

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

CASE NO. 13237: APPLICATION OF J.C. WELL SERVICE, INC., FOR AN ORDER OF THE
DIVISION RESCINDING APPROVALS OF C-104A CHANGE OF OPERATOR FORMS ISSUED
BY THE DISTRICT III OFFICE.

RECEIVED

APR 8 2004

ENTRY OF APPEARANCE
AND
PRE-HEARING STATEMENT

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

This entry of appearance and pre-hearing statement is submitted by Respondent Oil Conservation Division.

APPEARANCES

APPLICANT

J.C. Well Service Inc.

APPLICANT'S ATTORNEY

Scott Hall
Miller Stratvert PA
P.O. Box 1986
150 Washington Ave., #300
Santa Fe, NM 870504-1986
(505) 989-9614
shall@mstlaw.com

RESPONDENT

Oil Conservation Division

RESPONDENT'S ATTORNEY

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

Action Oil Company Inc.

Thomas Montoya
Atkinson & Kelsey, P.A.
P.O. Box 3070
2155 Louisiana Blvd. N.E. #2000
Albuquerque, NM 87110
(505) 883-3070
tommontoya@aol.com

STATEMENT OF THE CASE

RESPONDENT OIL CONSERVATION DIVISION:

The Oil Conservation Division opposes the application filed by J.C. Well Service Inc. to rescind the Division's approval of a change of operator from J.C. Well Service Inc. to Action Oil Company Inc. (Action) on certain wells.

The wells at issue are located on tribal land. Action provided evidence that the relevant tribes, the BIA and the BLM recognize Action as the operator of record for these wells. It is the Division's policy to recognize the same operator recognized by those entities. This policy ensures that the operator recognized by the

Division has the appropriate bonding in place with the BIA, and that all the enforcement entities look to the same operator for compliance action.

PROPOSED EVIDENCE

RESPONDENT OIL CONSERVATION DIVISION:

WITNESS:

ESTIMATED TIME:

EXHIBITS:

Frank Chavez, OCDSupervisor, Dist. III

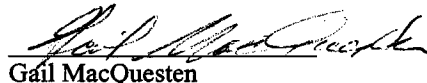
30 min.

Well files; correspondence

PROCEDURAL MATTERS

None.

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 8th day of April, 2004.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served upon the following by e-mail this _____ day of April, 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

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

RECEIVED

APR 12 2004

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

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

CASE NO. 13237

PRE-HEARING STATEMENT

This Pre-Hearing Statement is submitted by Miller Stratvert P.A. (J. Scott Hall) on behalf
of J. C. Well Service, Inc., as required by the Oil Conservation Division.

APPEARANCES

APPLICANT'S ATTORNEY

J. Scott Hall, Esq.
Miller Stratvert P.A.
Post Office Box 1986
Santa Fe, New Mexico 87504-1986
(505) 989-9614

APPLICANT

J. C. Well Service, Inc.

RESPONDENT'S ATTORNEY

Gail MacQuesten, Esq.
New Mexico Oil Conservation Division
Energy, Minerals and Natural
Resources Department
1220 South St. Francis Drive
Santa Fe, New Mexico 87505

RESPONDENT

Oil Conservation Division

Thomas Montoya, Esq.
Atkinson & Kelsey, P.A.
Post Office 3070
Santa Fe, New Mexico 87504

Action Oil Company, Inc.

STATEMENT OF CASE

Applicant seeks an order rescinding the approvals of C-104A Change of Operator forms issued by the District III office for a number of wells located in San Juan County, New Mexico described in the Application. Applicant acquired its leases in approximately February of 1998 and has operated the wells located thereon at all pertinent times since. On approximately June 3, 1998, Applicant filed C-104's with the Division to reflect the Change of Operator from Action Oil Company, Inc. to J. C. Well Service, Inc. The Operator Certificate of Compliance on the forms was executed by John Cunningham d/b/a J. C. Well Service, and was also acknowledged by Gene Burson, president of Action Oil Company, Inc. The Division approved the Change of Operator on June 3, 1998.

In 2002, Carmen Wood, the purported owner of Action Oil, Inc. filed suit in the 11th Judicial District Court seeking the rescission of the sale and the assignments of the leases from Action Oil to the Applicant. In the interim, during the pendency of the litigation and without the Applicant's knowledge, Ms. Wood filed C-104A's requesting a change of operator from J. C. Well Service, Inc. back to Action Oil Co., Inc. which the Division's District III office approved on July 14, 2003. Since the time the Application was filed in this case, the 11th Judicial District Court has entered its order dismissing the suit filed on behalf of Action Oil, Inc. with prejudice.

PROPOSED EVIDENCE

APPLICANT

WITNESSES:	Est. Time	No. of Exhibits
Mr. John Cunningham, Owner/Operator	30 min.	6
Opposition or Other Parties:		

PROCEDURAL MATTERS

None.

Respectfully submitted,

MILLER STRATVERT P.A.

By: J. Scott Hall
J. Scott Hall
Post Office Box 1986
Santa Fe, New Mexico 87504
(505) 989-9614
Attorneys for J. C. Well Service, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served upon the following as indicated below on this 12th day of April, 2004:

Gail MacQuesten, Esq. (via hand-delivery and facsimile)
New Mexico Oil Conservation Division
Energy, Minerals and Natural
Resources Department
1220 South St. Francis Drive
Santa Fe, New Mexico 87505

Thomas Montoya, Esq. (via facsimile)
Atkinson & Kelsey, P.A.
Post Office 3070
Santa Fe, New Mexico 87504

J. Scott Hall
J. Scott Hall

ATKINSON & KELSEY, P.A.

DIVORCE & FAMILY LAW

W. W. ATKINSON
(1910 - 1993)
STEPHEN J.E. SPRAGUE
(1941-2003)

VIRGINIA R. DUGAN
BRIAN D. ESCOBEDO
JON A. FEDER
SANDRA L. GARDNER
DAVID H. KELSEY
PATRICK L. MCDANIEL
THOMAS C. MONTOYA
DENISE E. READY
GREGG G. VELASQUEZ

CITY PLACE SUITE 2000
2155 LOUISIANA NE
ALBUQUERQUE, N M 87110

TELEPHONE
(505) 883-3070

FAX
(505) 889-3111

P.O. BOX 3070
ALBUQUERQUE, N.M. 87190-3070

April 12, 2004

RECEIVED

APR 13 2004

**OIL CONSERVATION
DIVISION**

VIA FAX AND MAIL 505-476-3462

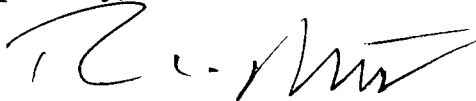
**Michael Stogner
Hearing Examiner
State of New Mexico
Energy, Minerals And Natural Resources Department
Oil Conservation Division
1220 S. St. Francis Dr.
Santa Fe, NM 87505**

Re: *Application Of J.C. Wells Service, Case No. 13237*

Dear Mr. Stogner:

Enclosed please find a copy of Action Oil, Company, Inc. and Carmen Wood's *Pre-Hearing Statement* for the April 15, 2004 hearing.

Respectfully,



**THOMAS C. MONTOYA
For the Firm**

**cc: Gail MacQuesten, Esq., via fax and mail
 J. Scott Hall, Esq., via fax and mail
 Kyle M. Finch, Esq., via fax and mail
 Carmen Wood**

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

RECEIVED

Case No. 13237

APR 13 2004

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

OIL CONSERVATION
DIVISION

PRE-HEARING STATEMENT

Action Oil Company, Inc., and Carmen Wood, respectfully submits their *Pre-Hearing Statement* herein.

A. The United States Government, operating through the Department of the Interior, Bureau of Indian Affairs, does not recognize J.C. Well Service, Inc. nor John Cunningham as the owner of the wells or gas leases referenced in ¶s 1 and 2 of the *Application*.

B. Attached are Exhibits 1-2, which are the February 4, 2003 and February 11, 2003 correspondences from the United States Department of Interior, Bureau of Indian Affairs related to the Navajo Nation leases referenced in ¶ 2 of the *Application*. Exhibits 1 and 2 demonstrate that, with respect to the United States Government, Action Oil, Inc. is the lessee of record with respect to the referenced leases, not J.C. Well Service, nor John Cunningham.

C. Attached is Exhibit 3, which is the October 15, 2002 correspondence from the United States Department of Interior, Bureau of Indian Affairs related to the Ute Mountain Ute lease referenced in ¶ 2 of the *Application*. Exhibit 3 demonstrates that, with respect to the United States Government, Action Oil, Inc. is the lessee of record with respect to the referenced lease,

not J.C. Well Service, nor John Cunningham.

D. Attached is Exhibit 4, which is the July 22, 2003 correspondence from the Navajo Nation related to the Navajo Nation leases referenced in ¶ 2 of the *Application*. Exhibit 4 demonstrates that, with respect to the Navajo Nation, Action Oil, Inc. is the lessee of record with respect to the referenced leases, not J.C. Well Service, nor John Cunningham.

E. Attached is Exhibit 5, which is the October 30, 2003 correspondence from the Ute Mountain Ute Tribe related to the Ute Mountain Ute lease referenced in ¶ 2 of the *Application*. Exhibit 5 demonstrates that, with respect to the Ute Mountain Ute Nation, no action has been taken with respect to the 1998 assignment from Action Oil, Inc. to John Cunningham of the referenced Ute Mountain Ute lease.

F. As of the date of submission of this *Pre-Hearing Statement*, there has been no change with respect to the position of the United States Government or the Tribal governments referenced by the attached Exhibits with respect to the leases which are the subject of this *Application*.

G. The Applicant's position is based on ¶2 of the *Application*, whereby, on February 11, 1998, pursuant to an *Assignment, Bill of Sale and Conveyance*, Action Oil, Inc. assigned to John Cunningham a 43.75% interest in the leases referenced in ¶2 of the *Application*. 56.25% of the referenced leases were assigned to third parties, who re-assigned those interests to Mr. Cunningham in 2002. In April, 2002, Mr. Cunningham assigned the Ute Mountain Ute leases to yet another third party, Richard and Debbie Baldwin, represented by Mr. Kyle Finch. As previously stated, none of the assignments executed by Action Oil, Inc. have been approved by either the United States Government or the affected Tribal Governments.

H. In October 2002, Action Oil, Inc. and Carmen Wood filed suit in New Mexico state court seeking to rescind the February 11, 1998 *Assignment, Bill of Sale and Conveyance*. This request for rescission was due in large part to the fact that the referenced assignments had not been approved by either the United States Government or the affected Tribal Governments.

I. On March 9, 2004, the New Mexico state court denied rescission of the February 11, 1998 *Assignment, Bill of Sale and Conveyance*, and an appeal is anticipated of that decision.

J. Under federal law, the assignments of the Tribal leases referenced in ¶ 2 of the Application (the same ones contained in the February 11, 1998 *Assignment, Bill of Sale and Conveyance*) must be approved by the federal government and the affected Indian Tribes.

“25 U.S.C. §396(a) provides:

“§ 396a. Leases of unallotted lands for mining purposes; duration of leases.

On and after May 11, 1938, unallotted lands within any Indian reservation or lands owned by any tribe, group, or band of Indians under Federal jurisdiction, except those specifically excepted from the provisions of sections 396a to 396g of this title, may, *with the approval of the Secretary of the Interior*, be leased for mining purposes, *by authority of the tribal council* or other authorized spokesmen for such Indians, for terms not to exceed ten years and as long thereafter as minerals are produced in paying quantities.” (Emphasis added.)

25 U.S.C. §396(d) provides:

“§ 396d. Rules and regulations governing operations; limitations on oil or gas leases

All operations under any oil, gas, or other mineral lease issued pursuant to the terms of sections 396a to 396g of this title or any other Act affecting restricted Indian lands *shall be subject to the rules and regulations promulgated by the Secretary of the Interior.*” (Emphasis added.)

K. Due to the foregoing, with respect to United States Government and Tribal Governments, Action Oil, Inc. is the lessee of record with respect to the referenced leases, not J.C. Well Service, nor John Cunningham.

Respectfully submitted,



THOMAS C. MONTOYA
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 faxed and
mailed to counsel of record on

4-12-04 TCM



IN REPLY REFER TO:

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

NAVAJO REGION

P. O. Box 1060

Gallup, New Mexico 87305-1060

RRES/543

FEB 04 2003

Ms. Carmen J. Wood
Action Oil, Inc.
437 Road 2900
Aztec, New Mexico 87410

Dear Ms. Wood:

This responds to your request, for information regarding Navajo Nation Oil and Gas Lease Nos. N00-C-14-20-0603-639 and -903. Our records indicate that Action Oil, Inc. is the lessee of record and Action Oil, Inc., posted a collective bond in the amount of \$75,000 with the Bureau of Indian Affairs, Navajo Region, which was approved March 16, 1995.

The two leases above are located on Navajo Tribal Indian trust lands and are subject to 25 Code of Federal Regulations (CFR), Part 211.53. The section states in part, "(a) *Approved leases or any interest therein may be assigned or transferred only with the approval of the Secretary. The Indian minerals owner must also consent if approval of the Indian mineral owner is required in the lease. (In this case the Navajo Nation is the minerals owner.) To obtain the approval of the Secretary of 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 leases. (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.*"

If you have any questions regarding this matter, please contact our Real Estate Services, Minerals and Mining section at (928) 871-5933.

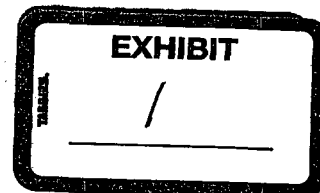
Sincerely,

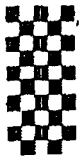
Dale Underwood

ACTING

Regional Realty Officer

*Action Oil
Exhibit
"A"*





IN REPLY REFER TO:

RRES/543

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

NAVAJO REGION

P. O. Box 1060

Gallup, New Mexico 87305-1060

FEB 11 2003

Ms. Carmen J. Wood
Action Oil, Inc.
437 Road 2900
Aztec, New Mexico 87410

Dear Ms. Wood:

Our letter dated February 4, 2003, cited the wrong lease numbers. This letter corrects the Navajo Nation Lease Nos. N00-C-14-20-0603-639 and -903 to read 14-20-0603-639 and 14-20-0603-903. Please accept our apology for this error.

If you have any questions regarding this matter, contact our Real Estate Services, Minerals and Mining Section at (928) 871-5933.

Sincerely,

Regional Realty Officer

Action Oil
Exhibit
"B"





United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
UTE MOUNTAIN UTE AGENCY
P.O. BOX KK
TOWAOC, COLORADO 81334

IN REPLY REFER TO:
Branch of Real Estate Services

OCT 15 2002

Ms. Carmen J. Wood
Action Oil, Inc.
437 Road 2900
Aztec, New Mexico 87410

Dear Ms. Wood:

In response to your request, the following information is provided regarding Ute Mountain Ute BIA Lease No. 14-20-604-90. Current Bureau of Indian Affairs records at Ute Mountain Ute Agency, Towaoc, Colorado, show that Action Oil, Inc., is the lessee of record and that Action Oil, Inc., posted a Collective Bond in the amount of \$15,000 with the Bureau of Indian Affairs at Ute Mountain Ute Agency on September 03, 1992.

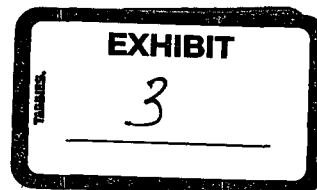
Lease No. 14-20-604-90 is located on Ute Mountain Ute Indian trust lands and is subject to federal regulations at 25 Code of Federal Regulations (CFR), Part 211. Section 211.53 states in part, "(a) Approved leases or any interest therein may be assigned or transferred only with the approval of the Secretary. 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."

If there are any questions regarding this matter, please call the Branch of Real Estate Services at (970) 565-6094.

Sincerely,

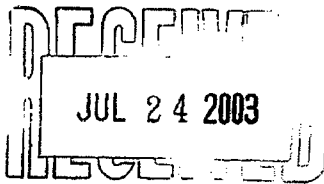
Priscilla Bancroft
Superintendent

*Action
Exhibit
"C"*





**THE
NAVAJO
NATION**



MINERALS DEPARTMENT

Post Office Box 1910

Window Rock, Arizona 86515

Phone: (928) 871-6587 • Fax: (928) 871-7095

*Joe Shirley, Jr.
President*

*Frank Dayish, Jr.
Vice President*

July 22, 2003

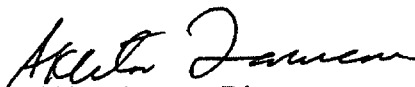
Mr. Tom Montoya, Attorney
Atkinson & Kelsey, P.A.
Post Office Box 3070
Albuquerque, NM 87190

Dear Mr. Montoya:

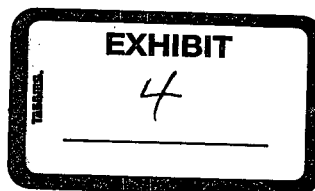
We are responding to your request of June 27, 2003 regarding Navajo Nation Oil & Gas Lease Numbers 14-20-0603-639 and -903. Our records show that Action Oil & Gas is the lessee of record for these leases. The Bureau of Indian Affairs record is consistent with our record.

If we can be of further assistance, please call (928) 871-6587.

Sincerely,


Akhtar Zaman, Director
Minerals Department

*Action Oil
Exhibit "D"*





UTE MOUNTAIN UTE TRIBE

Tribal Attorney's Office
P.O. Box 128
Towaoc, Colorado 81334-0128
(970) 564-5641

October 30, 2003

Thomas C. Montoya, Esq.
Atkinson & Kelsey PA
Post Office Box 3070
Albuquerque, New Mexico 87190-3070

J. Scott Hall, Esq.
Miller Stratvert P.A.
Post Office Box 1986
Santa Fe, New Mexico 87504-1986

RE: Oil and Gas Lease No. 14-20-604-90

Gentlemen:

The purpose of this letter is to inform you how the Ute Mountain Ute Tribe ("Tribe") plans to proceed with regards to Oil and Gas Lease No. 14-20-604-90. On October 10, 2003, the Bureau of Indian Affairs ("Bureau") transmitted to the Tribe assignment documents relating to Oil and Gas Lease No. 14-20-604-90. On October 22, 2003, the Tribe was informed that the Bureau wished to consult with the Regional Solicitor prior to any further action on this issue.

Therefore, the Tribe will take no further action with regards to these assignment documents until the Bureau has had an opportunity to consult with the Regional Solicitor and the Bureau has informed the Tribe of the Regional Solicitor's findings.

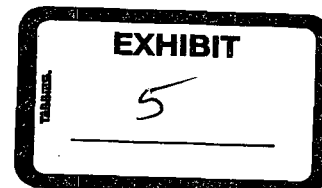
In the event the Tribal Council intends to address these assignment documents, I will provide each of you with at least two weeks prior notice. At which time you may request to appear before the Tribal Council when these assignment documents are presented from their review and consideration. Please be aware that the Chairman of the Tribal Council determines the agenda for Tribal Council meetings.

If you have any questions regarding this letter, please contact me at (970) 564-5642.

Sincerely yours,

William A. Johnson, Associate General Counsel
Department of Justice, Ute Mountain Ute Tribe

xc: Ute Mountain Ute Tribal Council
: Gordon Hammond, Director, Tribal Energy Administration
: Priscilla Bancroft, Agency Superintendent, Bureau of Indian Affairs



Chief Jack House, Last Traditional Chief 1886-

Action Oil
Exhibit
"E"