

ers.²⁹⁰ Generally, whether a system of proration is fair is a question for administrative and not judicial judgment.²⁹¹ On the other hand, where the evidence showed that an order prorating allowed production among several wells was actually intended to compel pipeline owners to furnish a market to those who had no pipeline connections, the order was held void as a taking of private property for private benefit.²⁹²

A state may act to conserve resources even if it works to the economic detriment of the producer. Thus, a state may forbid certain uses of natural gas, such as the production of carbon black, where the gas is burned without fully using the heat therein for other manufacturing or domestic purposes. Such regulations were sustained even where the carbon black was more valuable than the gas from which it was extracted, and notwithstanding the fact that the producer had made significant investment in a plant for the manufacture of carbon black.²⁹³ Likewise, for the purpose of regulating and adjusting coexisting rights of surface owners to underlying oil and gas, it is within the power of a state to prohibit the operators of wells from allowing natural gas, not conveniently necessary for other purposes, to come to the surface unless its lifting power was used to produce the greatest proportional quantity of oil.²⁹⁴

Protection of Property and Agricultural Crops.—Special precautions may be required to avoid or compensate for harm caused by extraction of natural resources. Thus, a state may require the filing of a bond to secure payment for damages to any persons or property resulting from an oil and gas drilling or production opera-

²⁹⁰ This can be done regardless of whether the benefit is to the owners of oil and gas in a common reservoir or because of the public interests involved. *Thompson v. Consolidated Gas Co.*, 300 U.S. 55, 76–77 (1937) (citing *Ohio Oil Co. v. Indiana* (No. 1), 177 U.S. 190 (1900)); *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61 (1911); *Oklahoma v. Kansas Natural Gas Co.*, 221 U.S. 229 (1911). Thus, the Court upheld against due process challenge a statute that defined waste as including, in addition to its ordinary meaning, economic waste, surface waste, and production in excess of transportation or marketing facilities or reasonable market demands, and which limited each producer's share to a prorated portion of the total production that can be taken from the common source without waste. *Champlin Rfg. Co. v. Corporation Comm'n*, 286 U.S. 210 (1932).

²⁹¹ *Railroad Comm'n v. Rowan & Nichols Oil Co.*, 310 U.S. 573 (1940) (evaluating whether proration based on hourly potential is as fair as one based upon estimated recoverable reserves or some other combination of factors). *See also* *Railroad Comm'n v. Rowan & Nichols Oil Co.*, 311 U.S. 570 (1941); *Railroad Comm'n v. Humble Oil & Ref. Co.*, 311 U.S. 578 (1941).

²⁹² *Thompson v. Consolidated Gas Co.*, 300 U.S. 55 (1937).

²⁹³ *Walls v. Midland Carbon Co.*, 254 U.S. 300 (1920). *See also* *Henderson Co. v. Thompson*, 300 U.S. 258 (1937).

²⁹⁴ *Bandini Co. v. Superior Court*, 284 U.S. 8 (1931).