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The Wyoming legislature recently amended the Oil and Gas Conservation Act to direct the protection of correlative rights as defined therein. Professor Jones outlines the scope of the common law obligation to protect the correlative rights of overlying surface owners, compares it with the statutory obligation, and concludes that the common law right exceeds that established by the legislature.

PROTECTION OF CORRELATIVE RIGHTS IN WYOMING

*Jack D. Jones**

MEEETING in early 1967, the 39th State Legislature of Wyoming amended the Oil and Gas Conservation Act¹ by, among other things, enjoining the commission to protect "correlative rights."² Section 1 of the Act, as amended, defines the term correlative rights as follows:

(i) Correlative rights.—"Correlative rights" shall mean the opportunity afforded the owner of each property in a pool to produce, so far as it is reasonably practicable to do so without waste, his just and equitable share of the oil or gas, or both, in the pool.

By making such a requirement, *i.e.*, that the commission protect correlative rights, and in defining the term in relation to the opportunity to produce a "just and equitable share," any discussion or determination of the scope of the obligation requires first that we determine what "correlative rights" are and whether or not they are as limited as this definition indicates.

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1. Wyo. STAT. §§ 30-216 to -238 (Comp. 1967), amended by Ch. 167 [1967] Wyo. Sess. Laws 477-78.
2. Ch. 167, § 1, [1967] Wyo. Sess. Laws 478; Wyo. STAT. § 30-216(i) (Comp. 1967).

The concept of correlative rights appears to have been originally recognized in this country, insofar as oil and gas are concerned, in *Ohio Oil Co. v. Indiana*.³ The Supreme Court stated the concept in the following language:

[A]s to gas and oil, the surface proprietors within the gas field all have the right to reduce to possession the gas and oil beneath. They could not be absolutely deprived of the right which belongs to them without taking of private property. But there is a co-equal right in them all to take from a common source of supply, the two substances which in the nature of things are united, though separate. It follows from the essence of their right and from the situation of the things, as to which it can be exerted, that the use by one of his power to seek to convert a part of the common fund to actual possession may result in an undue proportion being attributed to one of the possessors of the right, to the detriment of the others, or by waste by one or more, to the annihilation of the rights of the remainder. Hence it is that the legislative power, from the peculiar nature of the right and the objects upon which it is to be exerted, can be manifested for the purpose of protecting all the collective owners, by securing a just distribution, to arise from the enjoyment by them, of their privilege to reduce to possession, and to reach the like end by preventing waste.⁴

By this language the Supreme Court would appear to have established certain basics as to correlative rights. Thus, it would seem the following propositions are applicable to the so-called correlative rights:

(1) The concept of correlative rights is derived from the *co-equal* right of all the surface owners overlying the common source of supply to take the oil and/or gas therein and to reduce it to possession. Thus, we are able to determine that the rights exist in all of the owners of the surface overlying the common source of supply and that the rights are co-equal (correlative) making them, apparently, rights in the nature of the right to lateral support which is said to be a co-equal right inherent in the ownership of land.⁵ However, the rights

3. 177 U.S. 190 (1900).

4. *Id.* at 209-210.

5. *Prete v. Cray*, 49 R.I. 209, 141 A. 609 (1928).

exist only in the surface owners overlying the common source of supply and, in this respect, are limited rights.

(2) Correlative rights exist independently of, and apart from, statutory recognition since the legislative power can be exercised in this area only to protect all the collective owners.

(3) The legislative power to regulate correlative rights can be used to (a) protect "all the collective owners, by securing a just distribution," and (b) to prevent waste to the same end.

(4) The individuals owning the right to share in the common source of supply cannot be deprived of this right by legislation without such deprivation amounting to a taking of private property.

(5) Since the legislature can regulate correlative rights only to protect each person entitled thereto and since a deprivation thereof amounts to a taking of private property, it follows that the legislature cannot deprive a person of correlative rights without provisions for just compensation, nor, it would appear, can one individual deprive another of this right without such deprivation being actionable.

If, as it would appear, the Supreme Court has established that there are common law correlative rights of which a person cannot be deprived, it follows that these rights exist independently of statutory recognition and, in fact, even in the face of obvious legislative intent not to recognize them. Thus, in *Pattie v. Oil & Gas Conservation Comm'n*⁶ when a leaseholder was denied an exception to the normal well location on a drilling unit which he had applied for because he felt the normal location would result in his obtaining either no gas or less gas than that obtained by the well on the adjoining drilling unit the Montana Supreme Court said:

Montana is the only state we can find that produces substantial quantities of oil and gas, has a modernized Conservation Act, and belongs to the Interstate Oil Compact Commission, but has no specific reference to correlative or private rights in the legislation. This case is truly unique. No similar cases have been found and no oil and gas law treatise

6. 145 Mont. 531, 402 P.2d 596, 23 OIL & GAS REP. 65 (1965).

or other writing has been found disclosing to us a guide for the solution. Unless the Montana Act is flexible enough to permit the Commission to make orders with an eye to the interests of adjacent land-owners in sharing in the common supply the legislation would have to be held unconstitutional as a deprivation of property without due process of law⁷

This analysis indicates that the Wyoming Oil and Gas Conservation Commission has had, since its inception, the obligation to consider and protect correlative rights independently of any statutory requirements and that its protection must extend not only to that required by statute, but that which exists by force of the common law. Accordingly, any discussion of the commission's obligations must include a determination of what rights are comprehended by the correlative rights concept.

It has been said that an analysis of the cases indicates that the correlative rights of owners in a common source of supply include: (1) the right against waste (deliberate or negligent) of extracted substances; (2) the right against spoilage of the common source of supply; (3) the right against malicious depletion of the common source of supply; and (4) the right to a fair opportunity to extract oil or gas.⁸

In *Louisville Gas Co. v. Kentucky Heating Co.*⁹ the appellant (Louisville) had, through certain of its officers, stockholders and employees, created another company to acquire leases on the structure from which Kentucky drew its fuel and, with the expressed purpose of destroying Kentucky, then proceeded to construct a carbon black plant through which extremely large amounts of gas were run with the resultant production of very little carbon black. The result was, however, to so drastically lower the pressure in the gas pool as to threaten its destruction. In affirming an injunction granted by the trial court against such acts the Court of Appeals observed:

7. *Id.* at 599. See also *Bernstein v. Bush*, 29 Cal. 2d 773, 177 P.2d 913 (1947).

8. *Kuntz, Correlative Rights in Oil and Gas*, 30 MISS. L.J. 1 (1958); 1 KUNTZ OIL AND GAS § 4.3 (1962); *Kuntz, Correlative Rights of Parties Owning Interests for a Common Source of Supply of Oil and Gas*, 17TH OIL & GAS INST. 217 (SW. LEGAL FDN. 1966).

9. 117 Ky. 71, 77 S.W. 368 (1903).

Independently of the statute, the common law affords an ample remedy for a wrong like this. While natural gas is not subject to absolute ownership, the owner of the soil must, in dealing with it, use his own property with due regard to the rights of his neighbor. He cannot be allowed deliberately to waste the supply for the purpose of injuring his neighbor. While a bad motive will not render that unlawful which is lawful [citation omitted], a man is only allowed to make a reasonable use of those natural supplies which are for the common benefit of all The doctrine that an act which is legal in itself, and violates no legal right, cannot be made actionable on account of the motive which induced it, has no application, because the acts of the defendants in wasting the gas violated the plaintiff's legal rights. Both the parties drew gas from the same reservoir. It was incumbent on each to exercise his right so as not to injure the other unnecessarily. If one wasted all of the gas from the reservoir, there would be nothing left for the other. Every owner may bore for gas on his own ground, and may make a reasonable use of it; but he may not wantonly injure or destroy the reservoir common to him and his neighbor.¹⁰

Thus, we see the establishment that, at common law, there exist correlative rights against (1) a deliberate waste of the extracted substances, and (2) a malicious depletion of the reservoir. In discussing the malicious depletion of the common source of supply Kuntz concludes:

As is true in most competitive economic endeavors, the activities of a successful competitive oil or gas operator have an inevitable impact upon the economic welfare of others producing competitively from the same source of supply. Under the law of capture, each is privileged to inflict loss upon the other in the process of seeking an economic advantage. Any loss is *damnum absque injuria*. Where, however, the loss is inflicted for the purposes other than of seeking a direct economic advantage from the operation, an attempt is made to use the

10. *Id.* at 369-370. *Accord.* *Manufacturers' Gas & Oil Co. v. Indiana Natural Gas & Oil Co.*, 155 Ind. 461, 57 N.E. 912 (1900); *Hamby v. City of Dawson Springs*, 126 Ky. 451, 104 S.W. 259 (1907); *Calor Oil & Gas Co., v. Kentucky Heating Co.*, 128 Ky. 715, 109 S.W. 328 (1908); *Louisville Gas Co. v. Kentucky Heating Co.*, 132 y. 435, 111 S.W. 374 (1908); *United Carbon Co. v. Campbellsville Gas Co.*, 230 Ky. 275, 18 S.W.2d 1110 (1929); *Elliff v. Texon Drilling Co.*, 146 Tex. 575, 210 S.W.2d 558 (1948).

law of capture as an instrument to inflict injury deliberately. In such a situation, it would be reasonable to conclude that the privilege of inflicting loss is lost. That is, the privilege of producing from the common source of supply to the economic disadvantage of another owner may be exercised solely for purposes of realizing direct economic gain and not for a sinister purpose of inflicting harm deliberately upon another.¹¹

The Texas Supreme Court held that negligent waste was actionable in *Elliff v. Texon Drilling Co.*,¹² a case arising out of allegedly negligent drilling operations permitting the well to blow out, catch fire and crater. The cratering subsequently spread to a gas well on the plaintiff's land, resulting in its catching fire and burning for several years. In holding that a right of action existed the court stated:

Each owner whose land overlies the basin has a like interest, and each must of necessity exercise his right with some regard to the rights of others. No owner should be permitted to carry on his operations in reckless or lawless irresponsibility, but must submit to such limitations as are necessary to enable each to get his own. [Citation omitted].

While we are cognizant of the fact that there is a certain amount of reasonable and necessary waste incident to the production of oil and gas to which the non-liability rule must also apply, we do not think this immunity should be extended so as to include the negligent waste or destruction of the oil and gas.

. . . [T]he negligent waste and destruction of petitioners' gas and distillate was neither a legitimate drainage of the minerals from beneath their lands nor a lawful or reasonable appropriation of them.

. . . In the conduct of one's business or in the use and exploitation of one's property, the law imposes upon all persons the duty to exercise ordinary care to avoid injury or damage to the property of others. Thus under the commonlaw and independent of the conservation statutes, the respondents were

11. 1 KUNTZ, OIL AND GAS § 4.6 (1962).

12. 146 Tex. 575, 210 S.W.2d 558 (1948).

legally bound to use due care to avoid the negligent waste or destruction of the minerals imbedded in petitioners' oil and gas-bearing strata. This common-law duty the respondents failed to discharge.¹³

The right against spoilage of the common source of supply would appear to differ from the right against waste of extracted substances in that the damages protected against would be damage to the reservoir itself resulting in the waste of oil and/or gas through the inability to produce the substances rather than the physical waste of extracted substances which is the gravamen of the rights against waste and the malicious depletion of the common source of supply.¹⁴ Likewise, this correlative right has been established as a common-law right.¹⁵

The fourth area encompassed by the doctrine of correlative rights according to the research of Kuntz¹⁶ is the right to a fair opportunity to extract oil or gas from the common source of supply. We are told in this regard that "it is now clear that what is sometimes referred to as the correlative right to a fair share of oil or gas from a common source of supply does not mean that each owner is entitled to a proportionate share of the substances, but it means that owners have the right to a fair opportunity to extract oil or gas."¹⁷ The authority cited for this proposition is *Alphonzo E. Bell Corp. v. Bell View Oil Syndicate*¹⁸ in which it appears that the proposition was asserted in the following passage:

The principle of the respondents, and apparently accepted by the trial court is "that the owners of all the land embraced within the boundaries of an oil reservoir, between various points in which the oil may migrate, own all the oil in that reservoir as tenants in common." This principle has no support in a single case called to our attention. When pro-

13. *Id.* at 562-63.

14. 1 KUNTZ, OIL AND GAS § 4.5 (1962).

15. *Manufacturers' Gas & Oil Co. v. Indiana Gas & Oil Co.*, 155 Ind. 461, 57 N.E. 912, 917 (1900), stating:

Independently, . . . of any statute . . . the common owners of the gas in the common reservoir, separately or together, have the right to enjoin any and all acts of another owner . . . which will involve the destruction of, the property in the common fund, or supply of gas.

Accord, *Atkinson v. Virginia Oil & Gas Co.*, 72 W. Va. 707, 79 S.E. 647 (Ct. App. 1913).

16. See authorities cited *supra* note 8.

17. 1 KUNTZ, OIL AND GAS § 4.7 (1962).

18. 24 Cal. App. 2d 587, 76 P.2d 167 (Dist. Ct. App. 1938).

perly interpreted, the cases cited in support of the alleged principle simply hold that the owners of the surface have a common right to drill wells beginning on their own properties, so as to capture and reduce to possession all the oil, gas, and other hydrocarbons that may be passing through the sands underlying such surface location That the surface owners have a common and correlative right to take from such sand strata, oil, gas, and other hydrocarbons passing through the sands underlying his surface location, is all that the cases mean when they speak of extracting oil, gas and hydrocarbons from a common source. It is common to the extent that every surface owner has a right to reduce to possession all of the oil, gas, and other hydrocarbons that may be intercepted by a well drilled upon his own property, and does not mean that he has any ownership in oil, gas, and other hydrocarbons that may have passed through the sands underlying his own property and into the sands underlying neighboring locations.¹⁹

The whole thrust of this portion of the court's opinion is directed to the analysis of the contention that the surface owners are tenants in common of the oil and/or gas in the underlying reservoir. Quite clearly the court does say that each such owner does not own the oil and/or gas passing through that portion of the common source of supply overlaid by the individual's surface ownership. We are not, however, concerned with ownership of the oil and/or gas, but rather with the exercise of a right, which exists by virtue of the relationship existing between the surface and an underlying geological feature, to reduce the oil and/or gas trapped in the underlying structure to possession. A decision that the surface owners are not the owners as tenants in common of the oil and/or gas is not a decision that their right to reduce those substances to possession is not a right to obtain a fair proportion of the oil and/or gas in existence at the time the right to reduce them to possession is exercised.

On the other hand the Supreme Court in *Ohio Oil Co. v. Indiana*²⁰ does, arguably, indicate that the commonlaw correlative right includes the right to a proportionate share of the oil and/or gas if the surface owner exercises the co-equal

19. *Id.* at 175.

20. 177 U.S. 190 (1900).

right of all to reduce the oil and/or gas to possession. The Court said: "*Hence it is that the legislative power . . . can be manifested for the purpose of protecting all the collective owners, by securing a just distribution, to arise from the enjoyment by them, of their privilege to reduce to possession, and to reach the like end by preventing waste.*"²¹ It is the legislative power which is to be exercised to protect all the collective owners. How is this protection to be given? The Court says "by securing a just distribution" which is to arise from "their privilege to reduce to possession, and to reach the like end by preventing waste." Thus, the Court indicates that the function of legislation in this area is to protect the right of all the collective owners to a just distribution of the oil and/or gas by regulating the privilege of drilling and by preventing waste and is not to protect all the collective owners by securing to them their co-equal right to drill which exists by virtue of their ownership of the land overlying the common reservoir. This view is strengthened by the Court's statement that, "It follows from the essence of their right and from the situation of the things, as to which it can be exerted, that the use by one of his power to seek to convert a part of the common fund to actual possession may result in an undue proportion being attributed to one of the possessors of the right, to the detriment of the others, or by waste by one or more, to the annihilation of the rights of the remainder."²² If the right is only to a fair opportunity to drill, how can an exercise of this right "result in an undue proportion being attributable to one of the possessors of the right to the detriment of the others"? Obviously, what may be received in undue proportion or be annihilated by waste is the oil and/or gas, not the right to drill which exists independently of the presence or absence of oil and/or gas. It would appear quite clear that the right to drill is meaningless apart from the opportunity to share in the fruits of that drilling and that it is the right to a "just distribution" which is the essence of the common law correlative right.²³ In either event, the

21. *Id.* at 210 (emphasis supplied).

22. *Id.*

23. (a) *Thompson v. Consolidated Gas Co.*, 300 U.S. 55, 69 (1936):

It may be assumed that House Bill 266 should be construed as authorizing regulations to prevent waste, and to create and protect correlative rights of owners in a common reservoir of gas to their justly proportionate shares thereof, free of drainage to neighboring

Wyoming Legislature has settled the matter insofar as the Wyoming Oil and Gas Conservation Commission is concerned by either (1) broadening the commonlaw correlative right to include the right to an equitable share of the oil or gas or (2) by recognizing that this was the intended scope of the commonlaw right as delineated by the Supreme Court.

While the legislative direction to protect correlative rights is, by legislative definition, restricted to the right to produce a just and equitable share of the oil or gas, or both, in the pool²⁴ this article has attempted to demonstrate

lands. It may be assumed, also, that the statute, so construed, is a valid exercise of the State's undoubted power to legislate to those ends . . .

- (b) *Manufacturers' Gas & Oil Co. v. Indiana Gas & Oil Co.*, 155 Ind. 461, 57 N.E. 912, 915 (1900):

Natural gas in the ground is so far the subject of property rights in the owners of the superincumbent lands, that while each of them has the right to bore or mine for it on his land, and to use such portions of it as, when left to the natural laws of flowage, may arise in the wells of such owners and into his pipes, no one of the owners of such land has the right, without the consent of all the other owners, to induce an unnatural flow into or through his own wells . . .

- (c) *Quinn v. Pere Marguette Ry. Co.*, 256 Mich. 143, 239 N.W. 376, 380 (1931):

The deed contains no reservation to grantors. The grantee took title to the gas and oil in place. If there is a pool common to the lands of both parties, then, if defendant may not drill, plaintiff, by tapping the pool, may take oil belonging to defendant. Such a result could not be sanctioned, and, if it were imperative to restrain defendant from drilling, equity necessarily would attempt to require an accounting by plaintiff for defendant's oil taken by him.

- (d) *Bernstein v. Bush*, 29 Cal. 2d 773, 177 P.2d 913, 918 (1947):

From the foregoing it follows that the respondent's disapproval of the petitioners' proposal to drill a well in accordance with the notice of intention on file, if effective to prevent such drilling, would amount to a deprivation of the petitioners' right, co-equal with the right of surrounding owners and lessees, to recover their fair share of the oil and gas from the common source of supply, and consequently would infringe upon the constitutional guarantees invoked.

- (e) *Elliff v. Texon Drilling Co.*, 146 Tex. 575, 210 S.W.2d 558, 562 (1948):

In this manner, if all operators exercise the same degree of skill and diligence, each owner will recover in most instances his fair share of the oil and gas. This reasonable opportunity to produce his fair share of the oil and gas is the landowners' commonlaw right under our theory of absolute ownership of the minerals in place.

While such cases as *Ryan Consol. Petro. Corp. v. Pickens*, 155 Tex. 221, 285 S.W.2d 201 (1955) and *Atlantic Ref. Co. v. Bright & Schiff*, 321 S.W.2d 167 (Tex. Civ. App. 1959) tend to indicate that the right is solely the equal opportunity to drill such cases as *Atlantic Ref. Co. v. Railroad Comm'n.*, 162 Tex. 274, 346 S.W.2d 801 (1961), *Railroad Comm'n. v. Williams*, 163 Tex. 370, 356 S.W.2d 131 (1961), and *Halbouty v. Railroad Comm'n.*, 163 Tex. 417, 357 S.W.2d 364 (1962) appear to recognize that the opportunity to a fair share means a proportionate share in the oil and gas.

- (f) *Pattie v. Oil & Gas Conservation Comm'n.*, 145 Mont. 531, 402 P.2d 596, 23 OIL & GAS REP. 65 (1965).

- (g) *Dodds v. Ward*, 418 P.2d 629, 631 (Okla. 1966):

Correlative rights is a convenient term for indicating that each owner of land in common source of supply of oil and gas has legal privileges as against other owners of land therein to take oil and gas therefrom by lawful operations conducted on his own land, limited however, by duties to other owners not to injure source of supply and not to take an undue share of oil and gas.

24. WYO. STAT. § 30-216(i) (Comp. 1967).

that the obligation is a commonlaw one which is considerably broader than the legislative declaration and is an obligation which will be required even in the face of obvious legislative intent to the contrary.²⁵ Some brief consideration will also be given to the means by which the commission can effectuate the legislative mandate.

The direction to protect correlative rights raises the question as to what is meant by protect. In its normal use it indicates an obligation to guard or to defend from harm or destruction. The question then becomes one as to whether or not this obligation to defend or guard a person's correlative rights can be exercised by considering the person's correlative rights when the commission issues regulatory orders, or whether the discharge of such duty requires an adjudication of conflicts involving correlative rights. Article 2, Section 1 of the Constitution of the State of Wyoming provides:

The powers of the government of this state are divided into three distinct departments: the legislative, executive and judicial, and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments shall exercise any powers properly belonging to either of the others, except as in this constitution expressly directed or permitted.

Article 5, Section 1 of the Constitution of the State of Wyoming provides:

The judicial power of the state shall be vested in the senate, sitting as a court of impeachment, in a supreme court, district court, justice of the peace, court of arbitration *and such courts as the legislature may, by general law establish for incorporated cities or incorporated towns.* [Emphasis added].

The constitution expressly provides for the separation of powers amongst the executive, legislative, and judicial branches of the state government and provides that no branch shall exercise "any powers properly belonging to either of the others" and further expressly provides for the exercise of the judicial power only by specified courts "and such courts as the legislature may . . . establish for incorporated cities or incorporated towns." Thus, if a judicial function

25. See text accompanying notes 6 and 7 *supra*.

is necessary to discharge the obligation to protect correlative rights, it is possible that the legislature may have violated Article 2, Section 1 of the Constitution of the State of Wyoming.²⁶ The judicial power apparently is exercised anytime a dispute between two individuals is litigated and decided as to strictly individual right²⁷ or when an individual's right of property is determined.²⁸ It would appear, then, that if the commission considers the correlative right of individuals as one of the factors involved in the making of its rules, regulations, and orders and does not attempt to determine those rights among individuals that it has not performed the judicial function and, thus, would not be violating the constitutional separation of powers.

Having ascertained the scope of the correlative rights which the commission has been charged with protecting, some brief mention should be made of the means by which the commission can discharge its obligation to give that protection. It would appear that the required protection can be afforded through a combination of the following methods: (1) by the prevention of waste through such means as (a) restricting production to that allowed by utilization of the M.E.R., (b) prohibiting open pit storage, (c) prohibiting the unreasonable blowing of gas wells, (d) prohibiting the unreasonable flaring of gas, (e) prohibiting improper abandonment procedures, (f) prohibiting improper operation of wells, (g) prohibiting improper completion procedures, (h) establishment of drilling units, and (i) restricting the number and location of wells; (2) by providing for exceptions to the location and number of wells on the drilling unit and by increasing or decreasing the size of the drilling unit; (3) compulsory pooling; (4) pro-rationing of production; and (5) by ratable take of production.

It is not within the scope of this article to consider the application of these methods to the protection of correlative rights or to consider the problems created by such application.

26. *Farm Inv. Co. v. Carpenter*, 9 Wyo. 110, 61 P. 258, 269 (1900):

The legislature has not attempted to devest the courts of that jurisdiction, and we do not think it could successfully do so.

The court gave some indication, however, that the appellate function provided for the courts might be sufficient to avoid violating the constitutional provision.

27. *In re Opinion of the Justices*, 87 N.H. 492, 179 A. 344 (1935); *State v. Mechem*, 63 N.M. 250, 316 P.2d 1069 (1957).

28. *Laisne v. State Bd. of Optometry*, 19 Cal. 2d 831, 123 P.2d 457 (1942).

Nor does the author intend, by such listing, to indicate that these are the only or the exclusive methods by which the commission may discharge its obligations to protect correlative rights. It is the intention to give some idea of the means which can be utilized and, thus, to give an indication of the areas in which problems may arise in relation to correlative rights and the nature of those problems.

A reading of the statutes indicates that the Wyoming Oil and Gas Conservation Commission has been given adequate authority and power to discharge the obligation imposed upon it of protecting correlative rights. The commission has been given the authority and power (a) to prevent waste,²⁹ (b) to establish drilling units,³⁰ (c) to restrict the number and location of wells for each drilling unit,³¹ (d) grant exceptions from the authorized location,³² (e) to decrease the size of drilling units,³³ (f) to permit the drilling of additional wells,³⁴ (g) to pro-rate production among the several wells or properties when the production from the pool is restricted to an amount less than that which the pool could produce if no restriction were imposed,³⁵ (h) to require ratable taking in a pool by each person purchasing or taking oil or gas for transportation,³⁶ and (i) to compulsorily pool interests in a drilling unit.³⁷

CONCLUSION

The legislative injunction that the commission protect correlative rights imposes no greater obligation than existed. Correlative rights exist as common law rights against (1) the waste of extracted substances, (2) spoilage of the common reservoir, (3) malicious depletion of the common source of supply, and (4) as the right to extract a fair share of the oil or gas. Any abridgement of these rights by the legislature amounts to a taking of private property for which compensation must be paid.

29. WYO. STAT. § 30-217 to -219 (1957).

30. WYO. STAT. § 30-221(a) (Comp. 1967).

31. WYO. STAT. § 30-221(c) (Comp. 1967).

32. *Id.*

33. WYO. STAT. § 30-221(d) (Comp. 1967).

34. *Id.*

35. WYO. STAT. § 30-217 (Comp. 1967).

36. WYO. STAT. §§ 30-234.1-234.2 (Comp. 1967).

37. WYO. STAT. §§ 30-221(f), (g) (Comp. 1967).