

CASE 4865: Application of DAVID  
FASKEN FOR SPECIAL ALLOWABLES,  
EDDY COUNTY, NEW MEXICO.

D.C. # 528483

-ase Number

4865

Application  
Transcripts.

Small Exhibits

ETC.

Laskin

CASE 4865

R-4444

D.C.# 28483

S-231-44-72-

BEFORE THE OIL CONSERVATION COMMISSION  
OF THE STATE OF NEW MEXICO

IN THE MATTER OF THE HEARING  
CALLED BY THE OIL CONSERVATION  
COMMISSION OF NEW MEXICO FOR  
THE PURPOSE OF CONSIDERING:

CASE NO. 4865  
Order No. R-4444-A

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

ORDER OF THE COMMISSION

BY THE COMMISSION:

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

NOW, on this 22nd day of May, 1975, the Commission, a quorum being present, having considered the testimony presented and the exhibits received at said hearing, and being fully advised in the premises,

FINDS:

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

(B) That after hearing, Commission Order No. R-4444, dated December 6, 1972, was entered in Case No. 4865 denying the application of David Fasken for an exception to the general rules and regulations governing prorated gas pools in Southeast New Mexico, promulgated by Order No. R-1670, as amended, to permit the production of his Ross Federal Well No. 1, located 1980 feet from the South line and 1980 feet from the West line of Section 4, and his Shell Federal Well No. 1, located 1930 feet from the South line and 1980 feet from the West line of Section 5, both in Township 21 South, Range 24 East, Indian Basin-Morrow Gas Pool, Eddy County, New Mexico, at the capacity of the wells to produce, or in the alternative, to permit the production of said wells at a rate in excess of the allowables assigned to said wells.

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

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

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

(F) That the Commission moved for Summary Judgment.

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

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

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

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

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

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

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

(1) That the Commission is empowered by Subsection (12) of Section 65-3-11 NMSA, 1953 Comp., as amended, "To determine the limits of any pool or pools producing crude petroleum oil or natural gas or both, and from time to time to redetermine such limits;"

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

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

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

(4) That communication therefore exists throughout the pool.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IT IS THEREFORE ORDERED:

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



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

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

STATE OF NEW MEXICO  
OIL CONSERVATION COMMISSION

  
I. R. TRUJILLO, Chairman

A. L. PORTER, Jr., member Secretary

S E A L

dr/

BEFORE THE OIL CONSERVATION COMMISSION  
OF THE STATE OF NEW MEXICO

IN THE MATTER OF THE HEARING  
CALLED BY THE OIL CONSERVATION  
COMMISSION OF NEW MEXICO FOR  
THE PURPOSE OF CONSIDERING:

CASE NO. 4865  
Order No. R-4444

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

ORDER OF THE COMMISSION

BY THE COMMISSION:

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

NOW, on this 6th day of December, 1972, the Commission, a quorum being present, having considered the testimony presented and the exhibits received at said hearing, and being fully advised in the premises,

FINDS:

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

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

(3) That the applicant contends that a pressure differential exists between the area in which the above-described two wells are located and that area of the Indian Basin-Morrow Gas Pool to the south, and that unless his wells are permitted to be produced at a rate in excess of the current allowable assigned to them, gas will migrate to the south away from the aforesaid two wells.

Case No. 4865  
Order No. R-4444

(4) That the north area, in which the aforesaid two wells are located, contains a substantial amount of productive acreage not dedicated to any well.

(5) That while the aforesaid pressure differential may be present, it appears that the applicant may be able to provide his own relief to the aforesaid gas migration situation by further development of the gas reserves in the area to the north.

(6) That the applicant's Ross Federal Well No. 1 and Shell Federal Well No. 1, located as described in Finding No. (2) above, are producing from the same single common source of supply as other wells in the Indian Basin-Morrow Gas Pool.

(7) That to permit applicant's aforesaid two wells to produce in excess of the allowables assigned to said wells would afford said wells an undue share of the recoverable gas reserves in the pool and would result in unratable take and would violate the correlative rights of other mineral interest owners in the pool.

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

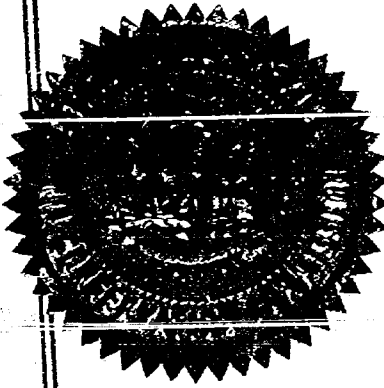
IT IS THEREFORE ORDERED:

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

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

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

STATE OF NEW MEXICO  
OIL CONSERVATION COMMISSION

  
*Bruce King*  
BRUCE KING, Chairman

*Alex J. Armiijo*  
ALEX J. ARMIJO, Member

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

S E A L

dr/



## OIL CONSERVATION COMMISSION

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

December 6, 1972

GOVERNOR  
BRUCE KING  
CHAIRMAN

LAND COMMISSIONER  
ALEX J. ARMijo  
MEMBER

STATE GEOLOGIST  
A. L. PORTER, JR.  
SECRETARY - DIRECTOR

Mr. Richard S. Morris  
Montgomery, Federici, Andrews,  
Hanna & Morris  
Attorneys at Law  
Post Office Box 2307  
Santa Fe, New Mexico

Re: Case No. 4865 & 4733  
Order No. R-4444 & R-4409-A  
Applicant:  
DAVID FASKEN

Dear Sir:

Enclosed herewith are two copies of the above-referenced  
Commission order recently entered in the subject case.

Very truly yours,

A. L. PORTER, Jr.  
Secretary-Director

ALP/ir

Copy of order also sent to:

Hobbs OCC x  
Artesia OCC x  
Aztec OCC           

Other Mr. Jack Cooley

DOCKET: REGULAR HEARING - TUESDAY - NOVEMBER 21, 1972

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

CASE 4763: (De Novo) (Continued from the October 18, 1972 Regular Hearing)

Application of Black River Corporation for compulsory pooling and non-standard proration unit, Eddy County, New Mexico. Applicant, in the above-styled cause, seeks an order pooling all mineral interests in the Morrow formation underlying the E/2 of Section 3, Township 26 South, Range 24 East, adjacent to the Washington Ranch-Morrow Gas Pool, Eddy County, New Mexico, comprising, approximately, a 409.22-acre non-standard proration unit. Said acreage to be dedicated to its Cities "3" Federal Well No. 2 located 2212 feet from the North line and 1998 feet from the East line of said Section 3.

Also to be considered will be the costs of drilling said well, a charge for the risk involved, a provision for the allocation of actual operating costs, and the establishment of charges for supervision of said well.

Upon application of Rutter and Wilbanks Corporation this case will be heard De Novo under the provisions of Rule 1220.

CASE 4764: (De Novo) (Continued from the October 18, 1972, Regular Hearing)

Application of Black River Corporation for compulsory pooling, and non-standard proration unit, Eddy County, New Mexico. Applicant, in the above-styled cause, seeks an order pooling all mineral interests in the Morrow formation underlying the W/2 of Section 3, Township 26 South, Range 24 East, adjacent to the Washington Ranch-Morrow Gas Pool, Eddy County, New Mexico, comprising, approximately, a 407.20-acre non-standard proration unit. Said acreage to be dedicated to its Cities "3" Federal Well No. 1 located 1980 feet from the North line and 1980 feet from the West line of said Section 3.

Also to be considered will be costs of drilling said well, a charge for the risk involved, a provision for the allocation of actual operating costs, and the establishment of charges for supervision of said well.

Upon application of Rutter and Wilbanks Corporation this case will be heard De Novo under the provisions of Rule 1220.

CASE 4765: (De Novo) (Continued from the October 18, 1972 Regular Hearing)

Application of Michael P. Grace and Corinne Grace for compulsory pooling and non-standard proration unit, Eddy County, New Mexico. Applicants, in the above-styled cause, seek an order pooling all

(Case 4765-continued from page 1)

mineral interests underlying the W/2 of Section 3, Township 26 South, Range 24 East, adjacent to the Washington Ranch-Morrow Gas Pool, Eddy County, New Mexico, comprising approximately a 407.20-acre non-standard proration unit. Said acreage to be dedicated to a well located 1980 feet from the North line and 1980 feet from the West line of said Section 3.

Also to be considered will be the costs of drilling said well, a charge for the risk involved, a provision for the allocation of actual operating costs, and the establishment of charges for supervision of said well.

Upon application of Rutter and Wilbanks Corporation this case will be heard De Novo under the provisions of Rule 1220.

CASE 4771: (De Novo)

Application of Black River Corporation for a non-standard gas unit, Eddy County, New Mexico. Applicant, in the above-styled cause, seeks approval of a 402.22-acre, more or less, non-standard gas unit adjacent to the Washington Ranch-Morrow Gas Pool, comprising the W/2 of Section 4, Township 26 South, Range 24 East, Eddy County, New Mexico, to be dedicated to a well to be located at an unorthodox location 1985 feet from the North line and 2087 feet from the West line of said Section 4.

Upon application of Michael P. Grace II and Corinne Grace this case will be heard De Novo under the provisions of Rule 1220.

CASE 4772: (De Novo)

Application of Black River Corporation for compulsory pooling, Eddy County, New Mexico. Applicant, in the above-styled cause, seeks an order pooling all leasehold, mineral, and royalty interests underlying the W/2 of Section 4, Township 26 South, Range 24 East, adjacent to the Washington Ranch-Morrow Gas Pool, Eddy County, New Mexico, comprising a 402.22-acre, more or less, non-standard gas unit. Said acreage to be dedicated to a well to be located at an unorthodox location 1985 feet from the North line and 2087 feet from the West line of said Section 4.

Also to be considered will be the costs of drilling said well, a charge for the risk involved, a provision for the allocation of actual operating costs, and the establishment of charges for supervision of said well.

Upon application of Michael P. Grace II and Corinne Grace this case will be heard De Novo under the provisions of Rule 1220.

Regular Hearing - Tuesday - November 21, 1972  
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CASE 4766: (De Novo)

Application of Michael P. Grace and Corinne Grace for compulsory pooling and a non-standard unit, Eddy County, New Mexico. Applicants, in the above-styled cause, seek an order pooling all mineral interests underlying the W/2 of Section 4, Township 26 South, Range 24 East, adjacent to the Washington Ranch-Morrow Gas Pool, Eddy County, New Mexico, comprising approximately a 402-acre non-standard proration unit. Said acreage to be dedicated to a well to be drilled 1980 feet from the North line and 1980 feet from the West line of said Section 4. Also to be considered will be the costs of drilling said well, a charge for the risk involved, and a provision for the allocation of charges for supervision of said well.

Upon application of Michael P. Grace II and Corinne Grace this case will be heard De Novo under the provisions of Rule 1220.

CASE 4796: (Continued from the August 16, 1972 Regular Hearing and October 18, 1972 Regular Hearing)

Application of Michael P. Grace II and Corinne Grace for capacity allowable, Eddy County, New Mexico. Applicants, in the above-styled cause, seek an exception to the General Rules and Regulations governing the prorated gas pools of Southeast New Mexico, promulgated by Order No. R-1670, as amended, to produce their City of Carlsbad "COM" Well No. 1, located in Unit 0 of Section 25, Township 22 South, Range 26 East, South Carlsbad-Morrow Gas Pool, Eddy County, New Mexico, at full capacity.

CASE 4733: (De Novo)

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

Upon application of David Fasken, this case will be heard De Novo under the provisions of Rule 1220.

CASE 4865:

Application of David Fasken for special allowables, Eddy County, New Mexico. Applicant, in the above-styled cause, seeks an exception to the general rules and regulations governing the prorated gas pools of Southeast New Mexico, promulgated by Order No. R-1670, as amended, to produce his Ross Federal Well No. 1 located 1980 feet from the South and West lines of Section 4 and his Shell Federal Well No. 1 located 1980 feet from the South and West lines of Section 5, both

(Case 4865 continued from page 3)

in Township 21 South, Range 24 East, Indian Basin-Morrow Gas Pool, Eddy County, New Mexico, at the capacity of the wells to produce, or in the alternative, to permit the production of the wells at a rate in excess of the allowable sufficient to offset the alleged decline in pressure due to production from wells to the south.



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

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

5. On May 1, 1972, Petitioner applied to the Commission for an order establishing Sections 4 and 5, Township 21 South, Range 24 East, Eddy County, New Mexico, as a separate gas pool for production from the Morrow formation and deleting the said acreage from the Indian Basin-Morrow Gas Pool. By such application, the Petitioner sought to remove his said acreage from administration and proration under the special rules and regulations applicable to the Indian Basin-Morrow Gas Pool and thereby be enabled to produce his said wells in such a manner as to prevent the migration of gas from beneath his lands and the encroachment of water into the wells lying South thereof.

Hearing was held upon the said Application on June 7, 1972, before Daniel S. Nutter, an Examiner appointed by the Commission, and on September 27, 1972, the Commission entered its Order No. R-4444-A, denying the Application. On October 24, 1972, Petitioner applied to the Commission for hearing de novo upon his original Application; hearing de novo was held before the Commission on November 21, 1972, and on December 6, 1972, the Commission entered its Order No. R-4444-A, again denying the application. On December 22, 1972, Petitioner made Application for Rehearing to the Commission with respect to its Order No. R-4444-A, and the Commission having failed to act thereon within ten days after filing, the Application for Rehearing is deemed to have been refused, pursuant to §65-3-22A, N.M.S.A., 1953.

6. Reviewed by the District Court of Eddy County as Cause No. 28483 on that Court's docket, and later reviewed by the Supreme Court of New Mexico and by Mandate remanded to the Commission for the entry of additional findings based upon the record as it presently exists before the Commission. Additional findings have been made, that are reflected in ¶ M. of Order R-4444-A, and David Fasken being adversely affected by the new findings in said Order, believes the Order to be erroneous and invalid for the following reasons:

A. Findings 3, 4 and 6 are not supported by substantial evidence and indeed, are contrary to the evidence as presented to the Commission.

B. Findings 18, 19 and 20 are not supported by substantial evidence and indeed are contrary to the evidence presented to the Commission at the previous hearing.

C. Findings 22, 23, 24, 25, 26 and 28 are contrary to the evidence presented to the Commission and are not supported by substantial evidence. The testimony before the Commission

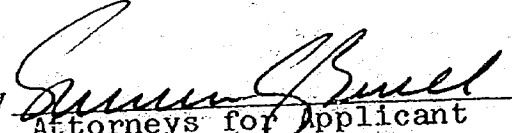
clearly shows that additional transportation facilities, purchasers and market demand exist for all the gas that can be produced under the circumstances.

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

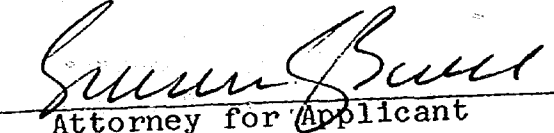
WHEREFORE, the Commission should enter its Order granting this Application for rehearing and superseding Order No. R-4444-A and either exempt Applicant's wells from the proration of the Indian Basin-Morrow Gas Pool or establish special allowables for said wells in accordance with the Application previously filed in this case.

MONTGOMERY, FEDERICI, ANDREWS,  
HANNAHS & BUELL

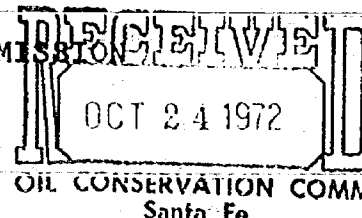
By

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

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

  
Attorney for Applicant

BEFORE THE OIL CONSERVATION COMMISSION  
OF THE  
STATE OF NEW MEXICO



APPLICATION OF DAVID FASKEN FOR )  
EXEMPTION OF WELLS FROM PRORATION- )  
ING OR, IN THE ALTERNATIVE, FOR )  
SPECIAL ALLOWABLES, INDIAN BASIN- )  
MORROW GAS POOL, EDDY COUNTY, )  
NEW MEXICO )

Case No. 4865

APPLICATION

Comes now David Fasken, by his attorneys, and applies to the New Mexico Oil Conservation Commission for an Order exempting wells from prorationing or, in the alternative, for special allowables, Indian Basin-Morrow Gas Pool, Eddy County, New Mexico, and in support of his Application states:

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

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

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

2. By Application for Hearing De Novo in Case No. 4733, the Applicant seeks the contraction of the horizontal limits of the Indian Basin-Morrow Gas Pool by the deletion therefrom of all of Sections 4 and 5, Township 21 South, Range 24 East, Eddy County, New Mexico, and the creation of a new Morrow Gas Pool containing those lands. This Application is submitted as an alternative to the relief requested in Case No. 4733 and should be considered only in the event relief is denied in that case. Due to the identity of the subject matter involved in this

Application and the Application for Hearing De Novo in Case No. 4733, Applicant requests that this Application be heard by the Commission at the same time as the Hearing De Novo in Case No. 4733.

3. All wells in the Indian Basin-Morrow Gas Pool, as presently defined, are subject to prorationing pursuant to the provisions of Commission Order No. R-1670-F. Although prorationing was instituted in the Indian Basin-Morrow Gas Pool in order to prevent waste and protect correlative rights, the effect of prorationing upon the Applicant's above described wells has been to cause waste and impair the Applicant's correlative rights, which situation will continue unless the Commission affords the Applicant relief in this case or in Case No. 4733.

4. In order to avoid aggravation of the pressure differential that exists between the Applicant's above described wells and the wells located South thereof, the Commission should enter an Order granting one of the following alternatives:

A. The Commission should recognize the existence of the structural saddle between the Applicant's wells and other wells to the South thereof, and should permit the Applicant's wells to be produced at capacity. This result may be accomplished by deleting the Applicant's wells from the Indian Basin-Morrow Gas Pool as requested in Case No. 4733 or by granting the Applicant an exception to the allowable provisions of Order No. R-1670-F.

B. In the alternative, the Commission should permit the Applicant's wells to produce at a rate sufficient to offset the decline in pressure due to production from wells South of the structural saddle and, in order to achieve this result, should assign the Applicant's wells a special allowable as an exception

to the allowable provisions of Order No. R-1670-F.

C. Further, in the alternative, the Commission should enter such Order or Orders as may be necessary to prevent waste and protect correlative rights.

WHEREFORE, the Applicant requests that this case be set for hearing before the Commission at the same time as the Application for Hearing De Novo in Case No. 4733, that this case be consolidated with Case No. 4733, and that the Commission enter an Order permitting the Applicant to produce his wells at capacity or at such a rate as will prevent waste and protect correlative rights.

MONTGOMERY, FEDERICI, ANDREWS, HANNAHS  
& MORRIS

By Richard J. Morris  
P.O. Box 2307  
Santa Fe, N.M. 87501  
Attorneys for David Fasken.

draft

(dw)

BEFORE THE OIL CONSERVATION COMMISSION  
OF THE STATE OF NEW MEXICO

IN THE MATTER OF THE HEARING  
CALLED BY THE OIL CONSERVATION  
COMMISSION OF NEW MEXICO FOR  
THE PURPOSE OF CONSIDERING:

CASE NO. 4865

Order No. R-4444

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

ORDER OF THE COMMISSION

BY THE COMMISSION:

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

NOW, on this Dec. day of ~~November~~, 1972, the Commission, a quorum being present, having considered the testimony presented and the exhibits received at said hearing, and being fully advised in the premises,

FINDS:

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

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

(3) That the applicant contends that a pressure differential exists between the area in which the above-described two wells are located and that area of the Indian Basin-Morrow Gas Pool to the south, and that unless his wells are permitted to be produced at a rate in excess of the current allowable assigned to them, gas will migrate to the south away from the aforesaid two wells.

(4) That the north area, in which the aforesaid two wells are located, contains a substantial amount of productive acreage not dedicated to any well.

(5) That while the aforesaid pressure differential may be present, it appears that the applicant may be able to provide his own relief to the aforesaid gas migration situation by further development of the gas reserves in the area to the north.

(6) That the applicant's Ross Federal Well No. 1 and Shell Federal Well No. 1, located as described in Finding No. (2) above, are producing from the same single common source of supply as other wells in the Indian Basin-Morrow Gas Pool.

(7) That to permit applicant's aforesaid two wells to produce in excess of the allowables assigned to said wells would afford said wells an undue share of the recoverable gas reserves in the pool and would result in unratable take and would violate the correlative rights of other mineral interest owners in the pool.

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

IT IS THEREFORE ORDERED:

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



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Case No. 4763

Order No. R-

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

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

dr/

*(Handwritten initials)*

BEFORE THE OIL CONSERVATION COMMISSION  
OF THE STATE OF NEW MEXICO

IN THE MATTER OF THE HEARING  
CALLED BY THE OIL CONSERVATION  
COMMISSION OF NEW MEXICO FOR  
THE PURPOSE OF CONSIDERING:

*(Handwritten initials)*

*(Handwritten initials)*

CASE NO. 4865  
Order No. R-4444-A

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

*(Handwritten signature)*

ORDER OF THE COMMISSION

BY THE COMMISSION:

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

NOW, on this \_\_\_\_\_ day of May, 1975, the Commission, a quorum being present, having considered the testimony presented and the exhibits received at said hearing, and being fully advised in the premises,

FINDS:

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

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

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

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

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

(F) That the Commission moved for Summary Judgment.

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

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

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

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

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

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

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

(1) That the Commission is empowered by Subsection (12) of Section 65-3-11 NMSA, 1953 Comp., as amended, "To determine the limits of any pool or pools producing crude petroleum oil or natural gas or both, and from time to time to redetermine such limits;"

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

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

(4) That communication therefore exists throughout the pool.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IT IS THEREFORE ORDERED:

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

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

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

*only reflect signatures  
of*

*J. R. TRUJILLO*

*and*

*A. L. Porter*

*(do not put Phil's  
name on this order)*