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The California Oil-Gas Conservation Acts

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commission in the innumerable details involved in administering a proration plan.[29] As far as Oklahoma is concerned, however, it seems certain that present orders will remain in force at least until there is a diminution of supply or a rising summer demand. There is working at present a committee appointed by Governor Murray for the purpose of finding a substitute or effecting a compromise for those decrying the sacrifices being made by Oklahoma producers. The Governor himself recently went on record against proration and also against any immediate repeal because of the results on the market that might follow such action.[30]

The possible element of commercial pressure on state legislatures and commissions suggests the greater advisability of Federal control. One current criticism of state utility commissions is their susceptibility to the demands of the large interests they are supposed to regulate. It is quite conceivable that under pressure from petroleum producers a state legislature in an essentially oil-producing state, such as Oklahoma, might adopt or enforce radical price-fixing legislation which would be unfair to the consuming public throughout the nation. Extensive powers given the present Federal Oil Conservation Board, however, would provide national regulation with all the advantages of uniformity, equality, and impartiality as between the producers and the buyers.

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THE CALIFORNIA OIL-GAS CONSERVATION ACTS

The state of California, because of its great supply of petroleum and because of its position on the Pacific coast, far away from the other great petroleum fields, holds an important place in the petroleum industry of the United States. The legislation of California prior to 1929 was twofold in its purpose. It sought to prevent the infiltration of water into the oil-bearing strata by appropriate regulations, compliance with which was made mandatory on gas and oil-well operators. It sought also to prevent the needless direct waste of natural gas through allowing it to escape from open wells.[1]

The State Oil and Gas Supervisor was directed to make tests for the determination of the most efficient methods by which underground oil and gas deposits might be kept free from the infiltration of water and to order such measures to be taken by well operators. If a well operator refused to make the repairs

[29] *Unit Operation and Proration Differ*, OIL & GAS J., Nov. 15, 1928, p. 39.
[30] ST. LOUIS POST-DISPATCH, Feb. 12, 1931.
[1] Gen. Laws Cal. (Deering, 1923) Act 4916.

the state would undertake them and the cost would become a lien on the land of the operator.[2] The Oil and Gas Supervisor also controlled the drilling, operation, maintenance, and abandonment of oil and gas wells to guard against fires and blowouts and prevent waste of gas and oil.[3] Notice of intention to drill a well, with certain facts about the proposed location and elevation and estimates of the depth at which the water would be shut off and the depth at which oil would probably be found; notice of abandonment of a well; notice of the sale of a well; and statements of the amount of oil produced each month from each well and what disposition was made of the gas were required to be furnished by operators to the Supervisor. The violation of the act or hindering its enforcement was made a misdemeanor.[4]

The foregoing law was wholly inadequate to cope with the conservation problem that faced the petroleum industry during the latter years of its operation. The Oil and Gas Supervisor was limited in his powers to the giving of orders for the correction of technical defects in the operation of wells and for the prevention of waste. Enforcement of orders could be delayed by appeals to a Board of Commissioners. Further delay could be had by applying for writs of certiorari from the Superior Court, which, if granted, would allow that court to review certain aspects of orders made by the Board of Commissioners.[5] Meanwhile millions of cubic feet of gas might be escaping from the wells of the owners proceeded against. The law was inadequate in that it did not provide for immediate preventive action as well as remedial measures. In 1929 the Act of 1915 was amended in order to remedy the deficiences of the earlier act and to meet the great problem that the development of the petroleum industry in California had thrown upon its people.[6]

An examination of the provisions of the new law will show how it works. One section requires every owner of a well to name an agent who resides in the county in which the well is located and upon whom all orders and notices under the act may be served.[7] Thus immediate service of an order of the Supervisor is secured, so that no delay will be occasioned in the correction of a defect in a well by the absence of the owner from the county.

The Act allows a cooperative agreement on the part of the owners of oil lands in any one field, in which they may bind themselves to follow the best methods found and chosen by them for the protection of their valuable oil and gas deposits.[8] To be effective, such an agreement would necessarily have to be participated in by every owner of land in the field. But this sec-

[2] *Ibid.*, sec. 14.
[3] *Ibid.*, secs. 1, 3.
[4] *Ibid.*, sec. 21.
[5] *Ibid.*, secs. 12, 14.
[6] Cal. Stat. 1929, p. 923.
[7] Cal. Stat. 1929, c. 535, secs. 8, 8a.
[8] *Ibid.*, sec. 8c.

tion of the law is beneficial at least in that it encourages such agreements for the conservation of oil and gas and allows them to be legally made at the initiative of the owners themselves.

The new Act also provides that whenever a complaint is filed with the Director of Natural Resources, stating that a waste of gas is occurring, he shall order the State Supervisor to hold a hearing. Notice of the hearing is to be given by publication in a newspaper in the county where the alleged waste is occurring. At the hearing a complete record is to be kept of the testimony of witnesses. The decision on the question of whether or not waste of gas is occurring is made by the Supervisor. It is evident that the procedure in the determination of the matter of waste follows closely the usual procedure of state administrative tribunals. The provision for notice and hearing and the attendance of witnesses protects the oil or gas operator from arbitrary or unreasonable action by the State Supervisor. If gas is allowed to flow from wells without utilizing its full lifting power for bringing the maximum amount of oil to the surface with it, the flow of such gas is deemed waste and is ordered discontinued.[9]

Appeal from an order of the State Supervisor is provided for. The appeal must be taken within five days of the order and will stay its operation. A hearing is granted on the appeal before the Board of Oil and Gas Commissioners, who then pass upon the appeal.[10] The act does not propose to allow the right of appeal unreasonably to delay the enforcement of the order or to interrupt the proceedings under such an order after it is being enforced.

The Act provides that when the decision of the State Supervisor is final that a waste of gas and oil is occurring or threatened, a certified copy of the order shall be filed with the Director of Natural Resources. The Director, unless such order is complied with, shall have proceedings instituted in the name of the People of the State of California to enjoin the unreasonable waste of gas. Any number of defendants may be joined in the same proceedings although their properties and interests are severally owned and their actual or threatened waste of gas may be several and distinct, provided the waste by all defendants is in reference to the same producing or prospective gas field. In such suits no restraining order shall be issued *ex parte,* and no temporary or permanent injunction issued in such proceedings shall be refused or dissolved or stayed pending appeal upon the giving of any bond or undertaking. In such proceedings the findings of the Oil and Gas Supervisor, unless modified or set aside by the Board of Commissioners, constitute *prima facie* evidence of unreasonable waste of gas therein found to be occurring

[9] *Ibid.,* sec. 8d.

[10] *Ibid.,* sec. 9.

or threatened. The judgment of the court shall be appealable by any party.[11]

Power to enjoin the unreasonable waste of gas even before any order is made to provide for the abatement of that waste is also given by a provision that the State Supervisor may in his discretion apply for an injunction without the hearing which is essential to an administrative order. This provision was caused by bitter opposition to the bill as it was being prepared for passage.[12]

There was an intimation on the part of certain oil men that the veiled but real purpose of the act of 1929 was to curtail production and thus stabilize the market price of oil,[13] but this contention was later denied by the Supreme Court of California.[14] However, it is not to be denied that the effect of the law is to curtail the production of petroleum.

In considering the question of whether the amendment of 1929 is constitutional or not, its effect upon the property rights of property owners and oil-well operators must be determined. At common law the owner of the soil was said to own everything above and beneath it, but this rule does not apply, at least in California, to oil and gas, which belong to whoever rightfully bores for them and reduces them to possession. Hence the property right of the owner of land to the oil beneath it is not an absolute one. Because of the peculiar fluid nature of gas and oil, the Supreme Court of the United States sustained an Indiana statute which made it unlawful to permit the escape of gas from a well for more than two days after oil had been struck.[15] In a

[11] *Ibid.*, sec. 14a.

[12] "Anticipated opposition resulted in the insertion at the last minute of a clause permitting the state oil and gas supervisor to institute injunction proceedings *direct* without the prescribed hearing, at his discretion. It was decided that this procedure would facilitate matters and the validity of the measure could be determined much sooner than expected." OIL AND GAS J., Sep. 12, 1929, p. 62.

[13] "The gas law [amendment of 1929] . . . is primarily a conservation measure. No attempt is made to regulate the production of crude oil, but it is quite obvious that any reduction in the production of natural gas will be sympathetically reflected in a corresponding reduction in the output of crude oil, as there are no fields producing dry gas exclusively in California at present." OIL AND GAS J., Sep. 19, 1929, p. 56.

[14] In People v. Associated Oil Co. (1930) 294 Pac. 717, the Court said: "It is contended that the real purpose of the statute is to curtail production of oil so as to regulate and stabilize the market price thereof. We cannot agree with this contention. Obviously the enactment on the part of the legislature is to conserve for present and future needs great natural resources in which the people of the state are interested."

[15] Ohio Oil Co. v. Indiana (1900) 170 U. S. 190, 207.

number of states legislation seeking to prevent waste of gas from wells has been upheld.[16]

On December 3, 1930, a decision was handed down by the California Supreme Court which upheld the conservation law as amended in 1929.[17] Stevenot, Director of Natural Resources of California, brought a proceeding for an injunction against the Associated Oil Company and other companies to restrain them from permitting an unreasonable waste of gas from their wells. The court granted a preliminary injunction which embodied several features. It sought to limit the waste of gas by restricting the production thereof to a reasonable excess over the quantities used above ground. It limited and fixed a total escape of gas per day; enjoined the escape of gas without prior removal of gasoline; forbade operating a well except with the highest degree of care—that is, using the smallest amount of gas possible in producing the oil; and forbade producing more than the allowed amount of gas-average per day in each seven-day period.[18] Pending an appeal from the order granting this injunction, the defendants petitioned for a supersedeas to stay the effect of the injunction. The contentions of the defendants for the issuance of the writ of supersedeas were: first, the oil conservation act is unconstitutional because it provides for the taking of private property without due process of law; second, the prohibition in the act of unreasonable waste is so vague, uncertain, and indefinite as to invalidate the act; third, the order allowing the injunction is arbitrary and in violation of the "due process" and "equal protection" clauses of the Fourteenth Amendment to the Constitution of the United States.

The Supreme Court of California disposed of the first argument by holding that the act was a valid exercise of the police power of the State, which embraces regulations designed to promote the public convenience or general prosperity as well as regulations designed to protect public health or safety. The Court declared that the people of California have a primary and supreme interest in the oil and gas deposits in the State and said that the result complained of—the lessening of the daily production of oil—if it follows from the operation of this statute, is a matter of concern for the Legislature and cannot of itself make

[16] Commonwealth v. Trent (1903) 117 Ky. 34, 77 S. W. 390; Walls v. Midland Carbon Co. (1920) 254 U. S. 300; Quinton Relief Oil & Gas Co. v. Corp. Commission (1924) 101 Okla. 164, 224 Pac. 156; State v. Lebow (1929) 128 Kan. 715, 280 Pac. 773; Marrs v. City of Oxford (C. C. A. 8, 1929) 32 F. (2d) 134, 15 ST. LOUIS L. REV. 104, cert. den. 280 U. S. 573.

[17] People v. Associated Oil Co., n. 14, above.

[18] Cal. Stat. 1929, c. 535 sec. 14b.

void a police measure which is a constitutional exercise of the legislative power.[19]

In meeting the second objection advanced by the defendants the court held that the standard of unreasonableness adopted by the Legislature was not objectionable as being too vague or uncertain in application, especially in view of the statutory emphasis upon full utilization of the lifting power of gas as a measure of reasonableness.

The third objection was disposed of by the court's answer to the first objection, and the court in summing up the reasons for holding the amended act valid, said:

> "Reading the act as a whole, it cannot be said that the method of its enforcement adopted by the court was unlawful or improper. We find no reason at this time to interfere with the action taken. The court reserved to itself the right to modify the preliminary injunction as occasion may require, and this, we assume, the court will do if other proper methods may be discovered and applied to the correction of the evil of unreasonable waste of this natural resource."

While this injunction proceeding was pending, it was anticipated that fast action would be taken by some independent producers to ratify the repressuring program sponsored by a number of progressive operators, in case this injunction were upheld, as this would afford them an outlet for some of the surplus gas and thus permit a larger production of crude oil.[20] The decision will be appealed to the United States Supreme Court in the near future by the Wilshire Oil Co., one of the defendants.[21]

During the time the Act of 1929 was pending it excited considerable comment among the oil operators and technical men of the industry. It was estimated that the drastic enforcement of this measure would automatically curtail crude-oil production in California by 200,000 barrels per day.[22] It was also claimed that the reduction in the amount of natural gas available for treatment would result in a smaller recovery of natural gasoline, because practically no wet gas had been blown into the air during the preceding year.[23] The Court in fact recognized that the operation of the amended statute might have an effect on the

[19] The court here supports this latter statement by citing Noble State Bank v. Haskell (1911) 219 U. S. 104, 111, and also shows that the same contention was advanced with seemingly more justification but was rejected in case of Ohio Oil Co. v. Indiana, n. 15, above.

[20] OIL AND GAS J., Sep. 12, 1929, p. 62.

[21] OIL AND GAS J., Feb. 5, 1931, p. 47.

[22] OIL AND GAS J., Aug. 29, 1929, p. 32.

[23] OIL AND GAS J., Sep. 19, 1929, p. 56.

market price of oil, but said that the fact that the statute to some extent invaded the field of economic law did not justify avoiding it.[24]

Under the provision of the Act which authorizes operators in the same field to enter into a cooperative agreement for the operation of their holdings without waste, a plan was devised as a basis for such agreements between operators.[25] The obstinate opposition of a few small producers in certain fields, however, prevented the proposal's being adopted there, even though a great majority of owners were ready to sign such agreements.[26]

The Director of Natural Resources has decided that unreasonable waste of gas is any production in excess of 2500 feet of natural gas for each barrel of crude oil produced, because such excess production contributes to the general surplus production of natural gas.[27]

It is now declared that the law of 1929 is ineffective by reason of peculiar conditions that exist in one of the newly discovered fields, which allow uncurtailed production of oil despite the statutory restrictions. Thus renewed evidence is furnished that those in the oil and gas industry believe the Act of 1929 had for its primary purpose the curtailment of the production of oil and stabilization of the petroleum industry.[28] The old Gas Conservation and Water Infiltration Act of 1915 lent itself to the purpose of the oil interests, and by the Amendment of 1929 became in effect a restriction on production without being so in name. The reasons for this well-meant deception were the belief that the state could not legally restrict production of oil, and the pressing need for such restriction. But the decision of *People v. Associated Oil Co.* seems to have cleared the way for appropriate legislative action on the regulation of the petroleum industry. It is apparent that the act as amended in 1929 will continue to render good service in preventing the waste of gas in spite of its hinted failure as an oil-production restriction.

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THE REGULATION OF OIL AND GAS PRODUCTION BY THE RAILROAD COMMISSION OF TEXAS

The State of Texas, by the act of March 31, 1919, adopted a unique system for oil and gas conservation by delegating to the State Railroad Commission the authority to make rules and

[24] People v. Associated Oil Co., n. 14, above.
[25] OIL AND GAS J., Sep. 5, 1929, p. 60.
[26] OIL AND GAS J., Jan. 8, 1931, p. 46.
[27] OIL AND GAS J., Sep. 19, 1929, p. 54.
[28] OIL AND GAS J., Feb. 12, 1931, p. 54.