

**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. 13237
ORDER NO. R-12156**

**APPLICATION OF J. C. WELL SERVICE, INC. FOR AN ORDER OF THE
DIVISION RESCINDING THE APPROVAL OF DIVISION FORM C-104A
("CHANGE OF OPERATOR") ISSUED BY THE DIVISION'S DISTRICT III
OFFICE IN AZTEC, NEW MEXICO FOR TWENTY-THREE (23) CERTAIN
WELLS IN SAN JUAN COUNTY, NEW MEXICO.**

ORDER OF THE DIVISION

BY THE DIVISION:

This case came on for hearing at 8:15 a.m. on April 15, 2004, at Santa Fe, New Mexico, before Examiner Michael E. Stogner.

NOW, on this 16th day of June, 2004, the Division Director, having considered the testimony, the record, and the recommendations of the Examiner,

FINDS THAT:

(1) Due public notice has been given, and the Division has jurisdiction of this case and its subject matter.

(2) The applicant, J. C. Well Service, Inc. ("J.C.") of Farmington, New Mexico, seeks an order rescinding the New Mexico Oil Conservation Division ("Division") district III (Aztec office) supervisor's July 14, 2003 approval of Division form C-104A ("Change of Operator") that approved the change of operator from J.C. to Action Oil Company, Inc. ("Action") of Aztec, New Mexico, for the twenty-three (23) wells identified below all located in San Juan County, New Mexico. Eleven (11) of the twenty-three (23) wells are located on Navajo Tribal Indian trust lands, the remaining twelve (12) wells are located on Ute Mountain Ute Indian trust lands:

30-045-09899	King Kong #20	Navajo Nation	L-4-30N-17W	1650' FSL & 330' FWL
30-045-10056	Ute Mountain "B" #7	Ute Mountain Utes	5/N-31-31N-15W	660' FSL & 1880' FWL
30-045-10143	Ute Mountain "B" #4	Ute Mountain Utes	F-32-31N-15W	1980' FN & WL
30-045-10145	Ute Mountain "B" #11	Ute Mountain Utes	F-31-31N-15W	2060' FNL & 2080' FWL
30-045-10155	Ute Mountain "B" #8	Ute Mountain Utes	H-31-31N-15W	1980' FNL & 660' FEL
30-045-10240	Ute Mountain "B" #10	Ute Mountain Utes	N-29-31N-15W	535' FSL & 2205' FWL
30-045-10346	Ute Mountain "B" #2	Ute Mountain Utes	F-29-31N-15W	1980' FN & WL
30-045-10380	Ute Mountain "B" #1	Ute Mountain Utes	B-29-31N-15W	1060' FNL & 1980' FEL
30-045-20209	King Kong #1-X	Navajo Nation	L-4-31N-17W	1800' FSL & 182' FWL
30-045-20224	King Kong #5	Navajo Nation	L-4-31N-17W	1830' FSL & 430' FWL
30-045-20225	Clark Kent #1	Navajo Nation	I-5-30N-17W	1880' FSL & 165' FEL
30-045-20254	Clark Kent #4	Navajo Nation	I-5-30N-17W	1650' FSL & 330' FEL
30-045-20624	King Kong #8	Navajo Nation	G-4-30N-17W	2310' FN & EL
30-045-20806	King Kong #9	Navajo Nation	G-4-30N-17W	2310' FNL & 1980' FEL
30-045-21834	King Kong #14	Navajo Nation	G-4-30N-17W	2110' FNL & 1980' FEL
30-045-21840	King Kong #19	Navajo Nation	J-4-30N-17W	2470' FSL & 1570' FEL
30-045-21842	King Kong #15	Navajo Nation	G-4-30N-17W	1810' FNL & 1980' FEL
30-045-21867	King Kong #22	Navajo Nation	G-4-30N-17W	1480' FNL & 1980' FEL
30-045-24606	Ute Mountain "B" #15	Ute Mountain Utes	K-31-31N-15W	1929' FSL & 1966' FWL
30-045-24621	Ute Mountain "B" #16	Ute Mountain Utes	J-31-31N-15W	2035' FSL & 2455' FEL
30-045-25224	Ute Mountain "B" #22	Ute Mountain Utes	M-29-31N-15W	727' FSL & 886' FWL
30-045-25239	Ute Mountain "B" #21	Ute Mountain Utes	B-31-31N-15W	1090' FNL & 2480' FEL
30-045-25240	Ute Mountain "B" #20	Ute Mountain Utes	G-31-31N-15W	2455' FNL & 1944' FEL

(3) The Division and Action both appeared at the hearing and were represented by counsel.

(4) The Division presented evidence showing that Action has been the lessee of record on the U. S. Bureau of Indian Affairs ("BIA") Ute Mountain Ute lease No. 14-20-604-90 since 1993, and that Action posted a \$ 15,000.00 collective bond with the BIA on September 3, 1992 for wells on this lease.

(5) The Division further presented evidence showing that Action is the lessee of record on the Navajo Nation Oil and Gas leases No. 14-20-0603-639 and 14-20-0603-903, and that Action posted a collective bond with the BIA, which was approved March 16, 1995 for wells on these leases.

(6) J.C. claims that it acquired Action's interest in these three leases through a 1998 conveyance that is the subject of pending litigation.

(7) In June and August, 1998, J.C. filed individual forms C-104 ("Request for Allowable and Authorization to Transport") for some or all of these 23 wells indicating a change of operator from Action to J.C. The signature of Gene Burson, president of Action, appears on each form C-104.

(8) The Aztec district office of the Division approved J.C. as the operator of eighteen (18) of the above-described twenty-three (23) wells. According to the Division's practice at the time, it relied on the signature of the prior operator as assurance that the transfer was in order. The Division did not request, and neither Action nor J.C. provided, evidence that J.C. held the appropriate leases for the wells. The five wells that were not transferred to J.C. had already been plugged and abandoned by Action (the above-described King Kong Wells No. 8, 9, and 22, and Ute Mountain B Wells No. 15 and 22).

(9) Evidence presented by the Division demonstrates that on July 14, 2003 Action filed a form C-104A ("Change of Operator") with the Aztec district office of the Division to change the operator of these eighteen active wells from J.C. back to Action. The form C-104A was not signed by J.C. In support of the application for change of operator, Action submitted the following to the district supervisor:

(a) a copy of a memorandum from the Superintendent of the Ute Mountain Ute Agency of the BIA to the U. S. Bureau of Land Management ("BLM"), dated May 24, 1993, referencing an approved assignment of the Ute Mountain Ute Oil and Gas Lease 14-20-604-90 to Action from a prior lessee, and a copy of Tribal Resolution No. 4013, authorizing the assignment;

(b) a letter from the Superintendent of the Ute Mountain Ute Agency of the BIA to Action, dated October 15, 2002, confirming that current BIA records show Action as the lessee of record on Ute Mountain Ute BIA Lease No. 14-20-694-90, and that Action posted a \$15,000 bond with the BIA; this letter cites the following provision from 25 CFR, Part 211.53:

“(a) Approved leases or any interest therein may be assigned or transferred only with the approval of the Secretary. The Indian mineral owner must also consent if approval of the Indian mineral owner is required in the lease.... To obtain the approval of the Secretary the assignee must be qualified to hold the lease under existing rules and regulations and shall furnish a satisfactory bond conditioned for the faithful performance of the covenants and conditions of the lease. (b) No lease or interest therein or the use of such lease shall be assigned, sublet, or transferred, directly or indirectly by working or drilling contract, or otherwise, without the consent of the Secretary”; and

(c) a letter from the Acting Regional Realty Officer of the Navajo Region of the BIA to Action, dated February 4, 2003, and a follow-up letter, dated February 11, 2003, confirming that current BIA records show Action as the lessee of record on Navajo Nation Lease No. 14-20-0603-639 and Navajo Nation Lease No. 14-20-0603-903, and that Action posted a collective bond of \$75,000 with the BIA; this letter also cites 25 CFR, Part 211.53.

(10) The Division's district supervisor approved Action's application for change of operator on July 14, 2003, returning operation of these eighteen active wells to Action.

(11) J.C. offered the following evidence in support of its application:

(a) Mr. John Cunningham, owner of J.C., acquired an interest in the three aforementioned Action leases through an Assignment, Bill of Sale, and Conveyance executed by Action on February 11, 1998. On that date Action also executed BIA assignment forms for the three tribal leases, showing an assignment from "Action Oil Company, Inc." to "Johnny Cunningham, d/b/a R&J Enterprises." Mr. Cunningham subsequently delivered the assignment documents to the BIA for its approval;

(b) Mr. Cunningham, through his corporation J.C., took possession of the three leases in February 1998 and began operating the wells located on those leases;

(c) in November, 2003, Mr. Cunningham executed BIA assignment forms for the Ute Mountain Ute lease, showing an assignment from "Johnny Cunningham d/b/a R&J Enterprises" to "BIYA Operators, Inc." Mr. Cunningham subsequently delivered the assignment documents to the BIA for approval. BIYA Operators, Inc. has been operating the aforementioned Ute Mountain Ute lease since the execution of that assignment. Mr. Cunningham intends to submit an OCD form C-104A requesting a change of operator from J.C. to BIYA Operators, Inc. for the wells located on the Ute Mountain Ute lease;

(d) the BIA has not approved the assignment of these three tribal leases from Action to "Johnny Cunningham, d/b/a R&J Enterprises"; and

(e) the BIA has not approved the assignment of the Ute Mountain Ute lease from "Johnny Cunningham d/b/a R&J Enterprises" to "BIYA Operators, Inc."

(12) The supervisor of Division's district III Aztec office offered the following testimony in support of his approval of the C-104A "Change of Operator" application submitted by Action:

(a) the BIA approves oil and gas leases and assignments of oil and gas leases of Indian tribal lands; the tribe may also need to approve a lease or assignment of lease, depending on the lease terms; and the lessee is required to provide the BIA with a bond;

(b) the BLM is responsible for the management of federal and tribal lands, and the enforcement of BLM oil and gas regulations on those lands; the BLM recognizes the operator recognized by the BIA;

(c) the Division and the BLM coordinate on management and enforcement issues related to wells located on federal and tribal lands in New Mexico; the BLM recognizes the Division's decisions on oil and gas spacing matters (such as the setting of spacing, approval of exception locations, the approval of nonstandard spacing unit, and compulsory pooling) under a memorandum of understanding between the BLM and the Division; either agency may pursue enforcement actions against operators of wells located on federal or Indian lands, and the two agencies cooperate on enforcement actions; for example, if the Division has to plug a well under a compliance order issued by a Division hearing examiner, the Division will obtain

reimbursement under the BIA bond, through the BLM; the Division does not require operators of wells located on federal or Indian lands to post a separate bond with the state;

(d) to coordinate management and enforcement activities between the federal agencies and the Division, it is essential that the federal agencies and the Division recognize the same operator;

(e) both the BIA and BLM recognize Action as the lessee and operator of the eighteen (18) active wells identified in the application; the BIA and the BLM have continued to recognize Action as the operator of these wells while approval is pending on Mr. Cunningham's assignment documents; during that time, Mr. Cunningham filed sundry notices for wells with the BLM under the name "Action Oil Company," and filed an application with the federal Environmental Protection Agency for an underground injection control program permit, under Action's name and Action's BIA bond; and

(f) as of the date of the hearing, the BIA and BLM recognize Action as the lessee of record and bonded operator of the Navajo and Ute Mountain Ute properties.

(13) The Division's rules define "operator" as "any person or persons who, duly authorized, is in charge of the development of a lease or the operation of a producing property" [19.15.1.7.O(8) NMAC]. The Division's rules hold the operator responsible for obtaining permits, conducting tests, filing reports, maintaining required financial assurances, plugging wells, and remediation of well sites.

(14) As a matter of federal law, the BIA determines the lessee of oil and gas leases of properties on Indian land, and approves assignments of such leases. The leases and assignments may also require approval of the tribe, depending on the lease terms.

(15) The BIA, the BLM, and the relevant tribes recognize Action as the lessee and operator of these three leases.

(16) It is consistent with the Division's management and enforcement procedures and goals to recognize as operator the same operator recognized by BIA.

(17) The application of J.C. to rescind the Division's district supervisor's approval of the form C-104A approving a change of operator for the eighteen (18) active wells described in Finding Paragraphs No. (2) and (8) above from J.C. to Action should therefore be **denied**.

(18) That portion of this case seeking to rescind the Division's district supervisor's approval of the form C-104A approving a change of operator for the above-described King Kong Wells No. 8, 9, and 22, and Ute Mountain B Wells No. 15 and 22 should be **dismissed** at this time.

IT IS THEREFORE ORDERED THAT:

(1) The application of J. C. Well Service, Inc. ("J.C.") of Farmington, New Mexico for an order rescinding the New Mexico Oil Conservation Division ("Division") district III (Aztec office) supervisor's July 14, 2003 approval of a Division form C-104A ("Change of Operator") approving a change of operator from J.C. to Action Oil Company, Inc. ("Action") of Aztec, New Mexico, for the eighteen (18) wells identified below all located in San Juan County, New Mexico, is hereby **denied**.

Well Number	Well Name/Unit Name	Land Owner	Section-Township-Range	Depth
30-045-09899	King Kong #20	Navajo Nation	L-4-30N-17W	1650' FSL & 330' FWL
30-045-10056	Ute Mountain "B" #7	Ute Mountain Utes	5/N-31-31N-15W	660' FSL & 1880' FWL
30-045-10143	Ute Mountain "B" #4	Ute Mountain Utes	F-32-31N-15W	1980' FN & WL
30-045-10145	Ute Mountain "B" #11	Ute Mountain Utes	F-31-31N-15W	2060' FNL & 2080' FWL
30-045-10155	Ute Mountain "B" #8	Ute Mountain Utes	H-31-31N-15W	1980' FNL & 660' FEL
30-045-10240	Ute Mountain "B" #10	Ute Mountain Utes	N-29-31N-15W	535' FSL & 2205' FWL
30-045-10346	Ute Mountain "B" #2	Ute Mountain Utes	F-29-31N-15W	1980' FN & WL
30-045-10380	Ute Mountain "B" #1	Ute Mountain Utes	B-29-31N-15W	1060' FNL & 1980' FEL
30-045-20209	King Kong #1-X	Navajo Nation	L-4-31N-17W	1800' FSL & 182' FWL
30-045-20224	King Kong #5	Navajo Nation	L-4-31N-17W	1830' FSL & 430' FWL
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30-045-20254	Clark Kent #4	Navajo Nation	I-5-30N-17W	1650' FSL & 330' FEL
30-045-21834	King Kong #14	Navajo Nation	G-4-30N-17W	2110' FNL & 1980' FEL

30-045-21840	King Kong #19	Navajo Nation	J-4-30N-17W	2470' FSL & 1570' FEL
30-045-21842	King Kong #15	Navajo Nation	G-4-30N-17W	1810' FNL & 1980' FEL
30-045-24621	Ute Mountain "B" #16	Ute Mountain Utes	J-31-31N-15W	2035' FSL & 2455' FEL
30-045-25239	Ute Mountain "B" #21	Ute Mountain Utes	B-31-31N-15W	1090' FNL & 2480' FEL
30-045-25240	Ute Mountain "B" #20	Ute Mountain Utes	G-31-31N-15W	2455' FNL & 1944' FEL

(2) That portion of this case seeking to rescind the Division's district supervisor's approval of the form C-104A approving a change of operator for the following five described wells located in San Juan County, New Mexico shall be dismissed.

30-045-20624	King Kong #8	Navajo Nation	G-4-30N-17W	2310' FN & EL
30-045-20806	King Kong #9	Navajo Nation	G-4-30N-17W	2310' FNL & 1980' FEL
30-045-21867	King Kong #22	Navajo Nation	G-4-30N-17W	1480' FNL & 1980' FEL
30-045-24606	Ute Mountain "B" #15	Ute Mountain Utes	K-31-31N-15W	1929' FSL & 1966' FWL
30-045-25224	Ute Mountain "B" #22	Ute Mountain Utes	M-29-31N-15W	727' FSL & 886' FWL

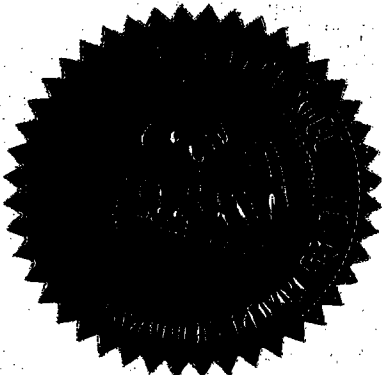
(3) Jurisdiction is hereby retained for the entry of such further orders as the Division may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION



MARK E. FESMIRE, P.E.
Director



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