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Oil and Gas - Proration - The Railroad Commission's Authority to Protect Correlative Rights

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the actions of its members it will lose all semblance of solidarity and thus reduce its effectiveness in representing its members. Whether practically the requisite union discipline can be maintained without resorting to judicially enforced fines is difficult to determine. Opponents argue that the national labor policy is based on the theory that the primary means through which a union maintains solidarity and control should be through persuasion and common purpose, not through measures which amount to coercion. As the Seventh Circuit majority stated: "All the protections which Congress has seen fit to throw about the union member operate to diminish the authority and power of the union to police its members by coercion and to that degree impose on the union the burden of achieving its ends by persuasion rather than by penal exaction."⁴³

John Esch

Oil and Gas — Proration — The Railroad Commission's Authority To Protect Correlative Rights

Under exceptions to the spacing rule the Railroad Commission permitted the small tract operators in the Appling Gas Field to make multiple completions from a single well bore in each of the several reservoirs underlying the field.¹ Drainage took place in the wells with multiple completions and distorted the producing capacity of the small tract wells. This enabled the small tract operators to file producers' forecasts far in excess of what the true delivery capacity of the wells would have been in the absence of such communication. As a result, the reservoir allowables assigned were so great that the large tract wells were incapable of producing the allowable representing their fair share of the gas as determined by the allocation formula in effect.² Accordingly, the large tract wells were classified as limited capacity wells and assigned allowables according to the maximum amount they were capable of producing. The remainder of the allowables to which they were entitled under the allocation formula was reallocated among the small tract wells, enabling them to produce far more of the

⁴³ 358 F.2d 656, 660 (7th Cir. 1966).

¹ *Benz-Stoddard v. Aluminum Co. of America*, 368 S.W.2d 94 (Tex. 1963) held that each of the vertically separated reservoirs underlying the Appling Gas Field was to be considered as a separate reservoir in determining the right to a rule 37 exception and upheld the action of the Railroad Commission in allowing the small tract operators to make multiple completions from a single well bore, even though production from a single completion would have enabled them to recover more than the quantity of gas underlying their lands.

² The allocation formula provided for one-third of the pool allowable divided equally among the wells and two-thirds in the proportion that the individual well bore bore to the total field acreage.

reservoir allowable than their share as determined by the allocation formula. The drainage advantage already enjoyed by virtue of the formula³ was thereby enhanced. The large tract owners asked the Railroad Commission to remedy the situation by promulgating a formula restricting the weight to be given to producers' forecasts in determining market demand, and thereby ending the classification of the large tract owners' wells as limited capacity wells.⁴ The effect of the formula adopted by the Commission was to permit the large tract wells to receive only the allowable they would be capable of producing. The small tract owners brought suit in the District Court of Travis County, where the special order of the Commission was declared invalid, and a direct appeal was taken to the Supreme Court of Texas.⁵ *Held, affirmed*: The Railroad Commission cannot establish by a special order a ceiling on monthly allowable of gas to be produced from a reservoir for the purpose of protecting correlative rights. *Railroad Comm'n v. Woods Exploration & Producing Co.*, 405 S.W.2d 313 (Tex. 1966).⁶

I. GENERAL BACKGROUND

Texas adheres to the doctrine of ownership in place of oil and gas. The landowner is regarded as having absolute title in severalty to the oil and gas in place beneath his land.⁷ Because of the migratory character of oil and gas, the rule of absolute ownership in place, of necessity, is tempered by the rule of capture. The rule is that the owner of a tract of land acquires title to the oil or gas which he produces from the wells bottomed on his

³ *Railroad Comm'n v. Aluminum Co. of America*, 380 S.W.2d 599 (Tex. 1964) held that the large tract owners in the Appling Gas Field were precluded by a lapse of time from attacking the allocation formula, even though use of the formula allowed the wells on the small tracts to drain substantial quantities of gas from the larger units. See *Halbouty v. Railroad Comm'n*, 163 Tex. 417, 357 S.W.2d 364 (1962) and *Atlantic Ref. Co. v. Railroad Comm'n*, 162 Tex. 274, 346 S.W.2d 801 (1961) which held that a one-third-two-third allocation formula resulting in the drainage of a large tract owner's gas by a small tract owner was unconstitutional and void as constituting the confiscation of property without due process of law and denial of equal protection of the law. *Accord*, *Railroad Comm'n v. Shell Oil Co.*, 380 S.W.2d 556 (Tex. 1964) (50-50 formula).

⁴ *Railroad Comm'n v. Woods Exploration & Producing Co.*, 405 S.W.2d 313, 316 (Tex. 1966).

The daily reasonable market demand for gas for each of the mentioned fields shall be the lesser gas volume figure as determined either by summation of nominated volumes taken from producers' forecast, or by dividing the reported productive capability as shown on the GWT-2 test of the well exhibiting the greatest ability to deliver gas to normal gathering facilities by the participation factor of the largest proration unit.

⁵ TEX. REV. CIV. STAT. ANN. art. 6049c, § 8 (1962) (suits authorized in a court of competent jurisdiction in Travis County by persons aggrieved by Commission's regulations or orders); TEX. REV. CIV. STAT. ANN. art. 1738a (1962) (direct appeals to Texas Supreme Court in injunction cases involving validity of administrative order).

⁶ The Supreme Court of Texas has entered an order staying its mandate in order to permit the Railroad Commission and the large tract owners to submit a petition for writ of certiorari to the United States Supreme Court.

⁷ *Lemar v. Garner*, 121 Tex. 502, 50 S.W.2d 769 (1932); *Waggoner Estate v. Sigler Oil Co.*, 118 Tex. 509, 19 S.W.2d 27 (1929); *Humphreys-Mexia Co. v. Gammon*, 113 Tex. 247, 254 S.W. 296 (1923); *Texas Co. v. Daugherty*, 107 Tex. 226, 176 S.W. 717 (1915).

land, though part of the oil or gas might have migrated from adjoining lands.⁸ Since both the ownership in place doctrine and the rule of capture involve property rights,⁹ neither can be infringed upon except in a proper administration of state conservation laws under the police power.¹⁰ Prior to governmental regulation, the landowner was privileged to drill as many wells as he pleased and he could drill as close to his property line as he pleased without liability to his neighbor.¹¹ Further, each owner could use artificial means to stimulate production if noninjurious to neighboring reservoirs.¹² The landowner was allowed to do this because his neighbor was privileged to do likewise under the rule of capture.

II. REGULATION

In order to conserve the oil and gas resources of the state, the Railroad Commission promulgated statewide rule 37, the spacing regulation.¹³ Rule 37 provides for one well per forty-acre tract,¹⁴ but it authorizes the Commission to grant exceptions to permit drilling on smaller tracts in order to prevent waste or the confiscation of property.¹⁵ Through the exceptions each landowner is allowed a fair chance to exercise his common law right, under the Texas theory of absolute ownership of minerals in place, to recover the oil and gas in and under his land.¹⁶

⁸ *Elliff v. Texon Drilling Co.*, 146 Tex. 575, 210 S.W.2d 558 (1948); see also *Ryan Consol. Petroleum Corp. v. Pickens*, 155 Tex. 221, 285 S.W.2d 201 (1956); *Brown v. Humble Oil & Ref. Co.*, 126 Tex. 296, 83 S.W.2d 935, *rehearing overruled*, 126 Tex. 296, 87 S.W.2d 1069 (1935); *Stephens Co. v. Mid-Kansas Oil & Gas Co.*, 113 Tex. 160, 254 S.W. 290 (1923) (rule of capture in conjunction with ownership in place); *General Crude Oil Co. v. Harris*, 101 S.W.2d 1098 (Tex. Civ. App. 1937), *error dismissed*.

⁹ *Brown v. Humble Oil & Ref. Co.*, 126 Tex. 296, 83 S.W.2d 935, *rehearing overruled*, 126 Tex. 296, 87 S.W.2d 1069 (1935); *Halbourn v. Dorsey*, 326 S.W.2d 528 (Tex. Civ. App. 1959) *error ref. n.r.e.*

¹⁰ *Corzelius v. Harrell*, 143 Tex. 509, 186 S.W.2d 961 (1945); *Brown v. Humble Oil & Ref. Co.*, 126 Tex. 296, 83 S.W.2d 935, *rehearing overruled*, 126 Tex. 296, 87 S.W.2d 1069 (1935).

¹¹ *Brown v. Humble Oil & Ref. Co.*, 126 Tex. 296, 83 S.W.2d 935, *rehearing overruled*, 126 Tex. 296, 87 S.W.2d 1069 (1935).

¹² *Comanche Duke Oil Co. v. Texas Pac. Coal & Oil Co.*, 298 S.W. 554 (Tex. Comm'n App. 1927) (shooting the well); *United Carbon Co. v. Campbellsville Gas Co.*, 230 Ky. 275, 18 S.W.2d 1110 (1929) (using a compressor for gas). *But see Grayce Oil Co. v. Peterson*, 128 Tex. 550, 98 S.W.2d 781 (1936), *affirming* 37 S.W.2d 367 (Tex. Civ. App. 1931) (Railroad Commission's rule (now statewide rule 23) prohibiting use of vacuum pumps for the purpose of putting vacuum on any gas or oil bearing stratum with certain exceptions was not in violation of the Texas Constitution).

¹³ Statewide Rule 37, Tex. R.R. Comm'n Rules & Regs. (as amended 1965).

¹⁴ Rule 37 governs spacing until special rules, called "field rules," are made for an area after a hearing. The spacing provisions of the field rules may or may not differ from the statewide rule.

¹⁵ See Comment, *Appeals From Proration Orders for Small Tract Wells*, 19 Sw. L.J. 304 (1965); note that the tract must have a separate existence prior to the application of the spacing rule to the area to be entitled to an exception well to prevent confiscation. See *Dailey v. Railroad Comm'n*, 133 S.W.2d 219 (Tex. Civ. App. 1939) *error ref.* In other words a small tract created after rule 37 becomes applicable to the territory or with an intent to evade the rule is not entitled to an exception. See *Gulf Land Co. v. Atlantic Ref. Co.*, 134 Tex. 59, 131 S.W.2d 73 (1939).

¹⁶ *Elliff v. Texon Drilling Co.*, 146 Tex. 575, 210 S.W.2d 558 (1948); *Corzelius v. Harrell*, 143 Tex. 509, 186 S.W.2d 961 (1945); *Gulf Land Co. v. Atlantic Ref. Co.*, 134 Tex. 59, 131

Since rule 37 prevents a landowner from protecting himself against drainage by drilling additional wells and employing the rule of capture, it became necessary for the state to protect correlative rights through regulation.¹⁷ To this end, section 10 of article 6008 provides that the Commission shall prorate and regulate the daily gas well production from each common reservoir for the protection of public and private interest in the prevention of waste and in the adjustment of correlative rights.¹⁸ The Supreme Court of Texas has held that section 10's authorization to protect correlative rights is constitutional and is not dependent upon the existence of waste.¹⁹ Thus, the Commission is able to offset the initial advantage obtained by one who is given an exception to the well-spacing rule by limiting his production, and as a result, to afford each owner the opportunity of recovering his just proportion of oil and gas underlying his land.²⁰

Section 11 of article 6008 provides that the Commission shall exercise the authority given in section 10 to prorate and regulate so as to adjust correlative rights when the potential capacity of the wells to produce gas from a common reservoir exceeds the market demand for gas from such reservoir.²¹ Section 12 of article 6008 then provides for a hearing each month to determine (1) the lawful market demand for gas to be produced from such reservoir during the following month and (2) the volume of gas that can be produced without waste. The Commission is then ordered to fix the monthly reservoir allowable for gas at the lawful market demand or at the volume that can be produced without waste, whichever is the

S.W.2d 73 (1939); *Railroad Comm'n v. Gulf Prod. Co.*, 134 Tex. 122, 132 S.W.2d 254 (1939); *Brown v. Humble Oil & Ref. Co.*, 126 Tex. 296, 83 S.W.2d 935, *rehearing overruled*, 126 Tex. 296, 87 S.W.2d 1069 (1935) (exceptions to rule 37 may be granted to protect any property against undue drainage by reason of the operation of wells of any other operator); *Colorado Interstate Gas Co. v. Sears*, 362 S.W.2d 396 (Tex. Civ. App. 1963) *error ref. n.r.e.*; *Halbouty v. Dorsey*, 326 S.W.2d 528 (Tex. Civ. App. 1959) *error ref. n.r.e.*; *Gulf Oil Corp. v. Smith*, 145 S.W.2d 280 (Tex. Civ. App. 1940) *error ref.*; *Atlantic Oil Prod. Co. v. Railroad Comm'n*, 85 S.W.2d 655 (Tex. Civ. App. 1935) *error dismissed*.

¹⁷ *Benz-Stoddard v. Aluminum Co. of America*, 368 S.W.2d 94 (Tex. 1963). The very validity of rule 37 and the exceptions thereto is based upon the principle that the Railroad Commission can so regulate the flow of the gas that no unreasonable hardship need result from its application. *Stanolind Oil & Gas Co. v. Railroad Comm'n*, 96 S.W.2d 664 (Tex. Civ. App. 1936) *error dismissed*. The Railroad Commission has power to regulate flow of oil wells to correct inequality existing between neighboring leases, and it is a more practical method than that of allowing additional wells as exceptions to the spacing rule. *Sun Oil Co. v. Gillespie*, 85 S.W.2d 652 (Tex. Civ. App. 1935) *error dismissed*. See Comment, *Proration in Texas: Conservation or Confiscation?*, 11 Sw. L.J. 186 (1957).

¹⁸ TEX. REV. CIV. STAT. ANN. art. 6008, § 10 (1962).

¹⁹ *Corzelius v. Harrell*, 179 S.W.2d 419 (Tex. Civ. App. 1944), *reversed on other grounds*, 143 Tex. 509, 186 S.W.2d 961 (1945); See also *Henderson v. Terrell*, 24 F. Supp. 147 (W.D. Tex. 1938).

²⁰ *Gregg v. Delhi-Taylor Oil Corp.*, 162 Tex. 26, 344 S.W.2d 411 (1961), *affirming* 337 S.W.2d 216 (Tex. Civ. App. 1960); *Brown v. Humble Oil & Ref. Co.*, 126 Tex. 296, 83 S.W.2d 935, *rehearing overruled*, 126 Tex. 296, 87 S.W.2d 1069 (1935); *Colorado Interstate Gas Co. v. Sears*, 362 S.W.2d 396 (Tex. Civ. App. 1962) *error ref. n.r.e.*; *Stanolind Oil & Gas Co. v. Railroad Comm'n*, 96 S.W.2d 664 (Tex. Civ. App. 1936).

²¹ TEX. REV. CIV. STAT. ANN. art. 6008, § 11 (1962).

smaller quantity. The monthly reservoir allowable is to be allocated so as to give each well its fair share of the gas to be produced from the reservoir.²²

The Commission promulgated statewide rule 31 for fixing the monthly gas allowable for a reservoir. Under this rule, market demand is primarily determined on the basis of producers' forecasts of operators having wells in the reservoir. These forecasts state the volume of gas each operator expects to be able to market the following month and are limited only by the delivery capacity of his wells. If the Commission concludes that use of the forecasts does not result in a correct determination of reasonable market demand for the reservoir, it may take into account other pertinent facts.²³ Section 13 of article 6008 sets out the factors to be used by the Commission in determining daily allowable for each gas well.²⁴ It also provides that all other factors which are pertinent may be considered in determining the daily allowable production for each gas well.²⁵

The Supreme Court of Texas has recognized that the legislature gave the Commission broad discretion in the exercise of its power of prorating and regulating the production of gas from a common reservoir, so that it would not be bound by any narrow and technical rules in carrying out the objects of article 6008.²⁶ On the other hand, an order of the Railroad Commission must be bottomed on a specific grant of power either contained in the constitution or delegated to it by the legislature.²⁷ In particular, the Commission has the power to allocate production of gas among

²² TEX. REV. CIV. STAT. ANN. art. 6008, § 12 (1962).

²³ Statewide Rule 31, Tex. R.R. Comm'n Rules & Regs. itself states: "Nothing herein shall be interpreted, however, as binding on the Commission to the extent that any adjustment of nominations cannot be made which is deemed necessary to adjust the production of gas to an amount equal to market demand as is required of the Commission by the Statutes."

²⁴ TEX. REV. CIV. STAT. ANN. art. 6008, § 13 (1962).

In determining the daily allowable production for each gas well, the Commission shall take into account the size of the tract segregated with respect to surface position and common ownership upon which such gas well or wells are located; the relation between the daily producing capacity of each gas well and the aggregate daily capacity of all gas wells producing the same kind of gas in the same common reservoir or zone; and all other factors which are pertinent; . . .

²⁵ E.g., recoverable reserves, see *Atlantic Ref. Co. v. Railroad Comm'n*, 346 S.W.2d 801 (Tex. 1961); *Railroad Comm'n v. Humble Oil & Ref. Co.*, 193 S.W.2d 824 (Tex. Civ. App. 1946) *error ref. n.r.e.*

²⁶ *Corzelius v. Harrell*, 143 Tex. 509, 186 S.W.2d 961 (1945); TEX. REV. CIV. STAT. ANN. art. 6008, § 1 (1962).

Sec. 1. In recognition of past, present, and imminent evils occurring in the production and use of natural gas, as a result of waste in the production and use thereof in the absence of correlative opportunities of owners of gas in a common reservoir to produce and use the same, this law is enacted for the protection of public and private interests against such evils by prohibiting waste and compelling ratable production.

TEX. REV. CIV. STAT. ANN. art. 6008, § 22 (1962): "Sec. 22. The Commission shall be vested with a broad discretion in administering this law, and to that end shall be authorized to adopt any and all rules, regulations or orders which it finds are necessary to effectuate the provisions and purposes of said law."

²⁷ *Railroad Comm'n v. Rowan Oil Co.*, 152 Tex. 439, 259 S.W.2d 173 (1953).

producers in a particular field but must base its proration order on the factors prescribed by the statute.²⁸

III. RAILROAD COMM'N V. WOODS EXPLORATION & PRODUCING CO.²⁹

Waste was not involved in *Woods*, and the court narrowed the issue to whether the formula³⁰ adopted for determining maximum market demand was beyond the Commission's delegated authority. The large tract owners contended that since the declared purpose of the law was the protection of public and private interests by prohibiting waste and compelling ratable production,³¹ the Commission might properly consider the protection of correlative rights as one of the relevant factors in determining reasonable market demand. The court reasoned that the legislature intended the Commission not to be concerned with correlative rights unless it first found that potential production was in excess of reasonable market demand.³² Since the monthly reservoir allowable of gas is to be fixed at the lawful market demand or at the volume that can be produced without waste, whichever is the smaller quantity,³³ the court concluded that the authority granted to the Commission in determining monthly reservoir allowable was not enlarged by the broad authority and discretion suggested by the more general provisions.³⁴ The court relied on *Rudman v. Railroad Comm'n*³⁵ in saying that the correction or relaxation of the requirements in determining allowables was a legislative matter if the allowables fixed thereby was seriously fallible. The court also deemed it significant that the Commission, in allocating the reservoir allowable among the wells, was authorized to consider the size of the tracts, the productive capacity of the wells, and all other pertinent factors,³⁶ but was not given similar authority in fixing the reservoir allowable. Therefore, the court concluded that the legislature did not intend to authorize production from a reservoir to be limited to less than reasonable market demand except for the prevention of waste.³⁷

²⁸ *Chenoweth v. Railroad Comm'n*, 184 S.W.2d 711 (Tex. Civ. App. 1945) *error ref.*

²⁹ *Railroad Comm'n v. Woods Exploration & Producing Co.*, 405 S.W.2d 313 (Tex. 1966).

³⁰ See note 4 *supra*.

³¹ TEX. REV. CIV. STAT. ANN. art. 6008, § 1 (1962); see note 26 *supra*.

³² TEX. REV. CIV. STAT. ANN. art. 6008, § 11 (1962); see note 21 *supra* and accompanying text.

³³ TEX. REV. CIV. STAT. ANN. art. 6008, § 12 (1962); see note 22 *supra* and accompanying text.

³⁴ TEX. REV. CIV. STAT. ANN. art. 6008, §§ 1, 22 (1962); see note 26 *supra*.

³⁵ 162 Tex. 579, 349 S.W.2d 717 (1961).

³⁶ TEX. REV. CIV. STAT. ANN. art. 6008, § 13 (1962); see note 24 *supra*.

³⁷ The court stated that this conclusion was further supported by the history of Texas oil and gas laws. The 1932 statute excluded economic waste from the term "waste" and prohibited the Commission from, directly or indirectly, limiting the production of oil to the existing market demand. The court reasoned that it was rather difficult to believe that when the legislature finally authorized the Commission to limit production to reasonable market demand, it meant that an even lower figure might be set whenever the Commission concluded that the same would constitute a reasonable reservoir allowable under all the circumstances.

One dissenting opinion contended that neither article 6008 nor any section thereof withheld from the Commission the power to adjust correlative rights, either expressly or by implication.³⁸ In fact the Commission is granted broad discretion in administering the law,³⁹ and in this situation it decided to modify statewide rule 31, as the rule authorizes,⁴⁰ to alleviate the manipulation and distortion that the use of producers' forecasts caused in determining reasonable market demand. Further support is found in article 6042, which states that "particular powers herein granted to the Commission shall not be construed to limit the general powers conferred by law, . . ."⁴¹ The first dissenter concluded that *Woods* presented a situation in which the legislature intended the Commission to act so as ultimately to give each operator, small or large, his fair share of the gas in the reservoir.⁴²

The second dissent emphasized that the Commission must have made a finding that productive capacity of the wells exceeded market demand before it promulgated a proration order for the field.⁴³ Therefore, all the broad powers and discretion conferred upon the Commission to prorate and regulate the production of gas to adjust correlative rights should have come into effect.

IV. CONCLUSION: THE MINERAL INTEREST POOLING ACT

Clearly, the result in *Woods* was dependent upon statutory construction. The Commission attempted to protect the large tract owners' equities, relying on the broad discretion purportedly granted, but the court preferred a narrow construction of the statute.

Since an oil or gas proration formula is subject to the continuous supervision of the Railroad Commission and may be changed at any time, either upon the Commission's own motion or upon application of interested parties,⁴⁴ the Commission could have avoided the problem in *Woods* by prom-

³⁸ See note 26 *supra* for an indication that article 6008 was promulgated, in part, to protect correlative rights.

³⁹ TEX. REV. CIV. STAT. ANN. art. 6008, § 22 (1962); see note 26 *supra*.

⁴⁰ See note 23 *supra* and accompanying text.

⁴¹ TEX. REV. CIV. STAT. ANN. art. 6042 (1962); in the first dissent the writer distinguished the *Rudman* case, on which the majority relied, by saying that it merely held that the field allowable must be determined in advance of the month to which it is applicable and that it cannot be determined retroactively after the month has expired.

⁴² *Railroad Comm'n v. Manziel*, 361 S.W.2d 560 (Tex. 1962); *Corzelius v. Harrell*, 143 Tex. 509, 186 S.W.2d 961 (1945); *Gulf Land Co. v. Atlantic Ref. Co.*, 134 Tex. 59, 131 S.W.2d 73 (1939); *Magnolia Petroleum Co. v. Railroad Comm'n*, 128 Tex. 189, 96 S.W.2d 273 (1936); *Brown v. Humble Oil & Ref. Co.*, 126 Tex. 296, 83 S.W.2d 935, *rehearing overruled*, 126 Tex. 296, 87 S.W.2d 1069 (1935).

⁴³ See note 3 *supra*. The second dissent reasoned that it was unlawful for the small tract owners to include in their producers' forecasts gas to be taken from under the lands of others. However, this practice is lawful due to the rule of capture. See note 8 *supra* and accompanying text.

⁴⁴ *Railroad Comm'n v. Shell Oil Co.*, 380 S.W.2d 556 (Tex. 1964); *Railroad Comm'n v. Humble Oil & Ref. Co.*, 193 S.W.2d 824 (Tex. Civ. App. 1946) *error ref. n.r.e.*

ulgating a new proration order. But courts will not compel the Commission to change its orders, and the Commission has been rather reluctant to do so in the past.

Recently the Texas Legislature passed a new statute which might serve as a solution in the future to the problem presented in *Woods*. The Mineral Interest Pooling Act⁴⁵ was passed in furtherance of the idea that each person is entitled to recover his fair share of the minerals under his land. Previously, there had been a provision for voluntary pooling, but no person could be compelled or required to enter into such an agreement.⁴⁶ The new statute authorizes the Railroad Commission to establish a unit and to pool all of the interests therein to avoid the drilling of unnecessary wells, to protect correlative rights, or to prevent waste. The statute provides that production be allocated on the basis of surface acreage unless such allocation does not allocate to each tract its fair share, in which event the Commission is authorized to so allocate the production that each tract will receive its fair share. The statute also provides for a distribution of the costs. Since the Pooling Act does not apply to any reservoir discovered and produced prior to March 8, 1961, it does not apply to the parties in the *Woods* case.

While the court said in *Woods* that it did not mean to suggest that reasonable market demand must always be fixed at the mathematical total of producers' forecasts for the month and that the Commission might consider and give appropriate weight to all factors that would be relevant to the determination of reasonable market demand, it stated that correlative rights, one of the most important factors, might not be considered as one of the factors in the determination of market demand. Since neither "reasonable market demand" nor "lawful market demand" is defined in the statute, nor are the factors to be followed in determining either of them enumerated, the Commission under its broad powers and discretion should be able to determine its own reasonable definitions and the factors to be considered in specific cases. Among these reasonable factors should be the protection of correlative rights.

Steve Alan Ungerman

⁴⁵ TEX. REV. CIV. STAT. ANN. art. 6008c (Supp. 1966); Smith, *The Texas Compulsory Pooling Act*, 43 TEXAS L. REV. 1003 (1965) (Pt. I), 44 TEXAS L. REV. 387 (1966) (Pt. II).

⁴⁶ TEX. REV. CIV. STAT. ANN. art. 6008b (1962).