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Oil and Gas—Conservation—Federal v. State Regulation: Northern Natural Gas Co. v. State Corp. Comm'n of Kansas, 372 U.S. 84 (1963)

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OIL AND GAS—CONSERVATION—FEDERAL V. STATE REGULATION*—Section 717(a) of the Natural Gas Act[1] states:

> [T]he business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest, and . . . Federal regulation in matters relating to the transportation of natural gas and the sale thereof in interstate commerce is necessary in the public interest.[2]

Section 717(b) provides:

> The provisions of this chapter shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas.[3]

These sections constitute federal preemption of the power to control the delivered price of natural gas to the consumer. When interstate commerce is involved in the transportation and sale of natural gas, the states are blocked from regulating sales by the "commerce" clause of the United States Constitution.[4] Congress intended that federal regulation should be imposed upon the interstate transportation of natural gas and those sales which the states did not have power to regulate.[5] However, the United States Supreme Court

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* Northern Natural Gas Co. v. State Corp. Comm'n of Kansas, 372 U.S. 84 (1963).

1. 52 Stat. 821 (1938) as amended, 15 U.S.C. §§ 717-717w (1958).

2. 52 Stat. 821 (1938), as amended, 15 U.S.C. § 717(a) (1958).

3. 52 Stat. 821 (1938), as amended, 15 U.S.C. § 717(b) (1958).

4. U.S. Const. art. I, § 8: "The Congress shall have the power . . . (3) To regulate commerce with foreign Nations, and among the several States, and with the Indian Tribes."

The validity of state regulation of wholesale rates of natural gas was tested in State Corp. Comm'n v. Wichita Gas Co., 290 U.S. 561 (1934), and Missouri v. Kansas Natural Gas Co., 265 U.S. 298 (1924). The United State Supreme Court held, on the basis of Wabash S. L. & Pac. Ry. v. Illinois, 118 U.S. 557 (1886), that the commerce clause of the United States Constitution is a limitation upon the authority of the several states, and state action which operates as a direct burden upon, or obstruction to, interstate commerce is unlawful even in the absence of federal regulation over the subject matter.

5. S. Doc. No. 92, pt. 84-A, 70th Cong., 1st Sess. (1928), report of Federal Trade Commission on natural gas companies and natural gas pipeline industry, submitted on December 31, 1935; H.R. Rep. No. 2651, 74th Cong., 2d Sess. (1936), report of Committee on Interstate and Foreign Commerce on proposed Natural Gas Act (H.R. 12680) with recommendation that it pass.

One of the clearest statements of the purposes of Congress in passing the Natural

has said that the jurisdiction of the Federal Power Commission[6] does not interfere with the power of the states to regulate production and promote conservation practices.[7] The last phrase of section 717(b) of the Natural Gas Act[8] exempts "production or gathering of natural gas" from the provisions of the Act. The practice has been to allow the states to regulate production in pursuit of their conservation statutes, but within the limits of the "production and gathering" exemption. If the states' regulations exceed these limits, the Federal Power Commission will preempt jurisdiction on the ground that the states' activities have an effect on the sale or transportation of natural gas in interstate commerce. As stated by the United States Supreme Court:

> In a line of decisions beginning with *Colorado Interstate Gas Co.* v. *Federal Power Comm'n,* 324 U.S. 581, 598, and *Interstate Natural Gas Co.* v. *Federal Power Comm'n,* 331 U.S. 682, 689-693 it has been consistently held that "production" and "gathering" are terms narrowly confined to the physical acts of drawing the gas from the earth and preparing it for the first stages of distribution.[9]

Gas Act was made by Mr. Justice Rutledge in Panhandle E. Pipe Line Co. v. Public Serv. Comm'n of Indiana, 332 U.S. 507, 517-20 (1947):

> The act, though extending federal regulations, had no purpose or effect to cut down state power. On the contrary, perhaps its primary purpose was to aid in making state regulation effective, by adding the weight of federal regulation to supplement and reinforce it in the gap created by the prior decisions. The Act was drawn with meticulous regard for the continued exercise of state power, not to handicap or dilute it in any way. . . .
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> The Natural Gas Act created an articulate legislative program based on a clear recognition of the respective responsibilities of the federal and state regulatory agencies. It does not contemplate ineffective regulation at either level. We have emphasized repeatedly that Congress meant to create a comprehensive and effective regulatory scheme, complementary in its operation to those of the states and in no manner usurping their authority. . . . The scheme was one of cooperative action between federal and state agencies.

For additional general information on federal regulation see Atkinson, *Federal Regulation of Natural Gas—The Independent Producers' Status,* 13 Sw. L.J. 425 (1959); Sargent, *Regulation of Natural Gas—Federal v. State,* 27 Dicta 216 (1950); Newcomb, *Effects of Federal Regulation Under the Natural Gas Act Upon the Production and Conservation of Natural Gas,* 14 Geo. Wash. L. Rev. 217 (1945); Comment, *Legislative History of the Natural Gas Act,* 44 Geo. L.J. 695 (1956).

6. Enforcement of the provisions of the Natural Gas Act is vested in the Federal Power Commission. The Commission has the power to perform any and all acts and to prescribe such rules and regulations as it may find necessary to carry out the provisions of the Act. 52 Stat. 821 (1938), as amended, 15 U.S.C. § 717o (1958).

7. FPC v. Hope Natural Gas Co., 320 U.S. 591, 609-10 (1944); Panhandle E. Pipe Line Co. v. Public Serv. Comm'n of Indiana, 332 U.S. 507, 516-19 (1947); Interstate Natural Gas Co. v. FPC, 331 U.S. 682, 690 (1947); FPC v. Panhandle E. Pipe Line Co., 337 U.S. 498, 502-04 (1949).

8. 52 Stat. 821 (1938), as amended, 15 U.S.C. §§ 717-717w (1958).

9. Northern Natural Gas. Co. v. State Corp. Comm'n of Kansas, 372 U.S. 84, 89-90 (1963).

The "line of decisions" the Court mentioned reached about as far as it could without entirely preempting state regulatory power when the Court held, in *Phillips Petroleum Co. v. Wisconsin*,[10] that the "production and gathering" exemption did not preclude federal regulation of natural gas sales by independent producers and gatherers—whether the producers themselves were engaged in the interstate sale and transportation of natural gas or merely sold their product to an interstate pipeline.[11] *Phillips* made it extremely difficult for a state to impose regulations on natural gas producers within the state. Whether or not the regulation was conservation-oriented, if it affected the interstate distribution of natural gas it would be subject to federal preemption.

In *Northern Natural Gas Co. v. State Corp. Comm'n of Kansas*,[12] the supreme court extended federal preemption over state conservation regulation in another manner. Here, the question raised was whether a state might lawfully impose a ratable take statute against the purchaser of natural gas (an interstate pipeline company) as a means of insuring a ratable take of total field allowables of gas in order to keep the field in balance, prevent waste and protect correlative rights. This decision, invalidating Kansas' ratable take statute,[13] will similarly affect ratable take statutes in other oil-producing states, including New Mexico.[14]

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10. 347 U.S. 672 (1954).

11. Some exerpts from the majority's opinion will illustrate the all-inclusive nature of the *Phillips* holding:

> [W]e believe that the legislative history indicates a congressional intent to give the Commission jurisdiction over the rates of all wholesales of natural gas in interstate commerce, whether by a pipeline company or not and whether occurring before, during, or after transmission by an interstate pipeline company.

Phillips Petroleum Co. v. Wisconsin, 347 U.S. 672, 682 (1954).

> [W]e are satisfied that congress sought to regulate wholesales of natural gas occurring at both ends of the interstate transmission systems.

Id. at 683-84.

> Regulation of the sales in interstate commerce for resale made by a so-called independent natural-gas producer is not essentially different from regulation of such sales when made by an affiliate of an interstate pipeline company.

Id. at 685.

12. 372 U.S. 84 (1963).

13. Kan. Gen. Stat. Ann. § 55-703 (Supp. 1959) provides for ratable taking:

> The commission shall so regulate the taking of natural gas from any and all such common sources of supply within this state as to prevent the inequitable or unfair taking from such common source of supply by any person, firm or corporation and to prevent unreasonable discrimination in favor of any one common source of supply as against another and in favor of or against any producer in any such common source of supply.

14. New Mexico has common purchaser and ratable take statutes:

> Any person now or hereafter engaged in purchasing from one [1] or more producers gas produced from gas wells shall be a common purchaser thereof within each common source of supply from which it purchases, and

Northern Natural, an interstate pipeline company, purchased gas under about 125 contracts from producers in the Kansas Hugoton Field. The oldest of these contracts, with Republic Natural Gas Co., bound Northern Natural to purchase the maximum production allowables from Republic's Kansas wells. The subsequent purchase contracts with other producers bound Northern Natural to take only so much of its requirements as were not satisfied by the quantities taken from Republic. For several years Northern Natural's requirements were such that its purchases from *all* the producers were roughly ratable, *i.e.,* in like proportion to the legally fixed allowables[15] for each of the approximately 1,100 wells in the Kansas Hugoton Field. However, in 1958, after an intensive study, the Kansas Corporation Commission issued a report and an order[16] which dealt with the problem of drainage from the Kansas portion of the Hugoton Field to Oklahoma and Texas portions of the field. The report stated that the question presented for determination was two-fold: (1) whether migration of gas was occurring or was likely to occur from the Kansas portion of the Hugoton Gas Field to other portions of the field and what remedial steps could and should be taken by the Kansas Corporation Commission to prevent loss of natural gas to Kansas and Kansas owners; and (2) what corrective measures could and should be taken by the

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as such it shall purchase gas lawfully produced from gas wells with which its gas transportation facilities are connected in the pool. . . . Such purchases shall be made without unreasonable discrimination in favor of one [1] producer against another in the price paid, the quantities purchased . . . .

N.M. Stat. Ann. § 63-3-15(d) (1953).

Any common purchaser taking gas produced from gas wells from a common source of supply shall take ratably under such rules, regulations and orders, concerning quantity, as may be promulgated by the commission consistent with this act.

N.M. Stat. Ann. § 65-3-15(e) (1953).

15. Kan. Gen. Stat. Ann. § 55-703 (Supp. 1959) provides:

Whenever the available production of natural gas from any common source of supply is in excess of the market demands for such gas from such common source of supply, or whenever the market demands for natural gas from any common source of supply can be fulfilled only by the production of natural gas therefrom under conditions constituting waste as herein defined [see Kan. Gen. Stat. Ann. § 55-702 (1949)], or whenever the commission finds and determines that the orderly development of, and production of natural gas from, any common source of supply requires the exercise of its jurisdiction, then any person, firm or corporation having the right to produce natural gas therefrom, may produce only such portion of all the natural gas that may be currently produced without waste and to satisfy the market demands, as will permit each developed lease to ultimately produce approximately the amount of gas underlying such developed lease and currently produce proportionately with other developed leases in said common source of supply without uncompensated cognizable drainage between separately-owned, developed leases or parts thereof. . . .

16. Docket No. 51,488-C (C-4916) (Kan. Corp. Comm'n 1958).

Commission in performance of its statutory duty to prevent waste, protect correlative rights and prevent unreasonable discrimination and inequitable withdrawals of gas from the field. The order contained within the report revised the formula for determining field allowables and, when applied to the Kansas portion of the Hugoton Field, increased the proportionate allowable for each producing well in the field. A balance was thus reestablished between Kansas, Oklahoma and Texas. Northern Natural's market requirements did not increase accordingly. The balance of Northern Natural's total requirements, after the contractually required purchases from Republic, resulted in purchases from other producers of proportions substantially below their maximum allowables. To correct this imbalance of taking and to protect the producers' correlative rights, the Kansas Corporation Commission, by statutory authority,[17] ordered Northern Natural to take gas from Republic's wells in no higher proportion to the allowables than from the wells of the other producers.[18] This order, directed specifically at Northern Natural, was rescinded by a later order directed generally at all purchasers within the Commission's jurisdiction, including Northern Natural.[19] These orders presented Northern Natural with two awkward alternatives: (1) honor its contract with Republic, increase its takes from other producers' wells and end up with more gas than it could use, or (2) decrease its take from Republic wells below allowables, in order to take ratably from *all* wells but not purchase more gas than it needed, and run the risk of liability for breach of the Republic contract because it did not purchase all of Republic's allowables.

Northern Natural argued in the Kansas courts that the orders of the Kansas Corporation Commission were invalid because they invaded the exclusive jurisdiction of the Federal Power Commission. The Kansas trial court upheld the Corporation Commission's orders and the Kansas Supreme Court affirmed.[20] On appeal the United States Supreme Court, *held,* Reversed and Remanded. The orders were invalid because they were concerned with the

17. Kan. Gen. Stat. Ann. § 55-703 (Supp. 1959). See note 13 *supra.*

18. Docket No. 60,740-C (C-7216) (Kan. Corp. Comm'n 1959).

19. Docket No. 34,780-C (C-1825) (Kan. Corp. Comm'n 1960). The general order of the Commission, embodied in Rule 82-2-219 (Kan. Corp. Comm'n 1960), provided:

> In each common source of supply under proration by this Commission, each purchaser shall take gas in proportion to the allowables from all the wells to which it is connected and shall maintain all such wells in substantially the same proportionate status as to overproduction or underproduction; provided, however, this rule shall not apply when a difference in proportionate status results from the inability of a well to produce proportionately with other wells connected to the purchaser.

20. Northern Natural Gas Co. v. State Corp. Comm'n of Kansas, 188 Kan. 355, 362 P.2d 599 (1961), *rehearing denied,* 188 Kan. 624, 364 P.2d 668 (1961).

purchase of natural gas—not with the *production and gathering* of natural gas.[21]

The majority pointed out that Kansas had the alternative means of checking waste and disproportionate taking—by directing proration orders at pro-

21. Northern Natural Gas Co. v. State Corp. Comm'n of Kansas, 372 U.S. 84, 92 (1963). The decision was rendered 5-3, Mr. Justice White not participating.

The majority of the Court considered, and rejected, three arguments of the Kansas Corporation Commission. *First,* that the orders of the Commission constituted only state regulation of "production and gathering" and were thus exempt from the provisions of the Natural Gas Act. 52 Stat. 821 (1938), as amended, 15 U.S.C. § 717(b) (1958). *Rejected:* "production" and "gathering" are terms narrowly confined to the physical acts of drawing gas from the earth and preparing it for the first stages of distribution. 372 U.S. at 90. Northern Natural is a purchaser, not a producer, of natural gas. *Second,* the orders did not invade the federal domain, because they did not involve the price of natural gas. *Rejected:* it does not matter whether the state's regulation interferes directly or indirectly with price; states are precluded from promulgating regulations that would affect interstate wholesales of natural gas. The Court reasoned (1) that to impose a ratable take rule on an interstate purchaser would be be to shift the burden of balancing the output of thousands of natural gas wells from the state regulatory body to the purchaser; (2) that any readjustment of purchasing patterns which such ratable take orders might require of purchasers might impair the authority of the Federal Power Commission to regulate the intricate relationship between the purchasers' cost structures and the eventual costs to wholesale customers who sell to consumers in other states; and (3) that the Federal Power Commission has exclusive authority in this relationship. 372 U.S. at 91-92. *Third,* ratable taking is essential for conservation, and conservation is traditionally a function of the state. *Rejected:* states have power to allocate and conserve natural gas *only* when the conservation measures are aimed at producers and production, not when such measures are directed at interstate purchasers and wholesales of natural gas for resale. 372 U.S. at 93-94.

Two arguments in Mr. Justice Harlan's dissenting opinion should be noted. First, he argued that just because the Kansas orders read "purchaser" rather than "producer", it did not conclusively mean the orders were an attempt to regulate the interstate sale of natural gas. The true purpose behind the order should have been considered rather than the mere wording of the order.

> The production of natural gas and its movement into interstate channels constitute one and the same physical operation. Thus the Kansas orders limiting the volume of gas a pipeline may purchase from a given well are tantamount to a limitation on the production of that well. Indeed an order directed to the purchaser of the gas rather than to the producer would seem to be the most feasible method of providing for ratable taking, because it is the purchaser alone who has a first-hand knowledge as to whether his takes from each of his connections in the field are such that production of the wells is ratable.
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> An order addressed simply to producers requiring each one to produce ratable with others with whose activities it is unfamiliar and over whose activities it has no control would create obvious administrative problems.

372 U.S. at 100-01 (dissenting opinion). (Footnotes omitted).

It is submitted that such "administrative problems" would not occur in New Mexico because its conservation statutes contemplate that the Oil Conservation Commission shall determine the allocation of allowable production, N.M. Stat. Ann. § 65-3-13(c) (1953), and the ratable take of a common purchaser, N.M. Stat. Ann. § 65-3-15(e) (1953).

The dissent's second argument criticized the all-inclusive nature of the statement of the majority that it does not matter whether the states' regulations interfere directly or indirectly with price; they are precluded from promulgating regulations that would

ducers.[22] In so directing the states' regulatory efforts, the Court still gives validity to the "purchaser-producer" distinction. However, the Court will invalidate ratable take orders directed at purchasers. New Mexico has common purchaser and ratable take statutes which are subject to federal invalidation.[23] Perhaps the argument could be made in favor of New Mexico's ratable take statute that it provides that the Oil Conservation Commission shall promulgate the rate of taking and does not shift the burden of determination to the purchaser.[24] It is doubtful, however, that this would be a sufficient distinction to protect it from federal attack. The Supreme Court of the United States would still find it invalid because it would regulate the purchaser, not the producer.

In *Northern Natural* the decision to invalidate the Kansas ratable take order was correct. To have held the order valid would have allowed economic waste in attempting to protect the correlative rights of the Kansas producers. The majority dismissed Northern Natural's argument that the ratable take orders of the Kansas Corporation Commission were tainted by an improper motive.[25] Whether the motive behind the Commission's orders was pertinent to the decision of the case or not, the point is that the language of the Kansas statute permitted the orders to be issued in the first place. Kansas conservation statutes include provisions against waste,[26] but the definition of *eco-*

affect interstate wholesales of natural gas. As the dissent pointed out, it would not be difficult to show that almost any regulation will have *some* effect on the final sale price of natural gas—even those regulations which deal with the physical acts of drawing the gas from the earth and preparing it for the first stages of distribution, heretofore excepted from the jurisdiction of the Natural Gas Act. 372 U.S. at 103-04; see also Phillips Petroleum Co. v. Wisconsin, 347 U.S. 672 (1954). State production allowable orders could well be included under such a broad rule even though the United States Supreme Court has previously upheld their validity in Champlin Ref. Co. v. Corp. Comm'n of Oklahoma, 286 U.S. 210 (1932).

22. Northern Natural Gas Co. v. State Corp. Comm'n of Kansas, 372 U.S. 84, 94 (1963).

23. N.M. Stat. Ann. §§ 65-3-15(d), (e) (1953). See note 14 *supra*.

24. See Mr. Justice Harlan's dissenting arguments and the discussion by the majority, note 19 *supra*.

25. The majority stated:

> There is no occasion to consider appellant's further argument that the Kansas Commission's orders were tainted by an improper motive, that is, to require over-production of Kansas Hugoton wells in order to prevent disadvantageous drainage to Texas and Oklahoma, which share the Hugoton Field with Kansas. The relevancy of motive to the validity of such regulations has been questioned . . . [Citation omitted]. See however . . . [Contra citation omitted] where the Court invalidated a state proration order 'shown to bear no reasonable relation either to the prevention of waste or the protection of correlative rights.'

Northern Natural Gas Co. v. State Corp. Comm'n of Kansas, 372 U.S. 84, 95 n. 12 (1963).

26. [T]he production of natural gas in the state of Kansas in such manner and under such conditions and for such purposes as to constitute waste is hereby prohibited. Kan. Gen. Stat. Ann. § 55-701 (1949).

nomic waste is limited to a description of the acceptable end-uses for Kansas gas.[27] Overproduction as a result of increased allowables can still occur within the statutory definition—just as long as the over-produced gas is put to an acceptable end-use.

Under the facts of *Northern Natural,* an order such as the Kansas order could not have been issued in New Mexico, even in the face of drainage to a neighboring state.[28] Economic waste through overproduction is intended to be included in the category of prohibited waste in New Mexico.[29] In almost thirty years, only two New Mexico Supreme Court cases[30] have arisen under the New Mexico Oil Conservation Act.[31] In each case the supreme court gave judicial effect to the pertinent statutory sections,[32] and in each case the

27. Kansas defines economic waste as follows:

> [T]he term 'waste' as herein used, in addition to its ordinary meaning, shall include economic waste, underground waste and surface waste. Economic waste as used in this act, shall mean the use of natural gas in any manner or process except for efficient light, fuel, carbon black manufacturing and repressuring, or for chemical or other processes by which such gas is efficiently converted into a solid or liquid substance.

Kan. Gen. Stat. Ann. § 55-702 (1949).

28. N.M. Stat. Ann. § 65-3-2 (1953) prohibits waste:

> The production or handling of crude petroleum oil or natural gas of any type or in any form . . . in such manner or under such conditions *or in such amounts* as to constitute or result in waste is each hereby prohibited. [Emphasis supplied.]

29. N.M. Stat. Ann. § 65-3-3 (1953) provides:

> As used in this act the term 'waste,' in addition to its ordinary meaning shall include:
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> * * * * *
>
> (e) The production in this state of natural gas from any gas well or wells, or from any gas pool, in excess of the reasonable market demand from such source for natural gas of the type produced or in excess of the capacity of gas transportation facilities for such type of natural gas.

30. Continental Oil Co. v. Oil Conservation Comm'n, 70 N.M. 310, 373 P.2d 809 (1962); Sims v. Mechem, 382 P.2d 183 (N.M. 1963).

31. Laws 1935, ch. 72; now N.M. Stat. Ann. §§ 65-3-2 to -16, -18 to -29, -31 (1953, Supp. 1961).

32. N.M. Stat. Ann. §§ 65-3-2, -3(e) (1953). See notes 28 and 29 *supra.*

In the *Continental Oil* case the New Mexico Supreme Court stated:

> We find no statutory authority vested in the commission to require the production of a greater percentage of the allowable, or to see to it that the gas purchasers can more nearly meet market demand *unless such results stem from or are made necessary by the prevention of waste or the protection of correlative rights.*
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> * * * * *
>
> [E]ven after a pool is prorated, the market demand must be determined, since, *if the allowable production from the pool exceeds market demand, waste would result if the allowable is produced.*

Continental Oil Co. v. Oil Conservation Comm'n, 70 N.M. 310, 320, 373 P.2d 809, 816 (1962). (Emphasis added.)

The facts of the *Continental Oil* case are not exactly the same as in *Northern Natural* in that *Continental Oil* involved only a change in the proration of an established gas pool allowable; there was no increase in field allowables, as there was in

supreme court held that the Oil Conservation Commission may not issue an order affecting or superseding a prior order which has established production units or set proration of allowables unless the new order contains a finding that waste existed under the old order or that the new order would prevent waste. It is arguable that this rule would allow the New Mexico Oil Conservation Commission to increase field allowables in a *Northern Natural* situation where gas was being drained to another state. But, referring again to the New Mexico statutory sections defining overproduction as waste,[33] the rule would not be applicable because no reasonable market demand for the additional gas could be shown. Nor would New Mexico's oil conservation laws permit the "non-ratable" situation which resulted in Kansas as a consequence of the Supreme Court's invalidation of the Kansas ratable take order in *Northern Natural*.[34]

Even though the Court's decision in *Northern Natural* to invalidate Kansas' ratable take statute was correct, the broad language of the majority of the Court, that states will be precluded from promulgating any regulations that directly *or indirectly* affect the price of gas sold interstate, threatens the conservation powers of the states. But there is reason to expect that the *Northern Natural* rule will be limited in its future applications to similar fact situations. Because the states are in closer touch with the condition of their natural resources it is not practical to encourage federal conservation regulation. The Supreme Court, in deciding the *Northern Natural* and *FPC v. Transcontinental Gas Pipe Line Corp.*[35] cases, has indicated a willingness to expand the jurisdiction of the Federal Power Commission into conservation areas, but the Court also has indicated a strong desire to leave conservation regulation to the states.[36]

Northern Natural. Nevertheless, the language of the New Mexico Supreme Court is still pertinent to this discussion.

33. N.M. Stat. Ann. §§ 65-3-2, -3(e) (1953). See notes 28 and 29 *supra*.

34. N.M. Stat. Ann. § 63-3-3 (1953) states:

> As used in this act the term 'waste,' in addition to its ordinary meaning, shall include:
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> * * * * *
>
> (d) The non-ratable purchase or taking of crude petroleum oil in this state. Such non-ratable taking and purchasing causes or results in waste as defined in the subsections (a), (b), (c) of this section and causes waste by violating section 12(a) of this act. [65-3-13].

Subsection (d) does not expressly include natural gas in its definition. But in view of the references to subsections (a), (b), (c) and section 65-3-13, all of which were amended to include or refer to natural gas [N.M. Laws 1961, ch. 168, § 2], it is submitted that the Legislature intended to include the non-ratable taking or purchasing of natural gas in subsection (d), as well as crude oil.

35. 365 U.S. 1, 20-22 (1961). In *Transcontinental* the Court recognized that the Federal Power Commission could and should take appropriate account of certain conservation factors in certification proceedings.

36. Panhandle E. Pipe Line Co. v. Public Serv. Comm'n of Indiana, 332 U.S.

As a result of the *Northern Natural* case and other federal pressure[37] the Interstate Oil Compact Commission[38] has recently begun a thorough factual study of all member states' conservation statutes.[39] When the study is completed, recommendations will be made to correct any deficiencies discovered. It is expected the individual states will make many of the suggested revisions in their own conservation statutes and thus alleviate the pressure for federal regulation.[40]

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507, 517-20 (1947); Public Util. Comm'n of Ohio v. United Fuel Gas Co., 317 U.S. 456, 467 (1943). And, as the Court stated in *Northern Natural*:

> There is no doubt that the states do possess power to allocate and conserve scarce natural resources upon and beneath their lands. We have recognized such power with particular respect to natural gas.

Northern Natural Gas Co. v. State Corp. Comm'n of Kansas, 372 U.S. 84, 93 (1963).

37. See Oil and Gas Journal, April 8, 1963, p. 42, May 27, 1963, p. 47; The Oil Daily, July 2, 1963, p. 1; United States Att'y Gen. Fifth Report Pursuant to Section 2 of the Joint Resolution of August 7, 1959, consenting to an Interstate Compact to Conserve Oil and Gas, at 27, 28 (May 15, 1963).

38. The Compact membership now includes thirty oil and gas producing states, three associate states, and observers from the United States government and several foreign oil producing countries. For a review of the Compact's organization and activities see Conservation of Oil and Gas—A Legal History 279 (Sullivan ed. 1958).

39. See generally Oil and Gas Journal, March 18, 1963, p. 69, April 15, 1963, pp. 77, 83, June 17, 1963, p. 54, June 24, 1963, pp. 57, 70; Interstate Oil Compact Comm'n Comments, June 1963.

40. In view of the federal government's intent to preempt the states' control of *purchasers* of natural gas, as expressed in the *Northern Natural* case, the states will have to achieve ratable taking by the enactment and enforcement of statutes for ratable *production,* which statutes will necessarily be directed at producers rather than purchasers.