

KELLAHIN & KELLAHIN
Attorney at Law

W. Thomas Kellahin
New Mexico Board of Legal
Specialization Recognized Specialist
in the area of Natural resources-
oil and gas law

P.O. Box 2265
Santa Fe, New Mexico 87504
117 North Guadalupe
Santa Fe, New Mexico 87501

Telephone 505-982-4285
Facsimile 505-982-2047
tkellahin@aol.com

January 22, 2003

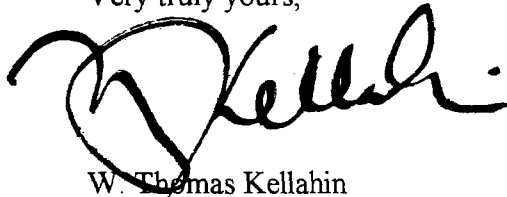
Ms. Lori Wrotenbry, Director
Oil Conservation Division
1220 South Saint Francis Drive
Santa Fe, New Mexico 87505

Re: Reply to San Juan Coal Company's motion to a stay
Fruitland Infill Case
NMOCD Case No. 12888
Order R-8768-C

Dear Ms. Wrotenbry:

On behalf of Burlington Resources Oil & Gas Company LP and Richardson Operating Company, and in accordance with Mr. Steve Ross's Memorandum dated January 16, 2003, please find enclosed their objection to San Juan Coal Company's motion to stay Order R-8768-C.

Very truly yours,



W. Thomas Kellahin

Cc: Counsel of record

RECEIVED
JAN 22 11 34 AM '03

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

**APPLICATION OF THE FRUITLAND COALBED
METHANE COMMITTEE TO AMEND RULE 4
AND 7 OF THE SPECIAL RULES AND REGULATIONS
FOR THE BASIN-FRUITLAND COAL (GAS) POOL
AND FOR THE TERMINATION OF THE CEDAR HILLS-
FRUITLAND BASAL COAL POOL AND THE CONCOMITANT
EXPANSION OF THE BASIN-FRUITLAND COAL (GAS) POOL,
RIO ARriba, SAN JUAN, McKINLEY AND
SANDOVAL COUNTIES, NEW MEXICO**

**CASE 12888
De Novo**

**BURLINGTON RESOURCES OIL AND GAS COMPANY LP
AND RICHARDSON OPERATING COMPANY'S
RESPONSE TO
SAN JUAN COAL COMPANY'S
APPLICATION TO STAY DIVISION ORDER R-8768-C**

Burlington Resources Oil and Gas Company LP ("Burlington") and Richardson Operating Company ("Richardson") hereby respond in opposition to San Juan Coal Company's ("SJCC") application to stay Division Order R-8768-C and in support state:

THE INFILL CASE:

(1) In May, 2002, the Fruitland Coalbed Methane Committee filed an application with the New Mexico Oil Conservation Division ("Division") for infill drilling of the Basin-Fruitland Coal Gas Pool ("Pool") which was docketed as Case 12888 and heard in the Division in Farmington, New Mexico on July 9, 10, 2002.

(2) On October 15, 2002, the Division entered Order R08668-C that approved infill drilling for the Low Productivity Area ("LPA") of the Pool.

(3) The LPA includes all of the San Juan Coal Company's ("SJCC") coal leases and all of Richardson and Dugan Production Corporation's ("Dugan") oil & gas Leases identified as the Richardson Area and the Dugan Area. See Exhibit (1)

(4) In a separate proceeding, Richardson had already applied for infill drilling (Case 12274) of an area objected to by SJCC. ("Richardson Area")

(5) On July 8, 2002, SJCC entered an appearance in the Infill Case (Case 12888) and moved to incorporate the record made before the Division in the Richardson Case (Case 12274 that resulted in Order R-11775 approving Richardson's application for infill drilling of a portion of the Pool part of which was subject to certain SJCC's coal leases.

(6) In doing so, SJCC requested:

(a) the area covered by the Richardson Case be excluded from the Infill Case;

(b) stated that "In lieu of presenting testimony on SJCC's position regarding infill drilling in the Pool, insofar as it covers its coal leases outside the Richardson Area (referring to what is now called the "Dugan Area"), SJCC requests that the entire record from the Richardson Case be incorporated into the record in the Infill Case."

(7) When SJCC motion was discussed at the July 9, 2002 hearing, SJCC's attorney was not present to discuss either the Richardson Area or the Dugan Area with the Examiner or the attorneys present for Burlington, Richardson or Dugan. **See Exhibit 2 (at Transcript page 110).**

(8) On October 15, 2002, the Division entered Order R-8768-C that, among other things, excluded the Richardson Area from the Infill Case. **See Order R-8768-C page 17, No. 55.**

THE RICHARDSON CASE:

(9) On November 13-14, 2002, the Division heard the Richardson Case and over SJC objection, on June 6, 2002, entered Order R-11775 approving infill drilling for the Richardson Area.

(10) SJCC requested a Commission De Novo Hearing and on October 29-31, 2002, the Commission held that 3 day hearing.

(11) On December 19, 2002, the Commission entered Order R-11775 approving infill drilling for the Richardson Area and denied SJCC's objection.

(12) On January 8, 2003, SJCC filed a motion for Rehearing with the Commission.

(13) The Richardson Area is no longer subject to a stay.

THE DUGAN CASE:

(14) On December 5, 2002, SJCC filed a motion to stay the order in the Infill Case and stated that "while the Commission hears and decides this matter (referring to the Richardson Case) SJCC requests that the Director prevent Dugan and others from pursuing any drilling, recompletion or fracturing of wells, or related activities...."

(15) SJCC continues to vent and thereby waste the methane gas owned by Richardson and Dugan.

SJCC HAS FAILED TO PROPERLY ASSESS DIVISION JURISDICTION OVER THE DUGAN AREA

SJCC submitted to Division jurisdiction, but having lost, SJCC is demanding multiple procedures as a device to stall the implementation of those adverse decisions.

On December 5, 2002, SJCC filed an application for a Stay of the order in the Infill Case (R-8768-C) insofar as it covered the Dugan Area. What SJCC failed to do was to either include the Dugan Area in the Richardson Case or to exclude the Dugan Area from the Infill Case. Instead, SJCC chose to ask for the exclusion of the Richardson Area from the Infill Case when it was heard on July 9-10, 2002 but failed to include the Dugan Area in its request. And to make matters even more confusing, obtained the incorporation of the record in the Richardson Case into the record for the Infill Case.

Having failed to avoid infill drilling of the Richardson Area, and recognizing that the Commission has no jurisdiction to stay of Richardson Order, SJCC now seeks to circumvent that limitation by seeking a Division Stay of the Infill Order over acreage it did not seek to prevent in any of the other proceedings. (The Dugan Area).

STATUS QUO

SJCC claims that a Stay will preserve the status quo while the Commission considers SJCC's application for hearing De Novo in the Richardson Case. Preserving the Status Quo has become the secret weapon of SJCC.¹ SJCC is using the state quo as a means of delay: (a) first, the Commission has decided the Richardson Case against SJCC and (b) second, SJCC continues to vent and waste the Gas by proceeding with underground mining.

¹ Howard, Philip K.; "The Death of Common Sense" 1994, Warner Books, Inc.

A PLAYGROUND FOR MENIPULATION:

SJCC has been provided with a full and adequate process but continues to manipulate the system. How many ways and how many times do the regulators have to tell SJCC "No?" SJCC took its coal leases subject to the prior rights of the oil and gas leases, but has sought every possible means to avoid the contracts that they agreed to. SJCC made its investment with full knowledge of the existence of more than 76 wells in the Richardson Area and more than 22 wells in the Dugan Area. SJCC agreed to allow the gas to be produced before it mined the coal, but then changed its mind. After all of this, SJCC had its arguments rejected twice by the BLM, twice by the Division, and once by the Commission.

As a further blocking device, SJCC implies that it will also seek a review of the Commission order in the Richardson Case by asserting the applicability of an ambiguous statute adopted in 1977. See 1978 NMSA Section 70-2-26. This statute adopted in 1977 was originally intended to provide a quick review of a Commission order to see if it "contravened the State Energy Plan". It was amended in 1987 to delete "Energy Plan" by substituting "Public Interest" and is now unconstitutionally vague statute that violates due process rights.

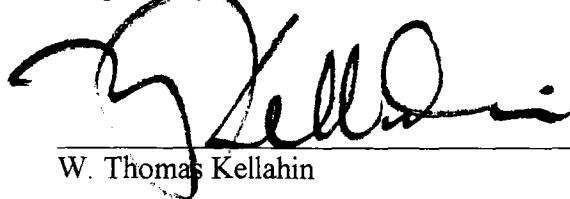
By their own actions, SJCC has constructed a wall between it and any accountability for the consequences of its own poor judgment. SJCC arrogance is beyond belief.²

CONCLUSION:

It is time for the Buck to Stop. SJCC has a mining plan, which will unreasonable interfere with Richardson's and Dugan's abilities and rights to produce the coalbed Methane gas within the Fruitland Coalbed gas formation pursuant to a plan originally agreed to by SJCC. Richardson's application and Dugan's activities are attempts to prevent the waste of valuable gas resources by acceleration the production of gas from the Fruitland formation prior to SJCC mining the coal and wasting the gas.

WHEREFORE, Burlington Resources Oil and Gas Company LP and Richardson Operating Company hereby request that the Application of SJCC for a stay of Division Order R-8768-CV be denied.

Respectfully Submitted,



W. Thomas Kellahin

² Scott Adams, "Dilbert's 2003 Calendar", February 16, 2003, United Features Syndicate, Inc.

CERTIFICATE OF SERVICE


I, W. Thomas Kellahin, certified that on this January 22, 2003, a true and correct copy of the foregoing was transmitted by facsimile to:

James Bruce, Esq.
Larry R. Auchersman, Esq.
Charles Roybal, Esq.
Attorneys for San Juan Coal Company
(505) 982-2151

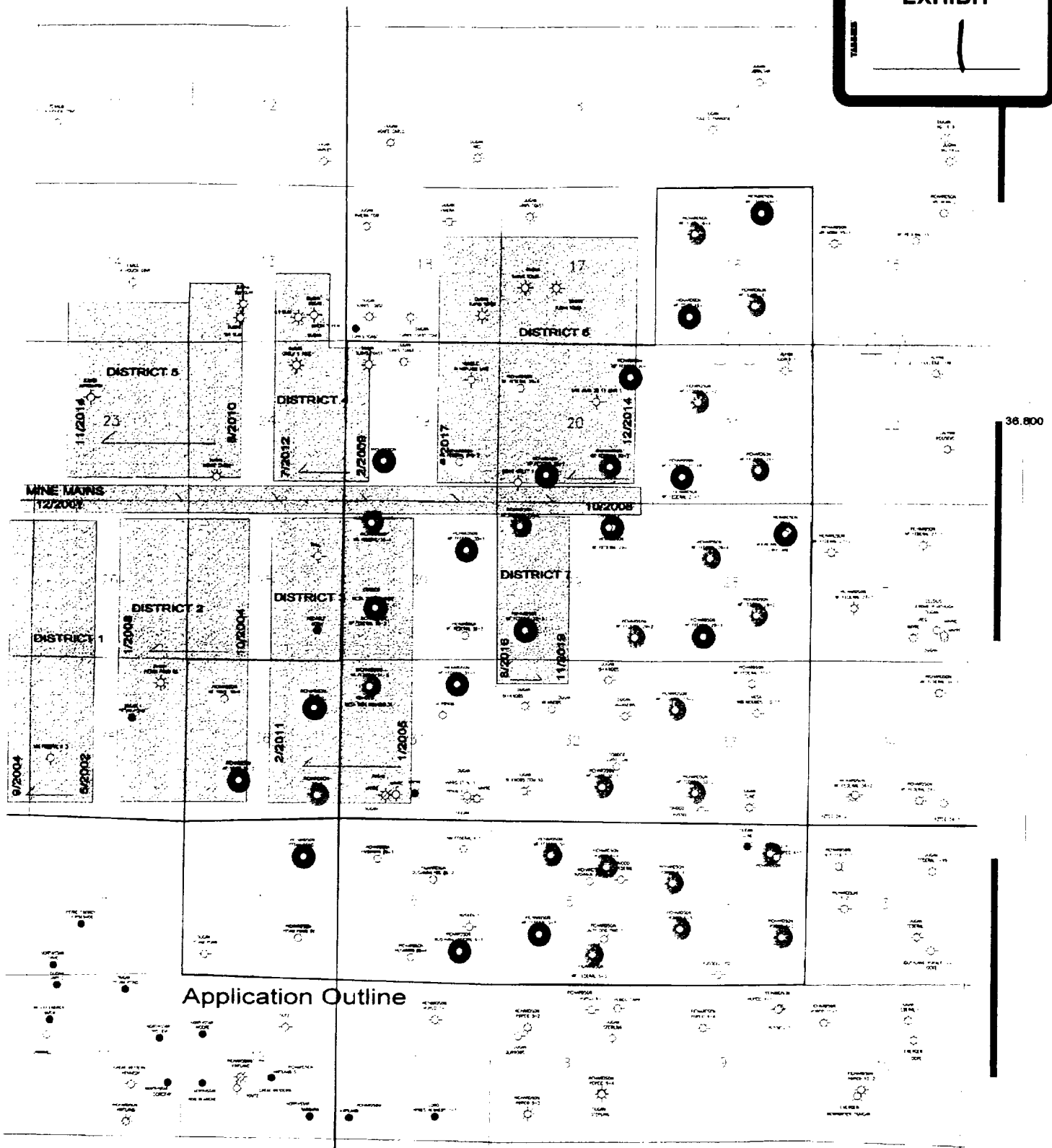
J. Scott Hall, Esq.
Attorney for Conoco/Phillips
(505) 989-9857

William F. Carr, Esq.
Attorney for BP Amoco
(505) 983-6043

John A. Dean, Jr.
Attorney for Dugan Petroleum Corporation
(505) 327-6034



W. Thomas Kellahin



LEGEND

PROPOSED LOCATION

● FRUITLAND COAL RECOMP.

● FRUITLAND COAL PRODUCERS

RICHARDSON OIL COMPANY

WEST FARMINGTON PROJECT
 San Juan County, New Mexico
 Projected Mining Area

REH

9/2002

Scale 1:24000

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. 12,888

APPLICATION OF THE FRUITLAND COALBED)
 METHANE STUDY COMMITTEE FOR POOL)
 ABOLISHMENT AND EXPANSION AND TO AMEND)
 RULE 4 AND 7 OF THE SPECIAL RULES AND)
 REGULATIONS FOR THE BASIN-FRUITLAND COAL)
 GAS POOL FOR PURPOSES OF AMENDING WELL)
 DENSITY REQUIREMENTS FOR COALBED METHANE)
 WELLS, RIO ARRIBA, SAN JUAN, MCKINLEY)
 AND SANDOVAL COUNTIES, NEW MEXICO)

02 JUL 30 AM 12:56

OIL CONSERVATION DIV.

REPORTER'S TRANSCRIPT OF PROCEEDINGSEXAMINER HEARING (Volume I, Tuesday, July 9th, 2002)

BEFORE: MICHAEL E. STOGNER, Hearing Examiner

July 9th-10th, 2002

Farmington, New Mexico

This matter came on for hearing before the New Mexico Oil Conservation Division, MICHAEL E. STOGNER, Hearing Examiner, on Tuesday, July 9th, 2002, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South Saint Francis Drive, Room 102, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

* * *

STEVEN T. BRENNER, CCR
 (505) 989-9317



A P P E A R A N C E S

FOR THE DIVISION:

DAVID K. BROOKS
Attorney at Law
Energy, Minerals and Natural Resources Department
Assistant General Counsel
1220 South St. Francis Drive
Santa Fe, New Mexico 87505

FOR BURLINGTON RESOURCES OIL AND GAS COMPANY:

KELLAHIN & KELLAHIN
117 N. Guadalupe
P.O. Box 2265
Santa Fe, New Mexico 87504-2265
By: W. THOMAS KELLAHIN

FOR PHILLIPS PETROLEUM COMPANY:

MILLER, STRATVERT and TORGERSON, P.A.
150 Washington
Suite 300
Santa Fe, New Mexico 87501
By: J. SCOTT HALL

FOR BP AMERICA, INC.; WILLIAMS PRODUCTION COMPANY;
and CHEVRON-TEXACO:

HOLLAND & HART, L.L.P., and CAMPBELL & CARR
110 N. Guadalupe, Suite 1
P.O. Box 2208
Santa Fe, New Mexico 87504-2208
By: WILLIAM F. CARR

(Continued...)

A P P E A R A N C E S (Continued)

FOR DUGAN PRODUCTION CORPORATION:

CURTIS & DEAN
P.O. Drawer 1259, 506 West Arrington
Farmington, NM 87401
By: JOHN DEAN

FOR SAN JUAN COAL COMPANY and
TEXAKOMA OIL AND GAS CORPORATION:

JAMES G. BRUCE, Attorney at Law
324 McKenzie
Santa Fe, New Mexico 87501
P.O. Box 1056
Santa Fe, New Mexico 87504

* * *

ALSO PRESENT:

FRANK T. CHAVEZ
District Supervisor
Aztec District Office (District 3)
NMOCD

* * *

1 (The following proceedings had at 1:15 p.m.)

2 EXAMINER STOGNER: Before we get started here,
3 off the record.

4 (Off the record)

5 EXAMINER STOGNER: -- and this was filed by Mr.
6 Jim Bruce for San Juan Coal Company. Is there any
7 discussion with the legal --

8 MR. KELLAHIN: Mr. Stogner, I represent
9 Richardson Operating Company. We were the Applicant in
10 that case. It was heard by you last November. An order
11 was issued recently. And at the prehearing conference last
12 Tuesday, we discussed this topic with the coal company and
13 you present.

14 We're opposed to Mr. Bruce's motion.

15 At that prehearing conference I asked that the
16 Richardson property, which also includes about 1600 acres
17 that Dugan controls, I asked that that area remain included
18 in this hearing now, because the Richardson property is
19 only part of the dispute with the coal company. Mr.
20 Bruce's filing shows an outline, and he's outlined in green
21 the rest of the coal property.

22 So the dispute with the coal company is more
23 property than is involved with Richardson. We ask that
24 that be included in the case today, and you decided to
25 exclude it. That matter is currently before the Commission

1 on the *de novo* appeal.

2 Having excluded the acreage, it makes not sense
3 to now encumber this record with a transcript for a case
4 that involves acreage that you've already excluded, so I
5 see no point in doing this, unless you want to change your
6 mind and put the Richardson acreage back into this hearing,
7 and I'd be delighted with that change.

8 MR. BROOKS: Mr. Kellahin, for purposes of
9 clarification on the exhibit you just showed, what is the
10 acreage that was the subject matter of the severance order
11 that we entered? I remember asking several questions of
12 you and of other counsel that were there about this
13 issue --

14 MR. KELLAHIN: Mr. Brooks, if you look at Mr.
15 Bruce's exhibit --

16 MR. BROOKS: Yes, sir.

17 MR. KELLAHIN: -- the area outlined in yellow is
18 the acreage approved for infill drilling for Richardson.

19 MR. BROOKS: Right.

20 MR. KELLAHIN: Within that area Mr. Dugan
21 controls about 1800 acres. It's not specific to operator,
22 it's not specific to the well. That area has been
23 excluded, and it includes areas that are controlled by
24 Dugan.

25 MR. BROOKS: Right.

1 MR. KELLAHIN: In addition, outside of the
2 yellow, in the green area, there are other leases held by
3 Dugan and others that now have not been excluded.

4 MR. BROOKS: So the --

5 MR. KELLAHIN: Does that answer --

6 MR. BROOKS: -- green -- the area that is within
7 the green outline but not within the yellow outline is
8 still within this proceeding --

9 MR. KELLAHIN: Right.

10 MR. BROOKS: -- pursuant to our severance order?
11 That was our understanding.

12 MR. KELLAHIN: Right.

13 MR. BROOKS: Okay, thank you.

14 EXAMINER STOGNER: Mr. Dean?

15 MR. DEAN: My name is John Dean, I represent
16 Dugan Production. And I guess our position is that we
17 recognize that in the other case we have some acreage
18 that's bound by that case and we don't dispute that, but we
19 have other acreage surrounding that co-exists with coal
20 leases, and our understanding from Mr. Bruce is, there's
21 going to be no request that any Dugan land be excluded from
22 this hearing, other than what's in the Richardson case. As
23 long as that's true, we don't have any objection to that
24 being put in the record.

25 But if they're going to ask that the Dugan land

1 be excluded, then we object to the Richardson record being
2 put in this case, which we did not appear at by our own
3 choice, but we did not appear at that hearing. We do
4 recognize that we're bound in that case, our acreage that's
5 inside the acreage that's described in that application.

6 But it's been represented to me by Mr. Bruce that
7 there be no request from San Juan Coal to exclude any Dugan
8 land from the change in the Fruitland Coal rules, if there
9 is one. And as long as that's the case, we don't object to
10 the record being put in.

11 But we don't understand why it needs to be put in
12 here, because the land that it refers to is excluded from
13 this hearing, which is part of our land. So we don't
14 understand why it needs to be in there.

15 MR. BROOKS: I believe that their motion, which
16 you have read, does not ask for any specific relief, other
17 than to place this evidence in the record.

18 MR. DEAN: No. But one would wonder what the
19 purpose of having that record in this case would be.

20 MR. BROOKS: Okay.

21 (Off the record)

22 EXAMINER STOGNER: Thank you, gentlemen. At this
23 time, I'm going to approve the motion and incorporate the
24 record in Case Number 12,734, into this matter at this
25 time.