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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:

CASE NO. 14188

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

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
EXAMINER HEARING

BEFORE: DAVID K. BROOKS, Legal Examiner  
TERRY G. WARNELL, Technical Examiner  
RICHARD EZEANYIM, Technical Examiner

October 30, 2008  
Santa Fe, New Mexico

This matter came on for hearing before the New Mexico  
Oil Conservation Division, DAVID K. BROOKS, Legal Examiner,  
TERRY G. WARNELL, Technical Examiner, and RICHARD EZEANYIM,  
Technical Examiner, on Thursday, October 30, 2008, at the  
New Mexico Energy, Minerals and Natural Resources Department,  
1220 South Saint Francis Drive, Room 102, Santa Fe, New Mexico.

REPORTED BY: JOYCE D. CALVERT, P-03  
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Albuquerque, New Mexico 87102

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19  
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21  
22  
23  
24  
25

INDEX

Examiner Hearing  
CASE NO. 14188

PAGE

APPEARANCES

3

APPLICANT'S WITNESSES:

TERRY SIMCOE

DIRECT EXAMINATION BY MR. KELLAHIN

5

CROSS-EXAMINATION BY MR. BRUCE

22

EXAMINATION BY MR. BROOKS

24

EXAMINATION BY MR. WARNELL

27

APPLICANT'S EXHIBITS 1 through 6

22

REPORTER'S CERTIFICATE

29

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
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22  
23  
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25

A P P E A R A N C E S

FOR THE APPLICANT:

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FOR THE LAWRENCE B. KELLY FAMILY TRUST:

James G. Bruce, Esq.  
ATTORNEY AT LAW  
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1 MR. WARNELL: The next case we'll hear this morning  
2 is Case No. 14188, Application of Burlington Resources Oil and  
3 Gas Company, LP, for Compulsory Pooling, San Juan County,  
4 New Mexico.

5 Call for appearances.

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

10 MR. WARNELL: Will the witness please stand and be  
11 sworn.

12 Any other appearances?

13 MR. BRUCE: Jim Bruce of Santa Fe. I'm here on  
14 behalf of Hope S. Kelly, who is the trustee of the Lawrence B.  
15 Kelly Living Trust. I have no witnesses.

16 MR. WARNELL: Thank you, Mr. Bruce. Please state  
17 your name.

18 MR. SIMCOE: My name is Terry Simcoe.

19 MR. WARNELL: Mr. Kellahin, we are ready whenever you  
20 are.

21 MR. KELLAHIN: Thank you, Mr. Examiner.

22 TERRY SIMCOE

23 after having been first duly sworn under oath,

24 was questioned and testified as follows:  
25

## 1 DIRECT EXAMINATION

2 BY MR. KELLAHIN:

3 Q. Mr. Simcoe, for the record, sir, would you please  
4 state your name and occupation.

5 A. My name is Terry Simcoe. I'm a landman.

6 Q. And where did you reside, sir?

7 A. I live in Farmington, New Mexico.

8 Q. On prior occasions, have you testified and  
9 qualified as a land expert before the Division?

10 A. No, sir.

11 Q. Are you a certified petroleum landman?

12 A. Yes, sir, I am.

13 Q. Summarize for us your education.

14 A. I have a Bachelor's degree from the University of  
15 Kansas.16 Q. Have you been involved in land title matters in  
17 the San Juan Basin for some period of time?18 A. Yes, sir. I began my career in land work in  
19 1975, and I've been involved with the San Juan Basin for most  
20 of that period either as a direct interest or occasional  
21 interest for the parties for whom I was employed.22 Q. What are your current responsibilities for  
23 Burlington?24 A. I am a staff landman. That's a senior landman  
25 position with our company.

1 Q. As part of your duties, have you made yourself  
2 knowledgeable about the ownership within the subject spacing  
3 unit?

4 A. Yes, sir. I am the principal landman for this  
5 well. That means that I did the title work and prepared the  
6 documents that were sent forth.

7 Q. As part of discharging your land duties, were you  
8 also the principal landman responsible for contacting the  
9 parties that had not voluntarily committed themselves to  
10 participate in the well?

11 A. Yes, sir.

12 Q. And you are able to report to the Examiner today  
13 the status of those voluntary parties?

14 A. Yes, I am.

15 MR. KELLAHIN: At this point, we tender Mr. Simcoe as  
16 an expert petroleum landman.

17 MR. WARNELL: We accept Mr. Simcoe as an expert  
18 petroleum landman.

19 THE WITNESS: Thank you.

20 Q. (By Mr. Kellahin): Mr. Simcoe, let's turn to the  
21 exhibit book. The exhibits are arranged behind tab numbers.  
22 And for purposes of the record, would you identify for the  
23 Examiner what he's going to find behind Tab No. 1?

24 A. Yes, sir. Behind Tab No. 1 is the application  
25 for this case, and within that tab is the request to continue

1 this case, because we found that inadvertently we had left off  
2 one of the respondents.

3 Q. So as part of that process, the information  
4 behind Tab No. 1 will include an original application and an  
5 amended application?

6 A. That's correct. And there's also proof of  
7 service.

8 Q. Once you review the documents behind Exhibit Tab  
9 No. 1, are you satisfied that all the parties that you intend  
10 to include in this pooling case receive notice of this hearing  
11 and the applications?

12 A. Yes, I am.

13 Q. Let's turn the Examiner's attention now to the  
14 well bore itself. If you look behind Exhibit Tab No. 2, let's  
15 start with the locator map. Describe what we're seeing here  
16 with this map?

17 A. This is a map of the San Juan Basin showing the  
18 townships. If you look at the three squiggly lines -- purple,  
19 red and brown -- those are the towns of Farmington, Aztec and  
20 Bloomfield. The little blue line that's diagonally running  
21 across the town of Aztec and up near the well site, which is  
22 identified by a red spot, is the Las Animas River. The well  
23 site is approximately eight miles from the Colorado state line.

24 Q. Let's turn to the next display behind the locator  
25 map. Describe for us what we're seeing when we look at this

1 nine-section plat.

2 A. This is a plat, which is typically called in the  
3 land business, a nine-spot. It shows the nine sections: The  
4 one that the well is in and the eight surrounding sections, and  
5 it shows on this particular plat the production in the sections  
6 surrounding the plat.

7 Q. Let's concentrate on the Section 15. What is the  
8 orientation of the spacing unit?

9 A. The spacing unit for this well, which  
10 incidentally is named the Kelly A #3E, is the E/2 of  
11 Section 15.

12 Q. What type of well bore does Burlington intend to  
13 drill at this location?

14 A. We'll be drilling a well to the base of the  
15 Dakota with the intention to commingle production from the  
16 Mesaverde formation and the Dakota formation.

17 Q. When you look at the E/2 of 15, are there other  
18 wells, either in the Dakota or the Mesaverde formation, within  
19 that spacing unit?

20 A. Yes, sir. If you look at the blue circles with  
21 the star symbol, gas symbol, within them, those are Mesaverde  
22 wells. You'll see that there's numerous Mesaverde wells around  
23 the section and in each of the other sections. There are,  
24 however, only a couple of Dakota wells. There's a Dakota well  
25 one mile south of this location and one to the southwest

1 approximately two miles, so this well as to the Dakota will be  
2 a step out.

3 Q. Is this the first Dakota well in the spacing  
4 unit?

5 A. Yes, sir.

6 Q. When you look at your well bore symbol in  
7 Section 15, there appears to be a P&A gas well symbol just to  
8 the west of your --

9 A. Yes, sir. We're actually twinning a Pictured  
10 Cliffs well. If you gentlemen will refer to the cover of this  
11 book, there's actually an aerial photo of that well site. And  
12 we will be drilling this well from that same pad that's shown  
13 in the center of the photograph.

14 Q. When you look at the nine-section plat,  
15 Mr. Simcoe, have you satisfied yourself that the proposed  
16 location for the subject well is a standard -- includes density  
17 well as to the location and density for both the Mesaverde and  
18 the Dakota pools?

19 A. Yes, sir. It is in a legal, standard location.

20 Q. Let's turn now to Tab No. 3. Again we start with  
21 a map. Identify for me what the map is behind Exhibit Tab No.  
22 3.

23 A. This is actually a plat showing the spacing unit  
24 which has the diagonal blue stripes across the eastern half of  
25 Section 15. There are two red spots on the well. The one in

1 the lower right-hand corner is the well under discussion. The  
2 one in the NW/4 of 15 is another proposed location, which is  
3 not part of this process.

4 Q. Describe for the Examiner in the E/2 of 15 the  
5 configuration of the tracts that consist of the spacing unit  
6 that you're consolidating?

7 A. We have two federal leases, which comprise the NW  
8 of the SE and the S/2, SE, and also the NW/NW. Another federal  
9 lease, which is the NE/NW, and then five fee leases in the  
10 intervening space in between. That's shown as a white space  
11 between the blue spaces on this plat.

12 Q. What working interest owner controls the fee  
13 leases in white?

14 A. That's BP Corporation.

15 Q. Has Burlington reached an agreement with BP  
16 Corporation for the consolidation of these tracts?

17 A. Yes, sir, we certainly have.

18 Q. When we look at the parties to be pooled, what  
19 kind of interest do they have and where is it associated within  
20 these tracts?

21 A. When we go behind this plat, there's an Exhibit  
22 A, which was the Exhibit A to the proposed operating agreement,  
23 it shows the interest of the parties. At this point, I'd like  
24 to reinforce the information the Division probably has that  
25 Burlington Resources Oil and Gas Company is a wholly-owned

1 subsidiary of ConocoPhillips. Interestingly, in this well,  
2 working interest is owned by both companies, so we show both  
3 Burlington with an ownership of 37.5 percent in the Mesaverde  
4 and 49.89 percent in the Dakota. But we also show  
5 ConocoPhillips Company nothing in the Mesaverde, but  
6 12.4749 percent in the Dakota.

7 The other major owner, as we stated, is BP America  
8 Production Company. They, too, have 37.5 percent in the  
9 Mesaverde, but 37.634 percent in the Dakota. The other parties  
10 in the well, and the cause for this hearing today, are  
11 interests of various members of the Kelly Family, which in the  
12 case of this well is represented by the Kelly Living Trust, the  
13 Kelly Family Trust, the Lawrence B. Kelly Living Trust and the  
14 Lawrence C. Kelly Trust.

15 And those percentages are shown on the second page of  
16 Exhibit A. The Kelly Living Trust has 3.125 percent. The  
17 Kelly Family Trust has 3.125 percent. The Lawrence B. Kelly  
18 Living Trust has 6.25 percent, and the Lawrence C. Kelly Trust  
19 has 12.5 percent only in the Mesaverde formation.

20 Q. Mr. Simcoe, of the population of Kelly Trusts,  
21 are there any of these trusts that are committed to participate  
22 with their Mesaverde interest in the well?

23 A. Yes, sir. One of the trusts did agree to go  
24 along with the well and pay their share. Three of the trusts  
25 did not wish to participate.

1 Q. Which one will be participating?

2 A. I hope you'll forgive me. I'm confused by all  
3 the different names. The Kelly Family Trust is the one, I  
4 believe, that went.

5 Q. If you look at your indicator that says yes and  
6 no?

7 A. Lawrence C. Kelly Trust. I forgot we put that on  
8 there. How embarrassing.

9 Q. So the Lawrence C. Kelly Trust is committed?

10 A. Yes, sir.

11 Q. Let's talk about the other three. Mr. Bruce's  
12 client is the Lawrence B. Kelly Living Trust with the Santa  
13 Barbara, California, address. Have you been in contact with  
14 those people responsible for that trust?

15 A. My contact with all of the trusts has been in  
16 writing through the mail. This well was originally proposed in  
17 December of 2007. The ballot was sent forth with an AFE.  
18 There was no response from several of the parties in the well,  
19 and the well was re-balloted in May of this year with requests  
20 that they approve or disapprove the well.

21 At the time, the three shown -- Kelly Living Trust,  
22 Kelly Family Trust and Lawrence B. Kelly Living Trust -- all  
23 indicated disapproval of the proposal.

24 Q. Let's turn to Tab 4 now. As part of your efforts  
25 to document your efforts to obtain the commitment of these

1 three remaining trusts, have you prepared a chronology of your  
2 contacts that begins immediately following Tab No. 4?

3 A. Yes, sir. This chronology begins, as you can  
4 see, December 7th of 2007.

5 Q. If you'll turn past the two pages, you come to  
6 what you were describing a while ago. There's a series of  
7 letters.

8 A. Yes, sir.

9 Q. Did you cause, on behalf of your company, well  
10 proposal letters including AFEs to be sent to those three  
11 various Kelly Trusts?

12 A. Yes, sir. That is my signature on the proposal  
13 letter. We call this a ballot letter.

14 Q. As part of that process, did you actually get  
15 green cards or confirmation of receipt from the three trusts?

16 A. Yes, sir. And they are elsewhere in this  
17 booklet.

18 Q. Let's turn to the last two pages of the documents  
19 behind Exhibit Tab No. 4. At that point in my book, I find an  
20 AFE use?

21 A. Yes, sir, it's actually the last three pages.

22 Q. Let's take the last three pages, then. Generally  
23 describe how you obtained this estimated well cost?

24 A. These AFEs are prepared by our engineers and  
25 accountants in ConocoPhillips by looking at the actual costs

1 for the wells that we drill. In the past few years, we've  
2 drilled approximately 200 wells per year in the Mesaverde  
3 Dakota and have, we believe, a very good handle on the costs of  
4 drilling and completing these wells. And these AFEs are  
5 reflective of our actual experience.

6 Also we found that from other operators asking us to  
7 join them, these costs are quite similar, if not identical, to  
8 the costs that they propose.

9 Q. Is this the AFE that you sent to the various  
10 Kelly Trusts?

11 A. It is indeed.

12 Q. Have you received any objection from any of those  
13 parties as to the well costs?

14 A. No.

15 Q. I'll ask you the next question, then. To the  
16 best of your knowledge, this AFE is fair and reasonable?

17 A. I believe it is.

18 Q. When we look at the AFE, one of the topics of  
19 discussion was not the cost but how they were allocated between  
20 the Dakota and Mesaverde?

21 A. Yes, sir.

22 Q. Does this say that they do that?

23 A. It shows the cost, the top page here, in the  
24 Mesaverde. The second page is the Dakota. There's two  
25 different amounts shown, one for each well. And then the third

1 page summarizes those.

2 MR. BROOKS: Excuse me. Which exhibit are we looking  
3 at?

4 MR. KELLAHIN: We're looking at Exhibit 4. At the  
5 last three pages at the end.

6 MR. BROOKS: Thank you. Sorry to interrupt you.  
7 Proceed.

8 Q. (By Mr. Kellahin): You're looking at that  
9 portion of the three documents that are the AFE, and you're  
10 looking at the one associated with the Mesaverde?

11 A. Yes, sir.

12 Q. Is there also a table in the AFE that allocates  
13 the cost associated with the Dakota?

14 A. Yes, sir. Each page has a summary for that  
15 formation and then the third page summarizes both of those  
16 pages.

17 Q. Let's go back to the three trusts that you intend  
18 to pool by this application. One of the trustees, the trustee  
19 for the Kelly Family Trust, is Gregory Kelly?

20 A. Yes, sir.

21 Q. Are you familiar with that individual?

22 A. Yes, I am.

23 Q. Have you been in contact with him on the phone?

24 A. I have. Since the ballots were both sent, I've  
25 had occasion to speak with him personally on the telephone on

1 two occasions.

2 Q. Did he voice to you any concerns that caused you  
3 to take action with regards to his concerns?

4 A. Yes. You noticed I hesitated about the question:  
5 Did anyone show any discomfort with the AFE?

6 I would assume that that was the basis of Mr. Kelly  
7 and perhaps other members of the family's interest in this  
8 well. They don't apparently want to spend money. And it  
9 wasn't the AFE itself; it was the fact that they did not wish  
10 to participate in the well.

11 They, apparently, did not understand the opportunity  
12 they had in this particular well. Because we're adding the  
13 Dakota for the first time in this spacing unit, an operating  
14 agreement was necessary to conduct operations, and I sent them  
15 a new operating agreement. We have an operating agreement with  
16 them on the Mesaverde, but we needed a mechanism to include the  
17 Dakota and to allocate production and costs.

18 I think they may have been confused by that and did  
19 not realize they could non-consent the well under the  
20 provisions of the operating agreement had they chosen to  
21 execute it and return it. So we find ourselves here today to  
22 do an administrative procedure to allow us to include the  
23 Dakota in this well.

24 Q. Let's turn now to Exhibit Tab No. 5. Before we  
25 talk about some of the key points of this, describe for us what

1 we're seeing behind Exhibit Tab No. 5.

2 A. This is, in fact, the proposed operator agreement  
3 that was sent to these family trusts. You'll notice the date  
4 of May 1 on it. I had hoped to arrive at an amendment of the  
5 Mesaverde operator agreement or an agreement to go ahead with a  
6 new operating agreement prior to this, but when I was  
7 unsuccessful in eliciting any kind of response, I went ahead  
8 and prepared an operating agreement, then mailed it out with  
9 the second group of ballots, which required a response.

10 You'll notice in the lower right-hand corner it says  
11 "BP Form." The reason for that is the number of wells we drill  
12 in the basin frequently includes other operators, and for each  
13 of those where they have a "dog in the fight," they may want  
14 certain clauses in their operating agreements. Because BP is  
15 our other major partner in here, we chose to use the BP form  
16 that we've already negotiated with them. So you'll see that  
17 this is the BP form, and they have agreed to this operating  
18 agreement.

19 Q. Mr. Simcoe, the various Kelly trusts have what  
20 type of interest in this well bore?

21 A. Interestingly, they have a working interest. The  
22 patriarch of the family many years ago actually acquired  
23 leasehold interest himself. He traded in leases. I can't say  
24 that he was actually a wildcatter, but he did participate in  
25 many wells back in the 1950s and 60s. In fact, we've mentioned

1 the name Greg Kelly. Greg Kelly is a petroleum engineer and  
2 did work in the basin in the past.

3 Q. Let me direct your attention to Mr. Bruce's  
4 client. He's entered an appearance on the behalf of the  
5 Lawrence B. Kelly Living Trust. As part of that activity, have  
6 you received communications from a California attorney by the  
7 name of Candy?

8 A. Yes, sir. I have.

9 Q. As part of Mr. Candy's concerns, have you  
10 reexamined your procedures, and is there in place a method to  
11 allocate costs and production between the Mesaverde and the  
12 Dakota?

13 A. Yes, sir. Within the operating agreement, we  
14 include as article 15-F.

15 Q. Have you put in the exhibit book a tab so that  
16 the Examiner can find the portion?

17 A. Yes. That would be the fist green --

18 Q. And that should allow you to find what is  
19 numbered page 16?

20 A. Correct.

21 Q. And the heading on that page starts "Cost  
22 Allocation Procedures"?

23 A. That is correct.

24 Q. Without going into detail, Mr. Simcoe, give us a  
25 general summary of what is intended to be accomplished by these

1 series of documents associated with the JOA.

2 A. This is a complicated cost allocation formula,  
3 and it allows drilling to different horizons. There's, as you  
4 know, numerous horizons within the San Juan Basin, but the  
5 nuts-and-bolts of where we're trying to go is the second tab  
6 here, which is page 20. And by agreement, based on actual  
7 historic oil costs and the experience that ourselves and other  
8 operators have had in the basin, it costs about 60 percent to  
9 reach the basin of the Dakota; 40 percent is then allocated to  
10 the Mesaverde.

11 And it makes it easier for the operator and everyone  
12 involved if they understand that we're drilling these wells on  
13 a 60/40 basis and not have to go through this formula with  
14 every single cost involved. And this historically is accurate.

15 Q. You've described the allocation of costs  
16 associated with the two formations. Is there a procedure in  
17 place in the company that is utilized by your company and  
18 others to allocate the production between the two pools?

19 A. Yes. And I believe that Mr. Candy was equally as  
20 concerned about that. The costs of drilling a well may be  
21 pretty formulaic, as this is. It's not so much that case with  
22 production, so we actually do a production test, and it's  
23 called, in our case -- we've used the technology that's been  
24 available recently called a spinner test. Would you like me to  
25 describe that?

1 Q. No, sir. As part of your efforts, do you believe  
2 that you have addressed all of Mr. Candy's concerns about how  
3 his client will be impacted in the event the Division issued a  
4 compulsory pooling order?

5 A. I believe so.

6 Q. As part of your JOA, are there overhead rates  
7 associated with this JOA?

8 A. Yes, sir.

9 Q. And how do we find the page that shows those?

10 A. That will be the next tab which is in the COPAS  
11 procedure, page number 8.

12 Q. Are these the rates agreed to by BP and  
13 Burlington associated with the drilling of this well?

14 A. That's correct. The drilling well rate is \$6,500  
15 and the producing well rate is \$650.

16 Q. Is that the current rate the company has been  
17 using in the San Juan Basin?

18 A. Yes, sir. This is common by most operators in  
19 the basin. Interestingly, it also is the number that's  
20 compatible if you were to take the old operating rates from  
21 history and escalate them according to the COPAS procedure.

22 Q. Do the operators in the basin periodically meet  
23 and agree upon the rates?

24 A. I can't say that we meet and agree, but we do  
25 negotiate among ourselves when we do operating agreements and

1 the procedure is amicable.

2 Q. Are these the rates that you recommend that the  
3 Examiner include in the compulsory pooling?

4 A. It is. And these are the rates that we receive  
5 from other companies. We believe them to be reasonable.

6 Q. Let's turn now to the last exhibit tab that we  
7 have, the documents with Exhibit Tab No. 6. When we turn to  
8 that page, what do we see?

9 A. This is our application and the plat that goes  
10 with the application. You'll see that the E/2 of Section 15 is  
11 stippled. This is Township 31 North 10 West. The legal  
12 location is 810 feet from the South Line, 815 feet from the  
13 East Line, which is a standard location. We've dedicated the  
14 E/2 of the section on a 320-acre basis.

15 Q. Have you actually obtained an approved APD at  
16 this point?

17 A. No, sir.

18 Q. That process is still ongoing?

19 A. Yes. Due to the nature of this hearing and the  
20 lack of response, I stopped the process so that we wouldn't be  
21 having an APD that was issued and then no ability to move ahead  
22 with the well.

23 Q. In addition to a compulsory pooling order, will  
24 Burlington undertake to file and obtain approval of the  
25 Division's downhole commingling procedures?

1           A. That is correct, sir.

2           MR. KELLAHIN: Mr. Examiner, that concludes my  
3 examination of Mr. Simcoe. We move the introduction of his  
4 Exhibits 1 through 6.

5           MR. WARNELL: Any objections.

6           MR. BRUCE: No objections.

7           MR. WARNELL: Okay. We'll accept Exhibits  
8 1 through 6.

9           [Applicant's Exhibits 1 through 6 admitted into  
10 evidence.]

11          MR. WARNELL: Any cross-examination?

12          MR. BRUCE: Just a couple of questions.

13                                   CROSS-EXAMINATION

14 BY MR. BRUCE:

15           Q. Your Exhibit 2, Mr. Simcoe, the second page -- I  
16 just want to clarify something. Looking at Section 15, the  
17 Mesaverde wells, when drilled, were those strictly Mesaverde  
18 wells, they did not test the Dakota and the Dakota was later  
19 abandoned.

20           A. No, sir, they did not test the Dakota.  
21 Incidentally, the Kelly's are members of those two wells. They  
22 are interest owners.

23           Q. Next, this looking at your AFE, the last three  
24 pages of Exhibit 4, I just want to verify something. Looking  
25 at the first page, which is the Mesaverde, that whether my

1 client went consent or non-consent, they would be charged  
2 6.25 percent of the costs shown on this page; is that correct?

3 A. That is correct.

4 Q. Okay. And then under this JOA, I couldn't find  
5 it quickly, but what non-consent penalties are there under the  
6 propose JOA?

7 A. This would be a 300 percent non-consent penalty  
8 for drilling operations.

9 MR. KELLAHIN: You find it on page 6.

10 MR. WARNELL: Page 6.

11 MR. KELLAHIN: Page 6 of the JOA under Tab No. 5.

12 THE WITNESS: 100 percent of the share of cost of  
13 newly acquired equipment, 300 percent of the cost and expense  
14 of drilling and reworking and plugging back and testing and  
15 completing. And 300 percent of a portion of newly acquired  
16 equipment for the well.

17 Q. (By Mr. Bruce): Okay. And that 300 percent  
18 is -- that's the equivalent of the cost plus 200 percent on  
19 drilling expenses under a pooling order, correct?

20 A. That's correct. Typically it noticed at  
21 300 percent penalty, but actually the penalty is 200 percent.

22 Q. Correct.

23 A. Cost plus 200.

24 Q. Right. I think that's all I have. Just one  
25 final question: Why are you beating up on these poor people

1 from Malibu and Santa Barbara?

2 A. Sir, I don't believe I'm beating up on anybody.  
3 I solicited a response, it was not forthcoming, and I would  
4 like to have avoided this. Many people find it unpleasant.  
5 There is a mechanism. If they had agreed to the operating  
6 agreement, they could certainly have gone non-consent.

7 MR. BRUCE: Mr. Examiner, as I've been informed, one  
8 reason why my client couldn't make a decision is that Lawrence  
9 B. Kelly fairly recently died and his wife took over as  
10 trustee, and she is unfamiliar with oil and gas matters. So  
11 that's, unfortunately, one reason why Mr. Simcoe had to come up  
12 here. But they're not aggravated at Burlington in any way.

13 That's all the questions I have.

14 MR. WARNELL: Okay. Mr. Brooks?

15 MR. BROOKS: Yes.

16 EXAMINATION

17 BY MR. BROOKS:

18 Q. If I understand correctly, you are going to  
19 allocate all of the expenses; 40 percent to the Mesaverde and  
20 60 percent to the Dakota in lieu of -- or this is what you're  
21 doing under the operating agreement? You allocate 40 percent  
22 to the Mesaverde and 60 percent to the Dakota in lieu of trying  
23 to work out an actual allocation?

24 A. Yes, sir. It's very difficult to do that, as you  
25 can imagine. When you're in the operations of drilling, and

1 certain things may cover both zones, how do you figure which  
2 went to which? This seems to be the most fair and equitable,  
3 and most of the companies agree to this.

4 Q. This is something that you've agreed on with BP?

5 A. Absolutely. This agreement is a two-way  
6 agreement.

7 Q. Now, you said if you complete in both zones, then  
8 you anticipate applying for downhole commingling?

9 A. Yes, sir.

10 Q. And your downhole commingling application will  
11 propose to allocate production on the basis of production  
12 tests?

13 A. On a test, yes, sir.

14 Q. Would you -- Mr. Kellahin didn't ask you to  
15 describe the spinner test, and I probably won't understand it,  
16 but for the record, would you briefly describe --

17 A. I'm not an engineer. I'm a landman, so it'll be  
18 simple.

19 Q. Okay.

20 A. Basically, we put a retrievable bridge plug  
21 packer in the hole to isolate the Dakota. This is after the  
22 fracing of the well and initial flow back. At that time, then,  
23 the well is opened to the Mesaverde against a production plate  
24 to simulate pipeline pressures and readings taken of how much  
25 the Mesaverde produces.

1           At that point, there is tubing lowered in the hole  
2 past the Mesaverde and above the Dakota. And at that time, the  
3 bridge plug is retrieved, and the spinner is lowered down that  
4 pipe. And the spinner itself has been shown to accurately  
5 reflect the amount of production from the lower zone which is  
6 producing against the pressure from the upper zone. So we know  
7 the pressure from testing of the Mesaverde.

8           The Dakota is then the additional pressure that has  
9 been seen by the spinner in the well. And it's added to that,  
10 and the allocation is based on those two different numbers.

11           Q. Now, this again, is this something that you've  
12 agreed upon with other industry partners in the well?

13           A. Yes, it's a common practice.

14           Q. Okay. The overhead charges, will those also be  
15 allocated between the zones?

16           A. Yes, sir.

17           Q. So that of the 6500, or 40 percent, will be  
18 allocated to the Mesaverde?

19           A. Correct.

20           Q. There's nobody you're pooling in the Dakota,  
21 right?

22           A. No, sir.

23           Q. So you're asking for a pooling order for the  
24 Mesaverde only?

25           A. Just for the Mesaverde and the ability to apply

1 for commingling.

2 MR. BROOKS: That's all I have. Thank you.

3 MR. WARNELL: Richard?

4 MR. EZEANYIM: No questions.

5 MR. WARNELL: I have a question or two here.

6 EXAMINATION

7 BY MR. WARNELL:

8 Q. You mentioned that this would be the only Dakota  
9 well in this area.

10 A. No, sir. It'll be the first one. There is one  
11 Dakota to the south one mile away and one to the southwest two  
12 miles away.

13 Q. So if I look at your nine-spot here --

14 A. That green square that's in Section 22 in the  
15 SE/SE is a Dakota well.

16 Q. Okay.

17 A. And then SW/SW of 21 there's several wells  
18 grouped together. One of those is a Dakota well.

19 Q. All right. Who operates that Dakota well, do you  
20 know -- directly to the south?

21 A. I'm sorry, sir. I don't have that information.

22 Q. That's all right. That's probably not a fair  
23 question.

24 MR. WARNELL: I have no further questions.

25 MR. BRUCE: Could I ask just one question of

1 Mr. Simcoe?

2 MR. WARNELL: Yes, sir.

3 MR. BRUCE: Mr. Simcoe, would you still accept a  
4 signature on the JOA from the Lawrence B. Kelly Trust in lieu  
5 of force-pooling them?

6 THE WITNESS: Certainly.

7 MR. BRUCE: Thank you.

8 MR. WARNELL: Mr. Kellahin?

9 MR. KELLAHIN: That concludes our presentation.

10 MR. WARNELL: Okay. Very well. You may step down,  
11 Mr. Simcoe.

12  
13 THE WITNESS: Thank you, gentlemen.

14 MR. WARNELL: Case No. 14188 will be taken under  
15 advisement.

16 Let's take a ten-minute break, and we'll start again  
17 at 9:30 according to the clock in this room.

18 \* \* \*

19  
20 I do hereby certify that the foregoing is  
21 a complete and true record of the proceedings in  
22 the hearing of Case No. \_\_\_\_\_  
23 heard by me on \_\_\_\_\_.

24 \_\_\_\_\_, Examiner  
25 Oil Conservation Division



1 STATE OF NEW MEXICO )  
2 COUNTY OF BERNALILLO )

3  
4 I, JOYCE D. CALVERT, a New Mexico Provisional  
5 Reporter, working under the direction and direct supervision of  
6 Paul Baca, New Mexico CCR License Number 112, hereby certify  
7 that I reported the attached proceedings; that pages numbered  
8 1-28 inclusive, are a true and correct transcript of my  
9 stenographic notes. On the date I reported these proceedings,  
10 I was the holder of Provisional License Number P-03.

11 Dated at Albuquerque, New Mexico, 30th day of  
12 October, 2008.

13  
14 

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

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

CASE NO. 14188

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

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: DAVID K. BROOKS, Legal Examiner  
TERRY G. WARNELL, Technical Examiner  
RICHARD EZEANYIM, Technical Examiner

October 30, 2008

Santa Fe, New Mexico

This matter came on for hearing before the New Mexico  
Oil Conservation Division, DAVID K. BROOKS, Legal Examiner,  
TERRY G. WARNELL, Technical Examiner, and RICHARD EZEANYIM,  
Technical Examiner, on Thursday, October 30, 2008, at the  
New Mexico Energy, Minerals and Natural Resources Department,  
1220 South Saint Francis Drive, Room 102, Santa Fe, New Mexico.

REPORTED BY: JOYCE D. CALVERT, P-03  
Paul Baca Court Reporters  
500 Fourth Street, NW, Suite 105  
Albuquerque, New Mexico 87102