

IN THE DISTRICT COURT OF LEA COUNTY
STATE OF NEW MEXICO

IN THE MATTER OF THE PETITION OF)
AMERADA PETROLEUM CORPORATION FOR)
REVIEW AND APPEAL OF PROCEEDING)
BEFORE THE OIL CONSERVATION)
COMMISSION OF THE STATE OF NEW)
MEXICO IN CASE NO. 191)

Case No. 8485

PRETRIAL ORDER

This matter having come on for hearing at pretrial conference at 9:00 a.m. on May 29, 1950 in the Court Chambers at the Courthouse of Roswell, New Mexico, pursuant to the provisions of Rule 16 of the Rules of the District Courts of the State of New Mexico, upon notices duly given to all parties, it was stipulated in open Court that said pretrial conference would be held before the Court at Roswell, New Mexico, in lieu of the conference being held in Lea County, New Mexico.

Petitioner Amerada Petroleum Corporation was represented by Clarence E. Hinkle for Hervey, Dow & Hinkle, Roswell, New Mexico, and Booth Kellough of Tulsa, Oklahoma, its attorneys of record. Respondent Texas Pacific Coal & Oil Company was represented by Jack M. Campbell and Ross L. Malone, Jr. for Stwood, Malone & Campbell, Roswell, New Mexico, and Eugene T. Adair, Fort Worth, Texas, its attorneys of record. Respondent Oil Conservation Commission of New Mexico was represented by Don G. McCormick, Special Assistant Attorney General and George A. Graham Special Assistant Attorney General, two of its attorneys of record. The following proceedings were had:

1. Respondent Texas Pacific Coal & Oil Company, joined by Respondent Oil Conservation Commission of New Mexico, under paragraphs numbered 1 and 4 in the Notice of Pretrial conference

raised the question of the extent of the scope of the review by the Court of the order appealed from and presented argument that the Court in its review was limited to a determination of whether there was substantial evidence in the record before the commission to sustain its order. Petitioner requested additional time to submit a brief to the Court upon the question and pursuant to such request the pretrial conference was recessed pending furnishing of briefs by the parties and a determination by the Court as to the question raised.

2. Briefs having been submitted pursuant to instruction by the Court, the pretrial conference was resumed at Roswell, New Mexico, on September 11, 1950 at 1:30 p.m. due notice having been given to all parties. Petitioner Amerada Petroleum Corporation was represented by Clarence E. Hinkle for Hervey, Dow & Hinkle, Roswell, New Mexico, and Booth Kellough of Tulsa, Oklahoma, its attorneys of record. Respondent Texas Pacific Coal & Oil Company was represented by Jack M. Campbell and Ross L. Malone, Jr. for Atwood, Malone & Campbell, Roswell, New Mexico, and Eugene T. Adair, Fort Worth, Texas, its attorneys of record. Respondent Oil Conservation Commission of New Mexico was represented by George A. Graham, Special Assistant Attorney General, one of its attorneys of record.

3. The Court having considered the briefs submitted by the parties and having heard argument of counsel as to the scope and extent of the review by the Court of the order of the Oil Conservation Commission in accordance with its letter to counsel dated August 4, 1950, ordered: *(finds)*

1. That the Oil Conservation Commission of New Mexico is primarily an administrative body with certain delegated legislative powers; and that in entering the order complained of in the Petition for Review the Commission was acting in that capacity.

2. That this Court is without power to substitute its own independent judgment for that of the Commission as reflected in the Order complained of.
3. That the nature and scope of the review in this case will be confined generally to the validity of the Order and specifically to
 - (a) the power of the Commission to enter the order complained of;
 - (b) the existence of substantial evidence before the commission supporting the order complained of; and
 - (c) the reasonableness of the order.
4. A transcript of the proceeding before the Commission including the evidence taken in a hearing or hearings by the Commission shall be received in evidence by the Court in whole or in part upon offer by either party, subject to legal objections to evidence.
5. Evidence in addition to that contained in the transcript of the proceedings before the Commission will be limited to
 - (a) such matters as to which legal objections are made and sustained to evidence thereon appearing in the transcript of the proceedings before the Commission; and
 - (b) facts bearing upon the question of whether or not the Order of the Commission was arbitrary, capricious or unreasonable, or whether the Commission acted beyond its power.
6. With reference to sub-paragraph (a) of paragraph No. 3 above set forth and in order that there may be no confusion or misunderstanding as to the meaning of said sub-paragraph, you are specifically informed that the Court does not look with favor upon the proposition urged under point "V" of Petitioner's memorandum brief filed with the Court, being the contention that the ultimate fact was a jurisdictional one which could be heard de novo, and that the Court will not permit the introduction of evidence based upon the proposition that the action of the Commission with reference to the application under consideration by it was one of jurisdiction or power but that it was an action involving the exercise of discretion and judgment only.

4. Petitioner Amerada Petroleum Corporation excepted to all of the aforesaid order and Respondent Texas Pacific Coal & Oil Company excepted to that portion of the order which provided that the evidence taken in a hearing before the commission was subject to legal objections before the Court and that additional

evidence might be heard upon such matter as to which legal objections are made. Petitioner Amerada Petroleum Corporation then by written motion moved the Court to dismiss its appeal without prejudice. The Texas Pacific Coal & Oil Company resisted the motion on the ground that any dismissal of the appeal should be with prejudice. The Commission offered no objection to the motion. The Court having heard argument of counsel and having fully considered the matter announced that it would dismiss the case with prejudice but deny the motion to dismiss without prejudice, whereupon counsel for Petitioner stated that it would proceed with the trial of the matter unless a dismissal without prejudice were granted. The Court announced it would enter its order denying the motion to dismiss without prejudice.

5. It was agreed by all parties that subject to the exceptions hereinafter noted the transcript of testimony and the exhibits attached thereto at the hearing before the Oil Conservation Commission would be received in evidence without objection. The following exceptions were agreed upon.

(a) It was agreed and stipulated between the parties that Respondent Texas Pacific Coal & Oil Company's Exhibit "E" and all testimony relating thereto would not be considered by the Court.

(b) It was further agreed and stipulated between the parties that Respondent Texas Pacific Coal & Oil Company's Exhibit "F" and testimony relating thereto would be considered by the Court only to the extent that such exhibit and testimony might tend to prove the impracticability and lack of feasibility of such pooling as might be required under the order sought by Petitioner.

(c) It was further agreed and stipulated between the parties that a schedule of mineral, leasehold and royalty ownership under leases of Petitioner Amerada Petroleum Corporation could be included and made a part of the transcript of record to

be considered by the Court as showing such mineral, leasehold and royalty ownership as reflected by the files of Amerada Petroleum Corporation on the dates shown in the schedules.

6. It was further agreed and stipulated between the parties that Petitioner Amerada Petroleum Corporation could prepare a written motion by which it might tender proof setting out such matters as authorized under the Rules of Civil Procedure if the matter were tried in open Court, specifically identifying witnesses and the matters concerning which they would testify, the motion to be submitted to counsel for Respondents Texas Pacific Coal & Oil Company and Oil Conservation Commission of New Mexico before filing for approval with the Court.

7. Respondent Oil Conservation Commission of New Mexico with approval of the Court and without objection filed a copy of the transcript of testimony before the Oil Conservation Commission, including all exhibits, as a part of its answer to the petition. It was stipulated and agreed between the parties that copies of the records before the Commission might be used and considered by the Court in lieu of original records.

8. Respondent Texas Pacific Coal & Oil Company objected to paragraph 6 (d) of the petition on the ground that the assignment of error was too general in its nature to be considered by the Court. Petitioner agreed to delete this paragraph with the understanding that it would not prejudice petitioner's right to raise jurisdictional questions and the Court so ordered.

9. It was stipulated and agreed that the following typographical errors in the transcript would be corrected and considered by the court as corrected:

(1) At page 29 of the transcript on the thirteenth line from the top of said page commencing with the semicolon

the clause should read "the royalty owner wants" etc.

(2) At page 41 of the transcript in the fifteenth line from the top of said page the word "prove" should be changed to the word "pool".

(3) At page 53 of the transcript in the first line thereof the word "flat" should be changed to the word "flank".

This order is entered pursuant to and in compliance with Rule 16 of pretrial procedure of the rules of civil procedure of the District Courts of the State of New Mexico and will control the subsequent course of this action.

s/Gco. T. Harris
District Judge

Done this 2ST day of December, 1950.