

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 CONOCOPHILLIPS COMPANY  
AND BURLINGTON RESOURCES OIL & GAS COMPANY, LP TO  
REOPEN CASES 11601, 11626, 11627, 11628, 11629,  
11708, 11709, 11685, 12136 AND 11815 TO AMEND  
THE DIVISION ORDERS ENTERED THEREIN TO PERMIT THE  
ALLOCATION OF PRODUCTION IN COMMINGLED WELLS BY  
ALTERNATIVE METHODS APPROVED BY THE DIVISION  
PRIOR TO COMMINGLING, RIO ARRIBA AND SAN JUAN  
COUNTIES, NEW MEXICO

CASE NOS. 11601, 11626, 11627, 11628, 11629, 11708,  
11709, 11685, 12136, 11815

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TRANSCRIPT OF PROCEEDINGS

Examiner Hearing

October 14, 2010

8:22 a.m.

1220 South St. Francis Drive  
Santa Fe, New Mexico 87504

BEFORE: TERRY WARNELL, HEARING EXAMINER  
DAVID BROOKS, LEGAL EXAMINER

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14

15

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1 MR. WARNELL: It has been suggested  
2 this morning, and a good suggestion it was, that we  
3 go ahead and kind of flip everything over and start  
4 in reverse order. So if we go to the very last case  
5 on page 6, Case Number -- the first case we will call  
6 is Case 11601 or Cases 11601, 11626, 11627, 11628,  
7 11629, 11708, 11709, 11685, 12136, and 11815. I  
8 don't know how those got out of order. All those  
9 cases have been reopened. Call for appearances.

10 MR. CARR: May it please the  
11 examiner, my name is William F. Carr with the Santa  
12 Fe office of Holland & Hart. We represent  
13 ConocoPhillips Company and Burlington Resources Oil &  
14 Gas Company, LP, in this matter, and I have one  
15 witness.

16 MR. WARNELL: Any other appearances?

17 MS. AUBREY: May it please the  
18 examiner, Karen Aubrey, Santa Fe, New Mexico. I am  
19 representing Robert Westfall. Mr. Westfall is a  
20 royalty owner.

21 MR. WARNELL: Very well. Thank you.  
22 Would the witnesses please -- I'm sorry.

23 MR. BRUCE: Mr. Examiner?

24 MR. WARNELL: Mr. Bruce.

25 MR. BRUCE: Jim Bruce of Santa Fe

1 representing Devon Energy Production Company, LP. I  
2 have no witnesses.

3 MS. AUBREY: And Mr. Examiner, I have  
4 one witness.

5 MR. WARNELL: Okay. Will the  
6 witnesses please stand. State your name and be  
7 sworn.

8 (Note: The witnesses were duly sworn.)

9 MR. CARR: May it please the  
10 Examiner, ConocoPhillips and Burlington Resources  
11 bring this application today, and we will just refer  
12 to both of them collectively as ConocoPhillips, and  
13 what they seek is an amendment to certain orders that  
14 approved applications for reference cases in certain  
15 units in the San Juan Basin.

16 These units are now operated by  
17 ConocoPhillips. They plan -- as the testimony will  
18 show, they plan to use a new technology, gas  
19 composition analysis, to allocate commingled  
20 production in new wells. This method of allocating  
21 production was approved by the director of the OCD  
22 earlier this year, and certain limitations were  
23 imposed on its use.

24 The evidence will show that it can  
25 only be used for newly commingled wells, and it is

1 limited to commingling production from the  
2 Basin-Dakota and the Blanco-Mesaverde Pools. It can  
3 only be used where adequate data is available. It  
4 requires continued sampling and testing of the well  
5 until stabilized production rates are established for  
6 each of the commingled zones, and it requires that  
7 supporting data be filed by the operator with the OCD  
8 so it can assure the accuracy of the allocation  
9 before approving the allocation.

10 Arguments will show it is accurate,  
11 it is easier, much less costly, and it is a better  
12 operating practice because you merely sampled a well,  
13 not shutting it down and incurring risks that are  
14 associated with it. But we're not here today to seek  
15 approval of use of gas composition analysis. That  
16 has been approved. After that was approved,  
17 ConocoPhillips discovered that it brought all these  
18 cases for reference cases so it could commingle  
19 production in these units and not be required to  
20 notify every unit owner every time they commingled  
21 any well.

22 These orders provide in the order  
23 paragraphs that for commingled wells, the applicant  
24 shall not be required to submit support or  
25 justification for utilizing a given method or formula

1 for allocation of production. So you would think,  
2 looking at the order paragraph alone, that we're  
3 authorized to do this.

4                   There is nothing in the rules of the  
5 OCD that would preclude this, but when you look at  
6 the orders, the findings -- and they are all slightly  
7 different. The cases were almost identical when  
8 presented, but they went to different examiners, and  
9 the orders vary slightly.

10                   While they all authorized  
11 commingling, authorized the reference case as to  
12 various criteria, economic criteria and notice, they  
13 contained findings which might be interpreted to  
14 limit allocation only to the subtraction method and  
15 to a fixed allocation method.

16                   As I said, we're not asking  
17 permission to use gas composition analysis. We  
18 believe it is authorized under the rules and has been  
19 approved by the director, but we don't want to use it  
20 in those cases where it makes -- complies with the  
21 other limitations and then discover that there is an  
22 interpretation that we run afoul of these reference  
23 cases. So for that reason, we're seeking to amend  
24 all of these prior orders.

25                   And our exhibits are set out in



1 individual binders for each unit. As I told  
2 Mr. Brooks, we clearly have the weight of the  
3 evidence today. The books are, I would say,  
4 identical, but they are not quite identical. They  
5 are similar. They each contain a plat, an order, and  
6 notice information.

7 But we would like to review here  
8 today with you in detail the book on the Canyon Largo  
9 Unit, and I will tell you, we selected that one  
10 because in the order, in the reference order in that  
11 case, it contains language that is the most  
12 restrictive of any language, and it will show you  
13 what the problem is and why we're seeking to amend  
14 these orders.

15 I have once witness, Chuck Creekmore,  
16 who I would like to call at this time.

17 MR. WARNELL: Before we do that, Mr.  
18 Carr, I'm sorry, Ms. Aubrey, I didn't ask if you had  
19 any opening statements or comments.

20 MS. AUBREY: No, we don't have any  
21 openings.

22 MR. WARNELL: No? Okay. Please.

23 CHARLES CREEKMORE

24 After having been first duly sworn under oath,  
25 was questioned and testified as follows:

EXAMINATION

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BY MR. CARR:

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

A Charles Creekmore.

Q Mr. Creekmore, where do you reside?

A I reside in Farmington, New Mexico.

Q And by whom are you employed?

A I am employed by ConocoPhillips, but I also do work for both ConocoPhillips and Burlington Resources.

Q And what is your current position with Conoco and Burlington?

A I am a staff landman with them.

Q Have you previously testified before the New Mexico Oil Conservation Division?

A Yes, I have.

Q How recently was that?

A I believe it was a year ago that I testified here, and I testified in the late '80s on a federal unit that I put together.

Q Have you ever testified before Examiner Warnell?

A I'm not sure.

Q Would you review for the examiner --

1           A       I've been here when he's -- with other  
2   landmen, but I'm not sure that I actually testified.

3           Q       Could you review your educational  
4   background and work experience for Mr. Warnell and  
5   Mr. Brooks?

6           A       I have a bachelor's degree from Knox  
7   College in Galesburg, Illinois, and I have another  
8   bachelor's degree from the University of Tulsa, and I  
9   have a juris doctorate from the University of Tulsa.

10          Q       And for whom have you worked?

11          A       I have worked for City Service, which  
12   turned into OXY. I have also worked for Williams  
13   Companies. I have also worked for ConocoPhillips for  
14   the last three years.

15          Q       And in these capacities, did you work as a  
16   landman?

17          A       As a landman.

18          Q       And for how many years have you actually  
19   worked as a landman?

20          A       I have been a landman since almost 30  
21   years since 1981. I did work five years for the  
22   State of Oklahoma, Tulsa County, as an assistant  
23   district attorney, and then I -- that's when I went  
24   back to the land work three years ago, a little over  
25   three years ago.

1           Q       Are you the person in ConocoPhillips  
2       responsible for the application here today?

3           A       Yes, I am.

4           Q       Have you prepared exhibits for  
5       presentation in this --

6           A       Yes, I have.

7                   MR. CARR: We tender Mr. Creekmore as  
8       an expert in petroleum land matters.

9                   MS. AUBREY: No objection.

10                  MR. WARNELL: So recognized.

11           Q       (By Mr. Carr) Mr. Creekmore, could you  
12       summarize for the examiner what ConocoPhillips seeks  
13       in this hearing?

14           A       We reviewed all of our federal units, and  
15       we seek the amendment of these ten -- the orders that  
16       have the reference cases for these ten units that we  
17       have combined today, both on behalf of ConocoPhillips  
18       and Burlington Resources, and they are in Rio Arriba  
19       County and San Juan Counties, New Mexico.

20                   And we want to allow the allocation of  
21       downhole commingling in the wellbores by an  
22       alternative method than those set out in the  
23       reference orders that we have. We also want to have  
24       the exemption notice for the individual wells that  
25       were set out in the original reference orders carried

1 over with this gas allocation method.

2 Q By amending these orders, it would place  
3 them -- it would put alternative methods of  
4 commingling in those reference cases?

5 A Yes.

6 Q And you could cite that as to the approved  
7 economic criteria, the notice criteria, and the  
8 commingling?

9 A Yes.

10 Q Why does ConocoPhillips seek these  
11 amendments?

12 A We would like to continue doing what we're  
13 doing presently with the present methods that are  
14 approved and with this new approved method.

15 Q And if you are allowed to do what you're  
16 doing presently, that would mean you would operate  
17 the existing commingled wells under the current  
18 allocation exactly as they are being operated; is  
19 that correct?

20 A Yes.

21 Q Do the current rules of the division  
22 restrict or limit the methods operators are allowed  
23 to use to allocate production in downhole commingled  
24 wells?

25 A No.

1           Q       Where are the limitations found that  
2       you're concerned about here today?

3           A       The limitations are the -- what we feel  
4       that these orders in these -- that reference these  
5       units are more or less restrictive and are not --  
6       don't allow us -- well, we're not sure they allow us  
7       to do this, and we want to remove any doubt that they  
8       don't allow us to do this in the Mesaverde, the  
9       Dakota Reservoirs for this gas allocation method.

10          Q       Mr. Creekmore, what units are involved in  
11       this case?

12          A       Well, the units in the order reference ten  
13       of the units we operate out there, and I can go  
14       through each one of them.

15          Q       Are they identified in the exhibit packet?

16          A       Yes, they are.

17          Q       And where would you find the list?

18          A       In the application.

19          Q       And is that application included behind  
20       Tab 5 in each of the exhibit books?

21          A       Yes, it is. They are referenced in the  
22       letter that I sent, and then attached to that is the  
23       order, which -- or I mean, the application, I'm  
24       sorry, which has them set out there.

25          Q       And the application identifies the units?

1           A       Identifies the units.

2           Q       And the application was provided with the  
3 notice letters?

4           A       Yes.

5           Q       Have you prepared a separate exhibit book  
6 for each of the ten units involved in this  
7 application?

8           A       Yes, I have.

9           Q       Are they identical?

10          A       They are similar.

11          Q       They each contain the same basic exhibits?

12          A       Yes.

13          Q       Each has a plat?

14          A       Yes.

15          Q       Each has the order approving the reference  
16 case?

17          A       Yes.

18          Q       And each contains the prior approval from  
19 the OCD for the use of this method?

20          A       Yes.

21          Q       And each has notice information?

22          A       Yes.

23          Q       Okay. Let's go to what has been marked  
24 ConocoPhillips Exhibit Number 1. Would you identify  
25 that, please?

1           A       That is the Canyon Largo Unit.

2           Q       Exhibit book?

3           A       Exhibit book, yes.

4           Q       And it contains eight tabs, correct?

5           A       Yes.

6           Q       The same eight tabs are found in each of  
7 the exhibit books?

8           A       Yes.

9           Q       Why did ConocoPhillips select the Canyon  
10 Largo Unit to be the one that we reviewed in detail?

11          A       It has similar language to all of the  
12 other units, but it also has a couple of additional  
13 restrictions in it that we wanted to clarify by  
14 amendment.

15          Q       Let's go to the exhibit book, and I would  
16 ask you to go behind Tab 1 and identify what that is.

17          A       Okay. All of these have a cover page, and  
18 Tab 1 just identifies the basin basically. It shows  
19 Farmington, Bloomfield, Aztec, and then it identifies  
20 the unit, and it specifies where the unit is on  
21 the -- sets out where the unit is in the basin.

22          Q       And this is a general orientation map?

23          A       Yes.

24          Q       And do each of the exhibit books contain a  
25 similar map for the unit that is the subject of each



1 of those applications?

2 A The specific unit that is covered by that  
3 book, yes.

4 Q Would you go to the material behind Tab 2  
5 in this exhibit book?

6 A Yes.

7 Q And what is that?

8 A The first exhibit is the Canyon Largo,  
9 Mesaverde participating area. And then the second  
10 tab is the Dakota -- well, it is the unit boundaries,  
11 and it specifically shows the participating area of  
12 the Mesaverde before and the Dakota because that's  
13 what we're concentrating on here today.

14 Q Why are these participating areas  
15 significant?

16 A Well, the participating areas, once a well  
17 qualifies for the participating area, they then share  
18 an oil production, have an undivided interest in oil  
19 production from that point going forward. The wells  
20 are initially developed on a drill block basis, and  
21 then once they qualify for the participating area,  
22 they are developed on an undivided basis.

23 Q And if you were to add a well to a  
24 participating area and commingle production, you  
25 would have to notify all interest owners in all the

1 affected participating areas?

2 A In all the participating areas.

3 Q And that creates a very substantial notice  
4 burden?

5 A Yes, it does.

6 Q And that was the reason behind the  
7 original reference cases or one of the reasons?

8 A Yes.

9 Q Let's go to the information behind Tab 3.  
10 What is this?

11 A Under each of the Tab 3s in each of the  
12 books, you will find the order which is the reference  
13 case for each of the specific units and specifies  
14 what -- how operations are to be performed on -- and  
15 it concentrates on the commingled wells in those  
16 units.

17 Q Behind Tab 3 in this book, we have Order  
18 Number R 10786, correct?

19 A Yes.

20 Q Is that the reference case order for the  
21 Canyon Largo Unit?

22 A Yes, it is.

23 Q And does it approve a reference case for  
24 economic criteria, notice requirements, and downhole  
25 commingling?

1           A       Yes, it does.

2           Q       Do we seek any change in the orders as  
3 they relate to any current activity in these units?

4           A       No.

5           Q       What methods of allocating production  
6 between formations are authorized by this order?

7           A       Well, most of them in this -- this one in  
8 particular -- the pages are sticking together here.  
9 I'm sorry. Well, most of them set out that they are  
10 a reference case, and then they discuss the  
11 subtraction method and then they discuss a flow  
12 method as two alternative methods that can be used in  
13 determining how to determine how the production from  
14 the Mesaverde and Dakota or the commingled formations  
15 are to be determined.

16          Q       Does paragraph 3 provide that applicant  
17 shall not be required to submit justification for  
18 utilizing a given method or formula for allocating  
19 commingled production?

20          A       Yes.

21          Q       Would you turn to the findings in this  
22 order. And I direct your attention to Findings 11  
23 through 14.

24          A       Okay.

25          Q       What do 11 and 12 provide?

1           A       Eleven and 12, like I discussed earlier,  
2   under 11 A, it discusses the subtraction method, and  
3   under B, the flow method. A is a method that -- I  
4   can go ahead and read them if you want or --

5           Q       Mr. Creekmore, this order approves --  
6   references those two methods of allocation, does it  
7   not?

8           A       Yes.

9           Q       And then Finding 12, does it authorize the  
10   use of these methods?

11          A       Yes.

12          Q       What does Findings 13 and 14 provide?

13          A       Well, in this particular order reference  
14   case 13 provides, "In addition to the above, the  
15   applicant proposed utilizing a formula by which the  
16   production allocation may be determined by utilizing  
17   the BTU content and/or API gravity of the commingled  
18   stream." And 14, "The proposed formula described in  
19   Finding Number 13 above should be used only to verify  
20   the results of production allocation derived by the  
21   methods described in Finding Number 11 above."

22          Q       When you read these findings and the order  
23   paragraph together, is there a question whether or  
24   not you may use gas composition analysis --

25          A       Yes, there is.

1 Q -- to allocate production in this unit?

2 A Yes, there is.

3 Q And is that what you're trying to clarify  
4 in these cases?

5 A Yes, it is.

6 Q Is the Canyon Largo the only one of these  
7 orders that contains this express limitation?

8 A This Article 13 and 14, yes.

9 Q Are the findings in the other orders vague  
10 in terms of whether or not they are limiting the  
11 kinds of allocation methods authorized?

12 A In these -- in this unit and the other  
13 nine units that we've brought before you, yes, we  
14 believe so.

15 Q Is the use of gas composition analysis an  
16 accurate way to allocate production?

17 A Yes, it is.

18 Q What are the benefits that come from using  
19 this method?

20 A Well, there's several benefits. One is  
21 the cost. It's considerably less expensive. We're  
22 estimating it will cost about \$1,500 plus or minus,  
23 as opposed to the flow method requires you to bring a  
24 rig onto the location, and which costs -- the  
25 estimates I have heard between \$40,000 to \$60,000,

1 and you have the increased danger of bringing a rig  
2 on site, safety issues. You have the risk of when  
3 you go down to the formations of damaging the  
4 wellbore. Whereas the gas allocation method, you  
5 take a sample at the surface.

6 Q Is it easier to use a gas  
7 composition analysis --

8 A Yes, very much. You don't, as I said,  
9 have to bring a rig on site.

10 Q Is there less risk of damaging the well?

11 A Yes.

12 Q Has ConocoPhillips reviewed gas  
13 composition analysis as a method to allocate  
14 production with the Oil Conservation Division?

15 A Yes, they have.

16 Q And when did that occur?

17 A We met with the acting director -- in my  
18 notes, the date -- let me look at the order. We met  
19 on May 13 of this year with Mr. Fesmire, the acting  
20 director, and Mr. Will Jones was also in attendance.

21 Q And did you explain how the gas  
22 composition analysis worked?

23 A Our engineer, Clayton McWhite, explained  
24 the system, yes.

25 Q Did you also meet with the Aztec office?

1           A       We also met with the Aztec -- well, the  
2       Aztec office attended a meeting with the BLM, and we  
3       have made the presentation to the BLM and to the  
4       Aztec office of the NMOCD.

5           Q       Did the director of the OCD approve the  
6       use of gas composition analysis?

7           A       Yes, he did.

8           Q       And how was that approval indicated?

9           A       We received an approval letter that was  
10      dated August 4, 2010, and it is signed by Mark E.  
11      Fesmire, Acting Director.

12          Q       And is that included in the exhibit  
13      package?

14          A       Yes. It is Exhibit 8. A copy of that  
15      letter is provided.

16          Q       Does the approval of the acting director  
17      limit the use of this method?

18          A       I'm sorry?

19          Q       Does the approval letter limit the use of  
20      gas composition analysis?

21          A       Yes, it does.

22          Q       And what are those limitations?

23          A       Let me find that.

24          Q       Mr. Creekmore, what formations is it  
25      limited to?

1           A       Well, first of all, they do limit it to  
2   the Mesaverde and the Dakota.

3           Q       And is it limited to newly commingled  
4   wells?

5           A       Yes.

6           Q       Won't affect any existing commingled  
7   wells?

8           A       Does not affect existing wells.

9           Q       Is it limited to situations where there is  
10   a sufficient database to make an allocation?

11          A       The process is limited to knowing the end  
12   points between the Mesaverde and the Dakota so that  
13   you can make an analysis with your sample as to how  
14   much of that sample comes from the Mesaverde  
15   Formation and how much of it comes from the Dakota  
16   Formation based on these end points that are a known  
17   quantity.

18          Q       Does it require that supporting data for  
19   each commingled well be submitted to the OCD for  
20   review?

21          A       Yes.

22          Q       Does it require the results of the initial  
23   sample?

24          A       Yes.

25          Q       How many samples are required? Do you



1 know?

2 A There may -- well, there will be an  
3 initial sample and enough samples until the formation  
4 is determined to be stabilized. And then once the  
5 formation -- the determination that the allocation  
6 factor between the Mesaverde and Dakota has  
7 stabilized, then that will be the final analysis, and  
8 that will be submitted to the NMOCD.

9 Q So what you're doing is sampling until you  
10 know what comes out of the Mesaverde -- how much, and  
11 you know how much comes out of the Dakota?

12 A Yes.

13 Q And then you submit that data to the OCD?

14 A Yes.

15 Q Then they approve that data?

16 A Yes.

17 Q And that's when the allocation method is  
18 established?

19 A Yes.

20 Q And it is only for newly commingled wells?

21 A Yes.

22 Q And it is only for these two formations?

23 A Yes.

24 Q Have you provided notice of this hearing?

25 A Yes, we have.

1 Q And to whom was notice provided?

2 A Notice was provided to all of the working  
3 royalty and overriding royalty, all interest owners  
4 in the units.

5 Q Let's go to Tab 4. Could you identify the  
6 information behind Tab 4?

7 A Tab 4 is a list of all of the owners, and  
8 because of the voluminous number of owners and the  
9 owners that owned in the -- many of these owners  
10 owned in more than one unit, we -- and because the  
11 case was combined, we sent one notice to each owner.

12 Q Behind Tab --

13 A And some of these include -- we had to go  
14 on royalty and overriding loyalty owners that we  
15 didn't disburse on, and other companies where we had  
16 to contact them, also, and find out who their owners  
17 were.

18 Q And the first page are the companies that  
19 you had to contact to be certain you had people to  
20 whom they were obtained?

21 A Yes.

22 Q And did they notify those owners, or did  
23 you get the names and did ConocoPhillips notify them?

24 A We got the names, and we ended up  
25 notifying them.

1 Q And then behind 4 B, you have a long list.  
2 What are those?

3 A Actually, 4 A is the list of the owners.  
4 4 B was the -- where we had the owners distributing.  
5 4 A is in this book. This is the list of all of the  
6 owners.

7 Q That you notified?

8 A That we notified.

9 Q How many people did you notify?

10 A There were 12,000 -- I mean 1,259  
11 certified letters that we sent out.

12 Q Let's look at Exhibit Number 5. What is  
13 behind that tab?

14 A This is the letter that we sent out  
15 where -- it's a letter explaining what we were --  
16 what the case was about, with the attachment of our  
17 application to the letter.

18 Q And this is the material that was sent to  
19 each of the 1,259 --

20 A Yes.

21 Q -- names?

22 A Yes.

23 Q What does Exhibit 6 do -- or the -- I'm  
24 sorry. Tab 6, what is that?

25 A Well, this is copies of the certified

1 green cards, but because they were so voluminous and  
2 we combined the units, I have two separate exhibits  
3 of all the green cards that we have. Do you want me  
4 to --

5 Q Are those just separate binders that  
6 contain each of the return receipts?

7 A Yes.

8 Q And they are marked 11 and 12?

9 A Yes, they are.

10 MR. CARR: They are large. There are  
11 1,200 green cards, and we only have one copy of  
12 those. If anyone wants another copy --

13 MS. AUBREY: No.

14 MR. CARR: But we have one for the  
15 official record that shows we have notified these  
16 people and gotten the cards back.

17 MR. WARNELL: 1,259?

18 MR. CARR: 1,259. We might have Mr.  
19 Bruce check them all.

20 Q (By Mr. Carr) Mr. Creekmore, what is  
21 behind Tab 7 in this exhibit book?

22 A Tab 7 is the affidavit of publication that  
23 was filed in both Rio Arriba -- for Rio Arriba and  
24 San Juan County.

25 Q What response did you receive to this

1 letter?

2 A As far as inquiries?

3 Q Yes.

4 A At the back of Tab 5, I put a listing of  
5 the inquiries that I received from individuals. Some  
6 names based on when I received the calls and things  
7 like that. I had to spell some of the names  
8 phonetically and missed a couple of names, but  
9 basically, these are the parties that made follow-up  
10 calls.

11 Q Were there also discussions concerning the  
12 application with BP?

13 A Yes, there were.

14 Q And was there a request for continuance  
15 from BP and Mr. Westfall?

16 A They had asked for that.

17 Q Did we also need to continue because we  
18 received late some additional names from Williams?

19 A Yes. Williams provided their owners that  
20 they distributed to a little late, so we went ahead  
21 and compared their names to our names. Those names  
22 that we had already sent out notice, we didn't send  
23 notice, but new names, we sent out additional  
24 notices.

25 Q In what unit or units does Mr. Westfall

1 own an interest?

2 A Well, I just found out about Mr. Westfall  
3 yesterday, and from what I understand, it is 29 --  
4 San Juan 29-6 Unit.

5 Q And what is your understanding about his  
6 interest?

7 A Well, as I said, I just found out about it  
8 yesterday, but our notes indicate that he is the  
9 successor in interest from an Archie Westfall, and  
10 Mr. Archie Westfall did not sign the ratification to  
11 the unit, so he was a nonsignatory.

12 Q And that means that he's paid on actual  
13 production from wells on the drill blocks on which he  
14 owns his interests --

15 A Yes.

16 Q -- not on a unit basis?

17 A He is paid on a drill block basis and not  
18 on a unit basis.

19 Q Will what you're proposing affect any of  
20 the existing wells in which Mr. Westfall has an  
21 interest?

22 A No.

23 Q It would only apply to new wells. In your  
24 opinion, will it accurately allocate production in  
25 those wells --

1           A       Yes.

2           Q       -- if there are any? In your opinion,  
3 will approval of this application be in the best  
4 interests of conservation and prevention of waste and  
5 the protection of correlative rights?

6           A       Yes.

7           Q       Now, you have prepared 12 exhibits for  
8 presentation in this case?

9           A       Yes.

10          Q       One for each of the units?

11          A       Yes.

12          Q       And two that are nothing but the green  
13 cards confirming that your notice was provided?

14          A       Yes. Those -- they are referenced here  
15 under Tab 4, but the actual green cards are in a  
16 separate exhibit book.

17          Q       Exhibits 1 through 10 are similar to the  
18 one you have just presented for Canyon Largo?

19          A       Yes.

20          Q       But they are unit specific; is that  
21 correct?

22          A       Yes, they are.

23          Q       Can you testify as to the accuracy of  
24 these exhibits?

25          A       Yes.

1 MR. CARR: May it please the examiner  
2 -- examiners, at this time we move the admission into  
3 evidence of ConocoPhillips Exhibits 1 through 12.

4 MS. AUBREY: No objection.

5 MR. CARR: We pass the witness.

6 MR. WARNELL: Exhibits 1 through 12  
7 will be admitted.

8 (Exhibits 1 through 12 admitted.)

9 MR. WARNELL: Ms. Aubrey?

10 MS. AUBREY: Thank you.

11 EXAMINATION

12 BY MS. AUBREY:

13 Q Good morning, Mr. Creekmore.

14 A Good morning.

15 Q I want to ask you some questions about  
16 your Exhibit 10, which I think you now have in front  
17 of you. That is the exhibit book which deals with  
18 29-6 Unit?

19 A Yes.

20 Q Did you prepare this book?

21 A Yes, I did.

22 Q Okay.

23 A Well, it was prepared under my  
24 supervision.

25 Q Okay. Tell me about your examination



1 of -- tell me what documents you examined to  
2 determine that Archie Westfall was a nonsignatory to  
3 the 29-6 Unit agreement.

4 A I asked -- I found out about him  
5 yesterday. I asked a person that coordinates units  
6 what units he owned under, and he said 29-6. And  
7 there is an indication in the file, a note that he  
8 was successor -- did you ask me about Archie?

9 Q I asked you about Archie, but Robert  
10 Westfall now owns the interest.

11 A That interest was nonsignatory.

12 Q Okay. And was that from the very  
13 beginning? It never was in the unit as far as you  
14 know, that interest?

15 A Yes. It was in the unit boundaries, but  
16 it was not part of the unit.

17 Q Okay. And Mr. Archie Westfall owns a  
18 royalty interest; is that right?

19 A Yes. That was my indication.

20 Q And his interest is in Sections 4, 5, and  
21 9. Do you agree with that?

22 A I'm not sure about 5, but I just saw 4 and  
23 9. We didn't do a detailed research.

24 Q Okay. Have you examined whether or not  
25 the Westfall royalty interest is the same in the

1 Mesaverde and the Basin-Dakota?

2 A No, I did not.

3 Q Have you done any examination of those  
4 proportionate interests?

5 A No.

6 Q So is it your testimony that for as long  
7 as Conoco and Burlington have been paying the  
8 Westfall family, that they have been paying them on a  
9 drill block basis as opposed to a unit basis?

10 A That's what our files indicated.

11 Q And that is going on till today?

12 A Sorry?

13 Q That continues till today?

14 A I did a limited brief review, and I didn't  
15 review the payments.

16 Q Are you aware of any other owners in  
17 Sections 4, 5, or 9 of Township 29 that are not  
18 participating in the unit?

19 A I didn't check anybody else out, no.

20 Q Now, you're not here to testify as to the  
21 technical aspects of the gas composition analysis,  
22 are you?

23 A No.

24 Q In your view, that was taken care of by  
25 the meeting with the acting director; is that right?

1           A       Yes. That was summarized by the order  
2       that we provided under Tab 8.

3           Q       So do you know -- are you able to tell  
4       whether or not you, one, would obtain different  
5       results using either the flow method or the  
6       subtraction method versus the gas composition  
7       analysis?

8           A       No.

9           Q       Now, why have Conoco limited this request  
10      to just the Mesaverde and the Basin-Dakota?

11          A       Because those were the only two formations  
12      at the present time that we have adequate test  
13      results that we could determine a differentiation  
14      between the two formations that would be adequate to  
15      use this gas composition analysis method.

16          Q       So you don't have that information for the  
17      Fruitland formation?

18          A       I'm not aware of our engineers having  
19      that, no.

20          Q       Do you know whether or not there are any  
21      present plans to drill additional wells in the area  
22      in which Mr. Westfall has royalty interests?

23          A       No, I do not.

24          Q       Now, why is it that this method will be  
25      applied only to production from -- let me ask this

1     again. Mr. Carr asked you a question about newly  
2     commingled wells. Are you proposing to apply this  
3     new method to existing wells that hadn't previously  
4     been commingled, or only to new wells drilled?

5           A       We plan on using this method going forward  
6     where we have adequate information and distinction  
7     between the Mesaverde and Dakota that this method can  
8     be used to determine the composition of each of the  
9     formations by this method.

10          Q       So it wouldn't be just wells which are  
11     drilled next week? It could be applied to wells  
12     which are -- have been drilled, but which have not  
13     been commingled; is that right?

14          A       I don't think I understand the question.

15          Q       Will you be applying this method in  
16     existing wellbores?

17          A       We plan on using this method on new  
18     wellbores.

19          Q       Only wellbores drilled after the date --  
20     wells drilled after the date of the order in this  
21     case?

22          A       Yes.

23          Q       So if you have an existing -- let's say an  
24     existing Dakota well and the decision is made to  
25     recomplete that well in Mesaverde, for instance, you

1 wouldn't then be applying this method?

2 A I'm not sure what they would do on a  
3 recompletion.

4 Q Do you know if there is any existing data  
5 that's available to royalty interest owners or  
6 working interest owners that compares the accuracy --  
7 that shows the accuracy of the new method when  
8 compared to the existing tried and true methods that  
9 have been in use for so many years?

10 A No, I do not.

11 Q Mr. Westfall's interests, our evidence  
12 will show, in the Mesaverde is about 100th of his  
13 interest in the Dakota. So do you agree that if  
14 there is an error in the allocation between those  
15 zones, it could adversely affect his interest?

16 A I'm not sure I understand what you mean.

17 Q Well, if Conoco allocates gas to the  
18 Mesaverde that should be allocated to the Dakota, Mr.  
19 Westfall gets less money; is that right?

20 A Well, I'm not sure if I could  
21 hypothetically answer that because all we're doing is  
22 allocating a fair and equitable share to each  
23 formation based on what the formation should receive.

24 Q But that assumes that your method is fair  
25 and equitable, right?

1           A       Well, yes.

2                   MS. AUBREY: I have no more  
3 questions. I pass the witness.

4                   MR. CARR: I have a couple if it's --

5                   MR. WARNELL: Mr. Bruce, do you have  
6 any?

7                   MR. BRUCE: I don't have any  
8 questions. Thank you.

9                   FURTHER EXAMINATION

10 BY MR. CARR:

11           Q       When you allocate production in commingled  
12 wells, the goal is to do it accurately; is that  
13 correct?

14           A       Yes.

15           Q       If there is an error, one party could be  
16 harmed?

17           A       Yes.

18           Q       And the methods that have been used are  
19 considered the best we can do under fair and  
20 equitable?

21           A       Yes.

22           Q       And the new method you're proposing would  
23 base the allocation on multiple samples instead of  
24 one; isn't that right?

25           A       Yes.

1 Q And your goal is to not only be fair and  
2 equitable, but accurate?

3 A Yes.

4 MR. CARR: That's all I have.

5 MR. WARNELL: Mr. Bruce?

6 MR. BRUCE: Mr. Examiner, I do have  
7 one question.

8 FURTHER EXAMINATION

9 BY MR. BRUCE:

10 Q Mr. Creekmore, do you know how long this  
11 gas composition analysis method has been used by  
12 ConocoPhillips or Burlington Resources?

13 A Out here, we just got it approved in  
14 August, so we have -- I think our first well proposed  
15 is coming up soon.

16 Q Okay. So all of the prior wells were done  
17 under the method set forth in the prior order?

18 A And under the approved prior order.

19 MR. BRUCE: Thank you.

20 A And -- yes.

21 MR. WARNELL: Okay. Mr. Brooks?

22 MR. BROOKS: You said the director  
23 issued a letter approving this method, and is this  
24 one of the exhibits here?

25 A Yes, it is Exhibit 8. It is dated August

1 4, 2010, addressed to ConocoPhillips, care of me, and  
2 signed by Mr. Fesmire.

3 MR. BROOKS: Okay. Thank you.  
4 That's all I have.

5 MR. WARNELL: I believe,  
6 Mr. Creekmore, you had mentioned that you had used  
7 the gas composition analysis before or are presently  
8 using it?

9 A We are proposing to use it now. I think  
10 it is imminent the first well that they're going to  
11 use it on, but they have tested it on other wells.

12 MR. WARNELL: But you have not gone  
13 back and taken a look at some of the wells that have  
14 been done with the subtraction method or the flow  
15 method and compared what would happen if you changed  
16 to this third method?

17 A Well, those -- many of those wells have  
18 been commingled for years, and they were by an  
19 approved method that was approved at that time. It's  
20 my understanding that they still, in some of the  
21 areas where they don't have the distinction between  
22 the two, that they will still use the current method.  
23 But going forward, yes, they have done analysis, but  
24 I'm not sure if I am qualified to --

25 MR. WARNELL: But the gas -- you



1 testified that the gas composition analysis will only  
2 be used on wells drilled -- new wells?

3 A Our plan is to use it prospectively, yes.

4 MR. WARNELL: And are we talking just  
5 gas production in the Mesaverde, Dakota, or is there  
6 some oil production?

7 A Well, there may be some liquids involved,  
8 but this is gas production, yes. I'm not sure about  
9 that. This is strictly on the gas composition.

10 MR. WARNELL: And I believe you  
11 testified or do you know, is the gas composition  
12 analysis, is that recognized by the industry, used by  
13 the industry?

14 A Yes, it is.

15 MR. WARNELL: Is there anyone up in  
16 the San Juan Basin using it today that you know of?

17 A Not that I'm aware of.

18 MR. WARNELL: I have no further  
19 questions.

20 MR. CARR: That concludes our  
21 presentation, the direct presentation in this case.  
22 We would move the admission of ConocoPhillips  
23 Exhibits 1 through 12.

24 MR. WARNELL: I believe those have  
25 been admitted, Exhibits 1 through 12. Okay. Well,

1 let's keep going then. Ms. Aubrey, if you would like  
2 to call your witness.

3 MS. AUBREY: Thank you.

4 ROBERT WESTFALL

5 After having been first duly sworn under oath,  
6 was questioned and testified as follows:

7 EXAMINATION

8 BY MS. AUBREY:

9 Q Mr. Westfall, would you state your name  
10 and address for the record, please?

11 A My name is Robert Westfall. I reside at  
12 1329 Sigma Chi Road, Albuquerque, New Mexico.

13 Q Mr. Westfall, you have heard some previous  
14 testimony from Mr. Creekmore about your mineral  
15 interests in the area of the 29-6 Unit. Could you  
16 explain to the examiner how you acquired your  
17 interests?

18 A I inherited these from my father on his  
19 death.

20 Q What was your father's name?

21 A Archie Westfall.

22 Q Do you know when he acquired the  
23 interests?

24 A 1952.

25 Q And when did Mr. Westfall -- when did your

1 father die?

2 A He died in July 2004. These interests  
3 were passed to me in early 2005.

4 Q And was that under an administration of  
5 his estate of some sort?

6 A Yes.

7 Q Mr. Westfall, you have some exhibits in  
8 front of you, Exhibits 1, 2 and 3. Can you identify  
9 those, please?

10 A Yes. The first one is a copy of the  
11 original mineral deeds to my father. The second one  
12 is the mineral deed to me after he -- after his  
13 death. And the third one is a statement or a  
14 paystub, I'm not sure what the correct terminology  
15 is, from ConocoPhillips.

16 Q And does that Exhibit Number 3 show what  
17 ConocoPhillips believes to be your royalty interests  
18 in these wells?

19 A Yes, I would assume so.

20 Q Okay. Do you see on the very first entry  
21 on the kind of left-hand side of the exhibit a  
22 .3344535 RI?

23 A Yes.

24 Q And do you believe that that shows what  
25 your royalty interests in the 29-6 64M Dakota Well

1 is?

2 A Yes, I do believe so.

3 Q And then if you look over on the  
4 right-hand side, do you see the last well entry on  
5 the right-hand side of the first page of the exhibit,  
6 a .00342815 royalty interest?

7 A Yes, I do.

8 Q And do you understand that that is your  
9 interest according to ConocoPhillips in the Mesaverde  
10 formation?

11 A Yes, I understand that.

12 Q Let me have you look at Exhibit Number 1.  
13 Do you understand the first page of this exhibit, the  
14 first two pages to refer to a conveyance to your  
15 father Archie Westfall of 32 royalty acres?

16 A Yes, I believe I do.

17 Q And then the third page of the exhibit is  
18 a different deed; is that correct?

19 A That's correct. There were two deeds.

20 Q And how many royalty acres does the second  
21 deed convey?

22 A Fifty.

23 Q So that would give you a total of 82  
24 royalty acres in this area?

25 A That's correct.

1           Q       And do you understand that this is  
2       portions of Sections 4, 5, and 9 that you own a  
3       royalty interest in?

4           A       Yes.

5           Q       Tell me what you understand about whether  
6       or not your father agreed to participate in the 30 --  
7       I'm sorry, in the 29-6 Unit.

8           A       My understanding from him when he was  
9       living was that he never agreed to join a unit.

10          Q       So was it your expectation that Conoco  
11       should always have been paying either your father or  
12       you on a drill block basis for your interests in  
13       these wells?

14          A       Yes.

15          Q       Now, in connection with the administration  
16       of your father's estate, Exhibit 2 shows that these  
17       interests were conveyed to you in February of '05; is  
18       that right?

19          A       That's correct.

20          Q       And you were the personal representative  
21       of his estate?

22          A       Yes, I was.

23          Q       Can you tell the examiner why you are here  
24       opposing the application of ConocoPhillips in these  
25       cases?

1           A       When I received the letter, it stated that  
2     the request was to change the method of allocation  
3     from its current method to some other method approved  
4     but not specified in the letter, and I said, "I have  
5     no idea how this will affect me, but it could affect  
6     me adversely." And I thought I probably needed some  
7     representation to determine just exactly how it would  
8     affect me.

9           Q       And were you provided with any technical  
10    or nontechnical explanation of the differences in the  
11    new methodology or what --

12          A       No.

13          Q       -- effect you could expect it to have on  
14    the allocation between your two interests?

15          A       No.

16          Q       Do you have anything else you want to add,  
17    Mr. Westfall, to your testimony?

18          A       Not that I can think of.

19                   MS. AUBREY: I pass the witness.

20                   MR. WARNELL: Okay.

21                   EXAMINATION

22    BY MR. CARR:

23          Q       Mr. Westfall, when you became involved in  
24    this case -- prior to today, had you seen the letter  
25    from the OCD approving the gas composition analysis

1 method?

2 A No.

3 Q Do you know whether or not that was  
4 requested from ConocoPhillips and provided? Do you  
5 know?

6 A No, I don't know.

7 Q You have been paid by ConocoPhillips, have  
8 you not?

9 A Yes.

10 Q And your concern here today is you want to  
11 be certain that you're accurately paid for what you  
12 own?

13 A Yes.

14 Q And you understand today that the  
15 allocation will be not changed in any existing  
16 method?

17 A Yes, that -- from listening to  
18 Mr. Creekmore's testimony, yes.

19 Q Okay.

20 A I do understand that.

21 MR. CARR: That's all I have. Thank  
22 you.

23 MR. WARNELL: Mr. Bruce?

24 EXAMINATION

25 BY MR. BRUCE:

1           Q       Just one question, Mr. Westfall. There is  
2 no -- in the deed that -- deeds that your father got,  
3 there wasn't any division -- there wasn't any  
4 separation between the Dakota and Mesaverde, was  
5 there?

6           A       Not to my knowledge. And I don't know if  
7 I should add this, but all of the early indications  
8 from paperwork I have going back to the '50s is that  
9 only the Mesaverde was being drilled into and tapped  
10 at that time.

11                   MR. BRUCE: Thank you.

12                   MR. WARNELL: Mr. Brooks?

13                   MR. BROOKS: No questions.

14                   MR. WARNELL: Mr. Westfall, you're  
15 the one person out of 1,259 people that stepped  
16 forward, and I'm kind of surprised at that because I  
17 would have had similar concerns that you had  
18 originally having received your letter from  
19 ConocoPhillips. But we've sat here this morning now  
20 for a little over an hour. You got to hear  
21 Mr. Creekmore testify. What are your concerns now,  
22 if any?

23           A       I don't know that I know enough to be able  
24 to answer that question, even though I have been  
25 sitting here for an hour listening to all of this.



1 It is really hard for me to know -- I know that  
2 Mr. Creekmore has testified that it's only on new  
3 wells, and so they will probably not affect  
4 anything -- any of the existing wells, but I also  
5 don't know how much gas there is in the new wells  
6 they are drilling and how that will -- how this  
7 change in the new wells will affect me. And I don't  
8 think there was any answer to that.

9 MR. WARNELL: I have no further  
10 questions. Any closing comments?

11 MR. CARR: I have none.

12 MS. AUBREY: I would like to offer  
13 Exhibits 1 through 3.

14 MR. CARR: No objection.

15 MR. WARNELL: Oh, I'm sorry. We  
16 haven't admitted your exhibits. Exhibits 1 through 3  
17 are admitted.

18 (Exhibits 1 through 3 admitted.)

19 MR. WARNELL: If there are no further  
20 questions, then we will take under advisement Case  
21 Number 11601 and the other ten cases -- or other nine  
22 cases, there is a total of ten cases, as stated in  
23 the beginning. And with that, let's take a 15-minute  
24 break.

25 I do hereby certify that the foregoing is  
a complete record of the proceedings in  
the Examiner hearing of Case No. \_\_\_\_\_,  
heard by me on \_\_\_\_\_.

\_\_\_\_\_, Examiner

**PAUL BACA PROFESSIONAL COURT REPORTERS**

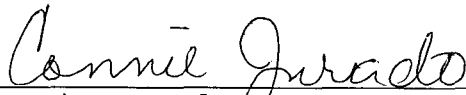
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## REPORTER'S CERTIFICATE

I, CONNIE JURADO, do hereby certify that I reported the foregoing case in stenographic shorthand and transcribed, or had the same transcribed under my supervision and direction, the foregoing matter and that the same is a true and correct record of the proceedings had at the time and place.

I FURTHER CERTIFY that I am neither employed by nor related to 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 14th day of October, 2010.

  
Connie Jurado, CCR, RPR  
New Mexico CCR No. 254  
Expires: December 31, 2010