

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

ORIGINAL

IN THE MATTER OF THE HEARING CALLED
BY THE OIL CONSERVATION DIVISION FOR
THE PURPOSE OF CONSIDERING:

APPLICATION OF BURLINGTON RESOURCES
OIL & GAS COMPANY, LP, FOR COMPULSORY
POOLING, SAN JUAN COUNTY, NEW MEXICO

Case No. 14734

TRANSCRIPT OF PROCEEDINGS
EXAMINER HEARING

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BEFORE: TERRY WARNELL, Presiding Examiner
DAVID K. BROOKS, Legal Examiner

October 13, 2011

Santa Fe, New Mexico

This matter came on for hearing before the
New Mexico Oil Conservation Division, TERRY WARNELL,
Presiding Examiner, and DAVID K. BROOKS, Legal Examiner,
on Thursday, October 13, 2011, at the New Mexico Energy,
Minerals and Natural Resources Department, 1220 South St.
Francis Drive, Room 102, Santa Fe, New Mexico.

REPORTED BY: Jacqueline R. Lujan, CCR #91
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1 EXAMINER WARNELL: Let's go back on the
2 record with Docket 30-11, and we'll call Case 14734, the
3 application of Burlington Resources Oil & Gas Company,
4 LP, for compulsory pooling, San Juan County, New Mexico.
5 Call for appearances.

6 MR. KELLAHIN: Mr. Examiner, I'm Tom
7 Kellahin, of the Santa Fe law firm of Kellahin &
8 Kellahin, appearing this morning on behalf of Burlington.
9 And I have one witness to be sworn.

10 MR. HALL: Scott Hall, Montgomery &
11 Andrews, Santa Fe, appearing on behalf of Koch
12 Exploration Company, and I have no witnesses this
13 morning.

14 EXAMINER WARNELL: Please stand and state
15 your name.

16 MR. SIMCOE: Terry Simmcoe.

17 (One witness was sworn.)

18 MR. KELLAHIN: Mr. Examiner, with your
19 permission, let me give you a brief introduction to where
20 the testimony will go this morning.

21 This is an application by Burlington for a
22 compulsory pooling order for the east half of Section 2.
23 In processing this case, Mr. Simcoe and I are making some
24 general assumptions that accommodate the reality of what
25 they want to accomplish.

1 This well location is right on the very
2 western edge of something called the Dufers Point
3 Gallup-Dakota Pool. To the east of this well location,
4 most of the wells in the pool are operated by Merrion.
5 George Sharp is the principal involved in the company
6 that we've worked with.

7 We are unable to apply the Basin Dakota and
8 Mancos rules to the east half of Section 2 routinely
9 because George Sharp and Merrion have already got the
10 northeast quarter dedicated to the Gallup. This old
11 Gallup pool has used Gallup in a way that doesn't
12 indicate that it's confined simply to the Gallup.

13 The operators, as a matter of history and
14 course, have perforated what is considered to be the
15 Mancos, which will be from the base of the Point Lookout
16 all the way down to the top of the Graneros and sometimes
17 all the way to the top of the Dakota.

18 So we have this odd situation in the east half
19 of Section 2 where the northeast quarter stands alone
20 with regards to that pool. And because we are within two
21 miles of the pool, we have an odd creature. What we're
22 going to ask you to do is allow us to treat the southeast
23 quarter as a stranded spacing unit under the Basin Mancos
24 rules.

25 The reality of that will be that we will be

1 allowed to dedicate the Dakota on 320, and then we'll
2 treat the Gallup on 160, and that should stop the flow of
3 this odd transition from Dufers to Basin Mancos.

4 There was a need to hurry up and file this and get
5 this done because we begin to lose leases after the first
6 of the year. Our global plan is to come back and address
7 specifically the Dufers Gallup-Dakota pool, as well as
8 other pools that cause difficulties with the Basin
9 Mancos.

10 It's a topic that Steve Hayden was working on
11 before his death, had testified in that Basin Mancos
12 hearing about commingling and other things with these
13 pools that were old Dakota pools that were public pools.
14 So our project goes far beyond what we're presenting
15 today.

16 To get to where we're trying to go then, we
17 have worked out a solution with Merrion, and they're
18 going to participate in this well. We've also looked for
19 all of the interest owners affected and that would
20 participate under the pooling order. All of those have
21 been found and contacted. And the only difference is
22 that Koch Exploration has contacted us and we have
23 negotiated what we think, through Mr. Hall's assistance,
24 is a solution to their concerns.

25 The last concern that we are dealing with is

1 going to be discussed in Exhibit 13 of the exhibit book,
2 and it has to do with how you allocate the production.
3 So there is a suggested amendment to the JOA for Koch
4 that has a little different concept in it that Mr. Simcoe
5 and I will discuss shortly.

6 In summary then, we're asking for a pooling
7 order. We will obtain from the district in Aztec an
8 exception for the stranded spacing unit. So it's our
9 suggestion that you need not deal with a nonstandard
10 proration unit, because we're going to do that under the
11 Mancos rules.

12 In addition, Mr. Hall and I agree that a
13 commingling process needs to approve the action of
14 commingling the Gallup with the Mancos, and we will
15 prepare and file a C-107 A. There's a sample in the book
16 for you to look at. But the filing of that will be done
17 by Mr. Simcoe later in the process, and that will be
18 processed with the district.

19 At the end of all this, we're going to ask you
20 to take the case under advisement and leave the record
21 open for seven to 10 days to allow Mr. Hall and I to
22 provide you the last language changes for what is now a
23 variation of the oil allocation procedure under Exhibit
24 13.

25 And with those statements then, I'd like to

1 proceed with my questions for Mr. Simcoe.

2 EXAMINER WARNELL: No opening comments?

3 MR. HALL: No.

4 TERRY SIMCOE

5 Having been first duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. KELLAHIN:

8 Q. For the record, sir, would you please state
9 your name and occupation?

10 A. My name is Terry Simcoe. I'm a Certified
11 Professional Landman.

12 Q. On prior occasions have you testified and
13 qualified as an expert petroleum landman before the
14 Division?

15 A. I have.

16 Q. And on prior occasions, you've testified
17 before Examiner Warnell; have you not?

18 A. I have indeed.

19 Q. As part of your duties and responsibilities,
20 have you made yourself familiar with the ownership
21 involved in the east half of the Section 2 we're talking
22 about?

23 A. Yes, sir.

24 Q. As part of your duties, have you also
25 contacted all of the interest owners in the appropriate

1 spacing units for the east half of this wellbore?

2 A. I have done my best to do so. There are
3 always some people who are difficult or impossible to get
4 ahold of. And you will find some of those names in the
5 exhibits as we get into this, and those are the parties
6 with whom we are dealing today that we need to have force
7 pooled. They're unresponsive.

8 Q. In each instance, though, you have actually
9 obtained service on those people through Certified Mail
10 receipts?

11 A. That's correct.

12 Q. And they simply have not responded?

13 A. They have not responded.

14 Q. Was I correct in my opening in characterizing
15 the fact that you and Koch and their attorneys are
16 working with us in trying to resolve their questions
17 about the cost and the production allocation procedures
18 proposed?

19 A. Yes, sir. We've had numerous conversations by
20 email and telephone.

21 Q. Have you prepared an exhibit book for the
22 Examiner to see that discusses all the issues involved in
23 this compulsory pooling case?

24 A. Yes, sir. I've passed these out. There are
25 13 tabs within the book that go through each of the items

1 that we're going to discuss.

2 Q. And the project we're discussing is a project
3 for which you have the responsibility?

4 A. That's correct.

5 MR. KELLAHIN: We tender Mr. Simcoe as an
6 expert petroleum landman.

7 EXAMINER WARNELL: So recognized.

8 Q. (By Mr. Kellahin) Mr. Simcoe, let's turn to
9 Tab 1. Turn behind the cover sheet. And before we
10 describe it in detail, tell us generally what we're
11 looking at when we look at this first display.

12 A. This is a township plat of the area around the
13 well location, which is highlighted with red dot. And it
14 shows the footages of this well in Section 2, Township 25
15 North, Range 9 West.

16 Q. What does the color code tell us?

17 A. If you look at that green outline, that is the
18 Huerfano Unit. We are the operator, Burlington
19 Resources, of the Huerfano Unit. The red line that's
20 kind of diagonally running through that is U.S. 550, the
21 highway between Farmington and Albuquerque.

22 Q. I see within the green outline there are areas
23 that are outlined in blue. What's the significance of
24 that?

25 A. Those blue outlines indicate portions of the .

1 leasehold within the unit that are not committed to the
2 unit. And that comes into play with our request
3 concerning the Dufers Point Gallup-Dakota pool that
4 Mr. Kellahin mentioned up front.

5 Q. Let's turn now to Exhibit Tab Number 2, and
6 turn to the next plot and continue with that discussion.
7 First of all, tell us what we're looking at generally.

8 A. This is a closer-up view of that same plat.
9 In the business, this is typically known as a nine spot.
10 It's the nine sections surrounding the well location.

11 And you can see the blue line more clearly
12 represented in there. I'm sorry it doesn't line up with
13 the internal markings within the section. But that's a
14 database problem, relating our two different map layers.

15 What's critical to this well is that well
16 that's identified at the Yucca Com. That's Merrion's
17 Dufers Point Gallup-Dakota pool well that we're
18 offsetting.

19 You'll also see to the west a well symbol in
20 the northwest of the southwest quarter. That's the
21 Huerfano Unit 309, and that is a Dakota well that we're
22 offsetting.

23 So this well for us is a strategic well offset
24 to the north by Gallup production and to the west by
25 Dakota production. It's not easily seen, but there's a

1 green line just to the right of the well dot, the red
2 well dot, and that is the boundary of the Huerfano Unit.

3 Q. When we look at the Dakota well in the west
4 half, who's the operator?

5 A. We're now the operator. But that well was
6 originally drilled by XTO on an agency from Burlington
7 Resources.

8 Q. So when you look at the east half of Section
9 2, is the proposed subject well we're dealing with today
10 the first Dakota well in the spacing unit?

11 A. It will be the first Basin Dakota well. It
12 was important to me to make that distinction, because we
13 have developed the Huerfano Unit -- Dakota on the Basin
14 Dakota rules.

15 Q. With the Dakota spacing set up as a stand-up
16 east half of Section 2, what is your preference as to how
17 to handle the Mancos in association with the Dakota?

18 A. Further on in the book, we'll discuss what
19 Merrion did with the Yucca Number 1. I've got a type log
20 from that well in the file. Because they're not part of
21 the unit, their leasehold is not committed to the unit.

22 That Dufers Point well presented me with a
23 philosophical problem of how to handle the Mancos in our
24 well because they're on a 160 spacing, and Mancos would
25 require me to be on a 320. So to honor what their well

1 already has dedicated to it and still honor the Dakota --
2 Basin Dakota rule, I was unable to make it a 320 for the
3 Basin Mancos.

4 And that's why Mr. Kellahin suggested, in his
5 initial comments, that we would want to apply to the
6 district for a stranded spacing unit. So I've gone ahead
7 with this action today predicated on creating a 160
8 spacing unit for our Mancos portion of our well and a 320
9 spacing unit for the Dakota portion of our well.

10 Q. We'll come to it later in the book. But will
11 the Examiner and Mr. Brooks be able to see how we account
12 for the costs of production associated with the
13 difference in ownership in the two spacing units?

14 A. Yes, sir. We've split those costs out in our
15 cost estimate, which is included.

16 Q. Let's now turn to the vertical intervals in
17 discussion. The next display is a portion of a
18 cross-section, is it not, or a log set?

19 A. This is a log section from the Yucca Number 1,
20 the Merrion well that we're directly offsetting. And you
21 can see highlighted in red are the perforated intervals.
22 Those perforations are shown by pink lines in the center
23 of the log. The --

24 EXAMINER BROOKS: This is the page right
25 behind --

1 THE WITNESS: Right behind that plat.

2 EXAMINER BROOKS: That we were looking at?

3 THE WITNESS: Correct.

4 So you see in large print it says, "Upper
5 Mancos," and right above that it says, "Top Mancos/Base
6 Point Lookout." And Merrion virtually opened everything
7 that had any kind of log characteristic indicating
8 production from that point right below the base of the
9 Point Lookout virtually through the upper portion of the
10 Dakota, including the Graneros.

11 Q. (By Mr. Kellahin) When you look at this type
12 log for the Yucca well, what on here indicates those
13 points in which they made perforations?

14 A. The pink lines in the center between the two
15 log indications, the squiggly lines of the log.

16 Q. The red rectangles represent what?

17 A. The actual producing areas within the
18 wellbore.

19 Q. And the nomenclature for those areas blocked
20 out in the red triangles are identified how?

21 A. Well, we realize, as Mr. Kellahin alluded,
22 that we have a nomenclature problem across the basin
23 which is going to be addressed in future hearings, and
24 that's the use of the word, "Gallup."

25 Very often, as is the case here, the word,

1 "Gallup," means shale, and it's the Mancos shale. It was
2 not typically used across the basin as an identifier. I
3 believe that's because early on in the history of the
4 basin, the first production within the shale was oil
5 production from what they called the Gallup.

6 It was a sandstone along the southwest part of
7 the basin, and I've indicated that in here. I had my
8 geologist do that. It says, "True Gallup." That's where
9 the Gallup production would have historically been.

10 But you can see they virtually opened up the
11 entire shale section, which is all of the Mancos. So we
12 decided it was best in this case to actually call it
13 that. So we have upper Mancos, middle Mancos. And then
14 the lower Mancos has come to be used in several different
15 names, one of which is Niobrara, one of which is lower
16 Mancos, one of which is Gallup.

17 We are going to start proposing from our shop
18 that that be called, in the lower Mancos, the El Vado,
19 which is a known local name for that lower shale
20 interval, so that we can avoid confusion of what we're
21 actually talking about. We want to try to refine this.
22 It has implications for all operators in the basin as we
23 move forward with development of this shale resource.

24 Q. This is the log for the Yucca well operated by
25 Merrion?

1 A. That's correct.

2 Q. Is Merrion a participant in the subject well
3 that's before Examiner Warnell this morning?

4 A. I have an agreement with Merrion, and they are
5 supporting this effort today.

6 Q. Have you discussed with Merrion whether their
7 definitions of Mancos, as you described them to Examiner
8 Warnell, are consistent with what they do with their
9 other wells operated in the Dufers Point Gallup-Dakota
10 pool?

11 A. Yes. Mr. Sharp did respond to that very
12 question and said that they basically opened up the
13 entire shale section and not that lower portion, which
14 would be called true Gallup, as it's indicated on this
15 type log. They have, in fact, opened up the entire
16 Mancos section. And they do operate most of those Dufers
17 Point wells.

18 Q. Would you turn to the next page and describe
19 what we placed in the exhibit book at this point?

20 A. We've included Order Number R-7435, which was
21 back in 1984. And it was the application of Merrion Oil
22 and Gas for special pool rules concerning the Dufers
23 Point Gallup-Dakota oil pool.

24 And I wanted to include this in the book for
25 the reason that we stated earlier, that this order does

1 affect the northeast quarter of Section 2, and I'm
2 offsetting that. So I've got a pool rule in effect for
3 part of my well spacing unit, and I want to honor that
4 and have my southeast quarter of that section shown to be
5 a stranded spacing unit under the Mancos rules, which
6 then would give me the ability to honor this rule for the
7 Yucca well.

8 Q. Following the order itself, have you included
9 a portion of the entire description as currently provided
10 by the industry?

11 A. Yes, sir. That is a Byram synopsis of the
12 Dufers Point Gallup rule, and it gives the various orders
13 affecting that and acreage covered by section, township
14 and range.

15 Q. Following that, do you have a plat showing the
16 acreage affected by Dufers Point?

17 A. Yes, sir. It looks like eight section -- six
18 section -- or six township plat.

19 Q. Just a minute.

20 A. And just roughly drawn on there with Xs are
21 the acreage that's encompassed by Dufers Point rules.
22 And up in the upper left-hand corner, you see Section 2
23 as a heavy black outline around the east half, and that's
24 where we are. So Dufers Point affects the northeast
25 quarter, but not the southeast quarter.

1 Q. Let's turn to Tab 3.

2 A. Included here are the well staking plats for
3 the 102 for --

4 Q. You've turned past the title page?

5 A. Yes, sir. I'm sorry. I went through the
6 title page, which is Exhibit 3.

7 Q. And the next page, sir?

8 A. Is the surveyor certification for the Gallup
9 portion -- the Mancos portion of this well with a 160
10 spacing, and this will be the C-102 exhibit plat.
11 Following that is the Dakota plat, showing the east half.
12 Same thing. It's the plat for the C-102. Following that
13 is the narrative portion of the C-102.

14 Q. You've got the first page of the APD, and it's
15 been assigned an API number?

16 A. Yes. That API number is 3004535291.

17 Q. And has the Division's Aztec office approved
18 your drilling permit?

19 A. I don't know the answer to that. I believe
20 that it has. The well is currently on our schedule for
21 early in the first quarter.

22 Q. The reason to have it scheduled now is what
23 reason?

24 A. We have schedule difficulties because of
25 wintering in the basin. And to best utilize our drilling

1 rigs, it's important to get this in when we have the
2 ability to do so. But I do have contractual obligations
3 with other partners in the well, which we will get to
4 when we see who the parties in the well are. And to
5 honor those obligations, I've got to drill this well
6 within the early part of 2012.

7 Q. Let's turn to Tab 4 and past the cover sheet
8 of 4 and have you identify the parties that would be
9 participating in the well and show us which ones, by some
10 indication, have not yet agreed to participate.

11 A. This is a list of the participants in the
12 well. It's split into two columns on the right, the
13 Gallup interest and the Dakota interest. The interest
14 shown in red are the parties who did not respond to our
15 proposal.

16 You'll notice the top one is Koch Exploration.
17 They have the largest of the minority interest. And this
18 has hopefully been resolved, it's the indication today.
19 The other parties that you see are those parties I spoke
20 of from whom we have difficulty ever receiving a
21 response, and they're frequently the source of force
22 pooling hearings.

23 Q. When you look at the spreadsheet and you go
24 down to the Koch interest in red, right across there is a
25 column that has an N in it. Do you now have service of

1 notice on Koch and their appearance in this case?

2 A. Yes. Of course Mr. Hall is here on their
3 behalf, and they have, in fact, acknowledged receipt of
4 the proposal.

5 Q. When we turn past Tab 4 and start 5, past the
6 cover for Exhibit 5A, what now are we looking at?

7 A. This again is a re-statement of the parties in
8 the well, with their addresses, and the parties to whom
9 we have not been able to receive service.

10 Q. When we turn to what is marked as Tab 5B and
11 turn past that cover sheet, we're looking at something
12 that is captioned Exhibit A. What is this?

13 A. Yes, sir. We proposed separate operating
14 agreements. And the question may arise that if we're in
15 a federal unit, why would we have new operating
16 agreements?

17 The reason for that is we have a leasehold
18 that's not committed to the unit. And to be able to
19 handle those parties, I proposed to them a modern
20 operating agreement.

21 And one of the things that we did within those
22 operating agreements was include the cost structure from
23 the unit so that we would not have unbalanced accounting
24 to the various parties.

25 So you'll see later, as we go through the

1 COPAS, that we've embraced the drilling well rate and
2 producing well rate as escalated in the unit agreement
3 itself, not what we would normally propose as a new well,
4 had that not been the case.

5 But what you see here is an Exhibit A to one
6 of those operating agreements, showing the parties to
7 whom that operating agreement was proposed and their
8 percentage ownership in each of the zones. The Mancos
9 again being called Gallup here, because the offset well
10 was a Gallup or a Dufers Point Gallup-Dakota well.

11 Q. To distinguish between the two JOAs, this one
12 is entitled, "Burlington," and first nonoperator is XTO?

13 A. That's correct. We have XTO, Energen, and the
14 rest of the parties shown here.

15 Q. As we look down this list, are there people
16 that have signed this contract?

17 A. Yes. Virtually everyone has signed this,
18 except those parties to whom we could not receive service
19 who we mentioned previously. One party who did not
20 execute this agreement is Energen. They've chosen to use
21 the unit operator agreement, as they are a participant
22 within the unit, and we have agreed to that.

23 Q. When we turn past Exhibit A for the XTO
24 operating agreement, there's another Exhibit A. Is this
25 the one that relates to the Burlington/Koch proposed JOA?

1 A. That is correct. The reason for this is that
2 three years ago, more or less, we negotiated a model form
3 to be used with Koch Exploration when they're a partner
4 in our wells, and certain language is slightly different.
5 The accounting procedure is the same.

6 One of the notable differences with Koch was
7 Koch wanted to have a production allocation method
8 clearly stated as an exhibit within their operating
9 agreement, and we've acceded to that request by them and
10 used this typically with Koch in wells in which they're a
11 party. So you see a different Exhibit A, with that
12 difference being the allocation of production.

13 Q. The existing Burlington/Koch JOAs for other
14 wells --

15 A. Yes, sir.

16 Q. -- do they include a cost allocation procedure
17 like you've now proposed to Koch for the current subject
18 well?

19 A. That's correct.

20 Q. Are those cost allocation procedures the same
21 that you're utilizing for those participants under the
22 XTO JOA?

23 A. Yes. The cost procedure that we've included
24 is our common cost procedure for all operations within
25 the basin.

1 Q. And to aid the Examiner, we have a subsequent
2 exhibit that shows how you make the cost calculation and
3 the actual numbers for Koch if you run through the
4 spreadsheet?

5 A. That's correct.

6 Q. When we turn to the subject of the production
7 allocation, how is the Koch JOA presented for wells other
8 than the subject well? How is the production allocation
9 method -- what's that methodology?

10 A. We negotiated a document which is called
11 Spinner Test method, and it has an example -- when we
12 first negotiated this approximately three years ago, it
13 was for Mesaverde/Dakota wells.

14 And I included it for this well as a method
15 for determining the gas production from the Dakota. And
16 I changed the language slightly to say that this was not
17 the only method available, and that Burlington Resources
18 would use methods that are standard in the industry and
19 approved by the Commission.

20 Q. On Tuesday of this week, did Koch provide us
21 with a suggested revision to that exhibit that added a
22 different methodology for the allocation of Gallup and
23 Dakota?

24 A. Yes. As I understand it, Koch was concerned
25 that a fair distribution of the liquids produced be made

1 to the parties in the well, as the ownership in the
2 Mancos is different from the ownership in the Dakota.
3 And the method they've proposed is, in fact, one that's
4 commonly used in the industry and one we use ourselves
5 for liquids.

6 And that is based actually in looking at
7 offset wells within X distance of the proposed location
8 and averaging, actually, the production and what has been
9 proposed back and forth now. And I think we've got an
10 agreement that we will look at the wells in the
11 nine-section offset around this location that produce
12 liquid and come up with what we think will be an
13 equitable arrangement for liquid from the Dakota, and
14 that will be attributed to the Dakota. The balance of
15 the liquid will be attributed to the Mancos.

16 And we've found over time that Dakota
17 production is pretty stable through its history because
18 the liquids produced are part of the gas stream. We
19 anticipate that the production of liquids from the Mancos
20 will be more of a traditional oil well profile. If you
21 need further science behind that, I brought a reservoir
22 engineer that can go into it a little more intelligently
23 than I can.

24 Q. The concept, though, is to find Gallup wells
25 that are like-kind to the subject well?

1 A. Exactly. Where there's anomalous wells,
2 they'll be addressed as such. And I think we've agreed
3 with Koch we'll throw out the low and throw out the high
4 of the like wells that are left. And there's quite a
5 large number, actually. We'll be able to average those
6 sensibly and come to a reasonable allocation method.

7 So I believe that our allocation procedure is
8 going to be acceptable to Koch and acceptable to
9 Burlington Resources.

10 Q. As a result of the time frame in the fall,
11 that's a process that our engineers are working on, but
12 is not completed as of this moment?

13 A. That's correct. Tuesday afternoon just didn't
14 give us enough time to go through the volume necessary
15 and do a proper reservoir analysis to get the numbers
16 together to actually plug a number into the Koch
17 suggested exhibit.

18 MR. KELLAHIN: Mr. Examiner, as a
19 footnote, at the conclusion of the hearing, we'll ask you
20 to take this case under advisement, but to leave it open
21 for 10 days so that Mr. Hall and I can supplement Exhibit
22 13 and give you the final information with regards to
23 that issue, and you'll have that then to complete the
24 record.

25 MR. HALL: We've agreed to that.

1 Q. (By Mr. Kellahin) Continue on, Mr. Simcoe.

2 We're ready to look at Tab Number 6.

3 A. Past the title page, you'll find the
4 chronology of events, and you'll see this well was
5 proposed nearly four years ago. Figuring out the title
6 in the well was nightmarish, to say the least. And there
7 was a great deal of correspondence back and forth among
8 various parties, including our title examiner and title
9 attorney. It took place until we were actually in a
10 position to propose the well this summer.

11 MR. KELLAHIN: Excuse me, Mr. Simcoe.

12 Mr. Examiner, can you hear the witness over
13 the noise?

14 EXAMINER WARNELL: Yes.

15 MR. KELLAHIN: That may be Mr. Carr trying
16 to get in. I tried to lock him out, but I think he's
17 still trying to get in.

18 Q. (By Mr. Kellahin) Proceed, Mr. Simcoe.

19 A. Sorry for the interruption.

20 So we have gone through the steps necessary to
21 notify all the parties in the well and advertise as
22 required by the rules. And you'll see towards the end
23 the conversations and steps we've taken to work something
24 out with Koch.

25 Q. In summary of all your contacts now, are you

1 satisfied at this point in time that you've made a fair
2 and reasonable effort to consolidate on a voluntary basis
3 all the participants in this well?

4 A. Yes, sir, I have.

5 Q. And there will be parties for which you have
6 not obtained agreement?

7 A. Yes. Everyone has been notified, but there
8 are parties who have been unresponsive.

9 Q. At this point in time, do you think it's
10 appropriate for the Division to enter a compulsory
11 pooling order against those parties?

12 A. I would request that, yes.

13 Q. Let's turn now past the tabulation of the
14 chronology, still within Tab 6, and there's a couple of
15 letters. Would you define the first one?

16 A. These are examples of the correspondence. The
17 first was necessary because we have uncommitted unit
18 acreage, we need to get a communitization agreement in
19 place to cover the leasehold. So you see a letter to the
20 parties requesting that they execute the communitization.
21 And then there's a description list on pages 2 and 3
22 showing the parties that were contacted for the
23 communitization.

24 Q. If you'll turn past the June 30th letter, do
25 you find the letter labeled July 13th?

1 A. Yes. This is our last letter. It shows a
2 revision to the parties. This is called our ballot
3 letter. It tells everybody their percentage of each
4 formation that's going to be produced, and it gives them
5 notice that we intend to force pool the well if we don't
6 receive some kind of an indication from them.

7 Following that is a ballot receipt that we
8 asked them to fill out and return to us that they either
9 approve or disapprove of the well proposal.

10 Q. Does this letter also include a proposed AFE
11 with it?

12 A. Yes, it does. And after the -- well, it's in
13 the next exhibit.

14 Q. I just want to make sure the letter itself
15 also was included.

16 A. Yes. It had the cost estimate with it,
17 commonly known as an AFE. There's a list of parties that
18 we did notify, with their addresses here.

19 Q. There are no missing unknown parties or people
20 that have not responded, at least parties for which you
21 have not had service?

22 A. There's no one that I've not been able to
23 contact. They've just been unresponsive.

24 Q. Turn to Tab 7 for me. And past the cover
25 sheet, what's the first thing we're going to find here?

1 A. This is the first of the operating agreements
2 that I mentioned before with all the parties except Koch.
3 And I've got evidence of the signatures there that the
4 parties who did join with the -- agreed to the operating
5 agreement.

6 Q. We should have subdivided this, Mr. Simcoe.
7 But can you help us find where we start with the
8 Burlington/Koch proposed JOA?

9 A. If we move past the --

10 Q. You'll come to a tab marked 7B.

11 A. Approximately halfway through Tab 7, there's
12 7B. Behind 7B is the form that was proposed to Koch, and
13 it is identified as such on its face as the Huerfano Unit
14 Com 311 Gallup and Dakota Formations Koch Form.

15 Q. And this is the form that Burlington and Koch
16 have agreed to for operating other wells?

17 A. That's correct --

18 Q. And to change --

19 A. Modified, of course, for this well.

20 Q. What we're doing now is looking over at the
21 modification to the Spinner allocation method, and we're
22 adding a new component to that procedure?

23 A. That's correct. If you look at Article XV J,
24 which is about halfway back in the Koch portion of this
25 tab, you'll see what was proposed to Koch as an

1 allocation method.

2 EXAMINER WARNELL: I'm not with you there.

3 THE WITNESS: It's approximately an eighth
4 of an inch above Tab 8. It's titled, "Article XV J,
5 Revenue Allocation Procedure - Spinner Test."

6 EXAMINER WARNELL: Do you have that,
7 David?

8 EXAMINER BROOKS: Yeah. I believe it's
9 the top -- no, no. I have the wrong one. This is XV J.

10 THE WITNESS: It's further back, sir.
11 It's right above Tab 8.

12 EXAMINER BROOKS: This is in the COPAS
13 accounting procedure?

14 THE WITNESS: It's right ahead of the
15 COPAS procedure.

16 EXAMINER BROOKS: I had the COPAS
17 procedure. Exhibit A is the land data, and then we have
18 Article XVI. I think Article XV J is entitled,
19 "Nonconsent wells."

20 MR. KELLAHIN: If you'll find page 15 of
21 the JOA that's got a signature on it and thumb back --

22 THE WITNESS: It's just right ahead of
23 that signature page.

24 MR. KELLAHIN: -- three pages, you'll find
25 it.

1 EXAMINER BROOKS: I think I have --

2 EXAMINER WARNELL: It says, "Spinner
3 Test."

4 THE WITNESS: Yes.

5 EXAMINER BROOKS: Okay, yeah. I found
6 revenue application procedure. Okay.

7 MR. KELLAHIN: I apologize. We should
8 have tabbed that for you.

9 EXAMINER BROOKS: Pages should be
10 numbered. Everybody thinks if you bring things in books,
11 you don't have to number the pages, and then you can't
12 find the exhibits.

13 MR. KELLAHIN: That's our usual practice.
14 We just didn't do it here. I'm sorry.

15 EXAMINER BROOKS: I remember a hearing
16 before the Commission as part of the Pit Rule proceeding
17 when Mr. Fesmire made everybody go through their books
18 and number the pages, and we did that while in the middle
19 of the hearing.

20 MR. KELLAHIN: We won't do this again,
21 sir.

22 EXAMINER BROOKS: Okay.

23 Q. (By Mr. Kellahin) Let's turn past this. If
24 you'll turn to Tab 8?

25 A. Past the cover page --

1 Q. Let's talk about how the concept of cost
2 allocation that's set forth in the proposed Koch JOA is
3 derived.

4 A. This is actually a more in-depth discussion of
5 the cost allocation procedure within the COPAS. And this
6 came into being in the past because of the nature of the
7 San Juan Basin having multiple completions within a
8 wellbore and how you're going to handle the accounting
9 for drilling costs among the various owners of the
10 various depths. It's not uncommon to have diverse
11 ownership between the formations.

12 And the OCD has previously approved this.
13 It's been included in numerous hearings. Industry, not
14 just our own company, but other companies embrace this as
15 a method. And while it goes through a lot of words to
16 get there, you'll see on the second page of it that you
17 get an algebraic formula that when you use the depth of
18 the formations themselves as a number and you run the
19 chain calculation between the various depths of the base
20 of each formation, you come out with a percentage number.

21 And they're stated on page 3, for instance,
22 the Fruitland Coal and PC and the Mesaverde and Dakota.
23 But I've got another chart back here further that shows
24 all of the currently producing formations. And right
25 above Tab 9 there are two pages. The first one, not the

1 one closest to page 9, but --

2 Q. Let me interrupt you, Mr. Simcoe. You're
3 looking at this one with the yellow highlights on it?

4 A. That's correct. If you take all of the
5 language here in this Article 59, this is a calculation
6 based on that for each of the zones and averaged actually
7 across the basin. And we found that out of the 11,000
8 wells that we produce, this is very accurate. It's
9 within 1 percent always.

10 And you can look and see at the bottom,
11 Mancos/Dakota, it's 45/55. And that's based on the
12 relative depths of the two formations.

13 Q. After running through all those calculations
14 and following the procedures within the cost allocation
15 portion of the JOA, do you have a display in actual
16 dollars and cents that shows how you propose to allocate
17 the cost of this well to Koch?

18 A. Yes, I do. When I received Koch's opposition
19 notice last week, I did this and actually ran it through
20 the formula that's shown on the previous page. And each
21 step is stated there, the depth allocation from the
22 formula itself, 45, 55, the drilling cost estimate in
23 which each zone pays for the drilling cost, and then
24 Koch's percentage ownership of each zone applied to those
25 numbers and the resulting Koch shares of the drilling

1 cost by formation and then as a total for the entire well
2 for drilling costs.

3 Q. In your opinion, is this a fair and reasonable
4 method for cost allocation for this well?

5 A. Yes. And it is industry standard.

6 Q. Can you turn to Tab 9 for me now? And let's
7 look at the proposed AFE.

8 A. Yes. The way that we generate our cost
9 estimates, we show each formation and all the costs
10 associated. So the first column would be drilling, and
11 the second column is completion. And those are
12 anticipated completion costs.

13 Next we show a P&A cost. If we don't find
14 anything, we'll put a number in there. Typically, we'll
15 show a line of zeros in our cost estimate because we
16 expect to find production, and we need to have a
17 placeholder within our software. So you see zeros in
18 there, and it shows zero for P&A. But should the well be
19 P&A'd, the cost will be supplied at the time. And then
20 facility costs are shown in the last column to the right.

21 So you see the first page is the Basin Dakota.
22 Then the second page is for the Mancos. Again, it's
23 called Gallup here because of that offset well being a
24 Gallup Dufers Point. Then page 3 is the combined totals
25 for each of the actions anticipated.

1 So the drilling expense for the total well is
2 \$892,124.36. But completed with facilities, the total
3 cost is expected to be \$1,809,794.56.

4 Q. Does this proposed AFE for the subject well
5 compare favorably to like-kind wells drilled in these
6 formations?

7 A. Yes, sir. This is what we expect in our own
8 wells and what we also see from other operators that send
9 us cost estimates.

10 Q. Do you have a recommendation to the Examiner
11 for the overhead costs to be associated with the pooling
12 order, the drilling well overhead rates and the producing
13 well rates?

14 A. Yes, sir. As I mentioned before, in the
15 operating agreements that we submitted to the parties, we
16 have embraced the operating rates from the Huerfano Unit
17 as they have been escalated over time. They're \$3,000
18 per day drilling and \$350 per month operating.

19 Q. Would you propose that be included in the
20 Examiner's order for pooling in this case?

21 A. I do. It's fair and equitable.

22 Q. How long is an escalating factor that's
23 utilized by you and the industry for escalation of those
24 costs?

25 A. Yes. We embrace, as most operators do, the

1 annual COPAS escalation.

2 Q. Has there been any objection from any party
3 with regards to the adoption of a cost plus 200 percent
4 risk component by the Examiner, if an order is entered in
5 this case?

6 A. No, sir. No one has shown any opposition.

7 Q. If you'll turn now to Tab 10.

8 A. We deleted Tab 10. We were going to include a
9 hearing order there, and it's not felt to be germane at
10 this point.

11 Q. There is no Exhibit 10? Let's turn to what is
12 marked as Exhibit 11. What's behind this tab?

13 A. This is the Certificate of Mailing in
14 compliance with Order R-8054.

15 Q. The certificate is my certificate. And it's
16 followed by the notice letter itself, copies of the green
17 cards, and then a copy of the actual amended application?

18 A. Yes, sir.

19 Q. That entire package went to all of these
20 parties?

21 A. And then following those green card copies is
22 the amended application.

23 Q. If you turn to Tab 12 with me now, past the
24 cover tab, we're now looking at downhole commingling.
25 Would you identify what the Examiner is seeing when he

1 looks at this page?

2 A. Yes. As Mr. Kellahin mentioned at the
3 beginning, I have included a C-107 as an example. And
4 this will be submitted when it's appropriate to do so to
5 the Aztec office.

6 Q. And following the form itself?

7 A. There is the certified plat for the well.

8 Q. And following the plat, there is -- what am I
9 looking at? There's a forecast of production here from
10 that well?

11 A. Yes. It's a decline curve. You have to turn
12 the book sideways. It looks too good if you look at it
13 the other way.

14 Q. That's simply part of the submittal for the --

15 A. Yes. That's the science backup for the 107.

16 Q. Let's turn now to Tab 13.

17 A. Tab 13 shows the Spinner Test method. This is
18 the Article XV J again as amended by Koch and submitted
19 to us on Tuesday.

20 And that highlighted portion at the top is the
21 language that they've submitted to us that will result in
22 a number being placed in the statement up there as to
23 what will be attributed to the Dakota as barrels of
24 liquid per one million cubic feet of gas. The number,
25 6.53 barrels, is currently in the proposal from Koch.

1 And that's the number that we've mentioned previously as
2 being worked on by our engineers and will be submitted to
3 Koch, and we should come up with an agreement between Mr.
4 Kellahin and Mr. Hall.

5 Q. Let's summarize then what is going to be
6 different about the proposal that we're not yet seeing.

7 A. The difference is that number is probably
8 going to escalate. If I were to hazard a guess, I'd say
9 it would be in the 15 to 20 barrels per million cubic
10 feet, instead of the 6.53.

11 Q. What's the methodology to be applied to arrive
12 at that number?

13 A. As previously stated, we're looking at the
14 offset wells in a nine-section offset, the nine spot, as
15 previously mentioned. We're going to look at like wells
16 that have Dakota and Mancos production and come up with
17 what we believe is a good expectation of what Dakota in
18 this area will give up as a stable liquid per million
19 cubic feet of gas.

20 Q. When the engineers finish that calculation, we
21 will have available and provide to the Examiner and to
22 Mr. Hall the worksheet showing the map, wells selected,
23 the inventory and how the math was done to make the
24 average?

25 A. That's correct. Yes, sir.

1 Q. It's that part of the record that we want to
2 supplement?

3 A. We just didn't have time to get that work done
4 before today's hearing.

5 EXAMINER WARNELL: You can get that done
6 within 10 days?

7 MR. KELLAHIN: Yes.

8 THE WITNESS: We hope to have it done
9 certainly early next week, if not sooner.

10 Q. (By Mr. Kellahin) That concludes your
11 presentation?

12 A. That is all, sir.

13 MR. KELLAHIN: With your permission,
14 Mr. Examiner, we move the introduction of Burlington
15 Exhibits 1 through 13, as indicated in the exhibit book.

16 MR. HALL: No objection.

17 EXAMINER WARNELL: Exhibits 1 through 13
18 are admitted.

19 (Exhibits 1 through 13 were admitted.)

20 MR. KELLAHIN: That concludes our
21 presentation.

22 EXAMINER WARNELL: All right. Before you
23 start, Mr. Hall, let's take a two-minute break. I need
24 to run across the hall.

25 (A recess was taken.)

1 EXAMINER WARNELL: Okay. Let's go back on
2 the record. Mr. Hall?

3 CROSS-EXAMINATION

4 BY MR. HALL:

5 Q. Very brief questions about your Exhibit 8 on
6 the cost allocation procedures. Can you tell us, does
7 this methodology have some foundation in a COPAS
8 publication? Where did this derive from?

9 A. It does come from the COPAS procedures. I'm
10 sorry, I'm not an expert on COPAS. I can't give you the
11 articles. This is a procedure that we've been using for
12 many years, and we include it in every operating
13 agreement.

14 Q. It's in use by other operators within the --

15 A. This, or something similar to it.

16 Q. Can you explain to me how the dryhole cost
17 provisions would work? If, say, you had a dry hole in
18 the Dakota, how are those costs handled?

19 A. Well, as shown on our cost allocation, we show
20 what we anticipate the drilling expense of the total well
21 is, and that is the dry hole expense. The completion is
22 a separate entity after the hole has reached TD. If
23 we're actually faced with a dry hole, then at that point
24 the P&A costs would be generated and submitted to the
25 parties in the well.

1 But the operator would, of course, reserve the
2 right to plug the well, as a prudent operator, with the
3 notice procedure in the operating agreement.

4 Q. Is there some consideration given to
5 incremental costs because a well is a dual completion or
6 a multiple completion? In other words, because you're
7 drilling down past the Gallup into the Dakota, does your
8 per-footage well cost increase incrementally?

9 A. Yes. As shown here, the Dakota would pay 55
10 percent of the well, where the Mancos would be pay 45
11 percent of the well. That's to reach the base of the
12 Mancos. Because the two are virtually contiguous zones,
13 that's why that spread is only 10 percent.

14 Typically, for instance, if a Mesaverde/Dakota
15 well were the target, it's 40 percent for the Mesaverde
16 and 60 percent for the Dakota, because those two
17 formations are separated in this case by the Mancos.

18 Q. So the costs are affected -- the costs are
19 allocated on more than just a depth basis; is that
20 correct?

21 A. No. It's actually the depth basis that
22 arrives at those percentages. The total depth of the
23 well, which is through the base of the Dakota, and the
24 total depth of the Mancos to the base of the Mancos,
25 that's the relationship, the 45, 55. So the Dakota is

1 paying 55 percent of the total drilling cost.

2 Q. But in fact, your footage unit costs don't
3 remain constant based on depth; isn't that accurate to
4 say? If you have a deeper well, you're drilling to
5 deeper formations, you're using different casing, which
6 requires heavier casing uphole?

7 A. If I understand what you're getting at, I
8 would have to disagree. There's only one casing string
9 run in the well that's unique, and that goes from our
10 surface casing all the way to the base. There's not a
11 separate procedure.

12 This is not like a very deep well that we
13 might have elsewhere in the country. The total depth of
14 these wells is approximately 7,000 feet. So when we're
15 talking about the differential between the Mancos and the
16 Dakota, we're talking about a distance that's somewhere
17 around 6,500 feet and total depth, which is 7,000 feet.

18 Q. So the allocation is simply based on depth?

19 A. Yes. And the footage, as I understand it, is
20 not changing as we go deeper because we're not running
21 multiple strings of casing or drilling different size
22 holes at different points in the well.

23 Q. Referring back to your type log under Exhibit
24 Tab 2, it's pretty much beside the point, but I'm curious
25 to know which of these zones is the zone that is

1 targeted?

2 A. We're going to look at the entire Mancos
3 section, as Merrion did in this well. The part that we
4 believe is going to be liquid rich is what we're calling
5 the El Vado here. You see a separate box for that. And
6 we believe that that's where the majority of the liquid
7 that Merrion has produced is coming from.

8 I believe they opened this entire section in
9 the spirit of the exuberance at the time, wanting to see
10 whatever they can produce. But we believe that this El
11 Vado section and the Basal Niobrara is probably where the
12 liquid rich portion of this Mancos is.

13 Q. It's a highly fractured section? You don't
14 know?

15 A. You're talking to a landman here.

16 MR. HALL: That's all the questions I
17 have.

18 EXAMINER WARNELL: Well, thank you.
19 Mr. Brooks?

20 EXAMINER BROOKS: No questions.

21 EXAMINATION

22 BY EXAMINER WARNELL:

23 Q. I'm not sure I got the overhead down right.

24 A. 3,000 drilling, 350 operating.

25 Q. I did get it right. And the downhole

1 commingle will be done administratively?

2 A. Yes, sir, based on that stranded spacing unit.
3 That's part of the Mancos rule.

4 EXAMINER WARNELL: You have nothing
5 further, Mr. Hall?

6 MR. HALL: One question. Thanks for
7 reminding me.

8 Is it your understanding that the cost
9 allocation methodology requires approval of the District
10 Office; do you know?

11 MR. KELLAHIN: My answer is it does not.
12 Two different things here. We're looking at the
13 production allocation under commingling. The cost
14 allocation is not necessarily something you do,
15 Mr. Examiner. We wanted you to know what it was framed
16 for under the consent agreements.

17 In the pooling order, actual costs and their
18 allocations are the subject of postorder, postdrilling
19 disputes. And there's a procedure for your rules in a
20 cost hearing, which is where I think it ends up going if
21 there's a difference about how we're going to do this.

22 MR. HALL: I misspoke. I was looking at
23 an older Meridian order for this pool. And it does speak
24 to Division approval of the allocations --

25 EXAMINER BROOKS: I wonder if that's -- I

1 don't recall that we've ever had this issue come up in a
2 compulsory pooling proceeding that I've participated in.
3 But approval of the reasonableness of the costs, I agree
4 with you, that's subject -- under the way our orders are
5 structured, that's to be done at a subsequent proceeding.

6 Allocation is a somewhat different question,
7 though, than reasonableness of costs. And normally we
8 attempt to deal with the allocation in the compulsory
9 pooling proceeding, if it's an issue. If they
10 contemplate downhole commingling, we've taken evidence on
11 that before. I'm not sure just what procedure you
12 contemplate here.

13 MR. KELLAHIN: We're happy either way. We
14 gave you enough information today. In case this came up
15 and you felt it necessary to address this allocation, we
16 have it for you.

17 EXAMINER BROOKS: Yeah, I would think it
18 appropriate to address the allocation of the costs in the
19 compulsory pooling order. Obviously, we can't deal with
20 the reasonableness of the costs until we know numerically
21 what they are.

22 MR. KELLAHIN: Okay. I guess we're in
23 agreement on that

24 EXAMINER WARNELL: Mr. Kellahin, could you
25 work up a draft down the road?

1 MR. KELLAHIN: That's my plan,
2 Mr. Examiner. We'll submit you a draft order.

3 EXAMINER WARNELL: Thank you. That would
4 be helpful.

5 MR. KELLAHIN: I want to wait for Mr. Hall
6 and the engineers to get that Exhibit 13 straight. And
7 then we will give you a draft order, and I'll circulate
8 that to Mr. Hall.

9 EXAMINER WARNELL: Very well. I think
10 with that, we'll take Case Number 14734 under advisement,
11 with the understanding, as mentioned earlier, that you
12 have 10 days.

13 MR. KELLAHIN: Yes, sir.

14 MR. HALL: We will let you know if we
15 cannot get it finished in 10 days. But it's my
16 expectation --

17 EXAMINER WARNELL: Don't do that. Ten
18 days. With that, that concludes Docket Number 30-11.

19 * * *

20
21 I do hereby certify that the foregoing is
22 a complete record of the proceedings in
the Examiner hearing of Case No. _____
heard by me on _____

23 _____, Examiner
24 Oil Conservation Division
25

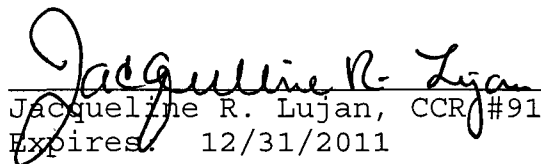
REPORTER'S CERTIFICATE

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I, JACQUELINE R. LUJAN, New Mexico CCR #91, DO
HEREBY CERTIFY that on October 13, 2011, proceedings in
the above captioned case were taken before me and that I
did report in stenographic shorthand the proceedings set
forth herein, and the foregoing pages are a true and
correct transcription to the best of my ability.

I FURTHER CERTIFY that I am neither employed by
nor related to nor contracted with any of the parties or
attorneys in this case and that I have no interest
whatsoever in the final disposition of this case in any
court.

WITNESS MY HAND this 26th day of October, 2011.


Jacqueline R. Lujan, CCR #91
Expires 12/31/2011