BEFORE THE
OIL CONSERVATION COMMISSION
SANTA FE, NEW MEXICO

IN THE MATTER OF:

CASE NO. 1668 (REHEARING)

TRANSCRIPT OF HEARING

AUGUST 13, 1959

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In the matter of the rehearing requested by Phillips Petroleum Company for reconsideration by the Commission of Case No. 1668 which was an application for an order promulgating temporary special rules and regulations for the Ranger Lake-Pennsylvanian Pool and certain adjacent acreage in Lea County, New Mexico, to provide for 80-acre proration units. The rehearing will be limited to a brief and argument on the legal propositions raised in the petition for rehearing and their application to the facts heretofore presented in said case.

BEFORE:

A. L. Porter
Murray Morgan

T R A N S C R I P T O F P R O C E E D I N G S

MR. PORTER: The meeting will come to order, please. We are going to take up next the rehearing in Case 1668.

I might announce at this time that the Commission will probably run the hearing right on through until maybe one o'clock before recessing for lunch. The members of the staff and possibly some other members would like to attend the funeral this afternoon. We'll probably just go ahead, at least until one o'clock and see how things come out.

Take up at this time Case 1668.

MR. PAYNE: Case 1668. (Rehearing) In the matter of the rehearing requested by Phillips Petroleum Company for recon-

sideration by the Commission of Case No. 1668 which was an application for an order promulgating temporary special rules and regulations for the Ranger Lake-Pennsylvanian Pool and certain adjacent acreage in Lea County, New Mexico, to provide for 80-acre proration units.

MR. SPANN: Charles C. Spann of Grantham, Spann & Sanchez, Albuquerque, appearing for the applicant, Phillips Petroleum Company, and I have Mr. Joe Meroney of Midland, Texas associated in the case. I would like to file five copies of a brief with the Commission. Our position is, of course, stated in detail in the brief, and I'll try to merely summarize at this time our position and not take up the Commission's time with a lot of unnecessary rehashing of something that is already set forth in the brief.

Our position, briefly, is that under the evidence that has been introduced in support of this application, the Commission should have granted it, and under the rules of procedure and rules of evidence that govern this Commission in its determination that it follows the application had to be granted. Of course, after going into this, I concluded you couldn't do this to me, but you went ahead and did it, so obviously I'm not entirely correct in that position. I do feel sincerely, however, that when an applicant presents undisputed evidence establishing certain facts as they did in this case, that under the laws of New Mexico, this Commission cannot arbitrarily disregard those facts and that evidence and make findings contrary to them as you did in this case. Your findings which you made in support of the order was to the effect that we had failed to prove that the Ranger Lake-Pennsyl-

vanian Pool can be efficiently drained and developed in an 80-acre spacing pattern. You also found that the development of the Ranger Lake-Pennsylvanian Pool on 40-acre proration units would not cause the drilling of unnecessary wells. Well, now, we presented, as you will recall, a geologist and petroleum engineer, both of whom gave it as their opinion, based on the tests that were made and the evidence they had gathered and the study of the field that they had made, both of them gave it as their opinion that in the Ranger Lake Pool one well would drain greatly in excess of 80 acres. Now, there was no evidence to the contrary. The Commission introduced none, there was no protestants involved or royalty interest owners or other operators who objected. As a matter of fact, they all supported it. All the evidence was to the effect that one well will drain far in excess of 80 acres. Notwithstanding, you say that one well, we failed to prove that one well will drain 80 acres which, of course, brings up the question of what is our obligation in establishing that fact before this Commission. And I contend, as I point out in the brief, that you are bound in that sort of a determination by the ordinary rules of evidence that bind any Court in New Mexico. Our Supreme Court has so held in cases that have involved other administrative tribunals such as Corporation Commissions. So what was our obligation? Our obligation under the law of New Mexico was to establish by substantial evidence that one well would drain in excess of 80 acres. Now, what is substantial evidence? We have a clear definition in a case of Lumpkins vs McPhee, 59 N. M. 442, saying this:

> "Ordinarily, the evidence is deemed substantial if it tips the scales in favor of the party on

> whom rests the burden of proof, even though it barely tips them. He is then said to have established his case by a preponderance of the evidence. A finding in his favor on the decisive issue is thus said to be supported by substantial evidence."

Now, it is almost impossible, I submit, and the Lumpkins case bears me out, to find contrary to undisputed issues under New Mexico law. When anyone gives as their opinion, assuming they are qualified, that a certain thing is a fact and nothing is presented to the contrary, you are bound by it, the Court is bound by it, and that was done in this case. As a matter of fact, I just heard Mr. Utz testifying here a few minutes ago, and Mr. Payne asked him if it is his opinion that prorating these pools will prevent waste. Mr. Utz said, "Yes", so you use that as a basis for entering an order, that's all. You do that all the time, and, of course, that's what you should do and, of course, that is what you should have done in this case.

Now, there is one case in New Mexico that I think perhaps should be discussed briefly. I happened to have been in it on appeal, and it is pointed out in the brief. It involved a damage accident against Cartwright Hardware Company and some other people, and the Plaintiff had been injured in an automobile accident involving a taxi cab and a Cartwright Hardware Company truck. Now, the driver of the truck of Cartwright Hardware Company said at the time of the accident he was not carrying out the business of the company for whom he was employed. He said he was going to his mother-in-law's on personal business. We didn't know why he was going there and had no evidence to contradict it. The Court found, as a matter of fact, that at the time of the accident this man was not driving the truck in his master's business, and put Cartwright

Hardware Company out of the case. The Supreme Court upheld it, saying the trial court was exactly right in that. They said this:

> "This Court states the evidence on the point is undisputed and must, therefore, be accepted as true."

It was argued by the appellant that certain inferences and deductions should be indulged in because of the fact that tools and pipes were found in the car and the driver was in working clothes at the time of the collission.

The Court said this:

> "This claim leads into the field of speculation. The courts generally hold that such doubtful inferences are not sufficient to contradict positive testimony."

So we are just out. Now, it may be contended that our witnesses, for example, being employed by Phillips, might have been prejudiced. That makes no difference under the rule. Under the general law in this subject, when you have expert testimony which is undisputed, these Commissions are just bound by it, and that is what we had in this case. Now, I submit that you cannot make a finding contrary to undisputed evidence where one well will drain 80 acres. In addition, we introduced evidence that it would be uneconomic to drill on 40's. Calculations were made as to reserve, the value, and what it would cost to drill these wells, and both witnesses testified and introduced Exhibits to the effect that it would be uneconomic to drill on 40's. So, by your finding that the drilling on 40's would not result in unnecessary wells being drilled, it is just contrary to undisputed evidence. And again I say you cannot, as an administrative tribunal, and you are bound by rules of evidence that bind our court, you cannot reject undisputed evidence and make findings contrary to it. I say you can't. You

did it, but I mean, you shouldn't do it under the law.

Now, there is one other thing that I think should be pointed out here that is important. You, as an administrative tribunal under the law, should decide this case on the record that was made before you. You should not indulge in speculation about what you have heard in other cases that you may have heard, and I'm sure there have been other applications for 80-acres in the Pennsylvanian pools in New Mexico. As a matter of record also, and evidence was presented and all that sort of thing. Unless the evidence appeared in the record in this case, you are not entitled to consider it in making your determination.

Now, there is a reason for that, and that was pointed out clearly in Transcontinental Bus Company vs State Corporation Commission. The Supreme Court said:

> "The Commission is authorized only to make its decision upon the evidence adduced at the hearing and made a part of the record. In either instance the Commission violated the statute and failed to give the appellant a fair and full hearing. The appellant was entitled to such a hearing as the statute provides. It was entitled to a hearing as provided by law, conducted fairly and impartially, with an opportunity to introduce evidence to refute or modify any matters or facts which the Commission might take into consideration in reaching its decision."

Now, if it is the opinion of this Commission and the staff that -- resulting, of course, from evidence you might have gathered in other cases -- if it is your opinion that one well will not efficiently drain 80 acres in this pool then the staff ought to come forward with that evidence and permit us to cross refute it if we could and explain it if we could, and that is just something that is required under, again, the laws of procedure that govern these

administrative hearings. And, of course, there is no such evidence in this record in this case.

Now, in two cases I mentioned, Transcontinental Bus Company and in another case, State versus Mountain State Telephone and Telegraph Company, the Corporation Commission was required, in the Continental case, by statute to "consider existing facilities in the field", before a new authority was granted -- operating authority. This was an application for a common carrier certificate, and they were to consider existing facilities in the field. Now, in that case they failed to do that. And the Court reversed it. In the Mountain States Telephone & Telegraph Company, under the Constitution, the Commission was required, in fixing rates, to:

> "Give due consideration to the earnings, investments and expenditures as a whole within the State in fixing values of public utility corporations' property as a basis for rate making, an order fixing or approving such rates is void."

They failed to consider the Telephone Company's earning and so forth as the Constitution required, and the Court reversed it and said the order was void because in this case there was a Constitutional mandate and in the other case, a mandatory mandate requiring them to do a certain thing, and they failed to do it in making that determination.

You have a statute which requires you to take into consideration certain things in making your determination. The statute says:

> "The Commission may establish a proration unit for each pool, such being the area that can be efficiently and economically drained and developed by one well, and in so doing the Commission shall consider the economic loss caused by the drilling of unnecessary wells, the protection of correlative rights, including those of royalty owners, the prevention of waste, the avoidance of the augmentation of risks arising

from the drilling of an excessive number of wells ....."

Now, there is no question of correlative rights here. We contend that you failed to observe that statutory mandate when you ignored the fact that the undisputed evicence shows that this was caused by the drilling of unnecessary wells, when it is established and undisputed that one well will drain 80 acres and you require us to drill on 40, you are causing us to drill unnecessary wells. And you have failed to consider that fact in arriving at your determination which the statute says you must. Furthermore, the augmentation of risk arising from the drilling of excessive number of wells, you have violated that, in my opinion, based on the evidence in this case.

Now, under those two cases the Supreme Court says that you cannot do that. Now, also you are to consider prevention of waste. Now, I think it is waste to require us to drill additional wells under the circumstances. I think that in a situation as we had here, where the undisputed testimony is that if you develop on 80's, the exploration and development of the field will be encouraged and enhanced, but when that evidence is in the record and you hold contrary to it, it results in waste because the development and exploration that would otherwise occur would not occur under their testimony, so that results in waste, in my opinion, but that generally, may it please the Commission, is our position. It is a question here of looking at the record, and based on the undisputed evidence in that record, is your order a proper one, and is there evidence to support it? And I submit there is not, and that under the Supreme Court decisions that have come up in cases not involving this Commission, but other administrative tribunals of

this state, under those decisions, you are simply bound to recognize substantially all evidence, and rules, which you did not do in that case. That is generally.

MR. PAYNE: Mr. Spann, would you mind answering a question?

MR. SPANN: Be happy to.

MR. PAYNE: Where you said there is no question here of correlative rights --

MR. SPANN: On the record, based on the record.

MR. PAYNE: Now, as I recall, Mr. Cone had a 40-acre well in this pool and Phillips waived objection to him getting the same allowable that he is now getting.

MR. SPANN: That is true.

MR. PAYNE: Do you feel it would be legal for the Commission to do that, assuming that they went to 80-acre spacing, gave Mr. Cone the same allowable that he is getting now, which would be more than half of an 80-acre allowable?

MR. SPANN: Do I feel it would be legal?

MR. PAYNE: Yes.

MR. SPANN: On a proper application and so forth, I assume you could.

MR. PAYNE: Well, now, his allowable is not going to be based -- or his total recovery is not going to be based on the recoverable oil in place under his 40-acre tract, is it?

MR. SPANN: Well, perhaps not. However, that's a question, it seems to me, that will have to be resolved by the Commission down the line. It is not an issue in our case at this point. As I understand, as a result of the statement we made, he withdrew

any protest, at least to the application we filed, and introduced no evidence in the case.

MR. PAYNE: Do you feel this way, that if nobody comes in and opposes the Commission doing something of this nature, that they have therby waived their right to protection of correlative rights? Is silence a waiver?

MR. SPANN: No, but I think there should be some evidence in the record as to the problem and how it might be affected by this decision. There isn't any in this case.

MR. PAYNE: Thank you. That's all.

MR. MORGAN: Mr. Spann, are you proposing that we issue a writ of mandamus in effect against ourselves?

MR. SPANN: Do I propose you issue a writ of mandamus?

MR. MORGAN: Against ourselves, yes.

MR. SPANN: I am proposing that you vacate the order that you entered and enter a new one granting our application.

MR. MORGAN: Isn't it the same thing?

MR. SPANN: No, sir.

MR. PORTER: Anyone else have any statements to make in this case, Case 1668?

MR. KELLAHIN: If the Commission please, Jason Kellahin, Kellahin & Fox, representing Amerada Petroleum Corpration. We would like to make a brief statement in support of the position taken by Phillips Petroleum Company in this case on the ground that on the present state of the record, it is clearly indicated that the order entered by the Commission should be vacated and a new order entered, and we do urge upon the Commission that they reconsider their decision in this case. I will not present legal argument.