

NEW MEXICO ENERGY, MINERALS and NATURAL RESOURCES DEPARTMENT

BILL RICHARDSON
Governor

Joanna Prukop
Cabinet Secretary
Acting Director
Oil Conservation Division

May 13, 2004

RECEIVED

MAY 13 2004

Michael Stogner, Hearing Examiner
Oil Conservation Division
Energy, Minerals and Natural Resources Department
1220 South St. Francis Drive
Santa Fe, NM 87505

e-mail: mstogner@state.nm.us

Via e-mail and hand delivery

Re: Case No. 13237, Application of J.C. Well Service, Inc. for an Order Rescinding Approval of Change of Operator, San Juan County, New Mexico.

Dear Mr. Stogner:

At the close of the hearing in the above matter, you asked the parties to submit their closing arguments in writing, with a draft order by May 13, 2004. The closing argument for the Oil Conservation Division is enclosed, with a draft order.

Sincerely,

Gail MacQuesten
Assistant General Counsel

Cc (with attachments, by mail and e-mail):

Tom Montoya, Attorney for Action Oil Company, Inc.
Scott Hall, Attorney for J.C. Well Service, Inc.

**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

**APPLICATION OF J.C. WELL SERVICE, INC. FOR AN ORDER RESCINDING
APPROVAL OF CHANGE OF OPERATOR, SAN JUAN COUNTY, NEW MEXICO.**

DIVISION'S HEARING MEMORANDUM

J.C. Well Service, Inc. (J.C.) asks the Division to recognize it as the operator of 23 wells located on Indian trust lands, even though J.C. is not itself the lessee of the properties and is not recognized as the operator by the lessee, the Bureau of Indian Affairs (BIA), the Bureau of Land Management (BLM), or the relevant tribal entities. J.C.'s application should be denied. The Supervisor of District III acted correctly in recognizing Action Oil Company Inc. ("Action") as the operator. Action is the lessee and operator of record recognized by the BIA, BLM and the tribes. The Supervisor's recognition of Action as the operator is dictated by both the law and by practical needs of enforcement.

J.C.'s claim is based on a complicated set of facts that may be summarized as follows. The wells at issue are located on Ute Mountain Ute Indian trust lands and Navajo Tribal Indian trust lands. Action is the lessee on the relevant leases and has posted the required bonds with the BIA. The owner of J.C., Mr. Cunningham, claims he acquired Action's interest in the leases in

1998 through a conveyance that is the subject of pending litigation. Mr. Cunningham initiated the paperwork to obtain BIA approval of the assignment of the leases from Action to "Johnny Cunningham, d/b/a R&J Enterprises," but that approval has not been granted. In 1998, Mr. Cunningham filed change of operator forms with the Division for some or all of the wells at issue to change the operator from Action to "J.C. Well Services Inc." Because the forms were signed by Action, the District Supervisor approved the change without further investigation. On July 14, 2003, however, Action filed a change of operator form requesting that the operator be changed from J.C. back to Action. The form was not signed by J.C. But Action provided evidence that at all times relevant to this matter, Action has been the lessee and recognized as the lessee and operator by the BIA, the BLM and the relevant tribes. The Division approved the change.

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. As a matter of federal law, the BIA, through a delegation of authority from the Secretary of the Department of the Interior, determines who will be the lessee of oil and gas leases of properties on Indian land by approving leases and assignments of leases. See 25 U.S.C. §396(a) (requiring approval by the Secretary of the Interior for leases of unallotted lands); 25 U.S.C. §2102 (requiring approval by the Secretary of the Interior for leases entered into under a tribal minerals agreement); and 25 U.S.C. §1a (permitting the Secretary of the Interior to delegate responsibilities to the BIA). The BIA adopted the following provisions regarding the approval and assignment of leases:

- (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. If consent is not required, then the Secretary shall notify the Indian mineral owner of the proposed assignment. 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.

25 CFR, Part 211.53. The lessee has authority to operate the lease itself, or designate an operator.

In this case, Action is the lessee recognized by the BIA and the relevant tribes, and Action has chosen to operate the properties itself. Action is the "duly authorized" operator of the properties.

In its hearing memorandum, applicant J.C. Well Service Inc. argues that the assignment from Action to J.C. is effective as between those parties, despite the fact that the BIA has not yet approved the assignment. The Division takes no position on the ownership dispute between J.C. and Action. The Division is not the appropriate forum in which to adjudicate the rights of the parties under their agreement, and whether the assignment is effective as between those parties is not relevant to the issue before the examiner in this case. The fact remains that the BIA recognizes Action as the lessee and operator, and the BIA is the final authority on that issue. And it is clear that the BIA and the BLM (the federal agency responsible for enforcing the regulations applicable to wells located on federal and Indian lands) do not recognize assignments while approval is pending. While the assignment from Action to Mr. Cunningham has been pending before the BIA, Mr. Cunningham filed various sundry notices with the BLM, and filed an application with the federal Environmental Protection Agency for an underground injection control permit. Mr. Cunningham did not file those documents as operator, however. He listed Action as the operator, and in the case of the permit application, relied on Action's bond.

The Division's recognition of Action as the operator is supported not only by law, but by practical considerations. 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. For wells located on Indian trust lands, the Division coordinates its management and enforcement responsibilities with the BLM. The BLM recognizes the Division's decisions on oil and gas spacing matters (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 initiate and pursue enforcement actions against operators of wells located on federal or Indian lands, and the two agencies cooperate on enforcement actions. That cooperation will not be possible if the two agencies recognize different operators.

One example will make this point clear. Both the Division and the relevant federal agencies require operators to post financial assurances to secure their compliance with plugging requirements. An operator who fails to plug a well when required to do so risks losing that financial assurance. Although the Oil and Gas Act requires financial assurances from each entity operating any oil, gas or service well within the state, NMSA 1978, §70-2-14(A), Division rules require bonds only for wells "on privately owned or state owned lands within this state."

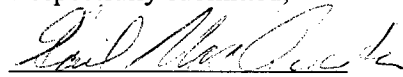
19.15.3.101.A NMAC. For wells on federal or Indian lands, the Division relies on the federal bond. If the Division has to plug a well located on Indian land, the BLM will reimburse the Division out of the BIA bond. This type of cooperation will be difficult to maintain if the state and federal agencies do not recognize the same operator. The Division will be pursuing enforcement action against operator "A" to obtain the required authority to plug the well, and then seeking reimbursement through a bond posted by operator "B."

The coordination issue goes far beyond the Division's relationship with the BIA and the BLM. Other state and federal agencies work with the "operator" and will be affected if the

Division recognizes a different operator than the operator recognized by the BIA: the Environmental Protection Agency, the Minerals Management Service, the State Land Office, and the state and federal taxing authorities.

The Supervisor's decision to approve Action's application to change the operator from J.C. back to Action is supported by law, and necessary for the Division to coordinate its activities with other agencies. J.C.'s application to rescind that approval should be denied.

Respectfully submitted,



Gail MacQuesten
Oil Conservation Division
Energy, Minerals and Natural
Resources Department
1220 S. St. Francis Drive
Santa Fe, NM 87505
(505) 476-3451

Attorney for the Oil Conservation Division


This 13th day of May, 2004.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served upon the following by mail and by e-mail this 13th day of May, 2004:

Mr. J. Scott Hall
Miller Stratvert PA
Attorney for J.C. Well Service Inc.
shall@mstlaw.com

Mr. Thomas Montoya
Atkinson & Kelsey, P.A.
Attorney for Action Oil Company Inc.
tommontoya@aol.com



Gail MacQuesten

Draft Order
Submitted by the OCD
May 13, 2004

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-

**APPLICATION OF J.C. WELL SERVICE, INC. FOR AN ORDER RESCINDING
APPROVAL OF CHANGE OF OPERATOR, SAN JUAN COUNTY, NEW MEXICO.**

ORDER OF THE DIVISION

BY THE DIVISION:

This case came on for hearing at 1:30 p.m. on April 15, 2004, at Santa Fe, New Mexico, before Examiner Michael Stogner.

NOW, on this ____ day of _____, 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."), seeks an order rescinding the Oil Conservation Division District III (Aztec Office) Supervisor's July 14, 2003 approval of a form C-104A (Change of Operator) approving a change of operator from J.C. to Action Oil Company, Inc. ("Action"), for the twenty-three wells identified below. All of the wells are located in San Juan County, New Mexico. Eleven of the twenty-three wells are located on Navajo Tribal Indian trust lands; twelve of the twenty-three wells are located on Ute Mountain Ute Indian trust lands:

<u>API</u>	<u>Well Name</u>	<u>Tribal Entity</u>
30-045-09899	King Kong #20	Navajo Nation
30-045-10056	Ute Mtn. B #7	Ute Mountain Utes
30-045-10143	Ute Mtn. B #4	Ute Mountain Utes
30-045-10145	Ute Mtn. B #11	Ute Mountain Utes
30-045-10155	Ute Mtn. B #8	Ute Mountain Utes
30-045-10240	Ute Mtn. B #10	Ute Mountain Utes
30-045-10346	Ute Mtn. B #2	Ute Mountain Utes
30-045-10380	Ute Mtn. B #1	Ute Mountain Utes
30-045-20209	King Kong #1X	Navajo Nation
30-045-20224	King Kong #5	Navajo Nation
30-045-20225	Clark Kent #1	Navajo Nation
30-045-20254	Clark Kent #4	Navajo Nation
30-045-20624	King Kong #8	Navajo Nation
30-045-20806	King Kong #9	Navajo Nation
30-045-21834	King Kong #14	Navajo Nation
30-045-21840	King Kong #19	Navajo Nation
30-045-21842	King Kong #15	Navajo Nation
30-045-21867	King Kong #22	Navajo Nation
30-045-24606	Ute Mtn. B #15	Ute Mountain Utes
30-045-24621	Ute Mtn. B #16	Ute Mountain Utes
30-045-25224	Ute Mtn. B #22	Ute Mountain Utes
30-045-25239	Ute Mtn. B #21	Ute Mountain Utes
30-045-25240	Ute Mtn. B #20	Ute Mountain Utes

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

(4) At all times relevant to this case, Action has been the lessee of record on Bureau of Indian Affairs (BIA) lease No. 14-20-604-90 for the wells located on Ute Mountain Ute Indian trust lands. That lease is approved by the Ute Mountain Utes, the BIA and the Bureau of Land Management (BLM). Action has posted a \$15,000 collective bond with the BIA for those wells.

(5) At all times relevant to this case, Action has been the lessee of record on Navajo Nation Lease No. 14-20-0603-639 and Navajo Nation Lease No. 14-20-0603-903 for the wells located on the Navajo Tribal Indian trust lands. The leases are approved by the Navajo Nation, the BIA and the BLM. Action has posted a \$75,000 collective bond with the BIA for those wells.

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

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

(8) The Division approved J.C. as the operator of eighteen of the 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: King Kong #8, King Kong #9, King Kong #22, Ute Mtn. B #15, and Ute Mtn. B #22.

(9) On July 14, 2003 Action filed a form C-104A ("Change of Operator") to change the operator of the eighteen 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 BLM, dated May 24, 1993, referencing an approved assignment of the Ute Mountain Ute Oil and Gas Lease 14-20-604-90 to Action Oil from a prior lessee, and a copy of Tribal Resolution No. 4013, authorizing the assignment. The referenced documents were not attached.
- 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. The 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.
- 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. The letter also cites 25 CFR, Part 211.53.

10. The District Supervisor approved Action's application for change of operator on July 14, 2003, returning operation of the eighteen 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 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 its approval. BIYA Operators, Inc. has been operating the 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 the three tribal leases from "Action Oil Company, Inc." to "Johnny Cunningham, d/b/a R&J Enterprises."
 - 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 District III 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. 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 (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. The BIA and the BLM recognize Action as the lessee and operator of the twenty-three wells identified in the application. The BIA and the BLM have continued to recognize Action as the operator of the 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.
- 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. The lessee has the exclusive authority to go upon the land for the purpose of prospecting for oil and gas, severing and removing the same. The lessee therefore has the authority to operate the property, or designate an operator for the property.

15. 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.

16. The BIA, the BLM and the relevant tribes recognize Action as the lessee and operator of the three leases.

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

18. The application of J.C. Well Service, Inc. rescinding the District Supervisor's approval of the form C-104A approving a change of operator from J.C. to Action should be denied.

IT IS THEREFORE ORDERED THAT:

(1) The application of J.C. Well Service, Inc. for an order rescinding the Oil Conservation Division District III Supervisor's July 14, 2003 approval of a form C-104A (Change of Operator) approving a change of operator from J.C. Well Service to Action Oil Company, Inc. is denied.

(2) Jurisdiction of this case is 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**

**JOANNA PRUKOP
Cabinet Secretary/Acting Director**

SEAL

MILLER STRATVERT

PROFESSIONAL ASSOCIATION

Ranne B. Miller
Alice T. Lorenz
Stephen M. Williams
Stephan M. Vidmar
Seth V. Bingham
Timothy R. Briggs
Rudolph Lucero
Deborah A. Solove
Gary L. Gordon
Lawrence R. White
Virginia Anderman
Marte D. Lightstone
J. Scott Hall*

Thomas R. Mack
Thomas M. Domme
Ruth O. Pregenzer
Jeffrey E. Jones
James J. Widland
Bradley D. Pepper**
Robin A. Goble
James R. Wood
Dana M. Kyle
Kirk R. Allen
Ruth Fuess
H. Brook Laskey
Paula G. Maynes

Michael C. Ross
Gary Risley
M. Dylan O'Reilly
Jennifer D. Hall
Jennifer L. Olson
Todd A. Schwarz
Nell Graham Sale
Scott P. Hatcher
Leonard D. Sanchez
Michelle K. Ostrye
Kelsey D. Green
Marcy Baysinger
David J. Martin

Caroline Blankenship
Matthew S. Rappaport
Karen E. Wootton
Somer K. Chyz
Michael G. Duran

Counsel

William K. Stratvert
James B. Collins
Sharon P. Gross
Robert D. Taichert

Reply to Santa Fe

150 Washington Ave., Suite 300
Santa Fe, NM 87501

Mailing Address:
P.O. Box 1986
Santa Fe, NM 87504-1986

Telephone: (505) 989-9614
Facsimile: (505) 989-9857

* New Mexico Board of Specialization Recognized Specialist in Natural Resources - Oil & Gas Law
** New Mexico Board of Specialization Recognized Specialist in Real Estate Law

May 13, 2004

HAND-DELIVERED

Michael Stogner
New Mexico Oil Conservation Division
1220 South St. Francis Drive
Santa Fe, New Mexico 87505

Re: New Mexico Oil Conservation Case No. 13237; Application of J. C. Well Service, Inc. for an Order Rescinding Approval of Change of Operator, San Juan County, New Mexico

Dear Mr. Stogner:

Enclosed on disk and in hard copy is a proposed Order on behalf of the Applicant, J. C. Well Service, Inc. in the above referenced matter.

Thank you for your assistance.

Very truly yours,

MILLER STRATVERT P.A.



J. Scott Hall

JSH/glb

Enclosures

cc: Gail MacQuesten
Thomas Montoya

G:\Data\Clients\10183\30647\Fesmire\05-13-04.doc

LAW OFFICES

ALBUQUERQUE
(505) 842-1950

FARMINGTON
(505) 326-4521

LAS CRUCES
(505) 523-2481

SANTA FE
(505) 989-9614

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

**IN THE MATTER OF THE APPLICATION OF J. C. WELL
SERVICE, INC. FOR AN ORDER RESCINDING APPROVALS OF
C-104A CHANGE OF OPERATOR FORMS ISSUED BY THE
DISTRICT III OFFICE**

CASE NO. 13237

ORDER NO. _____

ORDER OF THE DIVISION

(Applicant's Proposed Order)

BY THE DIVISION:

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

Now, on this ____ day of May, 2004, the Division Director, having considered the testimony, the record and the recommendations of the Examiner, being fully advised in the premises,

FINDS THAT:

1. Due public notice having been given as required by law, and the Division has jurisdiction over this case and the subject matter hereof.

2. The Applicant, J. C. Well Service, Inc., seeks and order of the Division rescinding the approvals of C-104A Change of Operator forms issued by the Division's District III Aztec office for the following wells located in San Juan County, New Mexico:

Well Name	API Number	Legal Description	Pool
KING KONG No. 020	3004509899	L-4-30N-17W	Salt Creek Dakota
UTE MTN B No. 007	3004510056	5-31-31N-15W	Verde Gallup
UTE MTN B No. 004	3004510143	F-32-31N-15W	Verde Gallup
UTE MTN B No. 011	3004510145	F-31-31N-15W	Verde Gallup
UTE MTN B No. 008	3004510155	H-31-31N-15W	Verde Gallup
UTE MTN B No. 010	3004510240	N-29-31N-15W	Verde Gallup

Well Name	API Number	Legal Description	Pool
UTE MTN B No. 002	3004510346	F-29-31N-15W	Verde Gallup
UTE MTN B No. 001	3004510380	B-29-31N-15W	Salt Creek Dakota
KING KONG No. 001X	3004520209	L-4-30N-17W	Salt Creek Dakota
KING KONG No. 005	3004520224	Z-4-30N-17W	Salt Creek Dakota
CLARK KENT No. 001	3004520225	I-5-30N-17W	Salt Creek Dakota
CLARK KENT No. 004	3004520254	I-5-30N-17W	Salt Creek Dakota
KING KONG No. 008	3004520624	G-4-30N-17W	Salt Creek Dakota
KING KONG No. 009	3004520806	G-4-30N-17W	Salt Creek Dakota
KING KONG No. 014	3004521834	G-4-30N-17W	Salt Creek Dakota
KING KONG No. 019	3004521840	J-4-30N-17W	Salt Creek Dakota
KING KONG No. 015	3004521842	G-4-30N-17W	Salt Creek Dakota
KING KONG No. 022	3004521867	G-4-30N-17W	Verde Gallup
UTE MTN B No. 015	3004524606	K-31-31N-15W	Verde Gallup
UTE MTN B No. 016	3004524621	J-31-31N-15W	Verde Gallup
UTE MTN B No. 022	3004525224	M-29-31N-15W	Verde Gallup
UTE MTN B No. 021	3004525239	B-31-31N-15W	Verde Gallup
UTE MTN B No. 020	3004525240	G-31-31N-15W	Verde Gallup

3. Action Oil Company, Inc., the former operator of the wells that are the subject of the Application, and Carmen Wood, who subsequently acquired Action Oil, appeared in opposition to the Application, but presented no testimony or evidence. The Supervisor of the Division's District III Aztec office appeared in opposition to the Application and was represented by counsel.

4. The wells that are the subject of the Application were originally drilled by Dugan Production Company. Through various *mesne* assignments, the wells were acquired by Action Oil, Inc. in 1993.

5. At the hearing it was established that Applicant acquired title to the wells pursuant to that Assignment, Bill of Sale and Conveyance executed by Action Oil Company, Inc. on February 11, 1998 which was duly recorded with the San Juan County Clerk's office on March 17, 1998. The leases that were the subject of the referenced assignment are all located on

Indian lands, two of which are within the boundaries of the Navajo Nation and one located on the Ute Mountain Ute Tribal Reservation.

6. Applicant took possession of the leases in February of 1998 and has operated the wells at all pertinent times since. In 2002, Applicant assigned its interest in the Ute Mountain Ute lease and wells to Biya Operators, Inc.

7. In 1998, Applicant filed C-104's with the Division's District III office to reflect the change of operator from Action Oil Company, Inc. to J. C. Well Service, Inc. The Operator's Certificate of Compliance on the forms was executed by John Cunningham d/b/a J. C. Well Service, Inc. and was also acknowledged by Gene Burson, President of Action Oil Company, Inc. The Change of Operator forms for the wells were approved by the Division's District III office on June 3, 1998.

8. The testimony and exhibit evidence established that prior to the filing of the Application in this case, Carmen Wood, as President of Action Oil Company, Inc., filed suit against the Applicant in the 11th Judicial District Court in San Juan County seeking the rescission of a 1997 Purchase and Sale Agreement and the corresponding assignments between Action Oil Company, Inc. and the Applicant for the underlying oil and gas leases. (*Carmen Wood and Action Oil Company, Inc. v. John Cunningham, et al.*, 11th Judicial District Court No. CV 2002-961-1.)

9. In 2003, during the pendency of the litigation in district court, it was discovered that Ms. Wood had filed C-104A's requesting a change of operator from J. C. Well Service, Inc. to Action Oil Company, Inc. for all of the wells referenced in the Application. The C-104A's were filed with the Division's District III office on July 14, 2003 and the change of operator to Action Oil Company, Inc. was approved that same day. That section on each of the forms for signature by the previous operator was not completed and the language "not available" was inserted instead. J. C. Well Service, Inc.'s approval for the change was neither sought nor authorized and the C-104A's were submitted to the Division without the Applicant's knowledge.

10. On March 9, 2004, the 11th Judicial District Court dismissed the Complaint brought by Carmen Wood and Action Oil Company, Inc. against the Applicant with prejudice, along with all of the claims for the rescission of the assignments and the return of the wells to Action Oil.

11. At the hearing, Applicant requested the Division take administrative notice of the following matters of fact which were undisputed or were otherwise uncontroverted in the district court litigation and incorporate them as findings in the order to be issued in this case. These matters constituted the factual basis for the Court's order of summary judgment against Carmen Wood and Action:

(a) Action Oil Company, Inc. had been ordered by the Bureau of Indian Affairs to plug and abandon a number of wells located on the tribal leases.

(b) On December 31, 1997, Action Oil and Cunningham [J. C. Well Service, Inc.] executed their Purchase and Sale Agreement ("Agreement").

(c) Action Oil Company executed that Assignment, Bill of Sale and Conveyance on February 11, 1998 (effective December 31, 1997), which was recorded with the San Juan County Clerk's office on March 17, 1998, at Book 1255/Page 774. Also on February 11, 1998, Action Oil executed the Bureau of Indian Affairs Assignment of Mining Lease forms for the three tribal leases.

(d) Section 5 of the Agreement is entitled "Consideration", but contains no requirement that Cunningham furnish bonds. The obligation to furnish bonds is stated in a separate section of the Agreement, Section 6.

(e) Section 6 of the Agreement provides, *inter alia*, as follows: "Buyer shall comply with all bonding requirements imposed by applicable state or federal laws and regulations. Until such time as Buyer secures the required bonding, Seller shall maintain in full force and effect its current bonds." No time for the performance of these obligations is stated in the Agreement.

(f) Cunningham took possession of the leases and wells in February, 1998, plugged and abandoned a number of the wells and has operated the remaining wells ever since. Subsequently, Cunningham assigned the lease on the Ute Mountain Ute lands to Richard and Debbie Baldwin, d/b/a Biya Operators, Inc., who now operates the wells located on that lease acreage.

(g) On approximately [December 4, 2002], Cunningham delivered the assignments for the Navajo leases to the BIA for its approval. The assignment for the Ute Mountain Ute lease was subsequently submitted to the BIA's Ute Mountain Ute Area Office, but the exact date of the submittal is uncertain.

(h) In the case of any assignment of an oil and gas lease on Indian lands, the Bureau of Indian Affairs determines the amount of bond in its discretion that will be required of an assignee. *See* 43 CFR §§ 3106.6-1, 3104.5, and 25 CFR § 225.30.

(i) On December 19, 1999, Cunningham purchased a certificate of deposit for \$15,000.00 for the bond on the Navajo leases, assuming such would be the amount required for the bond.

(j) On April 11, 2003, assuming such an amount would be sufficient, Cunningham obtained a \$75,000.00 irrevocable letter of credit in order to satisfy the bond requirement.

(k) The BIA instructed Cunningham to purchase new bonds, but as of early June 2003, the BIA had not yet determined the bond amounts that would be required.

(l) By letter dated June 25, 2003, the Bureau of Indian Affairs, Navajo Area Office, informed Cunningham that a bond in the amount of \$65,000.00 would be required on the Navajo leases.

(m) On July 21, 2003, the \$65,000.00 bond was provided by Cunningham to the BIA Navajo Area Office.

(n) In July, 2003, Cunningham and the Baldwins provided a bond to the Bureau of Indian Affairs for the Ute Mountain Ute lease in the amount of \$45,000.

(o) To date, Action Oil has not initiated the procedures to obtain the release of its bonds by the Bureau of Indian Affairs, the Minerals Management Service and the Bureau of Land Management. See Handbook Bureau of Indian Affairs, Albuquerque Area Office, *Guideline For Release of Bonds – Indian Oil and Gas Leases*. (Exhibit B.)

(p) At no time has the BIA or the BLM made any claims against the bonds on the properties. At no time since Cunningham has operated the three leases has the Bureau of Land Management issued any demand for the plugging and abandonment of any well that has not been satisfied or otherwise resolved.

(q) The requests for approvals for the assignments of the three Indian oil and gas leases remain pending before the BIA. None of the requests for approval has been denied by the agency.

12. Carmen Wood and Action Oil Company, Inc. have argued in this proceeding that the C-104A's in Action Oil's name should not be disapproved because the BIA has not yet finished processing the assignments for the Navajo and Ute Mountain Ute leases. They argue that despite the Assignment, Bill of Sale and Conveyance executed by Action Oil Company on February 11, 1998, referenced in paragraph 5 above, Applicant has no rights in the leases and should not be designated the operator because the Bureau of Indian Affairs has not yet approved the Tribal lease assignments that were executed concurrently with the lease assignment filed with the county clerk.

13. Previously, on June 3, 1998, the Division's District III office approved C-104 forms reflecting a change of operator from Action Oil Company, Inc., to J. C. Well Service, Inc. The testimony and evidence at the hearing established that the Division approved the change of operator before any approval of the Tribal assignment forms was issued by the BIA. The approval of the C-104's on June 3, 1998 triggered the application of the operator OGRID Number for J. C. Well Service (169822). Since that time, all production, and taxes have been reported under J. C. Well Service Inc.'s OGRID Number.

14. Following the assignment of the Navajo and Ute Mountain Ute wells to it in 1998, Applicant had no further dealings with Action Oil Company, Inc. or its former president, Gene Burson.

15. On November 18, 2003, J. C. Well Service, Inc. executed a C-104A for the wells on the Ute Mountain Ute lease in favor of Biya Operators, Inc. (OGRID No. 224717). The C-104A change of operator from J. C. Well Service, Inc. to Biya Operators, Inc. has not yet been processed for approval by the Division's District III office.

16. The testimony and evidence presented establishes that as of the date of the hearing on the Application, the request for approvals of the Tribal lease assignments remain pending before the BIA. None of the requests for approvals have been approved or denied. On June 25, 2003, the BIA Navajo Agency Realty office requested the Applicant to provide further information and materials, including a lease bond, preparatory to the processing of the assignments by the BIA. With the exception of re-executed BIA lease assignment forms, the information and materials requested by the BIA were provided on July 21, 2003.

17. Applicant presented documentary evidence establishing that it is not uncommon for operators to experience significant delays, sometimes years, in obtaining approvals for Tribal lease assignments.

18. Applicant's president and owner testified that at all times since Applicant assumed the operations of the wells in 1998, the BIA, the Bureau of Land Management as well as the Division have regarded Applicant as the actual operator of the wells. Each of these agencies has looked to Applicant to comply with their respective regulations and to correct any incidences of non-compliance. The evidence and testimony further established that at no time since Applicant has operated the wells, have any of the agencies looked to Action Oil Company, Inc. for regulatory compliance.

19. At the hearing the Division presented evidence that although the bond for the operation of the King Kong No. 20 water injection well is in the name of Action Oil Company, Inc., the United States Environmental Protection Agency regards J. C. Well Service the operator of the well and looks to the Applicant for regulatory compliance.

20. The Applicant's president testified that since 1998, Applicant has continually reported and remitted delay rentals and royalties to the Minerals Management Service and that it has always reported production to the Division. Applicant has also continually remitted Tribal and State severance taxes on production at all relevant times. At no time relevant to this proceeding has Action Oil Company, Inc. reported production, paid taxes, paid royalties, paid lease rentals, or otherwise complied with the federal and state regulatory reporting requirements for operators.

21. Evidence provided by the Applicant as well as the testimony of the Supervisor of the Division's District III office established that the Division requires the OGRID number for both the new operator and the previous operator be provided on C-104A's submitted for approval. The evidence further established that on approval of a C-104A change of operator, the OGRID number of the previous operator that was assigned to the wells in the Division's data base is changed to the new operator's OGRID.

22. On July 14, 2003, when the Division approved the C-104A's at issue in this case, the operator OGRID number for the wells referenced in paragraph 2 above where changed from J. C. Well Service, Inc. (169822) to Action Oil Company (25872). The testimony and evidence further established that the Applicant has continued to report oil, gas, and produced water production and injection volumes to the Division under its OGRID number (169822). The Division's District III Supervisor acknowledged that Applicant is properly reporting production but testified that as a consequence of the inconsistent OGRID numbers, the Division has not been in-putting the production data into its data base and that the information is being "set aside".

23. The testimony and evidence further established that the New Mexico Taxation and Revenue Department (NMTRD) also relies on and utilizes production data reported to the Division to track the payment of royalties and severance taxes. The Applicant presented evidence documenting the use by the NMTRD of production data under the operator OGRID n number. According to the NMTRD publication presented at the hearing, *"Failure To Use This Number Could Result In Unidentified Payments And Reports Which Could Affect A Taxpayers Reporting And Payment History"*. That publication further notes *"The Department mails notices such as "Notices Of Assessment Of Taxes" and "Notice Of Tax Credits", many of which require taxpayer response by a specified deadline. An incorrect address may delay the taxpayer's receipt of critical information, to the detriment of the taxpayer's best interests."*

24. The testimony and evidence at the hearing established that on November 13, 2003 a Notice of Tax Assessment was issued by the New Mexico Taxation and Revenue Department. to Action Oil Company at its address in Aztec, New Mexico due to the application of Action's OGRID number under the C-104A's approved by the Division in July of 2003. The evidence further established that Action Oil Company, Inc. failed to respond to or forward the tax

assessment notice, or otherwise notify Applicant of its issuance by NMTRD. A revised Notice of Assessment was issued by the Taxation and Revenue Department on February 3, 2004 which reflected that additional interest and penalty had been assessed due to the failure to respond or otherwise satisfy the original Notice of Assessment in October of 2003. Action Oil delayed forwarding the revised Notice of Assessment to the Applicant until approximately February 11, 2004. On receipt, Applicant immediately paid the tax, along with the assessed interest and penalty.

25. The District III Supervisor testified that when he approved the C-104A's at issue in this case, he relied on the representations of Carmen Wood. The District III Supervisor further testified that he made no effort to contact the Applicant to obtain approval for the change of operator, despite the fact he knew that the Applicant was actually operating the wells and had been doing so for a number of years. The District III Supervisor further testified that the Division must necessarily assume that the filings and representations it receives are made in good faith.

26. Although it is at issue in this case, the ability of Action Oil Company, Inc. to operate the subject wells is unknown. The evidence presented at hearing established that Carmen Wood obtained Action Oil in 2000 pursuant to a divorce settlement agreement and that she agreed the value of Action Oil was "zero". Although Carmen Wood and Action Oil appeared at the hearing and were represented by counsel, they presented no evidence establishing their capability to operate the wells. The Division's District III Supervisor testified that he neither inquired nor had any knowledge about Action Oil Company's ability to operate the wells or whether Action Oil has any staff, office or operating equipment. Evidence of the Division's current operator well list for Action Oil Company, Inc. presented at the hearing established that the only wells purported to be operated by that company are the wells that are the subject of this hearing.

27. The testimony and evidence establish indisputably that Action Oil Company, Inc. operates no wells and is neither remitting taxes or royalties nor reporting production or injection volumes to the Division.

28. When asked to whom the Division would look to respond to an emergency should one arise involving any of the subject wells, the District Supervisor expressed uncertainty.

29. In this case, the ability of the Applicant to operate the wells and to comply with the rules, regulations and orders of the Division was not disputed. However, the uncertainties with respect to the ability of Action Oil Company, Inc. to operate the wells, respond to an emergency, or otherwise comply with the rules, regulations and orders of the Division is a concern that should be accorded significant weight in this matter.

30. Because Action Oil Company, Inc. is neither physically operating the wells nor reporting the production of oil, gas and water, or injection volumes, the ability of the Division to execute its statutory duties of promoting conservation, protecting correlative rights and preventing waste is significantly impaired.

31. The approval of the change of operator to Action Oil Company, Inc. further interferes with the ability of the Taxation and Revenue Department to properly track and account for the payment of severance taxes and advalorem taxes. As a further consequence of the inconsistency between the OGRID Nos. for the actual oil operator and Action Oil Company, Inc., the Applicant incurred interest and penalty assessments.

32. There is no evidence that Action Oil Company objected to or otherwise challenged the C-104's reflecting that Applicant was the operator of the subject wells before July 14, 2003.

33. Applicant presented evidence establishing that in the past, the Division has approved C-104 change of operators before an assignment of the underlying oil and gas lease was approved. On May 15, 1989, Robert A. Crane, Jr. assigned all of Section 4, T-30-N, R-17-W, of the subject lands to Action Oil Company, Inc., effective October 8, 1990. Although the BIA did not issue its approval of the assignment for the lease until November 21, 1995, Action Oil took possession of the lands and held itself out as operator several years before. According to the Division's well file records, some of which were presented as evidence by the Applicant, the Division approved a C-104 changing operators to Action Oil Company on November 8, 1993, two years before the BIA had approved the underlying Tribal oil and gas lease assignment. By virtue of its own past conduct, it is reasonable to conclude that Action Oil Company considered its assignments effective when executed, and that it need not wait until final agency approval was granted before it took possession of the wells and changed operations into its name.

34. The District III Supervisor testified that it was the Aztec District office's practice to recognize as operator the same operator recognized by the BIA and the BLM. The BLM has no role in the approval of Tribal lease assignments however, and neither does it function in the capacity as trustee for the Indian owners. To the extent that the Aztec District office has ever followed or implemented the practice of following the designations of operators by the BIA or the BLM, there is no evidence to establish that such a practice is administratively reliable. Further, the extent that such a practice may have been utilized, it has never been codified as Division policy in the form of a rule, order or otherwise, and is therefore not binding.

35. The Division has neither the time nor the resources to verify each and every change of operator filed for approval. For this reason, the Division must be able to rely that someone who files a form, including a Change of Operator C-104A form, does so in good faith.

36. The C-104 and C-104A forms utilized by the Division for decades have had a simple, self-operating check that is easily administered by the Division. As a precondition to approving a change of operator, it has been the Division's established practice to require that the previous operator also acknowledge and approve the change.

37. In this case, the District III office deviated from the clear requirements of Rule 1104E, the Division's instructions, and the provisions set forth on the face of the C-104A form itself. As a consequence, the Division's administrative processes were opened up for misuse.

38. Carmen Wood and Action Oil Company, Inc. have misused the Division's processes as a means to improperly involve the Division in a contractual legal dispute that is pending before the 11th Judicial District Court. As has been established by previous orders, the Division is not the proper place to adjudicate a contractual dispute.

39. The District III Supervisor acknowledged that the District III office had no "policy" that it followed when processing change of operator requests where disputes over well operatorship existed. The District III Supervisor acknowledged that the C-104A forms require the signed approval of the previous operator before the Division approves a change, but that practice was not followed in this case.

40. Division Rule 1104E provides, in part, that "*Form C-104 with sections I, II, III and VI completely filled out shall be filed in quintuplicate by the operator of the well in the event there is a change of operator ...*". Neither form C-104A nor Rule 1104E address the situation where there is a dispute over the underlying lease title.

41. To the extent the Division has developed and implemented a policy, it is found in precedent orders from cases involving similar circumstances. In Case No. 12278 (*Application of Pride Energy Company for a Division Order Rescinding Approval of a Change of Operator, Lea County, New Mexico*) the operator of the well that was the subject of that proceeding sought the rescission of the approval of a form C-104 Change of Operator filed by another party. As in this case, the operator in Case No. 12278 was involved in District Court litigation with the party filing the change of operator form stemming from a dispute that arose under an operating agreement. In Order No. R-11335, the Division rescinded the approval of a change of operator and noted as follows:

"(8) The Oil Conservation Division is not the proper forum to adjudicate the terms of the agreement or the rights of the parties to that agreement.

(9) The application of Pride for an order rescinding the District Supervisor's October 5, 1999 approval of the form C-104 should be granted."

The precedent established by Order No. R-11335 is directly applicable to the facts and circumstances of this case.

42. Consistent with established Division precedent, to facilitate the discharge by the Division by its statutory duties to assure regulatory compliance for the subject wells, and to avoid the further accrual of adverse consequences to the Applicant, the Application of J. C. Well Service, Inc to rescind the District III office's approval of the C-104A's should be granted.

IT IS THEREFORE ORDERED THAT:

1. The Application of J. C. Well Service, Inc. for an order rescinding the Oil Conservation Division District III (Aztec office) Supervisor's July 14, 2003 approval of Form C-104A (Change of Operator) approving a change of operator from J. C. Well Service, Inc. to Action Oil Company, Inc. for the wells listed below, all of which are located in San Juan County, New Mexico, is hereby granted.

2.

Well Name	API Number	Legal Description	Pool
KING KONG No. 020	3004509899	L-4-30N-17W	Salt Creek Dakota
UTE MTN B No. 007	3004510056	5-31-31N-15W	Verde Gallup
UTE MTN B No. 004	3004510143	F-32-31N-15W	Verde Gallup
UTE MTN B No. 011	3004510145	F-31-31N-15W	Verde Gallup
UTE MTN B No. 008	3004510155	H-31-31N-15W	Verde Gallup
UTE MTN B No. 010	3004510240	N-29-31N-15W	Verde Gallup
UTE MTN B No. 002	3004510346	F-29-31N-15W	Verde Gallup
UTE MTN B No. 001	3004510380	B-29-31N-15W	Salt Creek Dakota
KING KONG No. 001X	3004520209	L-4-30N-17W	Salt Creek Dakota
KING KONG No. 005	3004520224	Z-4-30N-17W	Salt Creek Dakota
CLARK KENT No. 001	3004520225	I-5-30N-17W	Salt Creek Dakota
CLARK KENT No. 004	3004520254	I-5-30N-17W	Salt Creek Dakota
KING KONG No. 008	3004520624	G-4-30N-17W	Salt Creek Dakota
KING KONG No. 009	3004520806	G-4-30N-17W	Salt Creek Dakota
KING KONG No. 014	3004521834	G-4-30N-17W	Salt Creek Dakota

Case No. 13237

Order No. R-_____

Page 12

Well Name	API Number	Legal Description	Pool
KING KONG No. 019	3004521840	J-4-30N-17W	Salt Creek Dakota
KING KONG No. 015	3004521842	G-4-30N-17W	Salt Creek Dakota
KING KONG No. 022	3004521867	G-4-30N-17W	Verde Gallup
UTE MTN B No. 015	3004524606	K-31-31N-15W	Verde Gallup
UTE MTN B No. 016	3004524621	J-31-31N-15W	Verde Gallup
UTE MTN B No. 022	3004525224	M-29-31N-15W	Verde Gallup
UTE MTN B No. 021	3004525239	B-31-31N-15W	Verde Gallup
UTE MTN B No. 020	3004525240	G-31-31N-15W	Verde Gallup

3. Jurisdiction of this case is 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 FESMIRE
DIRECTOR

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

Case No. 13237

RECEIVED

MAY 14 2004

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

IN THE MATTER OF
THE APPLICATION OF
J.C. WELL SERVICE, INC.
FOR AN ORDER RESCINDING
APPROVAL OF CHANGE OF OPERATOR,
SAN JUAN COUNTY, NEW MEXICO

CLOSING ARGUMENT

Action Oil Company, Inc., and Carmen Wood, respectfully submits their *Closing Argument* herein.

A. The April 12, 2004 *Prehearing Statement* and attachments (received in evidence) are incorporated by reference and will not be repeated.

B. Mr. Frank T. Chavez, the District Supervisor of the Aztec District Office, District 3, New Mexico Oil Conservation Division, testified in part as follows. References are to page numbers in the attached portions of the *Transcript*, Exhibit 1:

1. The OCD is responsible for verifying information on any change of operator and approving it, that the operator meets all the requirements of the regulations. (p. 73);
2. The BIA recognized Action Oil, Inc. as the operator of the wells on the Ute Mountain Ute lease and the Navajo lease, and therefore OCD regarded Action Oil Company was the appropriate operator of the wells at issue. (p. 83);
3. The BIA letters were rather definitive as to who was the operator of the well. In OCD'S relationship with the Bureau of Land Management as trustee, it is important that they both hold the same operator responsible, as a responsible party in the operation of these properties. If there's an enforcement issue or violation, they have to be able to both address the

same responsible party for those. (p. 84)

4. OCD interacts with the Bureau of Land Management, who is the trustee of the oil and gas leases that are issued by the BIA, and the BLM is responsible for approving development and operation of oil and gas operations on those leases, approving the permits to drill, approving other actions, workovers on wells, and enforcing their regulations, and taking enforcement action. (p. 84);
5. If OCD sought enforcement against one operator, the operator OCD showed as record, and the operator was different from the one the BLM showed as the operator of record, it would create a significant amount of confusion and be a very ineffective way for OCD to handle the matter, and it would not allow OCD to coordinate activities against a single responsible party, and enforcing orders would be very difficult to do. (p. 87; p. 89);
6. On the issue of who the OCD should recognize as the operator of the wells at issue as of April 15, 2004, the OCD has information that the BLM regards Action Oil, Inc. as the operator for wells on the Navajo leases and the Ute Mountain lease, the BIA regards Action Oil, Inc. as the operator for wells on the Navajo leases and the Ute Mountain lease, the BIA has a bond provided by Action Oil, Inc. as the operator of those leases, and if the BIA recognizes a particular operator, other federal entities such as the BLM and the Environmental Protection Agency recognize the same operator. (pp. 97-98);
7. It is the practice of the Oil Conservation Division since 1978 to recognize the same operator of the wells and leases at issue that are recognized by the federal government and by the respective Indian tribes, because that is the best way to assure compliance with its rules and regulations. (p. 116);
8. Since 1978, the Director could not think of any case involving OCD whereby OCD recognized a different operator for a well or lease at issue than is recognized by the federal government or affected Indian tribes. (p. 117);
9. The OCD, the Bureau of Land Management, the Bureau of Indian Affairs, the Navajo Nation Tribe and the Ute Mountain Ute Tribe all recognize Action Oil, Inc., as the lessee of record for the leases and wells that are at issue in this case. (p. 135).

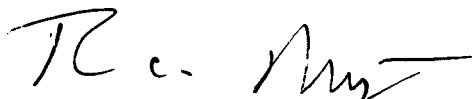
C. The application which is the subject matter of this case is the application of J.C.

Well Service, Inc. However, at the hearing, Mr. Cunningham was unable to demonstrate that J. C. Well Service, Inc. had been assigned any of the oil and gas leases which are the subject matter of this case. For this reason alone, the application of J.C. Well Service to be the operator of the wells at issue should be denied.

D. Each of the assignment documents upon which the applicant relies (Applicant exhibits, Tab 3) in support of his application provides that the assignments are to be effective from the date of approval by the Secretary of the Interior, or his authorized representative (BIA). However, the applicant was unable to demonstrate that the BIA had approved any of the referenced assignments. Therefore, the assignment documents are not effective to permit Mr. Cunningham to designate the operators of the wells at issue.

E. For the foregoing reasons and due to the authorities cited, the Application should be denied. Attached is a form of Order based on the foregoing.

Respectfully submitted,



THOMAS C. MONTOKA
Atkinson & Kelsey, P.A.
Attorney for Action Oil, Inc. and Carmen Wood
P.O. Box 3070
Albuquerque, NM 87190
883-3070

I certify that a copy of the
foregoing pleading was
mailed to counsel of record on

5-13-04 TCM

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

Case No. 13237

IN THE MATTER OF
THE APPLICATION OF
J.C. WELL SERVICE, INC.
FOR AN ORDER RESCINDING
APPROVAL OF CHANGE OF OPERATOR,
SAN JUAN COUNTY, NEW MEXICO

ORDER

This matter coming before the Hearing Examiner Michael E. Stogner on April 15, 2004 regarding the above entitled and numbered application, Applicant represented by J. Scott Hall of Miller Stratvert, P.A., State of New Mexico, Energy, Minerals And Natural Resources Department, Oil Conservation Division represented by Gail MacQuesten, Deputy General Counsel, Action Oil, Inc. and Carmen Wood represented by Thomas C. Montoya of Atkinson & Kelsey, P.A., and the Hearing Examiner having reviewed the Application, Pre-hearing statements and evidence submitted at the hearing, and being sufficiently advised, FINDS AND ORDERS:

The above referenced and entitled Application is denied.

MICHAEL E. STOGNER
Hearing Examiner

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. 13,237

APPLICATION OF J.C. WELL SERVICE, INC.,)
FOR AN ORDER OF THE DIVISION RESCINDING)
THE APPROVALS OF C-104A CHANGE OF)
OPERATOR FORMS ISSUED BY THE DISTRICT 3)
OFFICE ON CERTAIN WELLS IN SAN JUAN)
COUNTY, NEW MEXICO)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

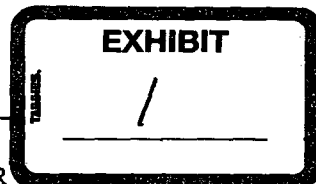
BEFORE: MICHAEL E. STOGNER, Hearing Examiner

April 15th, 2004

Santa Fe, New Mexico

This matter came on for hearing before the New Mexico Oil Conservation Division, MICHAEL E. STOGNER, Hearing Examiner, on Thursday, April 15th, 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.

* * *



STEVEN T. BRENNER, CCR
(505) 989-9317

For Your Information
ATKINSON & KELSEY

I N D E X

April 15th, 2004
 Examiner Hearing
 CASE NO. 13,237

	PAGE
EXHIBITS	3
APPEARANCES	5
OPENING STATEMENTS:	
By Mr. Hall	7
By Ms. MacQuesten	9
By Mr. Montoya	10
APPLICANT'S WITNESS:	
<u>JOHN CUNNINGHAM</u> (Owner/operater, J.C. Well Service and R&J Enterprises)	
Direct Examination by Mr. Hall	13
Cross-Examination by Ms. MacQuesten	29
Examination by Mr. Montoya	34
Redirect Examination by Mr. Hall	49
Recross-Examination by Ms. MacQuesten	52
Further Examination by Mr. Hall	55
Examination by Examiner Stogner	56
Further Examination by Ms. MacQuesten	58
DIVISION WITNESS:	
<u>FRANK T. CHAVEZ</u> (District Supervisor, Aztec District Office, District 3, NMOCD)	
Direct Examination by Ms. MacQuesten	72
Cross-Examination by Mr. Hall	100
Examination by Mr. Montoya	113
Examination by Examiner Stogner	117
Further Examination by Mr. Hall	130
Further Examination by Mr. Montoya	134
REPORTER'S CERTIFICATE	140

* * *

A P P E A R A N C E S

FOR THE DIVISION:

GAIL MacQUESTEN
Deputy General Counsel
Energy, Minerals and Natural Resources Department
1220 South St. Francis Drive
Santa Fe, New Mexico 87505

FOR THE APPLICANT:

MILLER, STRATVERT P.A.
150 Washington
Suite 300
Santa Fe, New Mexico 87501
By: J. SCOTT HALL

FOR ACTION OIL COMPANY, INC., AND CARMEN WOOD:

ATKINSON & KELSEY, P.A.
City Place Suite 2000
2155 Louisiana NE
Albuquerque, New Mexico 87110
By: THOMAS C. MONTOYA

* * *

1 EXAMINER STOGNER: Just to take notice.

2 MR. MONTROYA: No objection.

3 MS. MacQUESTEN: No objection.

4 EXAMINER STOGNER: Administrative notice will be
5 made of Tabs 13 through 22, provided in the J.C. Williams
6 Services, Inc., exhibit book. Thank you.

7 Anything else, Mr. Hall?

8 MR. HALL: That concludes my case on direct, Mr.
9 Examiner.

10 EXAMINER STOGNER: Okay, thank you, sir.

11 Ms. MacQuesten.

12 MS. MacQUESTEN: I call Frank Chavez.

13 FRANK T. CHAVEZ,

14 the witness herein, after having been first duly sworn upon
15 his oath, was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MS. MacQUESTEN:

18 Q. Would you state your name for the record, please?

19 A. I am Frank T. Chavez.

20 Q. And by whom are you employed?

21 A. I'm employed by the New Mexico Oil Conservation
22 Division as District Supervisor in the Aztec District
23 Office.

24 Q. What counties are included in the Aztec District
25 Office?

1 A. San Juan County, Rio Arriba, McKinley and
2 Sandoval.

3 Q. And where are the wells located that are at issue
4 in this case?

5 A. They're in San Juan County.

6 Q. What are the District's responsibilities
7 regarding approving change of operator forms for wells
8 located within the District?

9 A. The office is responsible for verifying
10 information on any change and approving it, the operator
11 meets all the requirements of the regulations.

12 Q. Are you familiar with the general process for
13 change of operator within the OCD?

14 A. Yes, I am.

15 Q. And are you familiar with the change-of-operator
16 processes that occurred in this particular case?

17 A. Yes, I am.

18 Q. Let me start with the change of operator from
19 Action Oil, Inc., to J.C. Well Service, Inc., in 1998.
20 Have you reviewed the well files for the wells at issue in
21 this case and the change-of-operator forms that appear in
22 those files?

23 A. Yes, I have.

24 Q. I'd like you to take a look at the documents in
25 front of you. The top document is labeled Exhibit Number

1 Q. Okay, which exhibit is that?

2 A. That is Exhibit Number 5.

3 Q. Okay. And to summarize, what did these documents
4 indicate to you regarding whether BIA recognized Action as
5 the operator of the wells on the Ute Mountain Ute lease and
6 the Navajo lease?

7 A. They indicated to me that Action Oil Company was
8 the appropriate operator of the wells that we approved a
9 well, that were the subject of the 104A.

10 Q. And did these documents indicate to you whether
11 BIA had a bond in place and who had that bond?

12 A. Yes they did.

13 Q. And who was that?

14 A. Action Oil.

15 Q. All right. Now, I believe the one exhibit in
16 this packet that we haven't seen in other presentations is
17 Exhibit Number 4, so I'd like to ask you some questions
18 specifically about that. Can you tell me what that
19 document is?

20 A. It's a copy of a letter sent by Mr. Tom Montoya
21 to Ms. Bancroft, who was the superintendent of the
22 Department of the Interior BIA Office of the Ute Mountain
23 Agency. And in that letter it advises Ute Mountain Agency
24 that Mr. Cunningham nor R.J. Enterprises nor Baldwin nor
25 others are authorized as employees, agents, operators or

1 representatives of Action Oil.

2 Q. At the time you approved the change of operator
3 from J.C. Well Service, to Action, did you have any
4 additional information?

5 A. At that time I didn't. This -- To me, the BIA
6 letters were rather definitive as to who was the operator
7 of the well. In our relationship with the Bureau of Land
8 Management as trustee, it is important that we hold the
9 same operator responsible, as a responsible party in the
10 operation of these properties. If there's an enforcement
11 issue or violation, we have to be able to both address the
12 same responsible party for those.

13 Q. Now, I heard you mention two different entities,
14 the BIA and the BLM. Could you tell me what OCD's
15 relationship is with each agency? How does the OCD
16 interact with those two entities?

17 A. We interact mostly with the BLM, because as
18 trustee of the oil and gas leases that are issued by the
19 BIA, the BLM is responsible for approving development and
20 operation of oil and gas operations on those leases,
21 approving the permits to drill, approving other actions,
22 workovers on wells, and enforcing their regulations, even
23 taking enforcement action.

24 Our relationship with the BIA has developed a
25 little bit differently, because they are a leasing agency.

1 inactive until the operator can reach a decision of what to
2 do with the well.

3 But we've been coordinating our inactive program
4 with the BLM for several years so that the operators are
5 aware tat they have to meet both State and BLM requirements
6 in their operations.

7 Q. If an operator of a well on tribal land is out of
8 compliance with 201, does the OCD take the operator to
9 hearing and an enforcement action?

10 A. Yes, we do.

11 Q. What would happen if we sought enforcement
12 against one operator, the operator we showed as record, and
13 the operator the BLM showed as the operator of record was
14 different?

15 A. It would create a significant amount of confusion
16 and might end up in a -- Well, I don't know what it would
17 end up as, but it would be a very ineffective way for us to
18 handle it. It's hard to predict exactly what would happen
19 in that case, but it wouldn't allow us to coordinate our
20 activities against a single responsible party.

21 Q. How do you coordinate the financial assurances
22 with, I suppose, the BIA in that case; is that right?

23 A. That's correct.

24 Q. How does that work?

25 A. What we've done in the past is, when we've

1 in our records in OCD.

2 Q. What would happen if we got such an order against
3 the operator of record that we showed, and the BIA and BLM
4 had a different operator of record?

5 A. Again, it would be the same type of confusion
6 that enforcing the order would be maybe very difficult to
7 do.

8 Q. All right. We've talked about enforcement
9 matters, but I wanted to ask you about other areas where
10 the OCD and the BLM interact. Does the BLM recognize OCD
11 decisions on oil and gas spacing matters, such as the
12 setting of spacing, approval of exception locations,
13 approval of nonstandard spacing units and compulsory
14 pooling?

15 A. Yes, it does, along -- in two ways. On federal
16 lands they accept that with those special issues. On
17 Indian lands we have a memorandum of understanding under
18 which we coordinate with the BLM for those matters on
19 Indian lands.

20 Q. Would any complications arise if we were issuing
21 such orders on operators of record that we showed as
22 operators of record, while the BLM showed different
23 operators of record?

24 A. Yes, again the same confusion would arise.

25 Q. Once you decided to grant the change-of-operator

1 know what page number it is, but interiorly a page at the
2 top says Section F, Financial Responsibility. It says the
3 applicant has furnished to BIA collective bond in the sum
4 of \$75,000.

5 Q. And what is the approximate time frame of this
6 document?

7 A. This was after Mr. Cunningham had filed his 104,
8 changing operator of this well to J.C. Well Service from
9 Action Oil Company.

10 Q. Okay. If you look at the cover page, what date
11 is that on that page?

12 A. It's dated at the top November 10th, 1999.

13 Q. So any bond that was in place at that time would
14 have been an action bond?

15 A. That's correct.

16 Q. Which would match the name of the applicant as
17 presented to the EPA?

18 A. That is correct.

19 Q. So on the issue of who the OCD should recognize
20 as the operator of the wells at issue today, you have
21 before you information that the BLM regards Action as the
22 operator for wells on the Navajo lease and the Ute Mountain
23 lease; is that correct?

24 A. That's correct.

25 Q. You have information that the BIA regards Action

1 as the operator for wells on the Navajo lease and the Ute
2 Mountain lease?

3 A. Yes, that's correct.

4 Q. And that the BIA has a bond provided by Action as
5 the operator of those leases?

6 A. That's correct.

7 Q. And you also have information that the EPA has
8 received an application from Action as operator seeking a
9 permit for an injection well, relying on Action's BIA bond?

10 A. That's correct.

11 Q. Your understanding, if the BIA recognizes a
12 particular operator, do other federal entities such as the
13 BLM and the EPA recognize the same operator?

14 A. That is my understanding, yes.

15 Q. And right now the information that we have is
16 that BIA recognizes Action. What if at some point in the
17 future the BIA recognized J.C. Well Service as the
18 operator? Would you approve the change of operator to J.C.
19 Well Service?

20 A. Well, yes. And that's an interesting question
21 because we had already approved a C-104 for J.C. Well
22 Service, and in retrospect a more appropriate action might
23 have been actually, since his assignments didn't go
24 through, to rescind the 104's that we had originally
25 approved for J.C. Well Service, rather than create a new --

1 before you would change your decision with respect to the
2 change-of-operator decision that you made?

3 A. No, it wouldn't.

4 Q. Is it the policy of the Oil Conservation Division
5 to recognize the same operator of the wells and leases at
6 issue that are recognized by the federal government and by
7 the respective Indian tribes?

8 A. When you say "policy", we have a way of handling
9 that here and our interpretation of what a policy is. It's
10 our practice to do that, because -- It's not a written
11 policy, if you ask along those lines, and all that we have
12 -- a policy is what we kind of call a written policy. But
13 it's our practice to do that, because that is the best way
14 to assure we can get compliance with our rules and
15 regulations.

16 Q. How long has that practice or policy been in
17 place?

18 A. I don't know when it originated. It was there
19 when I came to work for the Division in 1978.

20 Q. Has there been any challenge anywhere that you
21 were aware of, that the practice or policy of the Division
22 in recognizing the same operator of the wells and leases at
23 issue that are recognized by the government agencies and
24 the tribes that may be affected?

25 A. I can't think of whether there's ever been a

1 difference.

2 Q. I'm sorry, I didn't --

3 A. I can't think of whether there's ever been a
4 difference between our recognition and the federal, BLM
5 recognition of an operator. Maybe I didn't understand your
6 question.

7 Q. No, no, you answered the question.

8 A. Okay.

9 Q. And to your knowledge -- you may have asked this
10 before, but has there ever been a case involving the
11 Division whereby the Division recognized a different
12 operator for a well or lease at issue than is recognized by
13 the federal government or affected Indian tribes?

14 A. I can't think of any.

15 MR. MONTTOYA: That's all I have.

16 EXAMINER STOGNER: Any redirect, Ms. MacQuesten?

17 MS. MACQUESTEN: No, thank you.

18 EXAMINATION

19 BY EXAMINER STOGNER:

20 Q. Okay, let's see. Mr. Chavez, I want to make sure
21 on my exhibits here. Exhibit Number 2 is the C-104A, and
22 is it my understanding that Exhibits 3 back through 9 were
23 brought in to substantiate that change? Is that correct,
24 or am I missing something?

25 A. I think that's correct. Hold on a second, let me

1 particular, reference was made to Exhibit 16 -- was there a
2 dispute concerning whether the Bureau of Land Management or
3 the Bureau of Indian Affairs or the various Indian tribes
4 recognize or do not recognize the leaseholder with respect
5 to that particular application? Was that before the
6 Division at that time?

7 A. No.

8 Q. As I understand your testimony here today, the
9 Bureau of Land Management recognizes Action Oil, Inc., as
10 the lessee of record for the leases and wells that are at
11 issue?

12 A. Yes, that's the information that I have.

13 Q. And the information that you have is, the Bureau
14 of Indian Affairs recognizes Action Oil, Inc., as the
15 lessee of record for the leases and wells that are at
16 issue?

17 A. Yes.

18 Q. And the information that you have before you
19 today is that the Indian tribes at issue recognizes Action
20 Oil, Inc., as the lessee of record with respect to the
21 leases and oil wells that are at issue?

22 A. Yes.

23 MR. MONTAYA: That's all I have.

24 EXAMINER STOGNER: So noted, the hour. However,
25 I'm going to take a 10-minute recess, and my intent to