

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. 404
ORDER NO. R-231

THE APPLICATION OF JOHN P. CUSACK
FOR AN ORDER GRANTING PERMISSION
TO RECOVER BACK ALLOWABLE FROM
THE BYERS LEASE IN NE/4 SECTION 3,
TOWNSHIP 19 SOUTH, RANGE 38 EAST;
THE MOON ('A' AND 'B') LEASE, NE/4
SECTION 28, TOWNSHIP 18 SOUTH, RANGE
38 EAST; AND THE TURNER 'B' LEASE,
E/2 SE/4, SECTION 34, TOWNSHIP 18
SOUTH, RANGE 38 EAST, SAID LEASES
BEING IN THE HOBBS POOL, LEA COUNTY,
NEW MEXICO, AND PRESENTLY BEING OPER-
ATED BY SAMEKAN OIL CORPORATION.

MOTION FOR A RE-HEARING

COMES NOW, John P. Cusack, an individual operating in
the State of New Mexico, and in particular, Hobbs, New Mexico, and
respectfully shows to the Oil Conservation Commission of the State
of New Mexico, the following:

1. That paragraph six (6) of the findings of the
Commission is not based upon substantial evidence presented to the
Commission at the time of the original hearing.
2. There is no finding of the Commission, nor is there
any evidence upon which to base a finding, that to allow your
Petitioner his back allowable would constitute waste as that term
is defined by the laws of the State of New Mexico.
3. That to refuse to allow your Petitioner to make up
the back allowables lost through no fault of his own, would be to
directly violate the laws of the State of New Mexico, as set out
in the 1949 Statutes, Chapter 168, Section 13 (a), in that the
Commission would deprive the Petitioner of his just and equitable
share of the oil in the Hobbs Pool; that in refusing to allow your

Petitioner to make up his back allowables lost through no fault of his own, the Commission would violate the doctrine of correlative rights, as they are defined in the 1949 Session Laws, Chapter 168 Section 26, Sub-section (h).

4. That at the time of the oil refinery strike in May of 1952, during which time your Petitioner under-produced a total of 8,414 barrels, your Petitioner was operating under and complying with the rules of the Commission to-wit: Rule 503; that your Petitioner complied with Section (f), of Rule 503, and requested this Commission to allow him to make up the back allowables under 503 (f), Sub-section 1, "failure of producer or transporter to run assigned oil allowable," and that said application was filed within 90 days from the occurrence of the shortage; that for this Commission to attempt to apply Order No. R-98A, which was to take effect the first day of July, 1952, and by Order No. R-98A, deprive your applicant of his right to make up legal back allowable oil would be to deprive him of property without due process of law, which would be contrary to the Constitution of the State of New Mexico, and the Constitution of the United States of America.

5. That in refusing to allow your Petitioner to make up his back allowable of legal oil by means of administrative order, No. R-98A, would be an invalid act on the part of this Commission because it would not be in conformity with the Session Laws of 1949, Chapter 168, Section 13, Sub-section (a).

6. To refuse your Petitioner the right to make up the back allowable of legal oil, would be to violate the Session Laws of 1949, Chapter 168, Section 13 (a) and the Session Laws of 1949, Chapter 168, Section 12, Sections (b), for in refusing to allow him to make up his back allowable, the Commission would condone by an order of this Commission, an act of waste, as set out in the Session Laws, of 1949, Chapter 168, Section 2, Sub-Section (d), in that the Commission would permit the non-ratable purchase or taking of crude petroleum oil from the Hobbs Pool, by the pipe lines.

7. Your Petitioner points out that finding No. 7 of the Commission's order in regard to the alternate proposal, in regard to cut back of allowables, was within the application filed herein and if the Oil Conservation Commission failed, in its advertisement, to bring said proposal within the call of a hearing, your Petitioner should not be penalized for the failure of the Oil Conservation Commission to properly advertise the hearing.

WHEREFORE, Your Petitioner prays:

1. That a re-hearing be granted
2. That upon said re-hearing, the Commission consider the question of granting the back allowable to your Petitioner, and consider the alternate proposal to cut back allowables for wells in the Hobbs Pool, which, during the May 1952 refinery strike, produced 100% of allowables assigned for that month
3. That said re-hearing be properly advertised
4. That your Petitioner be allowed to make up his back allowable, so that he may have the opportunity to make up the legal oil allocated to him, and so that he may have his just and equitable share of the oil in the Hobbs Pool, and his just and equitable share of the reservoir energy in said Hobbs Pool.

Respectfully submitted,

FRAZIER, QUANTIUS & CUSACK

By John P. Cusack
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