

STATE OF NEW MEXICO  
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT  
OIL CONSERVATION DIVISION

IN THE MATTER OF THE HEARING CALLED BY )  
THE OIL CONSERVATION DIVISION FOR THE )  
PURPOSE OF CONSIDERING: )  
 ) CASE NO. 13,224  
APPLICATION OF BURLINGTON RESOURCES OIL )  
AND GAS COMPANY, L.P., FOR COMPULSORY )  
POOLING, RIO ARriba COUNTY, NEW MEXICO )  
 )

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: DAVID R. CATANACH, Hearing Examiner

February 19th, 2004

Santa Fe, New Mexico

RECEIVED

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Oil Conservation Division  
1220 S. St. Francis Drive  
Santa Fe, NM 87505

This matter came on for hearing before the New

Mexico Oil Conservation Division, DAVID R. CATANACH,  
Hearing Examiner, on Thursday, February 19th, 2004, at the  
New Mexico Energy, Minerals and Natural Resources  
Department, 1220 South Saint Francis Drive, Room 102, Santa  
Fe, New Mexico, Steven T. Brenner, Certified Court Reporter  
No. 7 for the State of New Mexico.

\* \* \*

I N D E X

February 19th, 2004  
Examiner Hearing  
CASE NO. 13,224

PAGE

APPLICANT'S WITNESS:

<u>STEVEN K. SMITH</u> (Landman)	
Direct Examination by Mr. Kellahin	3
Examination by Examiner Catanach	18

REPORTER'S CERTIFICATE 27

\* \* \*

E X H I B I T S

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\* \* \*

A P P E A R A N C E S

FOR THE APPLICANT:

KELLAHIN & KELLAHIN  
117 N. Guadalupe  
P.O. Box 2265  
Santa Fe, New Mexico 87504-2265  
By: W. THOMAS KELLAHIN

\* \* \*

1           WHEREUPON, the following proceedings were had at  
2 9:25 a.m.:

3           EXAMINER CATANACH: At this time I'll call Case  
4 13,224, the Application of Burlington Resources Oil and Gas  
5 Company, L.P., for compulsory pooling, Rio Arriba County,  
6 New Mexico.

7           Call for appearances in this case.

8           MR. KELLAHIN: Mr. Examiner, I'm Tom Kellahin of  
9 the Santa Fe law firm of Kellahin and Kellahin, appearing  
10 on behalf of the Applicant, and I have one witness to be  
11 sworn.

12           EXAMINER CATANACH: Any additional appearances?  
13 Okay, will the witness please be sworn in?

14           (Thereupon, the witness was sworn.)

15                         STEVEN K. SMITH,  
16 the witness herein, after having been first duly sworn upon  
17 his oath, was examined and testified as follows:

18                                 DIRECT EXAMINATION

19           BY MR. KELLAHIN:

20           Q. Mr. Smith, for the record, sir, would you please  
21 state your name and occupation?

22           A. Steven K. Smith, senior staff landman, Burlington  
23 Resources.

24           Q. Where do you reside, sir?

25           A. Farmington, New Mexico.

1 Q. On prior occasions, Mr. Smith, have you testified  
2 as a petroleum landman before the Division?

3 A. I have not.

4 Q. Summarize your education for us.

5 A. I have a PLM degree from the University of  
6 Louisiana.

7 Q. In what year was that?

8 A. 1983.

9 Q. Summarize for us your employment experience as a  
10 petroleum landman.

11 A. I have over 20 years' experience in the Gulf  
12 Coast, mid-continent and Rocky Mountain region with ten  
13 years in New Mexico.

14 Q. As part of your responsibilities for Burlington,  
15 have you been involved in consolidating the interests for a  
16 spacing unit located in the federal unit, the 29-and-7  
17 Federal Unit?

18 A. I have.

19 Q. Is that the subject of this case?

20 A. It is.

21 Q. Are you the principal landman with Burlington  
22 that's contacted the various parties that you're now  
23 seeking to pool?

24 A. I am.

25 MR. KELLAHIN: We tender Mr. Smith as an expert

1 petroleum landman.

2 EXAMINER CATANACH: He is so qualified.

3 Q. (By Mr. Kellahin) Mr. Smith, let's turn to the  
4 exhibit book, and let's start with Tab 3. Would you turn  
5 to that locator map for us? Can you identify for us, to  
6 give us a sense of where this unit is located, the  
7 approximate location of that unit as depicted on this map?

8 A. The San Juan 29-7 Unit is located in Township  
9 29-7, just east of Farmington.

10 Q. Am I correct in understanding this is what we  
11 called a federal divided interest unit?

12 A. That's correct.

13 Q. Under that system of unit operation, there are  
14 participating areas for various formations involved in that  
15 unit, are there not?

16 A. That's correct.

17 Q. In this particular unit, what are the principal  
18 participating areas that you're dealing with for these two  
19 wells?

20 A. The principal participating areas are the  
21 Mesaverde and the Dakota formations.

22 Q. Let's look within the unit area and identify for  
23 Mr. Catanach the next display behind Exhibit Tab Number 3,  
24 and let's focus on Section 9. Is Section 9 within the  
25 unit?

1 A. It is.

2 Q. When we look at Section 9, do you have a proposed  
3 spacing unit for these two wells?

4 A. The spacing unit is the west half of Section 9.

5 Q. When we look at the west half, can you tell us  
6 how it's subdivided into its component leases?

7 A. The Pablo Candelaria lease is the lease in  
8 question, and the federal lease, FF-078426, is 100-percent  
9 leased.

10 Q. When we look at the Pablo Candelaria lease, there  
11 are certain interest owners in the Dakota portion of the  
12 unit that are not fully committed to certain documents in  
13 the unit?

14 A. That's correct.

15 Q. Lead us through an understanding of what is the  
16 reason that you're having to pool certain of those owners.

17 A. Originally, the lease covered from the surface to  
18 the base of the Mesaverde formation. There haven't been  
19 any wells drilled below that depth on this tract. The  
20 surface to the Mesaverde formations are subject to the unit  
21 agreement and subject to the unit operating agreement. The  
22 Dakota formation is only subject to the unit agreement and  
23 not the unit operating agreement, and is unleased as to  
24 certain interests.

25 Q. Of the parties you're seeking to pool, describe

1 for us how their interests became uncommitted to the  
2 operating agreement.

3 A. The original --

4 Q. Are they originally --

5 A. Go ahead.

6 Q. Yeah, go ahead. I was going to ask you, are they  
7 originally unleased mineral owners? They are successors to  
8 an unleased mineral owner?

9 A. They are successors to an unleased mineral owner.  
10 He originally ratified the unit agreement, but did not  
11 ratify the unit operating agreement.

12 Q. Did he also commit part of the unit to a lease,  
13 to a certain individual or company, from the surface to the  
14 base of the Mesaverde?

15 A. Yes, he did.

16 Q. Okay. So summarize again for us how we get to  
17 where we are today with this interest.

18 A. This tract was originally leased from the surface  
19 to the base of the Mesaverde, leaving the depths below that  
20 unleased, and until this point a well has been proposed or  
21 drilled below the base of the Mesaverde. So the Dakota  
22 rights are not -- haven't produced in that west half of 9.

23 Q. Let's turn to the next display. When we look at  
24 this next display, it's identified as the Mesaverde  
25 participating area?

1 A. Yes.

2 Q. What does that show you.

3 A. The Mesaverde participating area is fully  
4 expanded as to the unit area.

5 Q. When we turn to the next display and look at the  
6 participating area for the Dakota within the unit area,  
7 what do we see?

8 A. That it's not fully expanded, in particular to  
9 the west half of Section 9.

10 Q. You have color-coded the west half of 9?

11 A. The blue outline is the tract in question.

12 Q. Describe for us the mechanism that's utilized  
13 within the unit consistent with the documents by which the  
14 spacing unit, being the west half of 9, the participation  
15 area in the Dakota is expanded. Describe for us that  
16 method.

17 A. Once a well is drilled on a drill block it's  
18 typically evaluated for six months. If it's deemed  
19 commercial, then it's included in the PA area. And at that  
20 time a cost adjustment is made with the owners, and it's  
21 included in the PA.

22 Q. Has Burlington proposed the west-half spacing  
23 unit to the other working interest owners in this federal  
24 unit?

25 A. Yes.



1 Q. And it's confined to the interest owners within  
2 this spacing unit?

3 A. That's correct.

4 Q. Insofar as the Dakota is concerned?

5 A. Yes.

6 Q. Until it's expanded then, the parties that share  
7 in the cost of the well as to the Dakota are confined to  
8 the percentages and the individuals contained within the  
9 west half of Section 9?

10 A. That's right.

11 Q. Once the well is drilled and successful, is there  
12 a mechanism to reallocate the costs, the percentages, on a  
13 participation-area basis?

14 A. Yes, and it's in the unit operating agreement and  
15 the COPAS agreement attached to the unit operating  
16 agreement.

17 Q. Is that Burlington's plan of handling the  
18 interest and participations in the west half of 9?

19 A. We plan on utilizing the terms of the unit  
20 operating agreement.

21 Q. Let's turn to Tab Number 3, and let's look at the  
22 interests. When we turn behind Tab -- I'm sorry, Tab  
23 Number 4, you've got some spreadsheets. Describe the first  
24 spreadsheet for us, Mr. Smith.

25 A. The first spreadsheet is a division of interest

1 as to the San Juan 29-7 Unit, 80B well.

2 Q. You're proposing to include approval to drill  
3 both these wells pursuant to the force pooling order and in  
4 consistent agreement with your documents as to other  
5 formations?

6 A. That's correct.

7 Q. So this is for the 80B well. Do you have a  
8 similar spreadsheet for the 80M well?

9 A. The next page is a division of interest for the  
10 80M well.

11 Q. When we look at this spreadsheet, can you  
12 identify for Mr. Catanach the parties that you're intending  
13 to pool by this order?

14 A. The first party is Douglas Cameron McLeod, and  
15 the second party is Leslie Hardwick O'Shea.

16 Q. Let's turn to Tab 5 and look at your chronology  
17 you've prepared on the Leslie O'Shea interest. Were you  
18 the representative of Burlington that proposed this well to  
19 Ms. O'Shea?

20 A. Yes.

21 Q. And you did that by letter?

22 A. Yes.

23 Q. When was that letter sent?

24 A. August 22nd.

25 Q. That's indicated on your chronology?

1 A. It is.

2 Q. Give us a summary of what's transpired between  
3 you and Ms. O'Shea concerning her interest.

4 A. Just a summary. After the initial letter was  
5 sent on August 22nd, after a period of -- there was no  
6 response -- I contacted this person by phone. She had  
7 misplaced the documents. I re-faxed the documents and re-  
8 sent the documents by mail.

9 Subsequent to that, she has indicated she will  
10 either elect to lease or participate, but to date we've not  
11 received an election.

12 Q. Have you taken the opportunity to explain to her  
13 on the telephone, as best you could, the mechanism by which  
14 all this functions?

15 A. I have.

16 Q. Did she indicate to you any opposition with  
17 regards to committing her interest to this well?

18 A. No, she didn't.

19 Q. Let's turn now to the Douglas McLeod interest.  
20 That's the next chronology in the tabulation of documents  
21 behind Tab 5. Summarize for us your contacts with Mr.  
22 McLeod.

23 A. I haven't spoken directly to Mr. McLeod. I  
24 believe he's a principal of Petrogulf Corporation in  
25 Denver. I have spoken to a person that represents him.

1 They're an oil and gas company, they understand what the  
2 initial letter entailed. And subsequent to that, I've  
3 talked to him as recent as last week.

4 Q. At this point you have not been able to reach a  
5 voluntary agreement with Mr. McLeod about the commitment of  
6 his interest in the Dakota to the operating agreement for  
7 the unit?

8 A. That's right.

9 Q. His interest in the Mesaverde is fully committed  
10 by contract, both the unit agreement and the operating  
11 agreement?

12 A. His interest in the Dakota is --

13 Q. In the Mesaverde.

14 A. In the Mesaverde, correct.

15 Q. As to the Dakota, then, he's committed to the  
16 unit agreement but not the operating agreement?

17 A. That's correct.

18 Q. Let's turn to the next page and look at the type  
19 of letter that you sent to Mr. McLeod and to Ms. O'Shea.  
20 Is this a letter of August 21st, over your signature, last  
21 year's letter?

22 A. August 22nd, yeah.

23 Q. What are you advising them, Mr. McLeod, in this  
24 letter?

25 A. We sent a cost estimate for the San Juan 29-7

1 Unit, for the 80M and 80B wells, and we've requested that  
2 they either elect to ratify the unit operating agreement  
3 and elect to participate in the cost of drilling,  
4 completing the well, or we've asked them to ratify the unit  
5 operating agreement and elect a nonconsent position in the  
6 well.

7 Q. Did you provide to Mr. McLeod, along with this  
8 letter, all the documentation by which he could inform  
9 himself of the nature of the problem and what you're asking  
10 him to do?

11 A. We believe we did.

12 Q. Did you include a proposed AFE for the cost of  
13 this well?

14 A. We did.

15 Q. To the best of your knowledge, is that AFE still  
16 a current AFE that's applicable to these two wells?

17 A. To the best of my knowledge.

18 Q. Was it performed, to the best of your knowledge,  
19 or prepared, to the best of your knowledge, in the ordinary  
20 course of Burlington's business?

21 A. Yes.

22 Q. Let's flip to the tab, the yellow tab that you  
23 have placed on the exhibit package for Exhibit Tab 5, and  
24 turn to Janet Paul's letter back to you on behalf of Mr.  
25 McLeod. That's a letter of February 2nd of this year?

1 A. Yes.

2 Q. As part of this process has Mr. McLeod asked  
3 Burlington to market his share of the gas produced from the  
4 well?

5 A. He has.

6 Q. Burlington as operator of the unit and as  
7 operator of this well, do you market 100 percent of the gas  
8 from this unit?

9 A. We don't. It's a policy of Burlington that the  
10 marketing gas on the behalf of nonoperators creates a  
11 function as a marketing agent.

12 Q. A working interest owner, then, under the system  
13 available in the unit, has the right and the opportunity to  
14 market his share of the gas?

15 A. Correct.

16 Q. In the event they do not do so, what is the  
17 mechanism in place to protect their correlative rights?

18 A. It's standard in the industry that a gas  
19 balancing agreement is utilized.

20 Q. As Mr. McLeod in his letter contended that if  
21 Burlington fails to market his share of the gas, then  
22 they've somehow violated his correlative rights?

23 A. That's his contention.

24 Q. What's your response to that issue?

25 A. That a gas balancing agreement protects him and

1 protects his correlative rights.

2 Q. Describe for us how that gas balancing agreement  
3 would function to do that in this case.

4 A. If an underproduced party is out of balance with  
5 the other owners in the well, that they're allowed to  
6 either take their gas in kind or be allowed to take a gas  
7 settlement.

8 Q. Is there an example of the gas balancing  
9 agreement that's applicable to this unit contained within  
10 the exhibit book?

11 A. It is the last three pages of Exhibit 6.

12 Q. Behind Exhibit Tab 6 --

13 A. Yeah.

14 Q. -- then look at the last three pages. That's the  
15 balancing agreement for the unit?

16 A. It is.

17 Q. Have you also included for the Examiner a copy of  
18 the unit agreement itself?

19 A. Yes.

20 Q. Will you look behind Tab 7 and find that?

21 A. Yes.

22 Q. Okay. In order to avoid future contentions  
23 between you and Mr. McLeod over gas balancing pursuant to a  
24 compulsory pooling order, do you have a recommendation to  
25 the Examiner on that issue?

1           A.    We would like to request that the gas balancing  
2 agreement, which is currently attached to the unit  
3 operating agreement for the San Juan 29-7 Unit, be  
4 incorporated in this order.

5           Q.    Have you received any objection from any party as  
6 to the proposed cost of this well?

7           A.    We have not.

8           Q.    Is the well proposal that Burlington sent to  
9 these parties to be pooled indicative of your intention to  
10 drill downhole commingled wells for production from the  
11 Mesaverde and the Dakota?

12          A.    Yes.

13          Q.    Do you have a recommendation to the Examiner for  
14 overhead rates for a drilling well and a producing well?

15          A.    We would like to utilize the current rates on the  
16 San Juan 29-7 Unit.  The drilling rate is \$5048.20, the  
17 producing well rate is \$589.01.

18          Q.    Is there a mechanism contained within the unit by  
19 which those costs or rates are adjusted?

20          A.    The COPAS agreement attached to the unit  
21 operating agreement allows for escalation of those rates.

22          Q.    If Mr. Catanach provides in his order a mechanism  
23 for adjustment of those rates pursuant to the COPAS  
24 bulletins, would that be consistent with how the unit  
25 functions?



1 A. Yes.

2 Q. Did Burlington cause notice of this hearing to be  
3 sent to these two parties, Ms. O'Shea and Mr. McLeod?

4 A. We did.

5 Q. When we turn to Exhibit Number 1, is there a copy  
6 of that certificate of notice of this hearing, along with  
7 copies of the green cards attached?

8 A. There is.

9 Q. In addition, you have copies of the Application  
10 that were furnished to these people?

11 A. Yes.

12 Q. Let's turn then, finally, to Exhibit Tab Number  
13 2, and identify behind that tab for Mr. Catanach the two  
14 Form C-102s that Burlington intends to use for these two  
15 wells.

16 A. The C-102 for the San Juan 29-7 Unit 80B and the  
17 San Juan 29-7 Unit 80M wells.

18 Q. Are you aware of what Burlington's plans are, Mr.  
19 Smith, as to when they will commence these wells?

20 A. The permit for the 80M is approved and it will be  
21 drilled, to the best of my knowledge, in the next 60 days.

22 Q. When we look at the C-102 for the 80M well and  
23 see how the well is spotted down in the southwest southwest  
24 corner of 9 --

25 A. Yes.

1 Q. In fact, that well is at an unorthodox location  
2 within the unit, is it not?

3 A. That's correct.

4 Q. Will Burlington file an administrative  
5 application seeking approval of that well location before  
6 you engage in the work?

7 A. We will.

8 MR. KELLAHIN: Mr. Catanach, that concludes my  
9 examination of Mr. Smith.

10 We move the introduction of Burlington's exhibit  
11 in the exhibit book behind Tabs 1 through 8.

12 EXAMINER CATANACH: Burlington's exhibit book and  
13 corresponding Exhibit Tabs 1 through 8 will be admitted as  
14 evidence in this case.

15 EXAMINATION

16 BY EXAMINER CATANACH:

17 Q. So everybody -- Okay, I'm just making sure I get  
18 this right. Everybody in the Mesaverde is committed by  
19 virtue of the operating agreement and unit agreement?

20 A. That's correct.

21 Q. So you're only pooling two parties that are not  
22 subject to that agreement?

23 A. The unit operating agreement.

24 Q. Okay.

25 MR. KELLAHIN: Insofar as the Dakota only, Mr.

1 Catanach.

2 Q. (By Examiner Catanach) Right, from the Dakota.  
3 From the Mesaverde down is my question.

4 A. Yes.

5 Q. In your proposal letter to these two interest  
6 owners, I notice that there's three options, two of which  
7 involve them ratifying the operating agreement. Is that  
8 necessary? I mean, in your opinion, do they have to do  
9 that to participate?

10 A. I believe they do. In particular, the operating  
11 agreement -- unit operating agreement, provides a mechanism  
12 for cost and expense reimbursement when that tract is  
13 included into the PA. Without that, there is no way to  
14 adequately bring that tract in to the PA and adjust their  
15 share of the cost.

16 Q. Okay. The other option is, they can lease to you  
17 guys --

18 A. Yes, yes, that's the third option.

19 Q. It sounds like an accounting nightmare about the  
20 well costs and allocation of well costs and all that.

21 A. It is.

22 Q. But you've got that, I suppose, enough experience  
23 that you've got that -- I mean, there's a procedure for  
24 allocating well costs?

25 A. That's correct.

1 Q. Do you know, just kind of briefly, how that works  
2 with regards to the Mesaverde and the Dakota?

3 A. Generally, because the Mesaverde is out of the  
4 PA, when it's brought in the owners that were parties to  
5 the drilling of the well were reimbursed for their cost.

6 Q. Okay. How would the well cost be split between  
7 the Mesaverde and Dakota interest owners?

8 A. Well, that's outlined in an amendment to the unit  
9 operating agreement, and that's another difficulty, I  
10 think, without that agreement in place.

11 Q. So this -- I guess the issue with one of the  
12 interest owners is the gas balancing agreement?

13 A. That's correct.

14 Q. I guess he wants you guys to market the gas?

15 A. That's correct.

16 Q. And it's not standard for you guys to do that?

17 A. Burlington's policy for several years now has  
18 been not to, because it creates a fiduciary relationship  
19 with our nonoperating parties, which we believe creates  
20 some liability.

21 Q. Okay, so in the absence of that you enter into a  
22 gas balancing agreement with these interest owners?

23 A. Yes.

24 Q. And has that generally been a satisfactory  
25 solution to this problem?

1 A. It's worked just fine.

2 Q. Do you anticipate that he will ultimately join,  
3 or do you have a sense for that?

4 A. My sense is that he will join and possibly elect  
5 to go nonconsent, which creates after payout a concern of  
6 his, of correlative rights when he backs into the well.

7 Q. So that's when the -- well, he wouldn't be  
8 required -- If he ratifies and goes nonconsent, then you  
9 wouldn't -- the gas balancing thing wouldn't come into play  
10 until after his interest is paid out?

11 A. That's right.

12 Q. And that's -- He's still expressing concern about  
13 that?

14 A. Yes.

15 EXAMINER CATANACH: Mr. Kellahin, to the best of  
16 my knowledge we've never done that kind of thing before.

17 MR. KELLAHIN: Your recollection is correct, Mr.  
18 Catanach. This is sort of an odd duck, and it's a  
19 particular oddity in that we have this stranded interest as  
20 to commitment to the working -- the operating agreement for  
21 the unit. And there are a couple of triggers in here that  
22 are of concern.

23 One is, if this is a standard pooling application  
24 for a spacing unit, normally that order doesn't allow you  
25 to -- or doesn't provide a mechanism where you can

1 reallocate those costs and percentages on the participation  
2 area that we utilize in the unit. But we want the record  
3 to reflect clearly that that's what we intend to do.

4 The more difficult problem of immediate concern  
5 is the claim that we must market his share of the gas. If  
6 he signs the operating agreement, goes nonconsent, then he  
7 has agreed to the gas balancing agreement attached to that  
8 contract, and we'll continue to do with that interest as  
9 we've always done.

10 If he chooses not to sign, then we are in limbo  
11 as to how we handle what may be a correlative rights  
12 impairment if all the gas has been produced by others and  
13 he now has an underbalanced account. And the classic way  
14 to solve that in the industry is with a gas balancing  
15 agreement.

16 So in this case we think it's fortuitous to adopt  
17 at this time by reference the gas balancing agreement  
18 that's utilized for the unit and thereby avoid the problem,  
19 or at least resolve the problem now, rather than coming  
20 back at some other time in the future.

21 I'm surprised, though, that this issue has never  
22 come up before in the context of a typical pooling case.

23 EXAMINER CATANACH: So what that does, if he  
24 chooses not to sign and he goes nonconsent, it's your  
25 contention that that would subject him to the gas balancing

1 agreement?

2 MR. KELLAHIN: If you incorporate by reference  
3 that gas balancing agreement, then he's subject to it,  
4 regardless of whether he elects to sign the operating  
5 agreement or chooses to go nonconsent under the pooling  
6 order.

7 EXAMINER CATANACH: Okay. Do you think the  
8 pooling statute is flexible enough to provide us that  
9 power?

10 MR. KELLAHIN: I know you've never exercised it,  
11 but I think it's certainly implied, if not clearly  
12 expressed, within the context of the pooling statute, that  
13 you are to do -- take reasonable action to protect  
14 correlative rights. And in doing so, while we've never  
15 addressed it, I think it's an obligation to consider gas  
16 balancing.

17 EXAMINER CATANACH: We certainly have some  
18 attorneys around here. I'll have to run it by them.

19 Q. (By Examiner Catanach) Okay, I just need to get  
20 the overhead rates again, I missed them.

21 A. Okay, the drilling rate is \$5048.20, and the  
22 producing rate is \$589.01.

23 Q. Okay. Now, the 80M is going to be drilled first,  
24 and then do you know how far after that the other well --

25 A. I believe the 80B is first -- excuse me -- Yeah,

1 the 80B is first --

2 Q. The 80B is first.

3 A. -- and then the 80M.

4 Q. Is it going to be one drilled and finished and  
5 then the other one started?

6 A. Yes.

7 EXAMINER CATANACH: Do we need a special  
8 provision to allow for additional time on the second well,  
9 Mr. Kellahin? Because the pooling order would give you 90  
10 days for both wells, typically.

11 Tell you what, why don't you think about that --

12 MR. KELLAHIN: Let me think about that.

13 EXAMINER CATANACH: -- then you can put it in  
14 your draft order.

15 MR. KELLAHIN: My reluctance to comment is, we  
16 have dealt with that in the force pooling committee year  
17 after year, and at this point I'm not sure what was agreed  
18 to. And Mr. Brooks has never finalized those  
19 recommendations on what to do with those points within a  
20 pooling case. So let me think about that.

21 EXAMINER CATANACH: I don't recall that we've had  
22 a case again where we pooled two wells at the same time. I  
23 may be mistaken, but --

24 MR. KELLAHIN: Let me look at my notes again  
25 about how that's done.



1           Let me share something with you, before we close,  
2 on the Division's jurisdiction within pooling to address  
3 gas balancing. The letter from Mr. McLeod refers to Rule  
4 414. Here's a copy of the order that adopted that rule.

5           This rule was adopted for a different purpose by  
6 Mr. Stamets and the Commission back in the mid-1980s. At  
7 that point in time, the Commission was dealing with gas  
8 prorationing and were worried about one operator taking all  
9 of the production from a well, utilizing all the allowable  
10 and leaving a party out of the market and frozen out of an  
11 allowable by taking it all. And there was a committee  
12 formed for the industry to try to resolve what to do.

13           Of the four proposals outlined in the order, the  
14 Commission decided it was too complicated and they had to  
15 do it on a case-by-case basis. And they adopted the  
16 suggestion that they would call a hearing if there was an  
17 owner in an underbalanced situation that thought his  
18 correlative rights were being impaired.

19           While this rule has never been utilized, to the  
20 best of my knowledge, for any purpose, it certainly is  
21 adaptable to this issue about gas balancing under a pooling  
22 order. So it appears to me that you have a rule in place  
23 that could be utilized to address gas balancing, even  
24 though it's never been exercised.

25           So I think that's where I would start in the

1 analysis of gas balancing within the context of a pooling  
2 order.

3 EXAMINER CATANACH: Okay. Are you requesting a  
4 200-percent risk penalty?

5 MR. KELLAHIN: Yes, sir.

6 EXAMINER CATANACH: Okay. Maybe if you could  
7 take a shot at a draft order, Mr. Kellahin?

8 MR. KELLAHIN: Yes sir, we'll do that.

9 EXAMINER CATANACH: Okay, is there anything else?

10 MR. KELLAHIN: No.

11 EXAMINER CATANACH: Okay, there being nothing  
12 further in this case, Case 13,224 will be taken under  
13 advisement.

14 Let's take a 20-minute break.

15 (Thereupon, these proceedings were concluded at  
16 10:07 a.m.)

17 \* \* \*

18  
19 I do hereby certify that the foregoing is  
20 a complete record of the proceedings in  
the Examiner hearing of Case No. 13224,  
21 heard by me on February 19 2004.  
22 David Kellahin, Examiner  
Oil Conservation Division  
23  
24  
25

## CERTIFICATE OF REPORTER

STATE OF NEW MEXICO    )  
                                   )    ss.  
 COUNTY OF SANTA FE    )

I, Steven T. Brenner, Certified Court Reporter and Notary Public, HEREBY CERTIFY that the foregoing transcript of proceedings before the Oil Conservation Division was reported by me; that I transcribed my notes; and that the foregoing is a true and accurate record of the proceedings.

I FURTHER CERTIFY that I am not a relative or employee of any of the parties or attorneys involved in this matter and that I have no personal interest in the final disposition of this matter.

WITNESS MY HAND AND SEAL February 21st, 2004.



STEVEN T. BRENNER  
 CCR No. 7

My commission expires: October 16th, 2006