hydrocarbon gas. The provisions of this act relating to gas or natural gas shall also apply to carbon dioxide gas insofar as the same are applicable. 'Carbon dioxide gas' as used herein shall mean noncombustible gas composed chiefly of carbon dioxide occurring naturally in underground rocks.
>
> B. The commission shall have concurrent jurisdiction and authority with the division to the extent necessary for the commission to perform its duties as required by law."

This statute governing the authority, responsibility and duties of the Oil Conservation Commission does not specifically mandate the approval by the Commission of voluntary unit agreement. However, the unit agreement which Amoco Production Company had proposed contained language which made the effectiveness of such unit agreement contingent upon approval of that agreement by the Oil Conservation Commission. In addition,

the rules of the State Land Commissioner, who was one of the parties being asked to join in that unit agreement, provide that the State Land Commissioner may postpone any decision on any unitization agreement pending action by the Oil Conservation Commission.

Respondent Oil Conservation Commission submits that in view of the statutory mandate placed upon it in Section 70-2-34 NMSA, 1978, and the application filed with the Commission by Co-respondent Amoco Production Company that its actions in regard to the Bravo Dome Carbon Dioxide Unit Agreement and the approval of such agreement by Orders Nos. R-6446 and R-6446-B were appropriate.

SUBSTANTIAL EVIDENCE STANDARD

In its Application for Rehearing and Request for Additional Findings, Petitioner alleges that Order No. R-6446 is invalid and should be set aside because it is not supported by substantial evidence that such order acts to prevent waste or protect the correlative rights of petitioners or other fee interest owners. Before discussing the specific items of substantial evidence which support the Commission's decision, a brief review of the "substantial evidence" standard is appropriate.

The most clearcut discussion of the substantial evidence rule in New Mexico is contained in a case dealing with an order

of the Oil Conservation Commission. That case is Grace v. Oil Conservation Commission, 87 N.M. 205, 531 P.2d 939, (1975). When confronted with a challenge similar to this one that a certain order of the Commission was not supported by substantial evidence, the Supreme Court stated in part:

> "'Substantial evidence' means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Rinker v. The State Corporation Commission, 84 N.M. 626, 506 P.2d 783 (1973). In resolving those arguments of the appellant, we will not weigh the evidence. By definition, the inquiry is whether on the record, the administrative body could reasonably make the findings. See IV Davis, Administrative Law Treatise, §29.01 (1958).
>
> [4] Moreover, in considering these issues, we will give special weight and credence to the experience, technical competence and specialized knowledge of the Commission. C.f., McDaniel v. New Mexico Board of Medical Examiners, 86 N.M. 447, 525 P.2d 374 (1974); §4-32-22, subd. A. NMSA, 1953. 87 N.M. at 208

The record presently before this Court clearly demonstrates that the New Mexico Oil Conservation Commission exercised its "experience, technical competence and specialized knowledge" in issuing the orders here under review and such orders are supported by substantial evidence.

A. THERE IS SUBSTANTIAL EVIDENCE THAT THE ORDERS UNDER REVIEW ACT TO PREVENT WASTE.

WASTE DEFINED

The New Mexico Oil and Gas Act, discussed above, which grants authority to and imposes duties on the Oil Conservation Commission sets forth a definition of "waste" which the Commission is charged with preventing. That definition found in §70-2-3 NMSA 1978, states in part:

> As used in this act the term "Waste" in addition to its ordinary meaning, shall include:
>
> > A. 'Underground waste' as those words are generally understood in the oil and gas business, and in any event to embrace the inefficient, excessive or improper, use or dissipation of the reservoir energy, including gas energy and water drive, of any pool, and the locating, spacing, drilling, equipping, operating or producing, of any well or wells in any manner to reduce or tend to reduce the total quantity of crude petroleum oil or natural gas ultimately recovered from any pool, and the use of inefficient underground storage of natural gas;
> >
> > B. 'Surface waste' as those words are generally understood in the oil and gas business, and in any event to embrace the unnecessary or excessive surface loss or destruction without beneficial use, however caused, of natural gas of any type or in any form or crude petroleum oil, or any product thereof, but including the loss or destruction, without beneficial use, resulting from evaporation, seepage, leakage or fire, especially such loss or destruction incident to or resulting from the manner of spacing, equipping, operating or producing, well or wells or instant to or resulting from the use of inefficient storage or from the production of

crude petroleum oil or natural gas in excess of the reasonable market demand;

. . .

FINDINGS THAT UNIT AGREEMENT PREVENTS WASTE

It is on the basis of this statutory definition that the Commission is compelled to judge whether or not any proposed action will operate to prevent waste. In operating under this statutory definition, the Commission in Order No. R-6446-B, made the following findings:

> (8) That the unitized operation and management of the proposed unit has the following advantages over the development of this area on a lease-by-lease basis:
>
> (a) More efficient, orderly and economic exploration of the unit area; and
>
> (b) More economical production, field gathering, and treatment of carbon dioxide gas within the unit area.
>
> (9) That said advantages will reduce average well costs within the unit area, provide for longer economic well life, result in the greater ultimate recovery of carbon dioxide gas thereby preventing waste. (Record p. 35)

These findings specifically address the statutory definition of what constitutes "waste" of carbon dioxide gas. Of the items specifically set forth in the statute, these two findings address, (1) the prevention of "inefficient, excessive or improper, use or dissipation of reservoir energy," (2) the prevention of "the locating, spacing, drilling, equipping, operating or producing, of any well or wells in a manner to tend to reduce the total quantity of crude petroleum oil or natural

gas ultimately recovered from the pool," as well as, (3) the prevention of surface waste by the prevention of "loss or destruction, without beneficial use, resulting from evaporation, seepage, leakage or fire, especially such loss or destruction instant to or resulting from the manner of spacing, equipping, operating or producing, well or wells..."

SUBSTANTIAL EVIDENCE THAT UNIT AGREEMENT PREVENTS WASTE

Evidence presented to the Commission shows that these findings, which set out the basis of the orders, are supported by substantial evidence. Some of the evidence presented showed that the Tubb formation is the formation which is productive of CO_2 and is the unitized interval. (Transcript of Hearing, p. 14.) Since the unitized substance under the definition set forth in the unit agreement is CO_2 (Amoco's Exhibit 1 to Hearing, paragraph 1.3) the Commission focused its attention on this formation.

Applicant presented a set of five stratigraphic cross-sections at the hearing on July 21, 1980. These cross-sections were interpreted by qualified expert geologists as showing that the Tubb formation was contiguous throughout the unit area. (Transcript of Rehearing, p. 99.) These cross-sections correlate the rock characteristics at specific depths at 28 known locations in and around the unit area. By demonstrating that the formation being studied tends to vary in

a known way (thicker or thinner, wetter or dryer, more or less permeable, etc.) it is possible for highly trained geologists to predict how the formation characteristics vary in an area for which no test data is available.

A review of the testimony relative to each of these cross-sections (Transcript of Hearing, p. 56-74, Exhibits 5 through 10) shows that the Applicant demonstrated that the Tubb formation was evident in the entire unit area and that the formation was substantially less evident, if present at all, outside the unit boundaries. Evidence was presented that "this entire area could reasonably be considered productive." (Transcript of Rehearing, p. 101, J. C. Allen.)

UNIT AGREEMENT AVOIDS UNNECESSARY WELLS

In addition to establishing that the entire unit area could be considered productive, Applicant demonstrated that without an approved unit agreement, it would be forced to drill additional, and possibly unnecessary wells. (Transcript of Hearing, p. 28, Transcript of Rehearing, p. 100.) This unnecessary drilling would cause the cost of production to rise and would therefore decrease the amount of CO_2 which would ultimately be recovered from the formation. (Transcript of Rehearing, p. 63-64.)

With regard to the question of waste, Mr. Bruce Landis the expert witness appearing on behalf of applicant Amoco Production

Company at Page 35 of the transcript of the initial hearing on this matter stated:

> "All right. First of all, with respect to conservation of CO_2. Where you have an orderly and efficient development, where it can be planned ahead, and where you are not running into competitive operators who have desperately to drill offset obligations, and so on, you are conserving the unitized substances. You are preventing waste in the drilling process. You are preventing waste in the completion of process."

The question of whether or not the Bravo Dome Carbon Dioxide Unit Agreement would operate to prevent waste was one main focus of the rehearing before the Oil Conservation Commission of this matter. At that hearing Mr. J. C. Allen, an expert witness appearing on behalf of Amoco Production Company, addressed this question and the affect which the Bravo Dome Dioxide Unit Agreement might have on the efficient use and production of materials contained in the Bravo Dome Carbon Dioxide deposits. Mr. Allen stated:

> "Yes, sir, I believe that was our intent the whole intent of the unit is to develop in an orderly and efficient manner and to develop on a basis that would effectively and efficiently drain that reservoir, whether it be 640 or somewhat less, 320." (Transcript of Rehearing, P. 100)

EVEN OPPONENTS AGREE UNITIZATION IS BENEFICIAL

This evidence, when coupled with the lack of evidence presented by Petitioners herein to refute such conclusions, supports the Commission's decision that unitization is an appropriate step and would act to prevent waste. In fact,

Mr. F. H. Callaway, appearing on behalf of Petitioners herein at the rehearing of this matter stated:

> "I've always been an advocate of field-wide unitization. I feel like that is the optimum method of operation in order to achieve the maximum recovery of hydrocarbons, in this case gas, and operate under the most efficient circumstances." (Transcript of Rehearing, p. 154)

Section 70-2-3 NMSA, 1978, defines waste. Other sections of the Oil and Gas Act require that the Oil Conservation Commission act to prevent waste. The Commission, both at the hearing of July 21, 1980, and the rehearing held on October 9, 1980, was presented with substantial evidence that the Bravo Dome Carbon Dioxide Unit Agreement operated to prevent waste by preventing the construction of unnecessary surface facilities, by preventing the drilling of unnecessary wells to efficiently and effectively drain the carbon dioxide reservoir in question, and by providing for orderly and efficient development of this resource in a manner which would act to most appropriately utilize and prevent the dissipation of reservoir energy.

B. THERE IS SUBSTANTIAL EVIDENCE THAT THE ORDERS UNDER REVIEW ACT TO PROTECT THE CORRELATIVE RIGHTS OF INTEREST OWNERS.

CORRELATIVE RIGHTS DEFINED

One of the purposes of the regulatory authority granted to the New Mexico Oil Conservation Commission is the protection of "correlative rights." The definition of these rights is set

forth in the New Mexico Oil and Gas Act at §70-2-33.H. That section states:

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

Since the drilling of wells on each individual interest owner's property might violate the principles of prevention of waste, protection of correlative rights is accomplished by equitable sharing of the proceeds of production from interests owned by separate individuals. In this manner, each interest owner receives a fair share of the proceeds of production of the resources which he is entitled to produce and greater ultimate resource recoveries are obtained by the prevention of waste.

FINDINGS THAT UNIT AGREEMENT PROTECTS CORRELATIVE RIGHTS

In its findings in Order No. R-6446-B made after the rehearing of October 9, 1980, the Commission made the following findings regarding the protection of correlative rights:

> "(13) That the developed acreage within the proposed unit is very small when compared to the total unit area and when viewed as a whole, the unit must be considered to be an exploratory unit.
>
> (14) That the evidence presented demonstrated that there are two methods of participation which would protect

the correlative rights of the owners within the exploratory units through the distribution of production or proceeds therefrom from the unit; these methods are as follows:

(A) a formula which provides that each owner in the unit shall share in production from any well(s) within the unit in the same proportion as each owner's acreage interest in the unit bears to the total unit acreage, and

(B) a method which provides for the establishment of participating areas within the unit based upon completion of commercial wells and geologic and engineering interpretation of presumed productive acreage with only those parties of interest within designated participating areas sharing in production. Such participation would be based upon the proportion of such owner's acreage interest within the participating area as compared to the total acreage within the participating area.

(15) That each of the methods described in Finding No. (14) above was demonstrated to have certain advantages and limitations.

(16) That there was no evidence upon which to base a finding that either method was clearly superior upon its own merits in this case at this time.

(17) That the method of sharing the income from production from the unit as provided in the Unit Agreement is reasonable and appropriate at this time. (Record p. 36)

TESTIMONY ON BEST WAY TO PROTECT CORRELATIVE RIGHTS

These findings are supported by substantial evidence presented to the Commission by expert witnesses for both parties to the dispute. This evidence indicated that there are two primary methods of determining how production is to be shared. (Transcript of Rehearing, pgs. 23, 32-33, 179 and 185.)

Evidence was also presented to the Commission that a participation formula which allocated production from the unit based upon the percentage of the unit owner's acreage in the total unit area was the most appropriate method of participation for large exploratory units in which the concentration of extensive reserves was unknown. The Transcript of Rehearing contains the following exchange between counsel for Amoco Production Company and one of the expert witnesses, Mr. Neal Williams:

> "Q. All right, sir. Let me ask you this question, since you have studied the unit agreement, Exhibit No. 1, you're familiar with the transcript, you're aware of the fact that in the Bravo Dome Unit all people who have voluntarily committed their interest to the unit will participate in the unit production from the time of first sale.
>
> "A. That is correct.
>
> "Q. Do you see anything wrong based upon your experience with exploratory units with having, I believe you experts in the field call it an undivided participation from the outset, do you see anything wrong with participation in that manner?
>
> "A. No, I do not. In fact, it's probably the most ideal situation to have in exploratory units."
>
> (Transcript of Rehearing p. 16)

At its hearing, the Commission was presented with certain ratifications of the unit agreement which implicitly indicated that those interest owners voluntarily participating in this unit had agreed that the participation formula set forth in such agreement was a just and equitable method of protecting their

interests. Other evidence was introduced to indicate that some of the interests which had been added to the unit agreement were added under terms of the various lease agreements which allowed the lessee to join unit agreements. These leases indicate that the opportunity. . .to produce without waste his just and equitable share. . ." has been transferred to the lessee and he has been authorized to use and is responsible to the lessor for protecting the lessors "correlative rights".

It is not within the responsibility, authority, or expertise of the Oil Conservation Commission to resolve individual contract disputes. The decision of the Oil Conservation Commission was rendered outside the consideration of these difficulties over private contractual arrangements. The Commission has decided only that based upon the substantial evidence presented to it, the Bravo Dome Carbon Dioxide Unit Agreement, being an agreement providing for voluntary participation, provided an appropriate means of protecting the correlative rights of those individual interest owners participating in such unit.

CORRELATIVE RIGHTS OF NON-PARTICIPANTS NOT AFFECTED

The correlative rights of parties who do not participate in the unit by voluntarily joining the Bravo Dome Carbon Dioxide Unit or by authorizing others to unitize their interests are unaffected by the Commission's approval of the agreement.

Nothing in the agreement or the Commission's approval of that agreement has any affect upon such non-joining interest owners' right "to produce without waste his just and equitable share of oil and gas. . .so far as can be practicably determined, and so far as can be practicably obtained without waste, substantially in the proportion that the quantity of recoverable oil and gas, or both, under such property bears to the total recoverable oil or gas, or both, in the pool,. . ." Such non-participating interest owners will have available to them the same rules and regulations and will have placed upon them the same requirements as would have been applicable if there had been no agreement or approval of such agreement.

PROVISION MADE FOR FUTURE REVIEW OF CORRELATIVE RIGHTS

In addition, in order to more appropriately carry out its mandate to prevent waste and protect correlative rights, the Oil Conservation Commission retained jurisdiction over this matter and placed upon applicant Amoco Production Company certain planning and reporting requirements which in the future will act to assure the most appropriate present and future actions on the part of unit operators to prevent waste and protect correlative rights. These requirements and the findings supporting them are set forth in Order No. R-6446-B at findings No. 24 through 36 and Order paragraphs numbered 3 through 11. (Record pps. 37-40)

C. FINDINGS SHOW BASIS OF DECISION

Plaintiff-Appellant attacks the sufficiency of the findings in the challenged order in paragraph 1 of its Application for Rehearing alleging that such findings are not sufficient to show the basis of decision. In response, this Court is referred to the case of Continental Oil Company v. Oil Conservation Commission, 70 N.M. 310, 373 P.2d 809 (1962) which states in part:

> "We would add that although formal and elaborate findings are not absolutely necessary, nevertheless basic jurisdictional findings, supported by evidence, are required to show that the Commission has heeded the mandate and the standards set out by statute. Administrative findings by an expert administrative commission should be sufficiently extensive to show not only the jurisdiction but the basis of the Commission's order. (Citations omitted.) 70 N.M. at 321.

A comparison of findings 8 and 9 of the Commission in Order No. R-6446-B (Record p. 35), set out above, and the statutory definition of waste set forth in the New Mexico Oil and Gas Act, demonstrates that the Commission, acting as an expert administrative agency, has tendered findings that meet this standard.

On the correlative rights issue, Petitioner again complains that the findings issued by the Commission in this matter are deficient because they do not "define correlative rights." Again the clarifications set forth by Continental Oil v. Oil Conservation Commission, 70 N.M. 310, 373 P.2d 809 (1962) are

instructive. The findings of the Commission set out above set forth the following: the necessity of providing for equitable participation; the two most commonly accepted participation formulas; the exploratory nature of the Bravo Dome Unit and the very limited development of such area which results in this exploratory nature; and that there is evidence that the participation formula set forth in the Bravo Dome Carbon Dioxide Unit Agreement is appropriate to protect the correlative rights of those interest owners participating in such agreement. Clearly these findings set forth the basis of the Commission's finding that the Bravo Dome Carbon Dioxide Unit Agreement acts to protect correlative rights and should be approved.

POINT II

THE RECORD OF THIS CASE SHOWS THAT ORDERS NOS. R-6446 AND R-6446-B ARE NOT ARBITRARY OR CAPRICIOUS

SUMMARY

The courts which address and define an arbitrary and capricious standard indicate that decisions which rise to this level are those which are unconsidered, willful and irrational.

In view of the evidence presented to the Commission at the hearing of this matter, the decision of the Commission does not violate this standard.

Further, the evidence shows that the prevention of waste required approval by the Commission.

THE ARBITRARY AND CAPRICIOUS STANDARD

The only New Mexico case which has directly attempted to define an arbitrary and capricious standard was Garcia v. New Mexico Human Services Department, 94 N.M. 178, 608 P.2d 154 (Ct. of App. 1979). Although this case was subsequently reversed on the basis of a substantial evidence review of the decision, the definition set forth by the Court of Appeals in its decision cited above was not disturbed. That Court found:

> Arbitrary and capricious action by an administrative agency is evident 'when it can be said that such action is unreasonable or does not have a rational basis...' and '...is the result of an unconsidered, willful and irrational choice of conduct and not the result of the 'winnowing and sifting' process" [citation omitted] 94 N.M. at 179.

APPLICATION OF THE STANDARD

As summarized above, the consideration of this matter involved two days of hearing and the consideration of voluminous exhibits by the Commission. The material presented was offered by opposing parties in support of their positions.

The record in this case is clear that the Commission in Order No. R-6446 and R-6446-B engaged in a thoughtful reasoned

review and decision process. For a demonstration of this "winnowing and sifting" this Court is referred to Point I above and to Order No. R-6446-B. The findings contained in this order not only provide a clear showing of the basis of decision but they also show that the evidence and arguments presented by both proponents and opponents were carefully considered.

LOGICAL PROCESS SHOWN BY FINDINGS

Without attempting to resummarize the evidence discussed in Point I, the rational basis of decision is made clear by an abstract of the findings. The Commission found:

> 1) That the advantages of unitized over non-unitized operation would act to prevent waste by reducing average well costs, extending economic well life, and increase the ultimate recovery of carbon dioxide. (Findings 8 and 9, Record p. 125)
>
> 2) That at least two alternative methods of allocating the proceeds of production exist and that the Commission recognizes advantages and limitations of each of these methods. (Findings 14 and 15, Record p. 126)
>
> 3) That the proposed Unit Agreement method of participation is reasonable and fair at this time. (Finding 17, Record p. 126)
>
> 4) That the information now available does not allow a determination of the optimum long term method of development and operation. (Finding 26, Record p. 127)
>
> 5) That the Commission should retain jurisdiction of this matter to take whatever future actions are required to continue to prevent waste and protect correlative rights. (Finding 29, Record p. 128)
>
> 6) That the unit operator should demonstrate to the Commission at a public hearing at least every four (4) years that the unit agreement is acting to prevent

waste and protect correlative rights. (Findings 31 and 32, Record p. 128)

7) That all plans of development and operation must be submitted to the Commission for approval. (Finding 33, Record p. 128)

Certainly such recognition of conflicting advantages and limitations and provision for future review and adjustment are hallmarks of carefully reasoned decision making.

POINT III

APPROVAL OF THE UNIT AGREEMENT WAS NOT PREMATURE

TIMELINESS OF DECISION

In its Petition for Rehearing and Request for Additional Findings Plaintiff-Appellants claim that the orders in question are premature. Argument on this point is directed to the fact that the unit area is substantially undeveloped and that future development is expected to add information which could help clarify the best methods of preventing waste and protecting correlative rights.

This argument does not overcome the duty of the Commission to do whatever is necessary to prevent waste and protect correlative rights. The Commission found that unitized operation prevented waste. Exploration and development of the

area without the benefit of unitization is not as efficient and therefore threatens waste.

FINDING THAT APPROVAL WAS TIMELY

The findings made by the Commission which relate to whether or not unit approval is necessary, are instructive of the thoughtful consideration given to a very complex matter. The Commission found that:

> 1) There is a need for carbon dioxide from the unit to help increase crude oil recovery from depleted oil reservoirs. (Finding 18, Record p. 37)
>
> 2) That approval of the unit will not make carbon dioxide available before it is needed or make more carbon dioxide available than is needed. (Finding 19, Record p. 57)
>
> 3) That two governmental bodies, the Commissioner of Public Lands and the United States Geological Survey had committed lands to the unit. (Finding 20, Record p. 37)
>
> 4) That the application was not premature. (Finding 21, Record p. 37)

SUBSTANTIAL EVIDENCE OF TIMELINESS

That there is a present need for the carbon dioxide and that therefore approval of the unit agreement is not premature is best shown by the testimony of J. R. Enloe. Mr. Enloe appeared to testify as the representative of Cities Service which both owns a working interest in the unit and needs carbon dioxide for crude oil recovery operations. When asked if he thought approval was premature, he stated:

> Absolutely not. We've said it will be in competition with other sources of supply. We have stated that we need this CO_2 at least by January 1, 1983. We have further told the working interest owners in the Seminole-San Andres unit that Amerada Hess expects to furnish the share of CO_2 allocable to its working interest in kind.
>
> Now, indeed, if Amerada Hess furnishes that share of CO_2 to Seminole in kind, we expect it to come from the Bravo Dome Unit. Certainly if we're going to have to supply our share in kind, or if we want to supply our share in kind, which will represent somewhere around 83-million cubic feet a day, it looks to me that there's going to be a substantial market available to Bravo Dome producers and royalty owners, and with the lead time necessary to drill wells, design facilities, procure equipment, and install that equipment, and make the CO_2 source ready for production, certainly the formation of the Bravo Dome Unit is not premature. (Transcript of Rehearing, p. 127) [emphasis added]

This testimony is supported by further testimony of Mr. E. F. Motter at pages 136 through 147 of the transcript of rehearing and is demonstrated by Mr. Motter's graphic exhibit of carbon dioxide requirements. This position on the timeliness of the unit agreement is agreed with by other witnesses at pps. 80 and 185 of the transcript of rehearing.

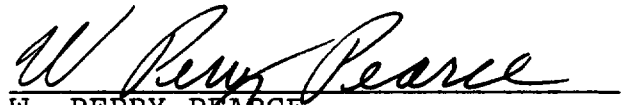
In view of the evidence of the need for carbon dioxide, the necessity of development prior to production, and the provisions for continuing review of operations which are discussed in Point I, approval of the Bravo Dome Carbon Dioxide Unit Agreement was not premature.

CONCLUSION

In issuing Orders No. R-6446 and No. R-6446-B, the New Mexico Oil Conservation Commission was responding to a request of applicant and others that it exercise its specific expertise to determine whether or not that certain agreement known as the Bravo Dome Carbon Dioxide Unit Agreement operated to prevent waste of carbon dioxide and to protect the correlative rights of the interest owners in such product. As summarized above, under both the statutory and case law of the State of New Mexico the evidence presented to the Oil Conservation Commission supported a finding that in fact this agreement would operate to prevent waste and protect such correlative rights.

Therefore, Respondent New Mexico Oil Conservation Commission respectfully prays that the relief sought by Petitioner herein be denied and that Order No. R-6446-B be affirmed.

JEFF BINGAMAN
Attorney General



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CERTIFICATE

I hereby certify that a true and correct copy of the foregoing brief was mailed to opposing counsel of record this 17th day of December, 1982

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December 17, 1982

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

HAND DELIVERED

Re: Robert Casados et al., vs. Oil Conservation Commission, No. 14,359

Dear Mrs. Alderete:

Enclosed for filing in the above-referenced cause is the Answer Brief of Defendant-Appellee Amoco Production Company.

Very truly yours,

William F. Carr

encl.
cc: Ernest L. Carroll, Esq.
William Monroe Kerr, Esq.
W. Thomas Kellahin, Esq.
J. Scott Hall, Esq.
W. Perry Pearce, Esq.

WFC/yp

IN THE SUPREME COURT

STATE OF NEW MEXICO

ROBERT CASADOS, et al., Plaintiffs-Appellants, v. OIL CONSERVATION COMMISSION, et al., Defendants-Appellees, and ALEX J. ARMIJO, COMMISSIONER OF PUBLIC LANDS, Intervenor-Appellee.	§	Cause No. 14,359

COUNTY OF TAOS

CALDWELL, J.

ANSWER BRIEF OF

APPELLEE AMOCO PRODUCTION COMPANY

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INDEX

TABLE OF AUTHORITIES

STATEMENT OF THE CASE

This suit is brought pursuant to Section 70-2-25, N.M.S.A. (1978 Comp.) for judicial review of orders entered by the New Mexico Oil Conservation Commission on August 14, 1980 and modified and reaffirmed on January 23, 1981.

STATEMENT OF PROCEEDINGS

Amoco Production Company (hereinafter called Amoco) is the operator of the Bravo Dome Carbon Dioxide Gas Unit (hereinafter called Unit) which is a voluntary unit for the exploration and development of carbon dioxide gas from approximately 1,035,000.00 acres of federal, state and fee lands located in Harding, Quay, and Union Counties, New Mexico. (Record, exh. 4, no. 1) In forming the Unit, Amoco, as unit operator, submitted the Bravo Dome Carbon Dioxide Gas Unit Agreement (hereinafter called Unit Agreement) to the New Mexico Commissioner of Public Lands and the Director of the United States Geological Survey for approval (Tr. at 27).[1]

On January 8, 1980, the New Mexico Commissioner of Public Lands gave preliminary approval to the Unit Agreement

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[1] In this brief, references to the transcript of the Commission's first hearing (July 21, 1980), which is exhibit 3 in the record, will be cited by the designation "Tr". References to the transcript of the Commission's de novo hearing (October 9, 1980), which is exhibit 11 in the record, will be cited by the designation "RTr". References to the transcript of proceedings before the District Court is "Vol. 2" of the record, and will be so cited. Volume 1 of the record will be cited simply as "Vol. 1". The twenty designations in the "Transcript on Appeal" filed with the Supreme Court on August 18, 1982 will be referred to as "Record, exhibits 1-20".

as to form and content (Tr. at 27), but pursuant to Rule 47 of the State Land Office Rules and Regulations postponed his final decision pending action by the New Mexico Oil Conservation Commission (hereinafter called Commission).

Amoco made application to the Commission for approval of the Unit on May 28, 1980 (Record, exh. 1). Notice was given and on July 21, 1980 a Commission hearing was held on Amoco's application (Record, exh. 2).

On August 14, 1980, Order R-6446 was entered by the Commission approving the Unit (Vol. 1 at 8-15). This order provided, among other things, that the Unit would become effective 60 days after approval of the Unit Agreement by the Commissioner of Public Lands and the Director of the United States Geological Survey (Order paragraph 5, Vol. 1 at 9).

Final approval was received from the Commissioner of Public Lands on August 28, 1980 (Record, exh. 12, no. 8) and the Unit became effective under the Order and Unit Agreement on November 1, 1980. The Director of the United States Geological Survey in Albuquerque, New Mexico approved the Unit on August 29, 1980 (Record, exh. 12, no. 9).

Certain petitioners filed an Application for Rehearing on September 2, 1980 asking the Commission to set aside Order R-6446 or, in the alternative, to enter additional findings on the questions of the prevention of waste and the protection of correlative rights (Vol. 1 at 16-31). Petitioners' Application for Rehearing alleged that: (a) the order and findings are not supported by substantial evidence (Vol. 1 at 17-24); (b) the findings in the order are insufficient (Vol. 1 at 17-19); (c) the Commission failed to carry out its statutory duties to prevent waste and protect

correlative rights (Vol. 1 at 17-24); and (d) the Commission's decision is arbitrary and capricious (Vol. 1 at 23-24). The Commission granted the Application for Rehearing by order dated September 12, 1980 but limited evidence to:

> "(1) prevention of waste within the unit area,
> (2) protection of correlative rights within the unit area as afforded by the unit agreement, its plan and participation formula, and
> (3) whether the unit agreement and its plan are premature." (Vol. 1 at 32-33, Order R-6446-A)

A second public hearing was held before the Commission on October 9, 1980 and on January 23, 1981 the Commission entered Order R-6446-B which again approved the Unit and contained extensive findings on waste and correlative rights (Vol. 1 at 34-45). Many of the findings are summarized in Appellants' Brief in Chief (Brief in Chief, pp. 2-5). In addition to the findings outlined in the Appellants' Brief, the Commission found that the Bravo Dome Carbon Dioxide Gas Unit was an exploratory unit (Finding 13, Vol. 1 at 36) and that the unit had been approved by the Commissioner of Public Lands and the United States Geological Survey with respect to state and federal lands committed to the unit (Finding 20, Vol. 1 at 37). This order also contained findings and order paragraphs which imposed certain conditions on unit operators which, among other things, require periodic public hearings before the Commission at which time Amoco will be required to show that unit operations will result in the prevention of waste and the protection of correlative rights (Findings 31-32, Vol. 1 at 38). Amoco is also required to periodically file with the Commission plans of development that may be considered by the Commission in its review of unit operations (Findings 33-36, Vol. 1 at 38).

No Application for Rehearing was filed by Appellants following entry of Order R-6446-B but Petitions to Appeal from Orders R-6446 and R-6446-B were filed in Harding, Quay and Union Counties on February 11, 1981. The Petitions were consolidated and docketed in the District Court of Taos County, New Mexico (Vol. 1 at 166-171, 175).

On December 7, 1981, a hearing was held before the Honorable Joseph Caldwell, District Judge, on the consolidated petition of Appellants. On May 6, 1982, the court entered judgment sustaining the orders of the Oil Conservation Commission. (Vol. 1 at 184-185). In reaching this decision, the court found that the Commission's findings of fact are supported by substantial evidence; that the conclusions reached in the orders of the Commission are supported by the findings of fact and that the Commission acted within its authority in approving the preliminary unitization agreement. (Vol. 1 at 184). Notice of Appeal was filed by Appellants on May 20, 1982 (Vol. 1 at 186)

Appellants emphasize language from the District Court's decision throughout their Brief-in-Chief (Brief in Chief, pp. 1, 6-8, 20-21). It is important in this regard to note that in this appeal, the Supreme Court is not to pass on the ruling of the trial court but is called upon to make the same review of the Commission's orders as did the district court. Rutter & Wilbanks v. Oil Conservation Commission, 87 N.M. 286, 532 P.2d 582, 583 (1975); Grace v. Oil Conservation Commission, 87 N.M. 205, 531 P.2d 939, 942 (1975); El Paso Natural Gas Co. v. Oil Conservation Commission, 76 N.M. 263, 414 P.2d 496, 497 (1966). This court is restricted to considering "...whether, as a matter of law, the action of

the Commission was consistent with and within the scope of its statutory authority, and whether the administrative orders are supported by substantial evidence. Rutter & Wilbanks, supra, at 583.

Appellants' Brief in Chief was filed on September 15, 1982. It attacked Commission Orders R-6446 and R-6446-B, on grounds not raised in their September 2, 1982 Application for Rehearing. On October 15, 1982, Appellee-Amoco Production Company filed a Motion to Strike Issues on Appeal on the grounds that appellants had failed to exhaust administrative remedy as to these new issues. The motion was granted on November 30, 1982 by Order limiting the issues in this appeal to only those issues which were raised by Appellants in the Motion for Rehearing before the Commission.

POINT I

OIL CONSERVATION COMMISSION ORDERS R-6446 AND R-6446-B ARE NOT ARBITRARY OR CAPRICIOUS AND ARE CONSISTENT WITH THE COMMISSION'S STATUTORY DIRECTIVES.

In the instant case, the Commission was concerned with the establishment of a voluntary unit for the exploration and development of carbon dioxide gas (Tr. at 27).

The State of New Mexico plays a significant role in the formation of this unit. Article 17 of the Unit Agreement requires approval of the Oil Conservation Commission as a condition precedent to its effectiveness (Record, exh. 4, no. 1). Furthermore, a substantial portion of the unit is state land (Tr. at 16-17, 27) and therefore, the consent of the Commissioner of Public Lands to the development and operation

of these lands as part of the unit is necessary (Tr. at 27). The standards to be applied by the Commissioner in making this determination are specifically set out in statute. Section 19-10-46, N.M.S.A.(1978 Comp.) provides:

> "No such agreement shall be consented to or approved by the Commissioner unless he finds that:
> (A) Such agreement will tend to promote the conservation of oil and gas and the better utilization of reservoir energy;
> (B) under the operations proposed the state and each beneficiary of the lands involved will receive its fair share of the recoverable oil and gas in place under its lands in the area affected; and
> (C) the agreement is in other respects for the best interests of the state."

As previously noted, Amoco submitted the Unit Agreement to the Commissioner of Public Lands and received the Commissioner's preliminary approval as to form and content (Tr. at 27). Under Rule 47 of the State Land Office Rules and Regulations, the Commissioner referred this Agreement to the Oil Conservation Commission for review and comment prior to rendering a final decision on it.

The authority for such Commission action comes from its general statutory authority to do whatever is necessary to prevent waste and protect correlative rights. Section 70-2-11, N.M.S.A. (1978 Comp.). The Commission held two hearings after giving notices required by law (Record, exh. 2, 10), received evidence and approved the unit agreement finding it would prevent waste and protect correlative rights (Vol. 1 at 8-15, 34-45).

The plaintiffs contend that due to the limited development in the unit area, the decision of the Commission that the Unit Agreement prevents waste and protects correlative rights is premature (Vol. 1 at 16-24). The Commission found,

however, that there is a current need for carbon dioxide and that the application was not premature (Finding 21, Vol. 1 at 37). By its very nature, an exploratory unit cannot be prematurely created and approval of such unit by regulatory authorities, likewise, cannot be prematurely given (RTr. at 14,80). If unit development is to be effective, the unit must be in operation before there is substantial development of the resource (RTr. at 80).

POINT II

THERE IS SUBSTANTIAL EVIDENCE IN THE RECORD TO SUPPORT EACH FINDING NECESSARY FOR A VALID ORDER APPROVING THE BRAVO DOME UNIT AGREEMENT.

Plaintiffs attack the sufficiency of the Commission's findings on waste and correlative rights in paragraph 7 of their Petition to Appeal (Vol. 1 at 4). In Continental Oil Company v. Oil Conservation Commission, 70 N.M. 310, 373 P.2d 809 (1962), and again in Fasken v. Oil Conservation Commission, 87 N.M. 292, 532 P.2d 588 (1975), the New Mexico Supreme Court announced the standards to be applied when the sufficiency of the findings in an Oil Conservation Commission order are at issue. The Court found that the Commission order must contain "sufficient findings to disclose the reasoning of the Commission in reaching its ultimate findings" on waste and correlative rights and further found that "administrative findings by an expert administrative commission should be sufficiently extensive to show the basis of the Commission's order." Fasken v. Oil Conservation Commission, supra, at 590. In this case, the Court is asked to review the findings to determine if they meet the test announced in Continental and Fasken.

Plaintiffs also attack the Commission's findings by alleging that they are not supported by substantial evidence. In Grace v. Oil Conservation Commission, 87 N.M. 205, 531 P.2d 939 (1975) the New Mexico Supreme Court defined the scope of review of an order of the Oil Conservation Commission stating that it will review the order to determine if it is substantially supported by the evidence and by applicable law. The question presented to the court by this appeal, therefore, is whether or not there is substantial evidence in the record which supports the order of the Commission. "Substantial evidence" is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Grace, supra, p. 492; Rinker v. State Corporation Commission, 84 N.M. 626, 506 P.2d 783 (1973); Fort Sumner Municipal School Board v. Parsons, 82 N.M. 610, 485 P.2d 366 (1971). In deciding whether a finding has substantial support, the court must review the evidence in the light most favorable to support the findings and reverse only if convinced that the evidence thus viewed together with all reasonable inferences to be drawn therefrom cannot sustain the findings. In making this review any evidence unfavorable to the finding will not be considered. Martinez v. Sears Roebuck & Co., 81 N.M. 371, 467 P.2d 37 at 39. (Ct.App. 1970). These standards of review apply to the decisions of administrative boards. United Veterans Organization v. New Mexico Property Appraisal Department, 84 N.M. 114, 500 P.2d 199, 203 (1972).

A. WASTE

The definition of waste in the New Mexico Oil and Gas Act reads in part as follows:

"As used in this act, the term 'waste' in addition to its ordinary meaning, shall include:

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

B. 'Surface Waste' as those words are generally understood in the oil and gas business, and in any event to embrace the unnecessary or excessive surface loss or destruction without beneficial use, however caused, of natural gas of any type or in any form or crude petroleum oil, or any product thereof, but including the loss or destruction, without beneficial use, resulting from evaporation, seepage, leakage or fire, especially such loss or destruction incident to or resulting from the manner of spacing, equipping, operating or producing, well or wells, or incident to or resulting from the use of inefficient storage or from the production of crude petroleum oil or natural gas in excess of the reasonable market demand.

Section 70-2-3 N.M.S.A., (1978 Comp.) (emphasis added).

This definition has been extended to apply to carbon dioxide gas as well as natural gas. Section 70-2-34 N.M.S.A. (1978 Comp.).

Findings 8 and 9 of Order R-6446-B clearly reflect the Commission's reasoning in reaching its conclusion that approval of the unit will tend to increase the total quantity of carbon dioxide ultimately recovered from the unit area thereby preventing underground and surface waste.

Finding 8 of Order R-6446-B reads in part:

> "That the unitized operation and management of the proposed unit has the following advantages over development of this area on a lease by lease basis:
>
> (a) more efficient, orderly and economic exploration of the unit area;. . . (Vol. 1 at 35).

The record contains substantial evidence to support this finding.

Witnesses for Amoco, Cities Services Company and the plaintiffs all testified that unitized operation and management was the best method to be used to develop this field. Mr. F.H. Callaway, a reservoir engineer who testified for the plaintiffs, stated:

> "I've always been an advocate of field-wide unitization. I feel like that is the optimum method for operation in order to achieve the maximum recovery of hydrocarbons, in this case gas, and operates under the most efficient circumstances.' (RTr. at 154)

The evidence offered in the case shows that unit management will provide for orderly development of the unit area (Tr. at 28, RTr. at 87, 140), and that will enable the operator of the unit to develop the area by drilling wells at the most desirable location (Tr. at 35) enabling the operator to drain the reservoir in an effective manner with the most efficient spacing pattern (RTr. at 100). It was also shown that unit management will avoid wasteful drilling and completion practices (Tr. at 35) for the operator will drill only those wells necessary to produce the reserves (RTr. at 40-50, Record, exh.12, nos. 1, 2, and 3). Unnecessary wells will, therefore, be avoided (RTr. at 45, 61-63).

Finding 8 of Order R-6446-B further provides that another advantage of unitized operation and management is that it will result in: "(b) more economical production, field gathering, and treatment of carbon dioxide gas within the unit area" (Vol. 1 at 35). Substantial evidence was presented supporting this finding.

Jim Allen, Senior Petroleum Engineer for Amoco Production Company was qualified as an expert engineering witness and testified that unit management and operation is the most efficient way to produce CO-2 from the Bravo Dome Unit area (RTr. at 87, 154). He testified as to how unit operations will enable the operator to produce CO-2 from the Bravo Dome Unit with substantially fewer surface facilities than would be required by operations on a lease by lease basis (RTr. at 50-61, 63; Record, exh. 12, nos. 3, 4, 5, 6, and 7). This in turn results in reduced production costs (RTr. at 64, 97).

Finding No. 9 of Order R-6446-B provides:

> "That said advantages will reduce average well costs within the unit area, provide for longer economic well life, result in the greater ultimate recovery of carbon dioxide gas thereby preventing waste." (Vol. 1 at 35).

Mr. Allen testified as to the number of surface facilities that would be required if the Bravo Dome was developed on a lease by lease basis and then contrasted this number with the number of facilities required under unit operation and management (RTr. at 50-61; Record, exh. 12, nos. 3, 4, 5, 6, and 7). He stated that under unit operations, only six surface facilities would be required as opposed to as many as 4435 such facilities if operated under the individual leases. (RTr. at 60) He concluded his testimony on this subject as follows:

Q. "(By Mr. Buell) . . . in your opinion would six surface facilities installations serving 324 wells each be able to be operated a longer economic life than 4435 individual surface facility installations serving this unit area on a lease basis?"

A. "In my opinion, Mr. Buell, I think it would be considerably cheaper to operate on a unit basis and as such, we would have a longer individual life, well life."

Q. "So under unit operation a greater amount of CO-2 would be recovered than would be recovered under individual lease operations?"

A. "Yes, sir, in my opinion."

Q. "That would thus prevent reservoir waste in that you'd be recovering the maximum amount of CO-2 possible."

A. "Yes, sir."

(RTr. at 63-64)

Mr. Allen further testified that the savings reflected by the reduced number of surface facilities is only indicative of a number of economies that would come from unit operations resulting in greater recovery of carbon dioxide gas from the unit area (RTr. at 97). This testimony was not refuted by any evidence offered at either commission hearing.

Order R-6446-B, therefore, contains findings sufficient to show the Commission's reasoning that unitized operation and management of the unit area would clearly prevent waste as defined by the New Mexico Oil and Gas Act. The findings reflect the Commission's reasoning that unitized management and operation of the unit area was more efficient, that it would result in economic savings which would extend the economic lives of the wells involved, that this would result in the production of carbon dioxide gas that otherwise would not be produced, and thus prevent waste. Each of the findings is supported by substantial evidence.

B. CORRELATIVE RIGHTS

The Supreme Court of New Mexico has stated that correlative rights are not absolute or unconditional but noted that the legislature has enumerated in the definition of correlative rights (Section 70-2-33 N.M.S.A., 1978) the following definite elements contained in such a right:

> ". . . (1) an opportunity to produce, (2) only insofar as it is practicable to do so, (3) without waste, (4) a proportion, (5) insofar as it can be practically determined and obtained without waste, (6) of the gas in the pool." Continental v. Oil Conservation Commission, supra at 818.

In Continental, the court noted that ". . . the protection of correlative rights must depend upon the Commission's findings as to the extent and limitations of the rights." Id. It further enumerated specific correlative rights findings to be made by the Commission, if practicable to do so, prior to the entry of an order, Id. The strict test announced in Continental concerning correlative rights findings was reviewed by the court in Rutter & Wilbanks v. Oil Conservation Commission, 87 N.M. 286, 532 P.2d 582 (1975). This case involved an attack on an Oil Conservation Commission order approving oversized proration units for failing to contain all findings on correlative rights required by the Continental decision. In announcing its decision in Rutter & Wilbanks, the Court stated:

> When the Commission exercises its duty to allow each interest owner in a pool 'his just and equitable share' of the oil or gas underlying his property, the mandate to determine the extent of those correlative rights, as prescribed by Section 65-3-29(H), N.M.S.A. 1953 [Section 70-2-33, N.M.S.A. 1978] is subject to the qualification 'as far as it is practicable to do so' See Grace v. Oil Conservation Commission. While the evidence lacked many of

> the factual details thought to be desirable in a case of this sort, it was because the appropriate data was as yet unobtainable. We cannot say that the exhibits, statements and expressions of opinion by the applicant's witness do not constitute 'substantial evidence' or that the orders were improperly entered or that they did not protect the correlative rights of the parties 'so far as [could] be practicably determined. . . " 532 P.2d at 588 (emphasis added)

The record in this case, as will be hereinafter shown, contains substantial evidence supporting the Commission's conclusion that the correlative rights of all property owners in the Bravo Dome Unit Area will be protected (Tr. at 27-29, 45; RTr. at 14, 17, 32, 328, 80, 98, 176). The only limitations on the evidence presented result from the very nature of exploratory units (see Vol. 1 at 35-36, Order R-6446-B, Findings 10-13) in that certain evidence is not obtainable until the acreage involved has been more fully developed.

Finding 14 of Oil Conservation Commission Order R-6446-B reads as follows:

> (14) that the evidence presented demonstrated that there are two methods of participation which would protect the correlative rights of the owners within exploratory units through the distribution of production or proceeds therefrom from the unit; these methods are as follows:
>
> > (a) a formula which provides that each owner in the unit shall share in production from any well(s) within the unit in the same proportion as each owner's acreage interest in the unit bears to the total unit acreage, and
> >
> > (b) a method which provides for the establishment of participating areas within the unit based upon completion of commercial wells and geologic and engineering interpretation of presumed productive acreage with only those parties of interest within designated participating

> areas sharing in production. Such participation would be based upon the proportion of such owner's acreage interest within the participating area as compared to the total acreage within the participating area. (Vol. 1 at 36).

Mr. Neil D. Williams, a petroleum consultant with extensive experience in unitization, testified about these two basic types of participation formulas used in exploratory units (RTr. at 23, 32-34). This testimony was concurred in by Mr. Callaway (RTr. at 179) and by Mr. Oscar Jordan who made a statement for the New Mexico Commissioner of Public Lands (RTr. at 185).

In its Finding 15, the Commission concluded that each of the methods of participation described in Finding 14 ". . . was demonstrated to have certain advantages and limitations" (Vol. 1 at 36). Bruce Landis, Regional Unitization Superintendent for Amoco, testified that when it was learned where productive acreage within the unit area was located, the unit agreement had a built-in provision to correct these inequities (Tr. at 45). He further testified that there could be problems with the participating area approach, if there are obligations outside of the area that destroy the concept of orderly and efficient development (Tr. at 45 and 46). Mr. Callaway testified that the participating area approach was better than a straight acreage approach but that it was not as precise a tool to protect correlative rights as one based on recoverable reserves (RTr. at 180). Mr. Jordan's statement for the Commissioner of Public Lands also noted abuses that the Land Office has experienced with participation formulas in unit agreements (RTr. at 186-187).

Finding 17 of Order R-6446-B reads as follows: "(17) That the method of sharing the income from production from the unit as provided in the unit agreement is reasonable and appropriate at this time" (Vol. 1 at 36). In response to questions about the reasonableness of the "undivided participation" formula in the Bravo Dome Unit Agreement, Mr. Williams testified as follows:

> Q. (By Mr. Buell) All right, sir. Let me ask you this question, since you have studied the Unit Agreement, Exhibit No. One, you're familiar with the transcript, you're aware of the fact that in the Bravo Dome Unit all people who have voluntarily committed their interest to the Unit will participate in the unit production from the time of first sale."
>
> A. That is correct.
>
> Q. Do you see anything wrong based on your experience with exploratory units with having, I believe you experts in the field call it an undivided participation from the outset, do you see anything wrong with participation in that manner?"
>
> A. No, I do not. In fact, it's probably the most ideal situation to have in exploratory units. (RTr. at 16)

Mr. Williams further expanded on this testimony by stating:

> "In exploratory units, the participation is based on the surface acre basis and where you are able to get all the land owners and working interest owners to agree to participate in the whole unit, they are all then sharing in the risk and sharing in the benefits proportionate to their acreage as to the whole, regardless to where the production is found." (RTr. 32-33)
>
> "Well, geology is not an exact science, so therefore, by all the parties voluntarily agreeing to share whatever there might be, is an ideal situation, in my opinion, regardless of where the production is, because you don't know that to begin with." (RTr. at 34)

In Findings 25 and 37, the Commission states its conclusions on correlative rights. Finding 25 reads, "That the evidence presented in this case establishes that the Unit

Agreement at least initially provides for the development of the unit in a method that will serve to prevent waste and which is fair to the owners of interest herein" (Vol. 1 at 37). Finding 37 reads "...approval of the proposed unit agreement with the safeguards provided above should promote the prevention of waste and the protection of correlative rights within the unit area."

Order R-6446-B contains findings which are sufficiently extensive to disclose the Commission's reasoning that approval of the unit will protect correlative rights. Each of these findings is supported by substantial evidence.

POINT III

IN A VOLUNTARY UNIT WHERE ALL OWNERS MUTUALLY AGREE TO BE PAID ON A PRO RATA BASIS, REGARDLESS OF THE ACTUAL PRODUCTION ON ANY TRACT WITHIN THE UNIT, THE CORRELATIVE RIGHTS OF ALL PARTIES ARE IPSO FACTO PROTECTED.

There is a basic distinction between voluntary unitization and forced or compulsory unitization. The former is a contractual agreement among parties for the purpose of primary or secondary production of resources. See generally, William & Meyers Oil and Gas Law, Volume 6, Section 924, at 508. The latter is usually a statutory proceeding to compel non-consenting interest owners to unitize acreage for purposes of secondary or enhanced recovery. The New Mexico Statutory Unitization Act, 70-7-1, et seq. N.M.S.A. (1978 Comp.) which Plaintiffs-Appellants discuss in their Brief in Chief, is such a statute. It does not, however, apply to the

situation presented in this appeal, for it applies only to secondary and tertiary recovery projects - not to voluntary exploratory units for primary production like the Bravo Dome Unit. Sec. 70-7-1 N.M.S.A. (1978 Comp.).

The procedures to be followed in compulsory unitization, given its involuntary and adversarial nature, must provide safeguards and protection for non-consenting interest owners. And again because of the adversarial nature of the proceedings, the Commission must determine whether the participation formula for unitization is fair, reasonable and equitable to both consenting and non-consenting parties. Sec. 70-7-6 A(6) N.M.S.A. (1978 Comp.)

The elements of conflict and adversity between the parties are simply not present in voluntary unitization. Because such unitization is affected by negotiation and agreement of the parties, there is no conflict which the court must resolve: the parties themselves have mutually agreed as to how their correlative rights will be protected.

In a voluntary unit, only one group of parties is affected: those who have committed to the unit. The very nature of voluntary unitization assures, ipso facto, that the correlative rights of committed parties are protected. The correlative rights of those not committed to the unit exist independently of the unit and are otherwise protected by lease agreements (Tr. at 27-28). The unit agreement in issue here provides for allocation of produced carbon dioxide on a straight acreage basis, regardless of the actual production on any tract within the unit (Record, exh. 4, no. 1). Each

interest owner in the unit area was notified of the formula, and the vast majority of such owners acknowledged the equity of the formula by ratifying the unit agreement (Tr. at 32-33).

In Syverson v. North Dakota State Industrial Commission, 111 N.W.2d 128 (1961), the North Dakota Supreme Court addressed the issue of correlative rights of the parties in a voluntary unit. The Court affirmed a regulatory Commission order approving the unit. In so doing, the decision asserted that the correlative rights of joining interest owners are ipso facto protected by an allocation formula based on a pro rata acreage basis.

The correlative rights of non-committed owners are not an issue in this proceeding. The proposed unit is wholly voluntary. No one can be compelled to join it. The correlative rights of non-committed parties are protected by the terms of their individual leases (Tr. at 27-28).

CONCLUSION

The Bravo Dome Unit area is in an early stage of carbon dioxide development. In an effort to effect efficient and orderly development of this resource, a voluntary unit agreement was entered into by a vast majority of the interest owners in the area. This Unit Agreement was submitted to state and federal authorities for approval. Part of the review made by the state included two hearings before the Oil Conservation Commission which resulted in orders approving the unit agreement. These orders concluded that the Unit

Agreement would prevent waste of the resources and would protect the correlative rights of all interest owners in the unit area. The orders are lawful and supported by substantial evidence.

We respectfully submit that the orders of the Oil Conservation Commission approving the Bravo Dome Carbon Dioxide Gas Unit Agreement should be affirmed.

Respectfully submitted,

CAMPBELL, BYRD & BLACK, P.A.

By William F. Carr

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Answer Brief of Appellee Amoco Production Company was mailed to all the following counsel of record this 17th day of December, 1982:

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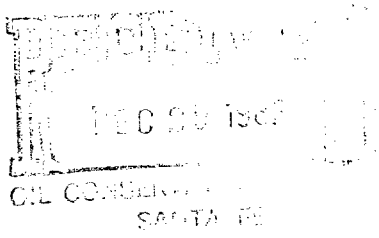

Mrs. Rose Marie Alderete
Clerk of the New Mexico
Supreme Court
Supreme Court Building
Santa Fe, New Mexico 87501

Re: Robert Casados et al., vs. Oil Conservation Commission, No. 14,359

Dear Mrs. Alderete:

Enclosed for filing in the above-referenced cause are eleven copies of the Appellants' Reply Brief of Robert Casados, et al.

Very truly yours,

Ernest L. Carroll

ELC/pwh
Encl.
cc: William F. Carr, Esquire
W. Thomas Kellahin, Esquire
J. Scott Hall, Esquire
W. Perry Pearce, Esquire

ORAL ARGUMENT

CASADOS ET AL v. OIL CONSERVATION COMMISSION

February 16, 1983

I. Before we get into the argument it is necessary to refocus this case on the issues presented to the court in this appeal:

A. Are the findings sufficient in OCC Orders R-6446 and 6446-B to disclose the reasoning of the Commission in concluding that approval of the Bravo Dome Carbon Dioxide Gas Unit Agreement will prevent waste and protect correlative rights?

B. Are the orders and findings supported by substantial evidence?

C. In entering these orders, did the Commission carry out its statutory duty to prevent waste and protect correlative rights and not act in an arbitrary and capricious fashion?

(These were the only issues raised by the Application for Rehearing: see Memo in Support of Motion to Strike Issues on Appeal, pp. 6 and 7 -- Petition to Appeal also limited the argument to these issues; see ¶¶ 6 and 7)

STATUTORY UNITIZATION -- NOT APPLICABLE TO BRAVO DOME UNIT

Injection of the statutory unitization act into these proceedings only serves to confuse the issues before the court.

1. Apply to different types of operations
   A. Statutory unitization -- secondary and tertiary recovery
   B. Bravo Dome -- primary production

2. Data available
   A. Statutory unitization -- much information -- developed pool
   B. Bravo Dome -- little data -- limited development

3. Nature and effect of OCD orders differ

   A. Statutory unitization -- a taking of property under the police power of the state -- OCC is called upon to set relative values for the tracts involved.
   B. Bravo Dome -- OCC approving a contract voluntarily entered by the parties -- OCC cannot change a single term.

II. CHECK LIST OF EVENTS

A. Amoco's application for approval of the Bravo Dome Carbon Dioxide Gas Unit Agreement -- May 28, 1980.

B. Public hearing on application of Amoco -- July 21, 1980.

C. Commission entered Order No. R-6446 approving the unit agreement -- August 14, 1980.

D. Appellants filed application for rehearing -- September 2, 1980.

E. Rehearing held -- October 9, 1980.

F. Order R-6446-B entered approving unit agreement -- January 23, 1981.

G. Appellants filed petitions to appeal in Harding, Quay and Union counties.

H. Petitions consolidated for hearing before the District Court of Taos County.

I. District Court affirmed Oil Conservation Commission Orders -- May 6, 1982.

III. STANDARDS OF REVIEW -- OCC ORDERS

A. Findings of fact (attacked by appellant in their application for rehearing and their petition to appeal -- ¶7)

1. Continental Oil Company v. Oil Conservation Commission, 70 N.M. 310, 373 P.2d 809 (1962)
"Formal and elaborate findings are not absolutely necessary, nevertheless, basic jurisdictional findings, supported by evidence are required" at p. 16.

2. Fasken v. Oil Conservation Commission, 87 N.M. 292, 532 P.2d 588 (1975)

a. The order must contain "sufficient findings to disclose a reasoning of the Oil Conservation Commission in reaching ultimate findings," ... on waste and correlative rights.

b. Findings "must be sufficiently extensive to show the basis of the Commission's order."

c. Record must contain substantial evidence supporting the findings.

In this appeal -- the court is asked to decide if the findings in Order R-6446-B meet the standards announced in Continental and Fasken.

B. Substantial evidence (attacked by petitioners in their application for rehearing and in the petition to appeal -- ¶6)

1. Grace v. Oil Conservation Commission, 87 N.M. 205, 531 P.2d 939 (1975).

   a. Supreme Court defines scope of review of OCC order -- it will review order to determine if it is substantially supported by the evidence and by applicable law.

   b. Supreme Court defines substantial evidence as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion" at 942.

   c. Will not weigh the evidence.

   d. Found that in reviewing OCC orders - it gives special weight and credence to the expertise, technical competence and specialized knowledge of the Commission - at 942.

   THE STANDARD IS:

   1. Findings sufficiently extensive to show the basis of the Commission's decision.

   2. Supported by substantial evidence.

2. The Court of Appeals defined the standard of review in deciding whether a finding has substantial support in Martinez v. Sears Roebuck & Co., 81 N.M. 371, 467 P.2d 37 at 39 (Ct. App. 1970): "In deciding whether a finding has substantial support, the court must review the evidence in the light most favorable to support the finding and the reverse only if convinced that the evidence thus viewed together with all reasonable

inferences to be drawn therefrom cannot sustain the finding. In making this review any evidence unfavorable to the finding will not be considered."

3. The Supreme Court extended these standards to decisions of adminstrative boards in United Veterans Organizations v. New Mexico Property Appraisal Department, 84 N.M. 114, 500 P.2d 199, 203 (1972).

NOW APPLY THESE STANDARDS TO THE ORDERS BEING CHALLENGED IN THIS APPEAL

IV. CORRELATIVE RIGHTS

(Correlative rights are not defined in terms of the "relative value" of the tracts making up the unit as appellants would have the Court believe. This term is from the Statutory Unitization act and does not apply to a voluntary exploratory unit.)

A. Defined in 70-2-33(H)

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

(This definition has been extended to carbon dioxide gas - Sec. 70-2-34.)

B. In Continental:

1. The Supreme Court stated that correlative rights are not absolute or unconditional but noted that the legislature has enumerated in the definition of correlative rights certain elements contained in that right.
2. It further specified certain specific correlative rights findings to be made by the Commission prior to entry of an order -- (1) amount of recoverable gas under each producers tract, 2) total amount of recoverable gas in the pool, 3) the proportion that 1

bears to 2, 4) the amount that can be recovered without waste.) at 815 IF PRACTICABLE TO DO SO.

C. Appellants would like the court to return to the test announced in Continental without concern for practicalities and prohibit the Oil Conservation Commission from acting to protect correlative rights until it has first defined the correlative rights it is attempting to protect in the Bravo Dome Unit Area.

D. The "Continental test" was reviewed by the Supreme Court in Rutter & Wilbanks v. OCC, 87 N.M. 286, 532 P.2d 582 (1975) -- an attack on findings in a case involving oversized proration units.

> "When the Commission exercises its duty to allow each interest owner in a pool 'his just and equitable share' of the oil or gas underlying his property, the mandate to determine the extent of those correlative rights, as prescribed by §65-3-29(H), NMSA 1953 (§70-2-33, NMSA 1978) is subject to the qualification 'as far as it is practicable to do so" see Grace v. Oil Conservation Commission. All the evidence lacked many of the factual details thought to be desirable in a case of this sort, it was because the appropriate data was as yet unobtainable. We cannot say that the exhibits, statements and expressions of opinions by the applicant's witness do not constitute 'substantial evidence' or that the orders were improperly entered or that they did not protect the correlative rights of the parties 'so far as (could) be practicably determined ...'" 532 P.2d at 588.

E. In this case

1. Certain additional evidence desirable
2. It is as yet unobtainable
3. If wait -- too late to obtain benefits of unitization

F. This is exploratory unit to provide for prudent development

-- cannot be premature

-- unitization must occur at beginning of development or benefit of unitization is lost

-- data becomes available as unit developed

G. THE FINDINGS

1. Appellants would have court believe that OCC found "it cannot yet tell how teh Unitization Agreement will prevent waste and protect correlative rights ..." (Reply Brief p. 6) -- not true.

2. Review of all findings and supporting evidence is required.

3. Although more evidence available after development -- much available now.

Look at Findings: (all are fully briefed)

FINDING 14

(14) that the evidence presented demonstrated that there are two methods of participation which would protect the correlative rights of the owners within exploratory units through the distribution of production or proceeds therefrom from the unit; these methods are as follows:

(a) a formula which provides that each owner in the unit shall share in production from any well(s) within the unit in the same proportion as each owner's acreage interest in the unit bears to the total unit acreage, and

(b) a method which provides for the establishment of participating areas within the unit based upon completion of commercial wells and geologic and engineering interpretation of presumed productive acreage with only those parties of interest within designated participating areas sharing in production. Such participation would be based upon the

proportion of such owner's acreage interest within the participating area as compared to the total acreage within the participating area.

Neil Williams -- petroleum consultant testified about both of these methods of participation (RTR 23, 32-34)

Mr. Callaway concurred -- Plaintiffs (RTR 179)

and SLO comment -- (RTR 185)

FINDING 15

Each of these methods of participation "... was demonstrated to have certain advantages and limitations."

Bruce Landis (Regional Unitization Superintendent) Amoco testified:

- benefits of proposed methods of participation (TR 45)
- problems with participating area approach ("... if there are obligations outside of the area that destroy the concept of orderly ... development" (TR 45 and 46)

F.A. Callaway

- also testimony stating problem with both that a participation formula based on recoverable reserves was more precise than either noted in finding 14 (RTR 180)
- problems also outlined in statement of Oscar Jordon for State Land Office. (RTR 186-187)

FINDING 17:

"That the method of sharing the income from production from the unit as provided in the unit agreement is reasonable and appropriate at this time."

Mr. Williams testified - in response to questions as to the reasonableness of an undivided participation formula --

> That it was probably the ideal situation to have in an exploratory unit (RTR 16)

Williams further testified

> In exploratory units, the participation is based on the surface acre basis and where you are able to get all the land owners and working interest owners to agree to participate in the whole unit, they are all then sharing in the risk and sharing in the benefits proportionate to their acreage as to the whole, regardless to where the production is found. (RTR 32-33)
>
> Well, geology is not an exact science, so therefore, by all the parties voluntarily agreeing to share whatever there might be, is an ideal situation, in my opinion, regardless of where the production is, because you don't know that to begin with. (RTR 34)

FINDING 25:

> That the evidence presented in this case establishes that the unit agreement at least initially provides for the development of the unit in a method that will serve to prevent waste and which is fair to the owners of interest therein.

FINDING 37: (ultimate)

> That approval of the proposed unit agreement with the safeguards provided above should promote the prevention of waste and the protection of correlative rights within the unit area.

H. OCC reasoning:

1. Evidence on two methods of participation which protect correlative rights
2. This method is reasonable and appropriate
3. This method is fair to the interest owners and will protect correlative rights

THERE IS SUBSTANTIAL EVIDENCE SUPPORTING EACH OF THESE FINDINGS

I. Subsequent C/R Problems

1. Appellants raise question of what happens if C/R and waste become problems at a later date.
2. OCC - found unit agreement protects C/R and prevents waste - MUST ACT ON EVIDENCE AT DATE OF HEARING (evidence shows no reason to think problems will develop)
3. What may happen at later date - not before the court - judicial review should be denied
   a. lack of finality
   b. hypothetical question
   c. even if problem later - premature
   d. not facts to act upon
4. If C/R or waste problem at later date - matter within primary jurisdiction of OCC.

* OCC has retained continuing jurisdiction over this matter to deal with problems if they develop
* Could take action at later time
  -- withdraw approval

-- Sec. 70-2-11 sets out duties of OCC to prevent waste and protect C/R - then provides "... may do whatever may be reasonably necessary to carry out purpose of this act, whether or not indicated or specified in any section hereof

* under unit - could remove unit operator

J. RIGHT OF THOSE JOINING UNIT TO RELY ON OCC APPROVAL

1. Unit agreement provides for OCC approval prior to becoming effective Article 17.1(b)

2. Appellants assert those joining had a right to rely on OCC assuring that C/R would be protected (given an absolute assurance that the agreement would not become effective until approved by OCC) Reply Brief - 4

3. OCC APPROVED UNIT AGREEMENT

   a. OCC found waste prevented - and C/R protected -

   b. OCC order -

      (1) "That the Bravo Dome Carbon Dioxide Gas Unit Agreement is hereby approved."

   c. STATE - WILL EXERCISE CONTINUING JURIS.

   d. Continuing Jurisdiction - retaine din all OCC unitization orders - nothing new here

4. APPELLANTS ASSERT:

   a. Those who joined entitled to order finding that unit would always protect C/R

b. Asking for order OCC never could give -

- reason they exercise continuing jurisdiction

c. To say that inclusion of OCC approval means that OCC must find that C/R protected in future - absurd when examine unit agreement

d. Look at unit

ART 3 - creation of unit talks of the development and operation of lands subject to the unit

ART 4 - development obligations

ART 6 - rentals and royalties (after production)

e. ENTIRE AGREEMENT - PREDICATED UPON IT BECOMING EFFECTIVE PRIOR TO DEVELOPMENT - OCC finding it would always protect C/R - only possible after developed and benefits of unitization lost.

V. WASTE FINDINGS

A. Definition

"As used in this act, the term 'waste' in addition to its ordinary meaning, shall include:

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

B. "Surface Waste" as those words are generally understood in the oil and gas business, and in any event to embrace the unnecessary or excessive surface loss or destruction without beneficial use, however caused, of natural gas of any type or in any form or crude petroleum oil, or any product thereof, but including the loss or destruction, without beneficial use, resulting from evaporation, seepage, leakage, or fire, especially such loss or destruction incident to or resulting from the manner of spacing, equipping, operating or producing, well or wells, or incident to or resulting from the use of inefficient storage or from the production of crude petroleum oil or natural gas, in excess of the reasonable market demand.

(Sec. 70-2-33)

This definition was extended to CO_2 - Sec. 70-2-34

B. Findings 8 and 9 -- clearly reflect Commission's reasoning on waste:

FINDING 8(a)

(8) "That the unitized operation and management of the proposed unit has the following advantages over development of this area on a lease by lease basis:

(a) more efficient, orderly and economic exploration of the unit area; ..."

Witnesses for Amoco, Cities Services Co., and Plaintiffs all testified that unitized operation and management was the best method for developing this resource.

F. A. Callaway - reservoir engineer for plaintiff stated

> "I've always been an advocate of field-wide unitization. I feel like that is the optimum method for operation in order to achieve the maximum recovery and operates under the most efficient circumstances." (RTR 154)

evidence in record showing: (all set out in trial brief)

1. unit management will provide for orderly development of unit area (TR 28, RTR 87, 140)
2. it will enable operator to develop unit area by drilling wells in the most desirable locations. (TR 35)
3. this will enable the operator to drain the reservoir in an effective manner - with most efficient spacing pattern (RTR 100)
4. Unit management will avoid wasteful drilling and completion practices (TR 35)
5. Operator will only drill wells necessary to produce the reserves (RTR 40-50, Rehearing Exhibits RH 1, RH 2, RH 3)
6. Unnecessary wells therefore are avoided (RTR 45, 61-63)

FINDING 8(b)

> "That unitized operation and management of the proposed unit has the following advantages over development of this area on a lease by lease basis:
>
> (b) more economical production, field gathering and treatment of carbon dioxide gas within the unit area."

Jim Allen, Senior Petroleum Engineering Supervisor for Amoco Production Co. testified --

1. Unit management -- most efficient way to produce CO_2 from Bravo Dome Unit area (RTR 87, 154)
2. CO_2 produced with fewer surface facilities (RTR 50-61, and RH 3 - RH 7)
3. This would result in reduced production costs (RTR 64, 97)

Max Coker - consulting petroleum geologist - Amoco Production Company

1. testified as to primary factors which result in surface loss
   a. malfunction of machinery - equipment
   b. manmade accident (RTR 106)
2. greater chance of surface loss without unit operations and management (RTR 107-111)

FINDING 9

> "That said advantages will reduce average well costs within the unit area, provide for longer economic well life, result in the greater ultimate recovery of carbon dioxide gas thereby preventing waste."

Mr. Allen testified that under unit operations only 6 surface facilities would be required as opposed to as many as 4435 on lease by lease development (RTR 50-61, RH3-RH7)

He testified:

a. fewer facilities = lower costs

b. lower costs = longer well life

c. longer well life = increase recovery

d. increased recovery prevented waste (RTR 63-64)

Further testified -

savings on surface facilities - only indicative of number of other savings that would result from unitized operations (RTR 97)

C. OCC findings on waste clearly disclose OCC's reasoning in reaching its conclusion that unitized operations of Bravo Dome will prevent waste.

1. unitized operation and mangement was more efficient
2. would result in economic savings
3. which would extend economic lives of wells
4. result in greater ultimate recovery of CO_2
5. this prevents waste

EACH FINDING IS SUPPORTED BY SUBSTANTIAL EVIDENCE

VI. CONCLUSION

1. OCC held two hearings on application
2. received evidence from geologists, engineers, experts on unitization
3. twice concluded that unitization agreement and its plan would prevent waste and protect C/R
4. R-6446-B -

   extensive findings which disclose reasoning in reaching the ultimate findings on waste and correlative rights
5. substantial evidence supports each of the findings
6. OCC order - consistent with its statutory authority and is neither arbitrary nor capricious
7. order should be affirmed