

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. 13,023
)
APPLICATION OF POGO PRODUCING COMPANY)
FOR AN EXCEPTION TO DIVISION RULES TO)
ALLOW TWO OPERATORS IN A SINGLE WELL)
UNIT OR, IN THE ALTERNATIVE, FOR TWO)
NONSTANDARD GAS SPACING AND PRORATION)
UNITS, EDDY COUNTY, NEW MEXICO)

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: MICHAEL E. STOGNER, Hearing Examiner

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March 13th, 2003

Santa Fe, New Mexico

Oil Conservation Division

This matter came on for hearing before the New Mexico Oil Conservation Division, MICHAEL E. STOGNER, Hearing Examiner, on Thursday, March 13th, 2003, 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.

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March 13th, 2003
 Examiner Hearing
 CASE NO. 13,023

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A P P E A R A N C E S

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By: PAUL R. OWEN

* * *

1 WHEREUPON, the following proceedings were had at
2 10:29 a.m.:

3 EXAMINER STOGNER: At this time, hearing will
4 come to order. Call Case Number 13,023, which is the
5 Application of Pogo Producing Company for an exception to
6 Division Rules to allow two operators in a single well unit
7 or, in the alternative, for two nonstandard gas spacing and
8 proration units, Eddy County, New Mexico.

9 Call for appearances.

10 MR. BRUCE: Mr. Examiner, James Bruce of Santa
11 Fe, representing the Applicant. I have one witness to be
12 sworn.

13 MR. OWEN: May it please the Examiner, Paul R.
14 Owen, of the Santa Fe law firm of Montgomery and Andrews,
15 appearing on behalf of Atasca Resources, Inc., filed a
16 written entry of appearance on behalf of that company this
17 morning, also appearing on behalf of Tribo Production
18 Company. I have not filed an entry of appearance on behalf
19 of that company.

20 I would like to state at this time that I was
21 retained yesterday afternoon after a very lengthy
22 prehearing conference and did not have a chance to discuss
23 this with Mr. Bruce before yesterday late evening.

24 Because I have not had the opportunity to review
25 anything with respect to this case other than an operating

1 agreement, which was faxed to me this morning, I would make
2 the request at this time, the outset of the hearing, that
3 at the conclusion of the hearing this matter be continued
4 until the -- I hate to do this to you, Mr. Examiner --
5 until the April 11th docket. I simply don't want to go
6 longer than that, because I don't want to inconvenience the
7 Applicant more than is necessary.

8 EXAMINER STOGNER: I believe you meant April 10th
9 docket?

10 MR. OWEN: April 10th, you're right. And at that
11 time present evidence in support of my client's position,
12 if that is appropriate at that time.

13 EXAMINER STOGNER: Mr. Bruce?

14 MR. BRUCE: Mr. Examiner, I do not consent to the
15 continuance. As my witness will testify, at this point we
16 have been dealing with Atasca and Tribo Production Company
17 for over two years. I think that's been plenty enough time
18 for them to deal with this matter.

19 Secondly, by letter dated March 5th, addressed to
20 Mr. Brooks, Mr. Richard Bowman on behalf of Atasca
21 Resources stated that he objected to the Application and
22 that he would present its opposition -- he would appear at
23 the March 13th, 2003, hearing to present its opposition to
24 Pogo Producing Company's Application. He's had time to do
25 so, he just hasn't taken advantage of it.

1 Because of -- I believe the Hearing Examiner has
2 a vacation, it would have to be continued for four more
3 weeks. That's just another month of delay after two years
4 of no movement on this matter. I would request that this
5 matter be taken under advisement at the end of the day, and
6 if Atasca is unhappy with the results, then it can appeal
7 to the Commission.

8 EXAMINER STOGNER: At this time I'm going to hear
9 the case and then take your motion under advisement,
10 probably have you -- Are you going to be here for the rest
11 of the evening, Mr. Owen?

12 MR. OWEN: The rest of the afternoon?

13 EXAMINER STOGNER: The rest of the afternoon --
14 or morning, I should say.

15 MR. OWEN: I hope we don't go into the evening.

16 MS. WALLACE: Me too.

17 (Thereupon, the witness was sworn.)

18 LESLYN WALLACE,
19 the witness herein, after having been first duly sworn upon
20 her oath, was examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. BRUCE:

23 Q. Will you please state your name and city of
24 residence for the record?

25 A. Leslyn Wallace, Midland, Texas.

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

2 A. I work for Pogo Producing Company as a district
3 landman.

4 Q. Have you previously testified before the
5 Division?

6 A. Yes, sir, I have.

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

9 A. Yes, sir, they were.

10 Q. And are you familiar with the land matters
11 involved in this Application?

12 A. Yes, sir.

13 MR. BRUCE: Mr. Examiner, I'd tender Ms. Wallace
14 as an expert petroleum landman.

15 EXAMINER STOGNER: Any objection?

16 MR. OWEN: No objection.

17 EXAMINER STOGNER: Ms. Wallace is so qualified.

18 Q. (By Mr. Bruce) Ms. Wallace, on the first few
19 exhibits we're going to skip around a little bit, but could
20 you identify Exhibit 1 and briefly describe just the lands
21 involved in this case?

22 A. Okay, Exhibit 1 is a plat of Section 19, Township
23 20 South, Range 27 East, Eddy County, New Mexico. As you
24 can see, that section consists of two state leases. The
25 green lease is depicted as K-851, and State of New Mexico

1 Lease L-355 is depicted in yellow.

2 There also is a well, the State 19 Com Number 1
3 well, denoted in the southwest quarter of the northwest
4 quarter of that section --

5 Q. Southeast quarter.

6 A. Excuse me, the southeast quarter of the northwest
7 quarter of that section. And Pogo Producing has proposed
8 the State 19 Com Number 2, which is located in the
9 northwest quarter of the southwest quarter of the same
10 section.

11 Q. Okay. Before we get into the ownership that's
12 set forth on Exhibit 1, let's move on to Exhibit 2 and
13 discuss the pool we're involved in and the well spacing.
14 What is Exhibit 2?

15 A. Exhibit 2 is a plat which denotes the McMillan-
16 Morrow Gas Pool. You'll see that the five sections
17 outlined in the heavy purple line are lands that are within
18 the McMillan-Morrow Gas Pool, and Pogo has a working
19 interest in all of the acreage that's shaded in yellow.

20 Q. What are the pool rules in this pool? And I
21 refer you to Exhibit 3.

22 A. The McMillan-Morrow Gas Pool was spaced on 640-
23 acre spacing by Order Number R-2917. Under that Order only
24 one well was allowed per section. But about two and a half
25 years ago Pogo applied to the Division to allow for infill

1 drilling, and under Order R-2917-C the Division allowed for
2 four wells to be drilled per section or one well per
3 quarter section.

4 MR. BRUCE: Okay. And Mr. Examiner, on Exhibit 2
5 the McMillan-Morrow Pool rules only apply to those five
6 sections, and not to acreage outside of the pool.

7 Q. (By Mr. Bruce) Now, going back to Exhibit 2, Ms.
8 Wallace, what has been the development history in this
9 pool?

10 A. Pogo began looking at this area about four years
11 ago, and in January of 2000 we drilled and completed the
12 Davis Number 1 well, located in the south half of Section 7
13 -- actually it's in the southwest quarter of the southwest
14 quarter of Section 7. Since that time Pogo has drilled two
15 wells in Section 7. And due to an oversight, I have to
16 say, on this exhibit, the Davis 7 Number 2, located in the
17 southeast quarter of the southeast quarter, is not denoted
18 on this map. But that's the second well that Pogo drilled
19 in the south half of Section 7.

20 Then also Pogo drilled two wells in Section 18,
21 and we have drilled three wells in Section 24. We are also
22 currently working with Yates to drill a well in the west
23 half of Section 8, which is outside the McMillan-Morrow Gas
24 Pool, and then also Yates is currently drilling the well in
25 the southeast quarter of Section 13.

1 Q. Has Pogo been instrumental in reviving
2 development in this pool?

3 A. Yes, sir, we have.

4 Q. Okay. So until before the Davis 7 Number 1 in
5 the southwest southwest of Section 7, there hadn't been any
6 drilling in this pool in what, 18 years?

7 A. That's correct. The first well, I believe -- or
8 the pool was discovered in 1964. There was a well in the
9 southeast quarter of 7 and the northeast quarter of 13, and
10 there were four more wells drilled from 1964 to 1982, and
11 then there was no other development until Pogo began
12 drilling in the year 2000.

13 Q. Okay. Now, let's go back to your first exhibit,
14 Exhibit 1, and could you discuss briefly the leasehold
15 ownership in these two leases?

16 A. Yes, sir. As I denoted, the area in green is
17 State of New Mexico K-851. And you can see at the bottom
18 of the page the operating rights are owned 50 percent by
19 Tribo Production Company and Pogo Production Company.

20 The acreage denoted in yellow is State of New
21 Mexico L-355, and that ownership is also broken out at the
22 bottom: Pogo Producing Company 50 percent, Nearburg
23 Exploration 25 percent, and then Pogo has recently acquired
24 the remaining one-half of Lario's interest, which is 25
25 percent in that same lease.

1 You can also see that Pogo has proposed the State
2 19 Com Number 2 in December of 2000, and because of the
3 nonconsent before payout, Pogo owns 100 percent of the
4 State 19 Com Number 2 proposal.

5 Q. Okay. Now, the operator of the 19-1 well is
6 Atasca Resources. Does Atasca own an interest, a working
7 interest, in the wells?

8 A. No, sir, Atasca does not own an interest. But
9 it's my understanding that Atasca Resources is the
10 operating company for Tribo Production Company, and it
11 appears that both companies have the same address.

12 Q. Okay. Now, until recently were there other
13 working interest owners in the 19-1 well?

14 A. Yes, sir. Enline Resources, Lora Canter and
15 Lario Oil and Gas Company, along with Nearburg Exploration,
16 also owned an interest in the State 19 Com Number 1. We
17 have since purchased the interest, or a portion thereof, of
18 Enline, Lora Canter and Lario, Nearburg still owns an
19 interest in that well.

20 Q. Okay. Is royalty interest common throughout
21 this --

22 A. Yes, sir, it is. The State of New Mexico owns a
23 one-eighth royalty under both leases.

24 Q. And are there any overriding royalty interests in
25 the two leases?

1 A. Yes, sir, Craig Clark, Dave Cromwell, Lora Canter
2 and Lario Oil and Gas Company all own overrides under this
3 section.

4 Q. Okay. Now, referring to your Exhibit 4, has Pogo
5 had contacts with Atasca and Tribo to try to resolve any
6 issues regarding drilling wells and operatorship, etc.?

7 A. Yes, sir, we have. And Mr. Examiner, unless you
8 require, I had not intended to go through this exhibit line
9 item by line item, but I would simply like to point out a
10 few things.

11 This is, in fact, a chronology or a time line, if
12 you will, of Pogo's correspondence with Tribo and/or
13 Atasca. I would like to state that David Knepper and Shawn
14 Martin, both listed in this chronology, are landmen that
15 have worked for Tribo Production Company. Mr. Phillip
16 Pavlich is an engineer for Tribo. But according to those
17 individuals, Mr. Richard Bowman is the president and owner
18 of Tribo Production and is the individual with the
19 authority to make decisions.

20 But what's notable about this chronology is that
21 Pogo has been attempting either directly or through a
22 broker to work out some sort of agreement with Tribo for
23 the development of Section 19 since December of 2000.

24 If you'll note, in February of 2001, per David
25 Knepper, we were told -- Pogo was told that they were going

1 to drill an additional well in Section 19 and had prepared
2 an AFE. As of this date we have not sen an AFE from Tribo
3 to drill an additional well.

4 Then in June of 2002, discussions regarding the
5 recompletion of the State 19 Com Number 1 were had with Mr.
6 Knepper and with Mr. Pavlich, and as of this date we have
7 seen no AFE or recompletion of that well from Tribo
8 Production Company.

9 And then finally, it's notable that Mr. Bowman,
10 who has not responded to any of our requests specific to
11 him until finally in early January after Pogo Producing had
12 proposed the well -- so for almost two years we got no
13 response for him. And then on January 8th, in a
14 conversation that I had with Mr. Bowman, he agreed to turn
15 over operations in Section 19 to Pogo, provided that Pogo
16 would comply with certain conditions that Mr. Bowman had
17 set forth.

18 Q. So in short, you've been dealing with over two
19 years and -- with Atasca and Tribo for over two years, but
20 you could never get Mr. Bowman to agree to anything?

21 A. No, sir.

22 Q. And again, to the best of your knowledge or what
23 you've been informed is that Mr. Bowman is the one who has
24 the authority to make a deal?

25 A. Yes, sir, we were told by both Mr. Knepper and

1 Mr. Pavlich that Mr. Bowman wanted to make a deal or wanted
2 to work something out with Pogo, but we have to this not
3 had anything worked out.

4 Q. Okay. Now, looking again at your Exhibit 1,
5 which is the ownership plat, looking at the green lease,
6 Pogo is listed as 50 percent owner of that lease. Who did
7 Pogo buy that from?

8 A. We bought that interest from Enline Resources.

9 Q. Okay, so prior to that time it was 50-percent
10 owned by Tribo Production Company and Enline resources?

11 A. Yes, sir.

12 Q. Okay. Now, when you get -- They both owned
13 record title as well as operating rights?

14 A. Yes, sir, they both owned 50 percent record title
15 in that lease.

16 Q. And you bought the operating rights and record
17 title?

18 A. Yes, sir, we did.

19 Q. Now, when a State of New Mexico lease is owned by
20 two companies, does the State Land Office require both of
21 the existing record title owners to sign the assignment
22 into Pogo and the other interest owner?

23 A. Yes, sir, it does, in order for Pogo to be
24 recognized as a record title owner.

25 Q. And when Pogo purchased Enline's interest, did

1 you have -- at your direction were there record title
2 assignments of the state lease prepared and signed by
3 Enline?

4 A. Yes, sir, there were.

5 Q. And signed by Pogo?

6 A. Yes, sir.

7 Q. Were they submitted to Tribo Production Company?

8 A. Yes, sir, they were submitted in December of
9 2002.

10 Q. Have you ever gotten those assignments back?

11 A. No, sir, I have not.

12 Q. So until you get those, the State Land Office
13 will not accept Pogo's record title interest?

14 A. That is correct, sir.

15 Q. Okay. Now, at this time doe Pogo have a time
16 limit on working on the 19-2 well?

17 A. Yes, sir, we do, and first and foremost, to be
18 entitled to the benefits under the nonconsent provision in
19 the existing JOA, Pogo was required to commence operations
20 on this property prior to February the 25th, and on
21 February 24th Pogo commenced dirt work and built the road
22 and the location. We sent a letter advising Mr. Bowman
23 that we were doing such and that we had a rig in the area
24 and that when it finished drilling the well that it was
25 currently on, that it would be moving to the State 19 Com

1 Number 2. So if this is continued, it could perhaps delay
2 the time constraints that we're under with respect to the
3 joint operating agreement.

4 Secondly, Pogo is under certain time constraints
5 that we have under term assignments from both Lora Canter
6 -- in the absence of establishing additional production,
7 that term assignment will expire August 1st of this year.
8 And additionally the term assignment we have from Lario for
9 the same reason will expire August 25th of this year.

10 Q. Now, was the Lora Canter term assignment set to
11 expire prior to this hearing?

12 A. Yes, sir, it was set to expire February 1st of
13 this year. However, we did buy an extension from Ms.
14 Canter to give us an additional six months to try to get a
15 well drilled and work out an arrangement with Tribo such
16 that we would have time to get a well drilled.

17 Q. How much did that extension cost?

18 A. \$8000.

19 Q. So you've already been set back \$8000 by the
20 inability of the parties to come to terms?

21 A. Yes, sir, that's correct.

22 Q. Are there any -- So if there's further delay, you
23 could lose these term assignments, and that would of course
24 affect Pogo's interest and correlative rights in this
25 section?

1 A. Yes, sir, that's correct.

2 Q. Are there any other problems which could
3 adversely affect the interest owners in Section 19?

4 A. Actually yes. Both state leases are held by
5 production from the State 19 Com Number 1. My
6 understanding is that production from that well is less
7 than 400 MCF per month, and Jeff Albers at the State Land
8 Office stated that that well is, in fact, considered
9 marginal.

10 So unless additional production is established,
11 both of those state leases could be in jeopardy.

12 Q. Okay. Is there any other issue affecting the
13 ability of Atasca to operate the State 19 Com Number 2
14 well?

15 A. Yes, sir, we believe there are. Atasca does not
16 have the surface damage improvement bond in place with the
17 State Land Office, and per advisement from the SLO any
18 record title owner of a state lease where those lands --
19 the surface are also owned by the State, that record title
20 owner is required to have such a bond in place, or the
21 lease can be terminated by the State Land Office.

22 Q. Okay, and that affects both the 19 -- that would
23 affect both wells, not just the Number 2 well?

24 A. Yes, it would affect both wells.

25 Q. Now, that issue regarding the surface damage

1 bond, can that issue be easily corrected?

2 A. Yes, sir, as a matter of fact, if Tribo
3 Production Company would simply execute the record title
4 assignments that have already been executed by both Pogo
5 and Enline, then the State Land Office would recognize Pogo
6 as a record title owner, and Pogo's blanket bond will
7 satisfy the State Land Office requirements.

8 It will cost Atasca nothing to do this, or will
9 cost Tribo nothing to do this, nor will it affect their
10 title in any way.

11 Q. What about Atasca's bond with the Oil
12 Conservation Division?

13 A. Atasca operates -- to my knowledge, they operate
14 only one well in the State of New Mexico, and according to
15 the OCD they have only a single well-plugging bond in place
16 for the State 19 Com Number 1. So even if Atasca were to
17 take over operations of this well, it could not produce
18 this well without additional bonding. In fact, without
19 that additional bonding, Atasca could not even get a permit
20 to drill the well.

21 Q. Now, Pogo was allowed to -- is -- Excuse me, let
22 me back up. Pogo has contacted the Artesia District Office
23 and filed an APD for this well, did it not?

24 A. Yes, sir, we have.

25 Q. And what have they told you regarding operation

1 of the well?

2 A. We have been told that we could drill and
3 complete the well at this time.

4 Q. But you would not be able, under the current
5 circumstances with Atasca as operator, to get a Form C-104
6 to produce the well?

7 A. We would not be able to produce the well, that's
8 correct.

9 Q. Okay. What is the cost of the proposed well?

10 A. We have an estimated dryhole cost of \$821,000 and
11 a completed cost of \$1.2 million, and as I stated earlier
12 Pogo is going to bear 100 percent of those costs.

13 Q. Now, a couple of final matters. There is an
14 operating agreement covering Section 9, is there not?

15 A. Section 19, yes, sir.

16 Q. Nineteen, excuse me.

17 What is the date of the agreement, and what does
18 it cover?

19 A. Yes, sir, it's dated June 20th, 1968, and it
20 covers all of Section 19, and the operating agreement has
21 been amended to cover the Morrow formation only. And
22 although Atasca Resources owns no record title or is not a
23 party to that operating agreement, Pogo has requested
24 documentation as to how Atasca was named the operator, and
25 as of this date we've received no such documentation.

1 Q. Now, the question is, why should Pogo be allowed
2 to operate the 19 Number 2 well if Atasca is the operator
3 under the JOA?

4 A. Well, first and foremost, Pogo or any consenting
5 party, even if they're a nonoperator, is allowed to drill
6 and complete a well if the operator goes nonconsent. So
7 we're allowed that much under the existing JOA. And
8 additionally, we do have approval from the Artesia District
9 Office to drill and complete the well.

10 Secondly, as I said earlier, we have asked Atasca
11 for evidence as to how they were properly appointed as
12 operator, and again we have not been provided such
13 evidence.

14 And then finally, as I've mentioned earlier,
15 Atasca is not properly bonded and therefore they may not
16 even be allowed to produce the 19-2 well. And if that is
17 the case, and then the 19-1 is deemed noncommercial by the
18 State Land Office, then both leases could terminate due to
19 nonproduction. And all of this will adversely affect all
20 the interest owners' correlative rights.

21 Q. They'll lose any interest in this section
22 whatsoever?

23 A. Correct.

24 Q. Now, Pogo has asked for either the 640-acre unit
25 to remain in place with Pogo allowed to operate the Number

1 2 well or two nonstandard units. Which alternative does
2 Pogo favor?

3 A. We actually would prefer to keep the 640-acre
4 unit in place and be allowed to become a suboperator of the
5 State 19 Com Number 2 and file all such reports in the name
6 of Atasca. Pogo is willing to take that responsibility and
7 the risk.

8 And also, we understand from the State Land
9 Office and Jeff Albers that if two nonstandard proration
10 units are formed by the Division, then the existing com
11 agreement, which covers all of Section 19, would be
12 terminated, and then two separate coms would instead need
13 to be formed. And given the difficulty that we've had up
14 to this point in time obtaining signatures from either
15 Tribo or Atasca, we think that it will be virtually
16 impossible to get their concurrence on new com agreements.

17 Q. Would nonstandard units affect any interest
18 ownership in the two wells?

19 A. No, sir. The working interest ownership would
20 remain the same as it is under the existing JOA and the
21 existing com. However, it will adversely affect one
22 overriding royalty interest owner.

23 Q. And who is that?

24 A. That is Dave Cromwell.

25 Q. Does his interest vary -- He has overrides in

1 both leases?

2 A. Yes, sir, he does.

3 Q. And they vary, so he would have a smaller
4 override in the Number 2 well than if it's retained as just
5 a 640-acre unit?

6 A. Yes, sir, that's correct.

7 Q. And Pogo does not desire to adversely affect his
8 correlative rights, does it?

9 A. No, sir, we do not.

10 Q. If that's the option, however, have other
11 nonstandard units been approved in this pool?

12 A. Yes, sir, they have. If you'll look at Exhibits
13 5, 6 and 7, three nonstandard proration units have been
14 previously approved, so this is not unusual.

15 Q. Okay. Now, what is Exhibit 8?

16 A. Exhibit 8 is a portion of Rule 104. We know that
17 one operator is required for 320-acre gas well units in
18 Eddy County, New Mexico. However, the Rule does not
19 address operators as to 640-acre units.

20 Q. Okay. Now, were all of the interest owners in
21 Section 19 notified of this hearing?

22 A. Yes, sir. Submitted as Exhibit 9 is an affidavit
23 of notice with copies of the notice letter and certified
24 return receipts.

25 Q. What is Exhibit 10?

1 A. Exhibit 10 is actually copies of letters from one
2 working interest owner and three overriding royalty
3 interest owners in support of Pogo's Application.

4 Q. Were Exhibits 1 through 10 prepared by you or
5 under your supervision or compiled from company business
6 records?

7 A. Yes, sir.

8 Q. And in your opinion is the granting of Pogo's
9 Application in the interest of conservation, the prevention
10 of waste and the protection of correlative rights?

11 A. Yes, sir.

12 MR. BRUCE: Mr. Examiner, I'd move the admission
13 of Pogo Exhibits 1 through 10.

14 EXAMINER STOGNER: Any objection?

15 MR. OWEN: No objection.

16 EXAMINER STOGNER: Exhibits 1 through 10 will be
17 admitted into evidence at this time.

18 MR. BRUCE: I pass the witness.

19 EXAMINER STOGNER: Mr. Owen?

20 MR. OWEN: May I have just a minute, Mr.
21 Examiner?

22 EXAMINER STOGNER: Yes.

23 CROSS-EXAMINATION

24 BY MR. OWEN:

25 Q. Ms. Wallace, you indicated that a JOA covers this

1 acreage; is that right?

2 A. Yes, sir.

3 Q. And that Atasca is the current operator?

4 A. Yes, sir.

5 Q. How do you know that Atasca is the current
6 operator?

7 A. Because we receive joint interest billings and --
8 yeah, because we receive joint interest billings in the
9 name of Atasca.

10 Q. Do you know if Atasca is the Division-approved
11 operator for the Number 1 well in this section?

12 A. Yes, sir, I believe that's the case.

13 Q. Do you have any indication that Atasca is somehow
14 not properly the operator under the JOA?

15 A. We have not been provided documentation to show
16 either way.

17 Q. Do you have any indication that Atasca is not the
18 correct operator under the JOA?

19 A. Again, because Atasca does not own any interest
20 in the contract area, you know, we are just uncertain as to
21 how Atasca was deemed as the operator under this OA.

22 Q. Have you ever seen a non-interest owner be a
23 contract operator of a well?

24 A. Yes, sir.

25 Q. Or a designated operator of the well?

1 A. Yes, sir.

2 Q. Have you ever seen that done without an agreement
3 in writing between subsidiaries?

4 A. Probably so, but not that I recall offhand.

5 Q. That's an accepted oil practice; is that right?

6 A. I believe so.

7 Q. Okay. Your Exhibit Number 4 lists a number of
8 contacts. Very few of those are from Pogo to Tribo -- I'm
9 sorry, from Tribo to Pogo. Does this Exhibit 4 list all
10 telephone calls made from representatives of Tribo or
11 Atasca to Pogo?

12 A. To the best of our record-keeping, yes, sir, it
13 does.

14 Q. It contains all phone messages, all letters, all
15 direct conversations between representatives, initiated by
16 representatives of Tribo or Atasca?

17 A. Again, to the best of my record-keeping, yes,
18 sir.

19 Q. Okay. I think you stated that Tribo and Atasca
20 has not sent you an AFE, or sent Pogo an AFE, for
21 recompletion of the Number 1 well; is that right?

22 A. That's correct, sir.

23 Q. They have not provided you with any proposal for
24 recompletion of that well?

25 A. Not in writing, no, sir.

1 Q. Okay. The term assignment that you reached with
2 Ms. Canter, the extension of that term assignment, when did
3 you reach that extension?

4 A. In January of this year.

5 Q. Had you made an application for approval of the
6 relief that you request in this case at that time?

7 A. I'm trying to recall the exact date. Not when we
8 -- No, sir, not when we negotiated with Ms. Canter, we had
9 not applied for this.

10 Q. So you filed your Application after you received
11 that extension?

12 A. Yes, sir.

13 Q. So the extension was not necessitated by Tribo or
14 Atasca's failure to -- or refusal to agree to the relief
15 requested for this Application, was it?

16 A. I believe it was, sir. If we -- I mean, we had
17 been trying, as I said before, for over two years to get a
18 well drilled here.

19 And because we had been able to do so and our
20 term assignment would have expired February 1st, what we
21 were trying to do was take precautions such that we
22 wouldn't go another six months with nothing happening, such
23 that we would have to buy another extension for Mr. Canter.

24 Q. Had you proposed this case, had you filed this
25 case at that time?

1 A. At the time that we --

2 Q. -- reached the extension?

3 A. No, sir.

4 Q. Okay. You stated that one of the reasons you
5 think that acreage is in jeopardy is because the Number 1
6 well is currently marginal; is that right?

7 A. Per Jeff Albers at the State Land Office, that's
8 correct, sir.

9 Q. Has Atasca or Tribo told you that it's going to
10 shut that well in anytime soon?

11 A. No, sir. We have written to Atasca asking for
12 current production data and asking the status of that well.

13 Q. Have you been able to obtain the current
14 production data from any of the public sources?

15 A. Yes, sir, but that data is about four months
16 behind.

17 Q. And is there a significant rate of decline shown
18 in that data?

19 A. I don't know if there's a significant rate of
20 decline. I think that the well has been close to marginal
21 for some time.

22 Q. More than a year?

23 A. I believe so, sir.

24 Q. Is there any indication that it will be less than
25 marginal in the time period that you've got before your --

1 expiration of your new term assignment?

2 A. According to Mr. Albers, I believe that's the
3 case.

4 Q. Has Mr. Albers been told that Tribo or Atasca
5 intends to shut in the well anytime soon?

6 A. I'm not aware of what Mr. Albers has been told by
7 Tribo.

8 Q. Does the State Land Office have any authority to
9 direct Atasca or Tribo to shut in the well because it's
10 marginal?

11 A. I don't know if they have authority to shut in
12 the well, but I believe they have the authority to demand
13 offset production or -- let's see, I'm trying to think what
14 else they have the ability to do.

15 Q. Isn't whether the well continues to produce
16 simply an economic decision on Atasca and Tribo's part?

17 A. According to the operator? Is it an economic
18 decision according to the operator?

19 Q. Correct.

20 A. That may be the case, but it affects the
21 economics of all parties involved.

22 Q. And that operator has continued to operate this
23 well for over a year at a marginal basis; is that right?

24 A. That's my understanding

25 Q. Okay. You stated that Atasca only has a one-well

1 plugging bond on file with the OCD; is that right?

2 A. Yes, sir.

3 Q. Has Atasca ever told you that it doesn't have the
4 resources to obtain another plugging bond?

5 A. What I've been told from Mr. Knepper was that
6 Atasca didn't -- or actually from Mr. Pavlich, that they
7 didn't want to have to post another bond. And in a
8 conversation that's denoted here, Mr. Pavlich even asked
9 Pogo if we would be willing to take over operations so that
10 they wouldn't have to post another bond.

11 Q. But they did ask whether you would -- I think you
12 stated that you reached a tentative agreement with Mr.
13 Bowman pursuant to some conditions; is that right?

14 A. Yes, sir.

15 Q. And that agreement was for Pogo to take over
16 operations of the entire section; is that right?

17 A. No, those conditions -- He would turn over
18 operations to Pogo under the entire section only if Pogo
19 could get Nearburg, another working interest owner in that
20 well, to agree to abandon the Morrow formation and
21 recomplete in a shallower zone.

22 Q. Were there any other conditions?

23 A. Not that I recall at this time.

24 Q. Were you able to meet that one condition, getting
25 Nearburg to abandon the Morrow?

1 A. No, sir. We offered to buy their interest out,
2 and also Nearburg brought up the possibility of all parties
3 executing a new agreement that covered all depths, so that
4 the ownership would be uniform as to all depths in that
5 section, because abandoning the Morrow and recompleting in
6 a shallower zone would have meant that Nearburg owned zero
7 interest in the shallower zone, and Nearburg is not willing
8 to do that at this time.

9 Q. The agreement which -- the tentative agreement
10 which you reached with Mr. Bowman was, in fact, a
11 conditional agreement; is that right?

12 A. For him to turn over operations to us?

13 Q. If you were able to obtain the necessary relief
14 from Nearburg; is that right?

15 A. Yes, sir.

16 Q. And you were not able to obtain the necessary
17 relief from Nearburg; is that right?

18 A. That is correct.

19 Q. Therefore there is no agreement with Tribo or
20 Atasca; is that right?

21 A. Except that Mr. Bowman has stated on more than
22 one occasion that he would be willing to do this if we
23 could get a third party. And again we reminded Mr. Bowman
24 that we have no control over third parties, but we will do
25 our best.

1 Q. Is that part of your Application today?

2 A. Is what part of my Application?

3 Q. This proposal to get a third party to operate?

4 A. No, sir.

5 Q. Okay. Your Application seeks authority for two
6 operators in a single well unit as its first course; is
7 that right?

8 A. A single -- the Application -- What we would
9 prefer is to be named a suboperator and file in the name of
10 Atasca under the 640-acre spacing.

11 Q. Is that relief that you're requesting from the
12 Division at this time?

13 A. Yes, sir.

14 Q. Is that noticed in your Application?

15 A. I believe that it is.

16 Q. Does the -- I'm reading the style of the case,
17 and it appears that it was advertised as allowing two
18 operators in a single well unit or, in the alternative, two
19 nonstandard gas spacing and proration units. Did you
20 actually advertise relief of having Pogo designated as
21 suboperator?

22 A. Not based on what you just read, no, sir.

23 Q. What rule would you be requesting that relief
24 under?

25 A. I'm uncertain, but I believe it would be under a

1 portion of Rule 104.

2 Q. Does that Rule in any case authorize the Division
3 to order the designation of a certain company as a
4 suboperator of a well?

5 A. I'm not aware of that, no, sir.

6 Q. Isn't a suboperator of a well usually an
7 agreement between parties?

8 A. Typically, yes, sir.

9 Q. Okay. The way the case is styled, it does seek
10 the Division to allow two operators in this unit; is that
11 right?

12 A. Yes, sir.

13 Q. Are you seeking that relief here today?

14 A. Yes, sir.

15 Q. Can you point to any case in which the Division
16 has authorized two different operators in a single well
17 unit?

18 A. I can't point to one today, no, sir.

19 Q. Okay. The portion of your Exhibit Number 8, the
20 portion of Rule Number 104 that you point to, specifically
21 the highlighted portion which deals with 320-acre spacing,
22 is the only portion dealing with infill drilling; is that
23 right? The only portion of that Rule dealing with infill
24 drilling; is that right?

25 A. I don't know that it's necessarily infill

1 drilling. It's just a well that's drilled on a 320-acre
2 spacing.

3 Q. The specific provision that you highlight states
4 that "the Division-designated operator for the infill well
5 is the same operator currently designated by the Division
6 for the initial well." Is that right?

7 A. Yes, sir.

8 Q. That was a recently added provision to Rule 104,
9 wasn't it?

10 A. I believe so.

11 Q. It was added to allow infill drilling in 320-acre
12 spacing units; is that right?

13 A. I believe so.

14 Q. And 640-acre spacing on a statewide basis does
15 not currently contemplate infill drilling; is that right?

16 A. I don't know that, sir.

17 Q. The specific Special Pool Rules for this pool do
18 allow infill drilling?

19 A. That is correct.

20 Q. Do they discuss -- the Special Pool Rules discuss
21 whether or not the Division-designated operator can be the
22 same operator or a different operator?

23 A. I'm uncertain. I'd have to take a look at those
24 rules.

25 Q. Do you know why the Division adopted this portion

1 of the highlighted Rule 104 dealing with maintaining
2 uniformity between operators?

3 A. I can only speculate.

4 Q. Were you present during the hearings in which
5 this Rule was adopted or considered?

6 A. No, sir.

7 Q. Have you reviewed transcripts of those hearings?

8 A. No, sir.

9 Q. Okay. Is it your position that commencing dirt
10 work is commencing operations under the JOA?

11 A. Yes, sir.

12 Q. What's the proposed target of this well?

13 A. The Morrow formation, 10,700 feet.

14 Q. Is it the same horizon within the Morrow that the
15 Number 1 well is currently producing from?

16 A. Yes, sir.

17 Q. The proposed recompletion of the Number 1 well
18 that you discussed with Tribo, do you know if that's the
19 same horizon within the Morrow?

20 A. Tribo wants to abandon the Morrow and come up to
21 a shallower horizon not within the Morrow.

22 Q. So the proposed recompletion is not a Morrow
23 recompletion?

24 A. The recompletion that Tribo prefers or wanted to
25 do was to abandon the Morrow and come up to either a Cisco

1 or Wolfcamp formation.

2 Q. And the Morrow would be abandoned entirely?

3 A. Yes.

4 Q. And that was all oral?

5 A. That was all oral, yes, sir.

6 Q. You've received no proposal from Tribo?

7 A. Not from Tribo, no, sir.

8 Q. Have you received a proposal from anybody?

9 A. Yes, sir.

10 Q. Who did you receive a proposal from?

11 A. From Nearburg Producing to deepen the well and
12 try to recomplete in a deeper Morrow horizon.

13 Q. Okay. The second part of your Application seeks
14 two nonstandard gas spacing and proration units. I think
15 you indicated that that would require a new com agreement
16 with the State; is that right?

17 A. Yes, sir.

18 Q. And you're not optimistic that you would be able
19 to reach agreement on that com agreement with Tribo; is
20 that right?

21 A. That's correct, sir.

22 Q. Are you still seeking in today's hearing the
23 alternative relief of two nonstandard gas spacing and
24 proration units?

25 A. Yes, sir.

1 Q. Despite your pessimism that you will be able to
2 implement that relief?

3 A. Yes, sir.

4 MR. OWEN: That's all I have, Mr. Examiner.

5 EXAMINER STOGNER: Redirect?

6 MR. BRUCE: Just a couple, Mr. Examiner.

7 REDIRECT EXAMINATION

8 BY MR. BRUCE:

9 Q. Ms. Wallace, Mr. Owen asked you about the State
10 19 Number 1 well and commercial production or producing in
11 paying quantities. The state leases do require production
12 in paying quantities to maintain them in effect, do they
13 not?

14 A. Yes, sir, they do.

15 Q. And that determination is not solely the
16 determination of the operator or the working interest
17 owners, is it?

18 A. That's correct, sir.

19 Q. The royalty owner can also make that
20 determination?

21 A. Yes, sir, that's correct.

22 Q. And basically what you're asking for regarding
23 being operator or suboperator, what Pogo is essentially
24 asking for is that once it drills this well, which it is
25 entitled to do --

1 aware of what I'm asking?

2 A. I'm not even aware -- I'm not aware of what
3 you're asking, but outside counsel has actually given us
4 title and has told us that the royalties payable to the
5 State will be the same.

6 MR. BRUCE: If you would like me to obtain that
7 data, Mr. Examiner --

8 EXAMINER STOGNER: If you would, please.

9 Okay, Exhibit Number 5, that is the -- It's the
10 Special Pool Rules for the McMillan, or the amendment of
11 the Special Pool Rules, which is --

12 MR. BRUCE: -- Exhibit 3.

13 EXAMINER STOGNER: I'm sorry, yes, Exhibit 3.
14 Yes, Exhibit 3.

15 Q. (By Examiner Stogner) Were you with Pogo
16 whenever these rules were enacted?

17 A. Yes, sir, I was.

18 Q. Did you participate in that hearing?

19 A. No, sir, I believe Terry Gant.

20 Q. However, you did provide some testimony today.
21 How many wells subsequent to the issuance of this Order
22 have been drilled within the McMillan-Morrow Gas Pool?

23 A. Since July of 2000 we've drilled -- one, two,
24 three, four, five -- six wells.

25 Q. Six wells?

1 A. Yes, sir.

2 Q. Have they all been successful? Are they all
3 commercial producers?

4 A. No, sir, the McMillan 18 -- excuse me -- yes --
5 The Davis 18 Number 2 was a dry hole.

6 Q. Which section?

7 A. That's in Section 18, I'm sorry, in the southwest
8 quarter of Section 18.

9 Q. Okay. Now in looking at the findings in here, I
10 believe there were three wells at the time that this Rule
11 was enacted, and one of them was the Atasca well that we
12 keep referring as the Number 1 well today; is that correct?

13 A. Yes, sir.

14 Q. Did Atasca Resources, did they appear at this
15 hearing for the rule change?

16 A. I'm not aware of that, sir.

17 Q. Did they oppose it?

18 A. I don't believe so.

19 EXAMINER STOGNER: Okay. Any questions?

20 MR. BROOKS: No questions.

21 MR. BRUCE: Mr. Examiner, one thing I would point
22 out, I did do the hearing on the pool rules. And because
23 this Exhibit Number 3 -- The original well-location rules
24 were 1650 feet from a section line, and so this Order also
25 relaxed those pool rules to be consistent with the

1 statewide rules.

2 Not only were the operators in the pool notified,
3 but every 320-acre unit outside of the pool that could have
4 been affected by these new well-location rules, and nobody
5 did object at the hearing to this request.

6 EXAMINER STOGNER: Okay. Just to make the record
7 clear on that, now, the Special Pool Rules, they just apply
8 to the boundaries of the McMillan-Morrow Pool as depicted
9 on Exhibit 2?

10 MR. BRUCE: Yes, sir.

11 EXAMINER STOGNER: Okay, and the reason everybody
12 within a mile was notified, because that relaxed the
13 location requirements so an operator could drill closer to
14 that boundary unit line, that 1650. That was the reason
15 those parties were notified?

16 MR. BRUCE: That is correct.

17 EXAMINER STOGNER: And there are three
18 nonstandard proration units out there now -- or spacing
19 units, I should say.

20 MR. BRUCE: Mr. Examiner, there are only the two
21 in Section 7. We did submit -- Exhibit 7 does refer to one
22 in the south half of 18, although we were informed that
23 that well was never drilled, and therefore that -- I mean,
24 I don't think there's a time limit on that order, but the
25 nonstandard -- the unit was never dedicated to the well

1 contemplated thereby.

2 EXAMINER STOGNER: Okay, I have no other
3 questions.

4 Do you want to restate your motion at this time,
5 Mr. Owen?

6 MR. OWEN: I will.

7 Mr. Examiner, it appears that we have a couple of
8 reasons for the continuance.

9 One, although it is clear that -- whether or not
10 the Exhibit Number 4 contains all of the communications,
11 there have been substantial communications between the
12 parties with respect to this case stretching over two
13 years, and another two weeks isn't going to make that big a
14 difference, either in the context of those negotiations or
15 in the context of these term assignments which now expire
16 in August.

17 The Applicant has indicated it has a well rig
18 available, and that -- however, there's been no indication
19 that that rig availability is going to be adversely by
20 simply a two-week continuance. It doesn't appear to be an
21 issue in this case.

22 In addition, Mr. Examiner, it appears that the
23 issue of the Division's designating a suboperator is a new
24 issue before the Examiner and is not part of the
25 Application or the advertisement. We request that if that

1 is in fact sought by the Applicant that the case be
2 readvertised and brought before another hearing.

3 We would request the opportunity to examine the
4 allegations made by Pogo during this hearing, including the
5 allegations with respect to the negotiations between the
6 parties, and present our side of the story in two weeks.

7 In addition, there is a joint operating agreement
8 covering the subject acreage to which both, or all three of
9 the parties -- Atasca, Tribo and Pogo -- are parties, and I
10 believe the provisions of that joint operating agreement
11 bear a tremendous amount of importance to the Division's
12 decision in this case and whether, in fact, it has
13 jurisdiction to order the relief requested by the Applicant
14 in this case.

15 Although I do have a copy of that joint operating
16 with me today, I chose not to introduce it as I am not
17 familiar with its terms and am not even sure that I have a
18 complete copy. I would request the opportunity to do so at
19 the hearing in two weeks on April the 10th.

20 Therefore, I request that this case be continued
21 until April the 10th.

22 EXAMINER STOGNER: Okay, you want April 10th.
23 That's longer than two weeks.

24 MR. OWEN: Oh, well, two weeks is all I'm asking
25 for, so --

1 EXAMINER STOGNER: That would be the hearing on
2 the 27th.

3 MR. OWEN: That would be fine.

4 EXAMINER STOGNER: I will not be available on the
5 27th.

6 Mr. Bruce, do you want to restate your --

7 MR. BRUCE: Mr. Examiner, using a timely example,
8 I feel like I'm the UN dealing with Iraq. There's been two
9 and a quarter years of communications almost exclusively by
10 Pogo with Atasca and Tribo, and we can never get the
11 gentleman who has the final authority, Mr. Bowman, to say
12 anything, one way or another. We think another four weeks
13 won't lead to disarmament, and we don't think it's
14 necessary.

15 Secondly, by his letter, as I stated before, Mr.
16 Bowman said he'd be here and they'd contest the case. They
17 haven't done so. Because of the time deadlines involved,
18 we believe that this matter should be taken under
19 advisement and let an order issue. They've had the
20 opportunity, they've had the notice. They could have
21 brought the people here. They chose not to do so.

22 We believe that in order to protect all of the
23 interest owners' correlative rights we need to get this
24 well drilled, and we need to do it now.

25 The issue regarding amending the Application I do

1 not agree with. What we are simply asking for is that once
2 the well is drilled, the Division approve a Form C-104
3 allowing Pogo to produce the well and transport the gas.
4 That is what we mean by suboperator. We would be making
5 all filings of record in Atasca's name. We recognize that
6 there may be some liability attached to that; we're willing
7 to assume that.

8 But we need to get the well drilled. We would
9 like a Form C-104 issued if the well is completed as a
10 producer in the Morrow, and we think that should be done as
11 soon as possible, and we would ask that the motion be
12 denied.

13 Thank you.

14 (Off the record)

15 EXAMINER STOGNER: I'm going to grant the request
16 to continue this matter till April 10th, since I'm going to
17 be available anyway, I'll be here, since I'm not going to
18 be available for the 27th, no need of continuing it two
19 weeks and handing it over to another Examiner just
20 repeating the testimony that was presented today.

21 I expect you to have a witness here at that time,
22 Atasca, I will note that on the record, that according to
23 his letter on March 3rd that they would be here and they
24 were not. I don't take that lightly. So I expect that
25 they will be here to present their side and opposition at

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that point.

This matter will be continued to April 10th.

MR. OWEN: Thank you, Mr. Examiner.

(Thereupon, these proceedings were concluded at
11:30 a.m.)

* * *

Oil Conservation Division
* * *
Case No. 13023
heard by me on 13 March 2003
Michael E. [Signature]
Oil Conservation Division, Examiner

CERTIFICATE OF REPORTER

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

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

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

WITNESS MY HAND AND SEAL March 14th, 2003.



STEVEN T. BRENNER
 CCR No. 7

My commission expires: October 16th, 2006