

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: )  
APPLICATION OF XTO ENERGY, INC., FOR )  
COMPULSORY POOLING, BERNALILLO COUNTY, )  
NEW MEXICO )

CASE NO. 13,299

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: WILLIAM V. JONES, JR., Hearing Examiner

July 8th, 2004

Santa Fe, New Mexico

This matter came on for hearing before the New Mexico Oil Conservation Division, WILLIAM V. JONES, JR., Hearing Examiner, on Thursday, July 8th, 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.

\* \* \*

WVJ 7/27/04

## I N D E X

July 8th, 2004  
 Examiner Hearing  
 CASE NO. 13,299

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| APPEARANCES                         | 3    |
| APPLICANT'S WITNESSES:              |      |
| <u>GEORGE A. COX</u> (Landman)      |      |
| Direct Examination by Mr. Bruce     | 4    |
| Examination by Examiner Jones       | 10   |
| <u>JOHN M. RICHARDSON</u> (Landman) |      |
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| Further Examination by Mr. Bruce    | 19   |
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\* \* \*

## E X H I B I T S

| Applicant's | Identified | Admitted |
|-------------|------------|----------|
| Exhibit 1   | 5          | 10       |
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| Exhibit 3   | 8          | 10       |
| Exhibit 4   | 9          | 10       |
| Exhibit 5   | 15         | 17       |
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\* \* \*

## 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:

JAMES G. BRUCE  
Attorney at Law  
P.O. Box 1056  
Santa Fe, New Mexico 87504

\* \* \*

1           WHEREUPON, the following proceedings were had at  
2 10:22 a.m.:

3           EXAMINER JONES: Okay, let's go back on the  
4 record and call Case 13,299, Application of XTO,  
5 Incorporated, for compulsory pooling, Bernalillo County,  
6 New Mexico.

7           Call for appearances.

8           MR. BRUCE: Mr. Examiner, Jim Bruce of Santa Fe,  
9 representing the Applicant. I have two witnesses.

10          EXAMINER JONES: Any other appearances? There  
11 being none, will the witnesses please stand to be sworn?

12                   (Thereupon, the witnesses were sworn.)

13                           GEORGE A. COX,  
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 MR. BRUCE:

18           Q.    Would you please state your name and city of  
19 residence for the record?

20           A.    My name is George A. Cox. I live in Fort Worth,  
21 Texas.

22           Q.    Who do you work for and in what capacity?

23           A.    I'm employed with XTO Energy, Inc., as a landman.

24           Q.    Have you previously testified before the Division  
25 as a petroleum landman?

1 A. Yes, I have.

2 Q. And were your credentials as an expert landman  
3 accepted as a matter of record?

4 A. Yes, they were.

5 Q. And are you familiar with the land matters  
6 involved in this Application?

7 A. Yes, I am.

8 MR. BRUCE: Mr. Examiner, I'd tender Mr. Cox as  
9 an expert petroleum landman.

10 EXAMINER JONES: Mr. Cox is qualified as an  
11 expert petroleum landman.

12 Q. (By Mr. Bruce) Mr. Cox, could you identify  
13 Exhibit 1 and describe what XTO seeks in this case?

14 A. Exhibit 1 is a land plat of our acreage position  
15 reflecting a well spot there in Section 27 where we propose  
16 to drill a well on 160 acres.

17 Q. And what acreage, specific acreage, are you  
18 seeking to force pool?

19 A. Force pool the acreage in the southeast  
20 quarter --

21 Q. Okay.

22 A. -- of Section 27.

23 Q. In 10 North, 1 West?

24 A. Yes, sir.

25 MR. BRUCE: Mr. Examiner, one thing in the

1 advertisement Mr. Cox pointed out to me today, it does say  
2 the well will be drilled at an unorthodox gas well  
3 location. It is actually orthodox, so --

4 EXAMINER JONES: Oh, it is orthodox?

5 MR. BRUCE: It is orthodox.

6 EXAMINER JONES: Okay.

7 MR. BRUCE: So --

8 EXAMINER JONES: I noticed it said unorthodox.

9 MR. BRUCE: And I don't know -- It must be my  
10 fault since my client pointed it out to me.

11 EXAMINER JONES: 660, 660 is orthodox.

12 Q. (By Mr. Bruce) What is the ownership in the  
13 southeast quarter well unit, Mr. Cox?

14 A. Well, we own one half of the interest by virtue  
15 of a lease, and the other half mineral interest is owned by  
16 Kent Investment, L.P., and they are unleased.

17 Q. Let's discuss XTO's efforts to obtain the  
18 voluntary joinder of Kent investment in the lease. What is  
19 Exhibit 2?

20 A. Exhibit 2 is my initial proposal letter,  
21 proposing the well to Kent Investment. It went out on May  
22 27th. It was sent out certified and they received it on  
23 the 29th of May.

24 I followed it up with another letter that was  
25 sent uncertified, because I wasn't sure at the time -- I

1 had not received the green card back and wasn't sure if  
2 they had gotten it, so I sent it regular mail, and then I  
3 followed it up with another letter on June 9th, revising  
4 the spacing from a 320 to a 160 and advising them that the  
5 cost and the depths were still the same as the original  
6 letter.

7 Q. Were there contacts before May 27th with Kent  
8 Investments?

9 A. Yes, there were.

10 Q. And will the next witness discuss those contacts?

11 A. Yes, he will.

12 Q. Okay. What is Kent Investments' position at this  
13 time with regard to the pooling Application?

14 A. They're -- The word that I had received from them  
15 is that they did not want to lease and wanted us to move  
16 forward with the pooling.

17 Q. Okay, they didn't express any objection to the  
18 pooling; they just didn't want to lease to you or join in  
19 the well at this time?

20 A. That is correct.

21 Q. In your opinion, has XTO made a good faith effort  
22 to obtain the voluntary joinder of Kent Investment in the  
23 well?

24 A. Yes, I believe we have.

25 Q. Would you identify Exhibit 3 and briefly discuss

1 the cost of the proposed well?

2 A. Exhibit 3 is our AFE for the drilling of this  
3 well, which details the costs prepared by our engineers.

4 Q. And is this a reasonable well cost for a well of  
5 this depth?

6 A. Yes, sir.

7 Q. Normally I ask if it's reasonable for a well  
8 drilled in this area of New Mexico, but this is rank  
9 wildcat territory, is it not?

10 A. Yes, it is.

11 Q. Do you have any idea where the nearest well might  
12 be located?

13 A. No, sir, I don't. It's not within a 10-mile  
14 radius, I do not believe.

15 Q. Okay. Does XTO request that it be designated  
16 operator of the well?

17 A. Yes, it does.

18 Q. And do you have a recommendation for the amounts  
19 which XTO should be paid for supervision and administrative  
20 expenses?

21 A. Yes, sir, we would request on a monthly drilling  
22 basis of \$5750 and on a producing basis of \$575 a month.

23 Q. And are these amounts equivalent to those  
24 normally charged by XTO and other operators for wells of  
25 this depth?

1 A. Yes, sir.

2 Q. Do you request that the overhead rates be  
3 adjusted periodically as provided by the COPAS accounting  
4 procedure?

5 A. Yes, sir.

6 Q. And do you request that the maximum cost-plus-  
7 200-percent risk charge be assessed on a nonconsenting  
8 owner?

9 A. Yes, I do.

10 Q. Was Kent investment notified of this hearing?

11 A. Yes, they were.

12 Q. And is that shown on Exhibit 4?

13 A. Yes, it is.

14 Q. Were Exhibits 1 through 4 prepared by you or  
15 under your supervision or compiled from company business  
16 records?

17 A. Yes, sir.

18 Q. And in your opinion, is the granting of XTO's  
19 Application in the interests of conservation and the  
20 prevention of waste?

21 A. Yes, sir.

22 Q. One final question, Mr. Cox. When does XTO plan  
23 on commencing the well?

24 A. We hope to start this well within -- in August or  
25 September, latter part of August, first part of September.

1 Q. Is this part of a drilling program in this area?

2 A. Yes, it is.

3 Q. Okay, so you would like the order out in time so  
4 that you can send the election letter to Kent investment?

5 A. Yes, sir.

6 MR. BRUCE: Mr. Examiner, at this time I'd move  
7 the admission of XTO's Exhibits 1 through 4.

8 EXAMINER JONES: Exhibits 1 through 4 will be  
9 admitted to evidence.

10 EXAMINATION

11 BY EXAMINER JONES:

12 Q. Mr. Cox, this is all fee?

13 A. Yes, sir.

14 Q. Okay. And on your Exhibit 1 you've got XTO 50  
15 percent.

16 A. Yes, sir.

17 Q. What does that mean?

18 A. Leasehold ownership -- in all of the shaded area  
19 we own 50 percent interest in all of that.

20 Q. Like an undivided 50 percent?

21 A. Yes.

22 Q. Who's the other --

23 A. It's numerous --

24 Q. The ones that didn't --

25 A. We have Kent Investment in here as to Section 27,

1 the east half. They own 50 percent. But as to the unit, I  
2 mean, it's just us and Kent. And then Kent also owns  
3 acreage in 26, I believe.

4 Q. Okay.

5 A. And I was just reflecting what we had in this  
6 immediate area. We have more acreage to the north, south  
7 and east of this, but...

8 Q. Okay. And what about surrounding production  
9 staked wells or wells in the midst of being drilled right  
10 now?

11 A. There's absolutely nothing out here.

12 Q. So when you launch your drilling program you're  
13 going to -- you want to include this well in the package?

14 A. Yes, sir, we have this and two other locations  
15 that we're putting together to drill, and then we're going  
16 to drill one right after another. And the others we own  
17 100 percent of the interest in, so this was the only one  
18 that really was slowing us down.

19 Q. Okay. And do you have an API number on this?

20 A. No, sir, I do not.

21 Q. So the type of compulsory pooling you're asking  
22 for here is unsigned mineral owners, then?

23 MR. BRUCE: That is correct, unleased mineral  
24 owners.

25 Q. (By Examiner Jones) Unleased mineral owners.

1 And the only one is this Peter Digangi, Jr. --

2 A. Yes, sir.

3 Q. -- agent of Kent Investment?

4 A. That is correct.

5 EXAMINER JONES: Okay, you're going to have  
6 another witness talk about the geology and everything?

7 MR. BRUCE: I do not have a geologic witness, no.  
8 I do have another landman that had numerous contacts with  
9 the mineral owner.

10 EXAMINER JONES: Okay, for notice.

11 MR. BRUCE: Yeah, and the geology, we were just  
12 going based on the recent division order regarding  
13 penalties.

14 EXAMINER JONES: Okay, why do you normally put  
15 these 200 percent -- asking for that in your ads for these  
16 compulsory pooling hearings?

17 MR. BRUCE: Mr. Examiner, before -- and I forget  
18 the order number that came out last year. The statute  
19 referred to a maximum of 200 percent, and of course there  
20 were -- there were occasional challenges to what the  
21 penalty was going to be.

22 For instance, last time Mr. Cox was here I think  
23 the Examiner, Mr. Stogner, gave us 100- or 150-percent  
24 penalty on some Dakota wells up in the San Juan Basin that  
25 XTO was drilling.

1           But with the new order which went through the  
2 rulemaking procedure, it was agreed that most of these in  
3 today's -- Take a step back. In many JOAs nowadays, there  
4 are penalties of 300, 400 percent. And so 200 percent is  
5 maybe not archaic, but it's low, it's on the low end.

6           And since that order provides for it, I think Mr.  
7 Kellahin, Mr. Carr and I have been putting it in there so  
8 that since a geologist isn't being called, that everybody  
9 who's notified knows that this is what we're seeking under  
10 the order and -- to make it a little more explicit, so that  
11 if they want to challenge it, they can come in and do that.

12           EXAMINER JONES: Okay, thank you very much for  
13 explaining that. I was wondering about that.

14           Q. (By Examiner Jones) Mr. Cox, are you going to  
15 the base of the Morrow, from the surface to the base of the  
16 Morrow and everything you find?

17           A. On the Morrison, yes, sir.

18           Q. Morrison, I mean.

19           A. Yes, sir.

20           Q. And so you're not going on down to the Chinle  
21 or --

22           A. No, sir.

23           Q. -- anything?

24           A. No, that was -- They're basically looking at the  
25 coal in here, and so -- but they were going to take it to

1 that depth and then --

2 EXAMINER JONES: Okay, that's all I have.

3 Gail, do you have --

4 MS. MacQUESTEN: No questions, thank you.

5 THE WITNESS: Thank you.

6 EXAMINER JONES: Thank you, Mr. Cox.

7 MR. BRUCE: Call Mr. Richardson to the stand.

8 JOHN M. RICHARDSON,

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

11 DIRECT EXAMINATION

12 BY MR. BRUCE:

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

14 A. John Michael Richardson.

15 Q. And where do you reside?

16 A. Stanley, New Mexico.

17 Q. What is your occupation?

18 A. I'm a petroleum landman.

19 Q. What is your relationship to XTO Energy in this  
20 matter?

21 A. We are XTO's contract land help for this  
22 prospect.

23 Q. Okay. Have you previously testified before the  
24 Division?

25 A. I have.

1 Q. And were your credentials as an expert petroleum  
2 landman accepted as a matter of record?

3 A. They were.

4 Q. And are you familiar with land matters involved  
5 in this matter?

6 A. I am.

7 MR. BRUCE: Mr. Examiner, I would tender Mr.  
8 Richardson as an expert petroleum landman.

9 EXAMINER JONES: Mr. Richardson is an expert  
10 petroleum landman.

11 Q. (By Mr. Bruce) Mr. Richardson, you heard Mr. Cox  
12 testify his first letter went out in May, but before that  
13 had you had contacts with Kent Investment, the only other  
14 mineral owner out here?

15 A. I had.

16 Q. Could you refer to your Exhibits 5 and 6 and  
17 summarize your contacts and the results of those contacts  
18 with Kent Investment?

19 A. I made my initial call on February 1st, followed  
20 by a follow-up call on the 4th, and I did not have any of  
21 my calls returned.

22 I then sent a letter on the 5th and actually went  
23 out to see him personally on the 11th.

24 Q. In Albuquerque?

25 A. In Albuquerque, uh-huh. He told me that he had

1 got my letter and the issue was under consideration with  
2 the Kent Investment partners and their legal counsel, and  
3 he would be getting back to me.

4 I did not hear anything from him, so on February  
5 -- or excuse me, March 23rd, I called again and he said  
6 that the partners were going to try to get together to  
7 discuss this. I didn't hear anything back.

8 I had a fourth and fifth call, I sent a second  
9 letter with an increased bonus consideration as we had  
10 bought some more leases at a higher rate, and extended that  
11 offer to them. Didn't hear anything back from them at that  
12 point in time.

13 I called again, left a message, and on the 14th  
14 of June he called and said that they were meeting with  
15 legal counsel -- and there's a typo on that, it should have  
16 been June 16th, not July 16th.

17 On the 24th I called back and didn't get ahold of  
18 him, but I left a message again.

19 And on July 1st he called me and said that they  
20 had met with legal counsel. The attorney's name is Tom  
21 Bohnam, and they had decided not to go along with our  
22 leasing proposal.

23 Q. And does Exhibit 6 contain copies of your two  
24 letters to Kent Investment?

25 A. It does.

1 Q. Okay. Did you also perform land work before  
2 February, examining the county records to determine  
3 ownership of this?

4 A. We did.

5 Q. Okay. So -- And based upon your review, the only  
6 other interest owner out here in this well unit is Kent  
7 Investment?

8 A. That is correct.

9 Q. Okay. In your opinion, do you believe that you  
10 on behalf of XTO have made a good faith effort to obtain  
11 the voluntary joinder of Kent Investment in this well?

12 A. I do.

13 Q. And were Exhibits 5 and 6 prepared by you?

14 A. They were.

15 Q. And in your opinion is the granting of this  
16 Application in the interests of conservation and the  
17 prevention of waste?

18 A. It is.

19 MR. BRUCE: Mr. Examiner, I'd move the admission  
20 of XTO Exhibits 5 and 6.

21 EXAMINER JONES: Exhibits 5 and 6 are admitted to  
22 evidence.

23 EXAMINATION

24 BY EXAMINER JONES:

25 Q. So I saw a note for \$10 an acre bonus. Did you

1 say you raised it after that?

2 A. We initially went in at \$5 an acre --

3 Q. Oh.

4 A. -- and then through negotiations with several of  
5 the land owners, they said that they weren't interested at  
6 \$5 but they would be at \$10, and when we got authority to  
7 go to \$10 we extended the offer to Kent Investments.

8 Q. Okay, when you say land owners, are you talking  
9 the mineral owners?

10 A. Correct.

11 Q. Not the surface owners? If they're a  
12 combination, if they're the same --

13 A. Yes, most of them out there are mineral owners as  
14 well as surface owners.

15 Q. Okay.

16 A. There is -- In this case you've got Kent  
17 Investment who own 100 percent of the surface and 50  
18 percent of the minerals.

19 Q. Okay. Is there surface -- Did you work out some  
20 kind of surface agreements on damages before you -- when  
21 you -- coincidentally with this offer?

22 A. I have not. In my initial letter I told them  
23 that we wanted to talk to them about surface disturbance  
24 and damages, but I didn't get any response back from him,  
25 other than that they were discussing that.



1                   EXAMINER JONES: Okay. With that, we'll take  
2 Case 13,299 under advisement.

3                   MR. COX: Thank you.

4                   (Thereupon, these proceedings were concluded at  
5 10:39 a.m.)

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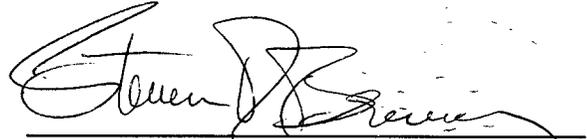
## CERTIFICATE OF REPORTER

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

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

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

WITNESS MY HAND AND SEAL July 11th, 2004.



STEVEN T. BRENNER  
 CCR No. 7

My commission expires: October 16th, 2006