December 10, 1998

Litigation Update

Johnson et al. v. Burlington Resources Oil & Gas Co., No. CV 25,061/25,062, Supreme Court —

We are awaiting the decision of the Supreme Court.

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

AUGUST 1998 BRIEFS ONLY CALENDAR

THE FOLLOWING CASES WILL BE SUBMITTED TO THE COURT ON BRIEFS ONLY. NO ORAL ARGUMENT WILL BE HEARD IN THESE MATTERS.

CERTIFICATION FROM NEW MEXICO COURT OF APPEALS:

NO. 24,687 Record; Br Ch; Ans Br; Reply Br.

STATE OF NEW MEXICO,	Tom Udall, Attorney General
	M. Anne Kelly, Asst. A.G.
Plaintiff-Appellee,	Santa Fe, NM
vs. (Knowles, Richard J., D.J.)	
ERBIE CHAVEZ,	Barnett, Allison & Robert
	Marc Robert
Defendant-Appellant.	Albuquerque, NM

ON CERTIORARI:

NO. 24,580 Record (1 vol.); Tapes (8); Br Ch; Ans Br.

STATE OF NEW MEXICO,	
	Tom Udall, Attorney General
Plaintiff-Respondent,	Joel Jacobsen, Asst. A.G.
	Santa Fe, NM
vs. (Beal, Graden W.)	
ROSENDO ONTIVEROS GONZALES,	Phyllis H. Subin, Chief Public Defender
	Susan Roth, Asst. Appellate Def'r
Defendant-Petitioner.	Santa Fe, NM

CERTIFICATION FROM NEW MEXICO COURT OF APPEALS:

NO. 25,193 Record; Tapes (12); COA Br Ch; COA Ans Br.

STATE OF NEW MEXICO,	Tom Udall, Attorney General
	Bill Primm, Asst. A.G.
Plaintiff-Appellee,	Santa Fe, NM
vs. (Quinn, Stephen K., D.J.)	
HARRY BROWN,	Phyllis H. Subin, Chief Public Def'r
	Susan Roth, Asst. Appellate Def'r
Defendant-Appellant.	Santa Fe, NM

CERTIFICATION FROM NEW MEXICO COURT OF APPEALS:

NO. 24,350 Record; Proceedings (2 vols.); Exhibits; Br Ch; Ans Br; Reply Br; Br Ch on x-appeal; Ans Br on x-appeal; **reply br on x-appeal due 7/10/98**

STATE OF NEW MEXICO,

Plaintiff-Appellant and Cross-Appellee,

Tom Udall, Attorney General
M. Victoria Wilson, Asst. A.G.
Santa Fe, NM

vs. (Blackmer, James F., D.J.)

JOHNNY CAMPBELL,

Defendant-Appellee and Cross-Appellant.

Phyllis H. Subin, Chief Public Def'r
Bruce Rogoff, Appellate Defender
Karl Erich Martell, Asst. Appellate Def'r
Santa Fe, NM

NOS. 25,061/25,062 Record (2 vols.); Supp'l Record; Tapes (6); Brs Ch (2); Ans Br; Reply Br

TIMOTHY B. JOHNSON, Trustee for Ralph A. Bard, Jr., Trust U/A/D February 12, 1983, et al.,

Plaintiffs-Appellees,

Gallegos Law Firm, P.C.
J.E. Gallegos
Jason E. Doughty
Santa Fe, NM

vs. (Caton, W. Byron, D.J.)

Kellahin & Kellahin
W. Thomas Kellahin
Santa Fe, NM

NEW MEXICO OIL CONSERVATION COMMISSION and BURLINGTON RESOURCES OIL & GAS COMPANY,

Defendants-Appellants.

Marilyn S. Hebert, Spec. Asst. A.G.
Santa Fe, NM

NO. 23,939 Record; Supp'l Record; Proceedings (7 vols.); Br Ch; Ans Br; **Reply Br due 7/13/98**.

STATE OF NEW MEXICO,

Plaintiff-Appellee,

Tom Udall, Attorney General
Anita Carlson, Asst. A.G.
Santa Fe, NM

vs. (Smith, W.C. Woody, D.J.)

EUTIMIO SALGADO,

Defendant-Appellant.

Adam Kurtz
Albuquerque, NM

Establishing Drilling And Spacing Units In Oklahoma—Is Publication Notice Sufficient?

By Victoria A. Dancy And Joseph R. Dancy

INTRODUCTION

The drilling and spacing unit is essential to the conservation of oil and gas in Oklahoma, and the Oklahoma Corporation Commission has been given the exclusive authority to use the spacing unit to control oil and gas well density.[1] The drilling and spacing unit is generally established by the Commission after publication notice only, unless there is a well producing from the formation to be spaced in which case personal notice is required.[2] Some parties recently have questioned whether due process requirements are met by publication notice, and have argued that personal notice is or should be necessary when establishing oil and gas spacing units.[3]

HISTORY OF THE SPACING UNIT

The mineral owner in Oklahoma does not possess title to the oil and gas in place, and to obtain title the mineral owner or lessee must reduce the oil or gas to his possession.[4] This principal, the "law of capture," encourages numerous wells to be drilled to protect a party from drainage or in an attempt to drain and capture oil from offsetting lands. The result of the law of capture on early development was a great waste of hydrocarbons and an economic loss that followed the drilling of unnecessary wells. It was apparent very early that the orderly development and true conservation of oil and gas demanded a minimum number and the proper spacing of wells.[5]

The first well spacing rule promulgated in the United States was passed by the Railroad Commission of Texas in 1919, known as Rule 37.[6] This Rule in effect provided for two acre spacing for oil wells in Texas by requiring that a well be drilled a minimum distance from the lease or property line. The distances have been altered by the Railroad Commission periodically, and since 1962 the regulations in Texas have generally provided for forty acre spacing for oil.[7]

Oklahoma enacted its Well Spacing Act in 1935, and this Act was the States' first law which directly empowered the Commission to create drilling and spacing units.[8] Prior to this time the Commission had generally used proration orders to limit production in its efforts to promote conservation.[9] The 1935 Act provided that drilling and spacing units for oil would not exceed 10 acres in size unless 80 percent of the owners agreed to a larger unit, with a maximum unit size of 40 acres.[10] No provisions were included in the initial Act which would limit the size of the drilling and spacing unit for a gas well.

By 1945 developers had begun to explore the deeper basins in the western part of the state, and the deeper hydrocarbon horizons made 40 acre drilling and spacing units uneconomical for oil development. In response to the deeper drilling activity the legislature in 1945 amended the Well Spacing Act to provide for a maximum of 40 acre spacing for oil wells less than 8,000 feet in depth, but provided that 160 acre units could be established for oil wells deeper than this level if 66⅔ percent of the lessees in the units voted to approve of such larger units.[11] Mineral lessors claimed that the 1945 Act allowed

the lessee to establish the size of the drilling and spacing unit by vote, without the Commission's guidance. After a number of hearings before the Commission where the mineral lessors objected to the relatively large size of the lessee's proposed drilling and spacing units, the 1947 Legislature abandoned the 66⅔ percent lessee approval provision and vested the exclusive authority to determine the proper size of the drilling and spacing unit in the Commission.[12]

The modern Oklahoma spacing statute has evolved from the 1935 Well Spacing Act, and drilling and spacing units are established for a common source of supply by filing an application with the Oklahoma Corporation Commission.[13] The statute requires at least 15 days publication notice in a newspaper in Oklahoma County and in the county where the land is located prior to the hearing.[14] No personal notice is required unless the drilling and spacing unit will encompass a well producing from the formation to be spaced.[15]

DUE PROCESS AND THE RIGHT TO NOTICE

The Oklahoma Corporation Commission was created by the Oklahoma Constitution, and as an administrative agency has been given the exclusive power to regulate the conservation of oil and gas in the State.[16] Administrative agencies regulating natural resources may not use the police power to deprive a party of their property rights without notice if a hearing is required under the Constitution's due process clause.[17]

The courts have recognized two kinds of protection under the due process clause: substantive due process and procedural due process.[18] The right to adequate notice arises from the procedural branch of the due process clause, along with the right to a fair hearing, the right to cross examine witnesses, and the right to be represented by counsel.[19] The notice required for establishing a drilling and spacing unit involves the procedural branch of the due process clause.

Some agency functions do not require notice and a hearing, therefore the procedural due process requirements are not applicable in those situations. In determining whether a hearing is required it should be ascertained if the issues are adjudicative or legislative in nature, as in general hearings are only required for the determination of adjudicative facts.[20] Adjudicative issues involve specific matters which directly affect the interests of particular individuals, and in these instances the facts and issues can be best developed by witnesses and cross examination.[21] Legislative issues involve general policies which are prospective in nature and which apply to numerous parties, and where it is impracticable due to the number of parties involved to take testimony from witnesses and provide the right of cross examination.[22]

If a hearing is required due to the adjudicatory nature of the proceeding the notice given must be reasonably calculated to inform the interested parties.[23] No rigid formula exists as to the kind of notice that must be given, and the type of notice necessary to comply with constitutional requirements will vary with the circumstances involved.[24] Personal service of written notice is always adequate to meet due process requirements in any type of proceeding, and the notice should be adequate to appraise interested parties of the time, date, place and purpose of the hearing.[25] If the notice is not adequately descriptive of the property which would be affected or of the nature of the hearing, the notice may be deemed insufficient under the due process clause.[26]

In general the courts have recognized that publication notice is a poor substitute for actual notice, and have stated that publication notice rarely informs the owners of a proceeding affecting their property except by chance.[27] Publication notice is even less effective where the notice does not name the parties involved, or where a party resides outside the area covered by the newspaper's circulation.[28] In general, where the names and addresses of the affected parties are easily ascertainable, publication notice will not be sufficient unless there is a persuasive reason why actual notice should not be given.[29]

In the leading case on the issue, *Mullane v. Central Hanover Bank & Trust Co.*, the U.S. Supreme Court held that a Trustee could not obtain a judicial settlement of its trust accounts if individual notice was not given to those beneficiaries whose addresses were known or easily ascertainable, and held that publication notice was insufficient to satisfy constitutional due process requirements.[30] The Court noted that publication notice is appropriate where it is not reasonably possible to give actual notice,

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or where actual notice would place impossible or impractical obstacles in the way of a vital interest of the state.[31]

Where notice is required, the Oklahoma Supreme Court has expressly adopted the principles outlined in *Mullane*, and has stated that the method of notification must be "reasonably calculated" to give a party knowledge in a meaningful time and in a meaningful manner of any proceeding directly affecting its property interests.[23]

NOTICE AND THE SPACING UNIT

The establishment of drilling and spacing units affect the mineral owner by requiring such owners to share in the proceeds from the unit well, and the spacing order effectively pools the mineral owners' 1/8th royalty by statute.[33] The spacing unit also determines the extent of the lessee's working interest in the production from a given well. Under the Commission rules, if the proposed spacing unit does not contain a producing well notice of the hearing is given by publication.[34] Personal notice is not required by statute unless there is a well on the proposed unit producing from the formation to be spaced.[35] The major question remains unanswered: is publication notice sufficient to satisfy the due process clause when establishing drilling and spacing units?

A. Notice Where There Are Producing Wells on the Proposed Unit. In *Cravens v. Corporation Commission*, a party had drilled and completed a producing gas well located on an 80 acre drillsite lease.[36] Unknown to the owner of the drillsite lease, an offsetting leasehold owner filed an application at the Corporation Commission to include this well in a 160 acre drilling and spacing unit which included the offsetting leasehold, and such application was approved by the Commission. On review, Oklahoma Supreme Court held that the order establishing the 160 acre spacing unit was void due to the fact the owner of the 80 acre drillsite lease was not personally notified of the application, therefore violating its due process rights.[37] The *Cravens* Court adopted the standards for publication notice enunciated by the U.S. Supreme Court in *Mullane v. Central Hanover Bank & Trust*, and the Court stated that where the names and addresses of the parties who had an interest in the well were easily ascertainable publication notice would not suffice.[38]

The Court of Appeals followed the *Cravens* reasoning in a similar fact situation in *Louthan v. Amoco*, in which case a spacing unit was established which included a producing well, and the Court held that publication notice was deficient if the names and addresses of the parties who could participate in the production from such well were easily ascertainable.[39] Similarly, in an earlier case, the Oklahoma Supreme Court stated that mineral owners in a field wide unitization must be given actual notice of the unitization hearing, and stated that the *Mullane* case should have put the parties on notice of the possible pitfalls of publication notice.[40] The Oklahoma Court of Appeals has gone one step further in a recent unpublished case by requiring that personal notice be given to the owners in a proposed drilling and spacing unit where a well

has been spudded and is drilling at the time of the spacing application, but is not producing.[41]

These cases have established the general rule that personal notice is required where a well is producing on the proposed spacing unit, however the fact remains that most spacing units are established before a well is drilled. Where there are existing wells on the proposed spacing unit the leasehold owners will be in an adversarial relationship, with the parties owning rights surrounding the drillsite lease attempting to include their interests in the drillsite spacing unit so that they can share in the production revenues without sharing the risks of drilling. Due to the obvious adversarial nature of the parties, the courts have correctly found that due process requirements mandate that all of the parties are personally notified of the proceedings.

B. Notice Where There Are No Producing Wells on the Proposed Unit. Where there are no wells on the proposed spacing unit, the leasehold owners will not be in an adversarial relationship, and the application to space will be more legislative than adjudicatory in nature. The Oklahoma Legislature can exercise its police power to regulate natural resources, and it has carefully established guidelines to establish or extend spacing units to prevent waste and to protect correlative rights.[42] Because the Legislature could not as a practical matter take into account the varying geographical and geological differences which exist in the State, it has delegated the power to establish such spacing units to the Corporation Commission, and carefully circumscribed the Commisssion's authority by statute.[43]

The Legislature has established a uniform policy to guide the Commission in establishing spacing units, and the fact that these powers have been delegated to an agency does not alter the fundamental legislative character of the proceedings.[44] When establishing spacing units the Commission uniformly applies the general policies and conservation scheme set out by the Legislature in a prospective manner, and such application involves numerous parties who have an interest in the common source of supply.[45] The Oklahoma Supreme Court has recognized that an agency can prescribe the details in connection with an act for the purpose of carrying the act into operation.[46] As such, well spacing can be regarded as a legislative function, and personal notice may not be required due to the legislative nature of the proceeding.[47]

An argument can also be made that personal notice is not required when establishing spacing units because the owners or their addresses are not "easily ascertainable" under the *Mullane* standard. If an applicant is required to give personal notice to owners before establishing a spacing unit, it would require that the applicant prior to the hearing check all the deeds and mineral conveyances indexed against the property description to determine the ownership of the minerals. In most cases the applicant would have to obtain a title opinion covering the proposed spacing units from an independent attorney. The delay in obtaining title opinions would slow the pace of activity and development, especially in townsite areas.

Once the identity of the owners is established from the deed records, other records will have to be reviewed by a landman to determine the correct addresses of many of the parties. Unlike the surface owners whose addresses are usually easily ascertainable from the tax records, mineral owners are not assessed yearly taxes and their addresses may not be readily available from easily accessible records. Many mineral conveyances will not include addresses on the instrument, and if they do the address may be out of date. Also, mineral interests may have passed to heirs through probate proceedings, or may not be probated, again making the addresses of the owners difficult if not impossible to obtain. Because Oklahoma is a major producer of oil and gas, it is the rule rather than the exception that all or part of the minerals have been severed from the surface, and notification of the severed mineral owners and lessees may require several hundred notices.

In cases where personal notice has been required by statute or by the courts, the courts have generally held that "due diligence" must be exercised by the party searching the records for the addresses of the owners.[48] While due diligence is a judicial determination on a case by case basis, some courts have indicated that the following sources may have to be examined to meet the "due diligence" test. (1) local tax rolls, (2) deed records, (3) judicial records, (4) other official records, (5) secondary sources such as telephone or city directory, (6) post office, (7) former employer, (8) public utility companies (light, phone and water), (9) neighbors, (10) friends, and (11) relatives in the area.[49] Should personal notice be required to establish a spacing unit, the Corporation Commission would have to establish standards to determine if the applicant's search was "diligent,"

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and would have to evaluate the notice or lack thereof on a case by case basis. It may be questioned if the addresses are "easily ascertainable" under the *Mullane* standard if all of the above sources must be examined in a diligent search for the owners.

The requirement that personal notice must be given may also place impractical obstacles in the way of a state interest under the *Mullane* test.[50] The state has a vital interest in promoting the development of its oil and gas resources as the energy industry is a major employer in the state. The seven percent gross production tax on hydrocarbon production in Oklahoma accounts for nearly 25 percent of the revenues in the state's general fund, and any requirements restricting the development of oil or gas would certainly adversely affect a vital state interest at a time when tax revenues are in short supply.[51] Oklahoma has approximately 21,000 producing gas wells which account for 10 percent of the total U.S. natural gas production, and 95,000 producing oil wells accounting for five percent of total U.S. production.[52] Recent legislative proposals have already added significant burdens on operators and working interest owners with regard to their activities in the state, and further burdens may make Oklahoma less appealing to the oil and gas operator.

CONCLUSION

The establishment of a drilling and spacing unit on lands where there are no wells on the proposed spacing unit is arguably a legislative function which has been delegated to the Commission. The Commission uniformly enforces the policies set out by the legislative in a prospective manner, and due to the legislature nature of the spacing application personal notice should not be required to meet due process requirements. Also, using the test developed by the U.S. Supreme Court in *Mullane* and adopted by the Oklahoma courts, it would appear that personal notice to owners of a pending spacing application would not be reasonably practicable considering the circumstances, and requiring such personal notice would place an impractical obstacle in the way of the vital state interest in continued oil and gas exploration.

1. See: Kuntz, "Statutory Well Spacing and Drilling Units," 31 Okl.L.Rev. 344 (1978); 17 Okla.Stat. §52 grants the Commission the exclusive power to regulate the conservation of oil and gas and the drilling of oil and gas wells.

2. OCCRP Rule 8(d)(3). See also 52 Okla.Stat. §87.1(a).

3. Senate Bill No. 456, introduced by Senator Green in the Second Session of the 39th Legislature (1984), attempted to amend 52 Okla.Stat. §87.1 so that a party would be required to give personal notice of a spacing application to the owners of royalty interests and surface in the proposed unit. A public hearing was held on the bill, but it died in committee. Notice requirements were also at issue in *Benson-McCowan & Co. v. Corporation Commission*, No. 60706, Ct. of App., Div. 3, (May 8, 1984) (now on appeal).

4. *Ohio Oil Co. v. Sharp*, 135 F.2d 303, 307 (10th Cir. 1943); *Greenshields v. Warren Petroleum Corp.*, 248 F.2d 61 (10th Cir. 1957), **cert. denied**, 78 S.Ct. 334.

5. Myers, Pooling and Unitization, §1.01 (Supp. 1982).

6. *Id.*; 8 Williams & Myers, Oil and Gas Law, p. 669 (Supp. 1983).

7. *Id.*

8. R. Bond, R. Weems and R. Jones, Oklahoma Oil and Gas Conservation Laws, Oklahoma Corporation Commission (1950), p. 323.

9. *Id.* at 253. The Commission had enacted a few spacing orders under its broad powers to prevent waste prior to the time of the Spacing Act, but the spacing power was not widely used.

10. *Id.* at 309, 310.

11. *Id.* at 326.

12. *Id.* at 328.

13. 52 Okla.Stat §87.1(a).

14. *Id.*; See also OCCRP Rule 12.

15. OCCRP Rule 8(d)(3); See also *Cravens v. Corporation Commission*, 613 P.2d 442 (Okla. 1980).

16. Okla. Const. Art IX, §§15-35. The Commission has the exclusive power to regulate oil and gas conservation in the state under 17 Okla.Stat. §52. The Corporation Commission is exempt from the Administrative Procedure Act, except that it must file its rules with the Secretary of State.

17. *Cravens v. Corporation Commission, supra* at 444; See also: *Tulsa Classroom Teachers Association, Inc. v. State Board of Equalization*, 601 P.2d 99 (Okla. 1979); *Greenwell v. Dept. of Land and Natural Resources*, 436 P.2d 527 (Hawaii 1968).

18. *Skinner v. State*, 189 Okl. 235, 115 P.2d 123 (1941), reversed on other grounds 62 S.Ct. 1110; Nowak, Rotuda, and Young; Constitutional Law, Chapter 12, p. 380 (1980).

19. Rathkoph, The Law of Zoning and Planning, §4.02 (Supp. 1981); *In Re Lutker*, 274 P.2d 786 (Cr.Ct.App. 1954) characterized procedural due process as the right to notice and an opportunity to defend in an orderly proceeding before an impartial tribunal. See also: 12A Am.Jur.2d, Constitutional Law, §813.

20. 2 Am.Jur.2d, Administrative Law, §403.

21. *Londoner v. Denver*, 28 S.Ct. 708 (1908).

22. *Bi-Metallic Investment Co. v. State Board of Equalization*, 36 S. Ct. 141 (1915). A court determining whether an act is adjudicative or legislative in nature must determine whether the action produces a general rule or policy which is applicable prospectively to an open class of individuals, interests or situations (legislative), or whether it entails the application of a general rule or policy to specific individuals, interests or situations (adjudicative). See: *Ayres v. City Council of Cannon Beach*, 572 P.2d 664 (Or. 1977); *Fasano v. Bd. of County Commissioners, 507 P.2d 23 (Or. 1973).*

23. *Walker v. City of Hutchinson*, 77 S.Ct. 200, 202 (1956); *Covey v. Town of Somers*, 76 S.Ct. 724, 727 (1956); *North Alabama Express, Inc. v. U.S.*, 585 F.2d 783 (5th Cir. 1978); *Tolman v. Salt Lake County*, 437 P.2d 442 (Utah 1968).

24. *Walker v. City of Hutchinson, supra; Mullane v. Central Hanover Bank & Trust Co.*, 70 S.Ct. 652 (1950); *Bomford v. Socony Mobil Oil Co.*, 440 P.2d 713 (Okla. 1968).

25. *Walker v. City of Hutchinson, supra; Mullane v. Central Hanover Bank & Trust, supra; City of New York v. N.Y. New Haven & Hartford R.R. Co.*, 73 S.Ct. 299 (1953).

26. *Mellow v. Board of Review*, 177 A.2d 533 (R. I. 1962); *American Oil Corporation v. City of Chicago*, 331 N.E.2d 67 (App.Ct.Ill. 1975).

27. *Walker v. City of Hutchinson, supra; Olansen v. Texaco*, 587 P.2d 976 (Okla. 1978); *Cravens v. Corporation Commission, supra; Bomford v. Socony Mobil Oil Co., supra.*

28. *Bomford v. Socony Mobil, supra; City of New York v. N.Y. New Haven & Hartford R.R. Co., supra.*

29. *Mullane v. Central Hanover Bank & Trust Co., supra; Cravens v. Corporation Commission, supra; Bomford v. Socony Mobil Oil Co., supra.*

30. 70 S.Ct. 652 (1950).

31. "This Court has not hesitated to approve of resort to publication . . . . where it is not reasonably possible or practicable to give more adequate warning," *Id.* at 657, 658. In *Schroeder v. City of New York*, 83 S.Ct. 279, 282 (1962), the Court "recognized the practical impossibility of giving personal notice in some cases, such as those involving missing or unknown persons."

32. *Bomford v. Socony Mobil Oil Co., supra*, at 718.

33. *Petroleum Reserve v. Dierksen*, 623 P.2d 602 (Okla. 1981); *O'Neill v. American Quasar Petroleum*, 617 P.2d 181 (Okla. 1980).

34. OCCRP Rule 8(d)(3); 52 Okla.Stat. §87.1(a).

35. OCCRP Rule 8(d)(3); *Cravens v. Corporation Commission, supra.*

36. 613 P.2d 442 (Okla. 1980).

37. *Id.* See also *Louthan v. Amoco*, 652 P.2d 308 (Ct.App. Okla. 1982).

38. *Id.* The *Mullane* Court noted that where there is a vital state interest involved or where it is not reasonably practicable to give personal notice, publication notice may be sufficient.

39. 652 P.2d 308 (Okla. 1982). The order establishing the drilling and spacing unit was held void as to the party who was not given personal notice.

40. *Olansen v. Texaco, supra.*

41. *Benson-McCowan & Co. v. Corporation Commission*, No. 60706 Ct. of App., Div. 3 (May 6, 1984). This case is now on appeal.

42. 52 Okla.Stat. §87.1. The courts have generally upheld the use of the police power to protect natural resources, including oil and gas. See: *C. C. Julian Oil & Royalties Co. v. Capshaw*, 145 Okla. 237, 292 P.841, 843 (1931).

43. 52 Okla.Stat. §87.1. The statute provides, among other things, that the spacing unit overlay the common source of supply, and sets the maximum sizes for the units depending on the depth of the common source of supply and whether oil or gas is produced.

44. *Oliver v. Oklahoma Alcoholic Beverage Control Board*, 359 P.2d 183 (Okla. 1961).

45. When establishing spacing units the Commission closely examines the adjoining spacing units which have been established, and requires uniformity in the size of the spacing unit overlying a formation to protect correlative rights unless geological conditions warrant otherwise.

46. In *Patterson v. Stanolind Oil & Gas Co.*, 182 Okla. 155, 77 P.2d 83, 90 (1938), the court considered the well spacing statute and stated: "[t]he Legislature may enact a law, complete within itself, the object of which is a general purpose, and, for the purpose of carrying the act

into operation, may delegate to administrative agencies the power to prescribe the details in connection with the administration and enforcement of said law." See also *Oklahoma Natural Gas v. Long*, 406 P.2d 499 (Okla. 1965).

47. Zoning ordinances which are comprehensive and uniformly applied are generally considered legislative in nature, and publication notice usually is held to satisfy due process requirements. *Garrett v. City of Oklahoma City*, 594 P.2d 764 (Okla. 1979); *Arnel Development Co. v. City of Costa Mesa*, 620 P.2d 565 (Cal.1980); *Fifth Avenue Corp. v. Washington Co.*, 581 P.2d 50 (Or. 1976), Annot. 96 A.L.R. 2d 450, 459(1964). The use of the police power to define property rights under a zoning ordinance is similar to the use of the police power to establish oil and gas spacing units.

48. *Kintigh v. Elliott*, 570 P.2d 659 (Or. 1977); *Bomford v. Socony Mobil Oil Co.*, *supra*.

49. *Id.*

50. 70 S.Ct. at 657.

51. Oklahoma Legislative Reporter, Jan. 28, 1983 at 5.

52. The Oil and Gas Compact Bulletin, December 1983.

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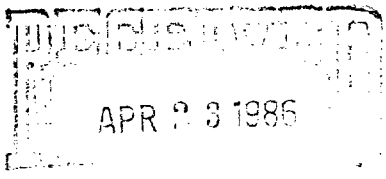

Mike Stogner
P. O. Box 2088
Land Office Building
Santa Fe, New Mexico 87501

Dear Mike:

Enclosed is the article which you requested dealing with notice requirements when establishing a spacing unit. Much of the law regarding notice has been developed by the U.S. Supreme Court, therefore would be applicable to both New Mexico and Oklahoma law.

Very truly yours,

ANDREWS DAVIS LEGG BIXLER
MILSTEN & MURRAH

Joseph R. Dancy

JRD/mch
Enclosure

STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION DIVISION
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SANTA FE, NEW MEXICO 87505
(505) 827-7131

INFORMATIONAL MEMORANDUM

TO: All Oil and Gas Operators

FROM: Michael E. Stogner, Chief Hearing Examiner/Engineer (OCD) MS

SUBJECT: Revised Division General Rule 104 - Well Spacing: Acreage Requirements for Drilling Tracts.

DATE: January 18, 1996

On January 18, 1996 the New Mexico Oil Conservation Commission revised Division General Rule 104 by approving Order No. R-10533 in Case 11351. Attached is a copy of REVISED RULE 104 in its entirety.

Significant changes include:

(1) The definition of a wildcat well in Northwest New Mexico is a well that is drilled the spacing unit of which is a distance of 2 miles or more from a defined pool or any other well which has produced from that particular formation.

(2) Wells in zones with 320-acre spacing can now be drilled as close as 1650 feet from the end or short boundary of the spacing unit.

(3) District Supervisors can now authorize some non-standard spacing and proration units caused by a variation in the legal subdivision of the U. S. Public Land Surveys.

(4) The policy of having only one well per spacing unit in non-prorated pools is now a rule.

(5) Most unorthodox well locations within waterfloods and pressure maintenance projects are now automatically approved by the District Supervisor.

(6) Unorthodox well locations based on geology can now be approved administratively.

Please take notice on changes in the notification process for obtaining unorthodox locations and non-standard spacing units.

Exhibit "B"
Case No. 11351
Order No. R-10533

RULE 104. - WELL SPACING:
ACREAGE REQUIREMENTS FOR DRILLING TRACTS

104.A. CLASSIFICATION OF WELLS: WILDCAT WELLS AND DEVELOPMENT WELLS

(1) San Juan, Rio Arriba, Sandoval, and McKinley Counties

(a) Any well which is to be drilled the spacing unit of which is a distance of 2 miles or more from:

(i) the outer boundary of any defined pool which has produced oil or gas from the formation to which the well is projected; and

(ii) any other well which has produced oil or gas from the formation to which the proposed well is projected, shall be classified as a wildcat well.

(2) All Counties Except San Juan, Rio Arriba, Sandoval, and McKinley

(a) Any well which is to be drilled the spacing unit of which is a distance of one mile or more from:

(i) the outer boundary of any defined pool which has produced oil or gas from the formation to which the well is projected; and

(ii) any other well which has produced oil or gas from the formation to which the proposed well is projected, shall be classified as a wildcat well.

(3) Any well which is not a wildcat well as defined above shall be classified as a development well for the nearest pool which has produced oil or gas from the formation to which the well is projected. Any such development well shall be spaced, drilled, operated, and produced in accordance with the rules and regulations in effect in such nearest pool, provided the well is completed in the formation to which it was projected.

(4) Any well classified as a development well for a given pool but which is completed in a producing horizon not included in the vertical limits of said pool shall be operated and produced in accordance with the rules and regulations in effect in the nearest pool within the 2 mile limit in San Juan, Rio Arriba, Sandoval, and McKinley Counties or within one mile everywhere else which is producing from that horizon. If there is no designated pool for said producing horizon within the 2 mile limit in San Juan, Rio Arriba, Sandoval, and McKinley Counties or within one mile everywhere else, the well shall be re-classified as a wildcat well.

104.B. ACREAGE AND WELL LOCATION REQUIREMENTS FOR WILDCATS

(1) Lea, Chaves, Eddy and Roosevelt Counties

(a) Wildcat Gas Wells. In Lea, Chaves, Eddy and Roosevelt Counties, a wildcat well which is projected as a gas well to a formation and in an area which, in the opinion of the engineer or supervisor approving the application to drill, may reasonably be presumed to be productive of gas rather than oil shall be located on a drilling tract consisting of 160 surface contiguous acres, more or less, substantially in the form of a square which is a quarter section, being a legal subdivision of the U.S. Public Land Surveys, and shall be located not closer than 660 feet to any outer boundary of such tract nor closer than 330 feet to any quarter-quarter section or subdivision inner boundary. Provided, however, that any such wildcat gas well which is projected to the Wolfcamp or older formations shall be located on a drilling tract consisting of 320 surface contiguous acres, more or less, comprising any two contiguous quarter sections of a single governmental section, being a legal subdivision of the U.S. Public Land Surveys. Any such "deep" wildcat gas well to which is dedicated more than 160 acres shall be located not closer than 660 feet to the nearest side boundary of the dedicated tract nor closer than 1650 feet to the nearest end boundary, nor closer than 330 feet to any quarter-quarter section or subdivision inner boundary. (For the purpose of this rule, "side" boundary is defined as one of the outer boundaries running lengthwise to the tract's greatest overall dimensions; "end" boundary is defined as one of the outer boundaries perpendicular to a side boundary and

closing the tract across its least overall dimension.)

(b) Wildcat Oil Wells. In Lea, Chaves, Eddy, and Roosevelt Counties, a wildcat well which is not a wildcat gas well as defined above shall be located on a tract consisting of approximately 40 surface contiguous acres substantially in the form of a square which is a legal subdivision of the U.S. Public Land Surveys, or on a governmental quarter-quarter section or lot, and shall be located not closer than 330 feet to any boundary of such tract.

(c) In the event gas production is encountered in a well which was projected as an oil well and which is located accordingly but does not conform to the above gas well location rule, it shall be necessary for the operator to bring the matter to a hearing before approval for the production of gas can be given.

(2) San Juan, Rio Arriba, Sandoval, and McKinley Counties

(a) Wildcat Gas Wells. In San Juan, Rio Arriba, Sandoval, and McKinley Counties, a wildcat well which is projected to a gas-producing horizon shall be located on a designated drilling tract consisting of 160 surface contiguous acres, more or less, substantially in the form of a square which is a quarter section, being a legal subdivision of the U.S. Public Land Surveys, and shall be located not closer than 790 feet to any outer boundary of the tract nor closer than 130 feet to any quarter-quarter section or subdivision inner boundary.

(b) In the event a well drilled as a gas well is completed as an oil well and is located accordingly but does not conform to the oil well location rule below, it shall be necessary for the operator to apply for administrative approval for a non-standard location before an oil allowable will be assigned. An application may be set for hearing by the Director. If the operator is uncertain as to whether a proposed wildcat well will be an oil well or a gas well, the well should be staked so that it is in a standard location for both oil and gas production.

(c) Wildcat Oil Wells. A wildcat well which is projected to an oil-producing horizon as recognized by the Division shall be located on a tract consisting of approximately 40 surface contiguous acres substantially in the form of a square which is a legal subdivision of the U.S. Public Land Surveys, or on a governmental quarter-quarter section or lot, and shall be located not closer than 330 feet to any boundary of such tract.

(d) In the event a well drilled as an oil well is completed as a gas well and is located accordingly but does not conform to the above gas well location rules, it shall be necessary for the operator to apply for administrative approval for a non-standard location before the well can produce. An application may be set for hearing by the Director. If the operator is uncertain as to whether a proposed wildcat well will be an oil well or a gas well, the well should be staked so that it is in a standard location for both oil and gas production.

(3) All Counties except Lea, Chaves, Eddy, Roosevelt, San Juan, Rio Arriba, Sandoval, and McKinley.

(a) Any wildcat well which is projected as an oil well in any county other than Lea, Chaves, Eddy, Roosevelt, San Juan, Rio Arriba, Sandoval, and McKinley Counties shall be located on a tract consisting of approximately 40 surface contiguous acres substantially in the form of a square which is a legal subdivision of the U.S. Public Land Surveys, or on a governmental quarter-quarter section or lot and shall be located not closer than 330 feet to any boundary of such tract.

(b) Any wildcat well which is projected as a gas well to a formation and in an area which, in the opinion of the Division representative approving the application to drill, may reasonably be presumed to be productive of gas rather than oil shall be located on a drilling tract consisting of 160 surface contiguous acres, more or less, substantially in the form of a square which is a quarter section, being a legal subdivision of the U.S. Public Land Surveys, and shall be located not closer than 660 feet to any outer boundary of such tract nor closer than 330 feet to any quarter-quarter section or subdivision inner boundary.

104 C. ACREAGE AND WELL LOCATION REQUIREMENTS FOR DEVELOPMENT WELLS

(1) Oil Wells, All Counties.

(a) Unless otherwise provided in special pool rules, each development well for a defined oil pool shall be located on a tract consisting of approximately 40 surface contiguous acres substantially in the form of a square which is a legal subdivision of the U.S. Public Land Surveys, or on a governmental quarter-quarter section or lot, and shall be located not closer than 330 feet to any boundary of such tract nor closer than 330 feet to the nearest well drilling to or capable of producing from the same pool, provided however, only tracts committed to active secondary recovery projects shall be permitted more than four wells.

(2) Lea, Chaves, Eddy and Roosevelt Counties.

(a) Gas Wells. Unless otherwise provided in special pool rules, each development well for a defined gas pool in a formation younger than the Wolfcamp formation, or in the Wolfcamp formation which was created and defined by the Division prior to November 1, 1975, or in a Pennsylvanian age or older formation which was created and defined by the Division prior to June 1, 1964, shall be located on a designated drilling tract consisting of 160 surface contiguous acres, more or less, substantially in the form of a square which is a quarter section being a legal subdivision of the U.S. Public Land Surveys, and shall be located not closer than 660 feet to any outer boundary of such tract nor closer than 330 feet to any quarter-quarter section or subdivision inner boundary nor closer than 1320 feet to the nearest well drilling to or capable of producing from the same pool.

(b) Unless otherwise provided in the special pool rules, each development well for a defined gas pool in the Wolfcamp formation which was created and defined by the Division after November 1, 1975, or of Pennsylvanian age or older which was created and defined by the Division after June 1, 1964, shall be located on a designated drilling tract consisting of 320 surface contiguous acres, more or less,

comprising any two contiguous quarter sections of a single governmental section, being a legal subdivision of the U.S. Public Land Surveys. Any such well having more than 160 acres dedicated to it shall be located not closer than 660 feet to the nearest side boundary of the dedicated tract nor closer than 1650 feet to the nearest end boundary, nor closer than 330 feet to any quarter-quarter section or subdivision inner boundary. (For the purpose of this rule, "side" boundary and "end" boundary are as defined in Rule 104 B(1)(a), above.)

(3) San Juan, Rio Arriba, Sandoval, and McKinley Counties.

(a) Gas Wells. Unless otherwise provided in special pool rules, each development well for a defined gas pool shall be located on a designated drilling tract consisting of 160 surface contiguous acres, more or less, substantially in the form of a square which is a quarter section, being a legal subdivision of the U.S. Public Land Surveys, and shall be located not closer than 790 feet to any outer boundary of the tract nor closer than 130 feet to any quarter-quarter section line or subdivision inner boundary.

(4) All Counties except Lea, Chaves, Eddy, Roosevelt, San Juan, Rio Arriba, Sandoval, and McKinley.

(a) Gas Wells. Unless otherwise provided in special pool rules, each development well for a defined gas pool shall be located on a designated drilling tract consisting of 160 surface contiguous acres, more or less, substantially in the form of a square which is a quarter section, being a legal subdivision of the U.S. Public Land Surveys, and shall be located not closer than 660 feet to any outer boundary of such tract nor closer than 330 feet to any quarter-quarter section or subdivision inner boundary nor closer than 1320 feet to the nearest well drilling to or capable of producing from the same pool.

104.D. ACREAGE ASSIGNMENT

(1) Well Tests and Classification. It shall be the responsibility of the operator of any wildcat gas well or development gas well to which more than 40 acres has been dedicated to conduct a potential test within 30 days following completion of the well and to file the same with the Division within 10 days following completion of the tests. (See Rule 401.)

(a) Date of completion for a gas well shall be the date a wellhead is installed or 30 days following conclusion of active completion work on the well, whichever date comes first.

(b) Upon making a determination that the well should not properly be classified as a gas well, the Division will reduce the acreage dedicated to the well.

(c) Failure of the operator to file the aforesaid tests within the specified time will also subject the well to such acreage reduction.

(2) Non-Standard Spacing Units. Any well which does not have the required amount of acreage dedicated to it for the pool or formation in which it is completed may not be produced until a standard spacing unit for the well has been formed and dedicated or until a non-standard spacing unit has been approved.

(a) The supervisor of the appropriate District Office of the Division shall have the authority to approve non-standard spacing units without notice when the unorthodox size and shape is necessitated by a variation in the legal subdivision of the United States Public Land Surveys and/or consists of an entire governmental section and the non-standard spacing unit is not less than 70% nor more than 130% of a standard spacing unit. Such approval shall consist of acceptance of Division Form C-102 showing the proposed non-standard spacing unit and the acreage contained therein.

(b) The Division Director may grant administrative approval to non-standard spacing units without notice and hearing when an application has been filed for a non-standard spacing unit and the unorthodox size or shape of the dedicated tract is necessitated by a variation in the legal subdivision of the U.S. Public Land Surveys, or the following facts exist and the following provisions are complied with:

(i) The non-standard spacing unit consists of a single quarter-quarter section or lot or the non-standard spacing unit consists of quarter-quarter sections or lots that are contiguous by a common bordering side; and

(ii) The non-standard spacing unit lies wholly within a single governmental quarter section if the well is completed in a pool or formation for which 40, 80, or 160 acres is the standard spacing unit size, wholly within a single governmental half section if the well is completed in a pool or formation for which 320 acres is the standard spacing unit size, or wholly within a single governmental section if the well is completed in a pool or formation for which 640 acres is the standard spacing unit size.

(c) Applications for administrative approval of non-standard spacing units, pursuant to Section D(2) above, shall be accompanied by a plat showing the subject spacing unit and an applicable standard spacing unit for the applicable pool or formation, its proposed well dedications, all adjoining spacing units and/or leases (whichever is applicable), and a list of affected parties. Also to be included is a statement that discusses the necessity for the formation of the subject non-standard spacing unit and the reasons why a standard sized spacing unit is not feasible.

(i) Affected parties in this instance shall be defined as those parties who own interests in the applicable half quarter section (80-acre spacing), quarter section (160-acre spacing), half section (320-acre spacing), or section (640-acre spacing) in which the non-standard spacing unit is situated and which acreage is not included in said non-standard spacing unit;

(ii) the designated operator of any adjoining or diagonal spacing unit producing from the same pool(s) as the proposed non-standard spacing unit;

(iii) in the absence of an operator, all lessees of record of any diagonal or adjoining lease owning interests in the same pool(s) as the proposed non-standard spacing unit; and

(iv) in the absence of an operator or lessee, then to all owners of record of unleased mineral interests.

(d) The applicant shall submit a statement attesting that applicant, on or before the same date the application was submitted to the Division, has sent notification to the affected parties by submitting a copy of the application, including a copy of the plat described in Subpart (c) above by certified or registered mail-return receipt in accordance with Rule 1207(6)(a) advising them that if they have an objection it must be filed in writing within twenty days from the date notice was sent. The Division Director may approve the non-standard spacing unit upon receipt of waivers from all said parties or if no said party has entered an objection to the non-standard spacing unit within 20 days after the Director has received the application.

(e) The Division Director may set any application for administrative approval for a non-standard spacing unit for public hearing.

(3) Number of Wells Per Spacing Unit in Non-Prorated Gas Pools: Unless otherwise permitted by special pool rules or authorized after notice and hearing, only one (1) well per spacing unit is permitted in non-prorated pools.

104.E. Form C-102, "Well Location and Acreage Dedication Plat", for any well to designate the exact legal subdivision allotted to the well and Form C-101, "Application for Permit to Drill, Deepen, or Plug Back", will not be approved by the Division without such proper designation of acreage.

104.F. UNORTHODOX LOCATIONS

(1) Well locations for producing wells and/or injection wells which are unorthodox based on the well location requirements of Rule 104.C(1)(a) above and which are necessary to permit the completion of an efficient production and injection pattern within a secondary recovery, tertiary recovery, or pressure maintenance project are hereby authorized, provided that any such unorthodox location within such project is no closer than the required minimum orthodox distance to the outer boundary of the lease or the unitized area, nor closer than 10 feet to any quarter-quarter section line or subdivision inner boundary. Such locations shall only require such prior approval as is necessary for an orthodox location.

(2) The Division Director shall have authority to grant an exception to the well location requirements of Sections 104.B and 104.C above or to the well location requirements of special pool rules without notice and hearing when the necessity for such unorthodox location is based upon geologic conditions, archaeological conditions, topographical conditions, or the recompletion of a well previously drilled to a deeper horizon provided said well was drilled at an orthodox or approved unorthodox location for such original horizon.

(3) Applications for administrative approval of unorthodox locations pursuant to Rule 104.F(2), above, shall be accompanied by a plat showing the subject spacing unit, its proposed unorthodox well location, the diagonal and adjoining spacing units and/or leases (whichever is applicable) and wells, and a list of affected parties. If the proposed unorthodox location is based upon topography or archaeology, the plat shall also show and describe the existent topographical or archaeological conditions. If the proposed unorthodox location is based upon geology, the application shall include appropriate geologic exhibits and a discussion of the geologic conditions which result in the necessity for the unorthodox location.

(a) Adjoining and diagonal spacing units shall be defined as those immediately adjacent existing spacing units in the same pool(s) as the proposed unorthodox well and towards which the unorthodox well location encroaches.

(b) Affected parties shall be defined as those parties who own interests in leases or operate wells on adjoining or diagonal spacing units and include:

(i) the designated operator of any adjoining or diagonal spacing unit producing from the same pool(s) as the proposed well;

(ii) in the absence of an operator, all lessees of record of any diagonal or adjoining lease owning interests in the same pool(s) as the proposed well; and

(iii) in the absence of an operator or lessee, all owners of record of unleased mineral interests in the same pool(s) as the proposed well.

(4) The applicant shall submit a statement attesting that applicant, on or before the same date the application was submitted to the Division, has sent notification to the affected parties by submitting a copy of the application, including a copy of the plat described in Rule 104.F(3) above by certified or registered mail-return receipt in accordance with Rule 1207(A)(5) advising them that if they have an objection it must be filed in writing within twenty days from the date notice was sent. The Division Director may approve the unorthodox location upon receipt of waivers from all said parties or if no said party has entered an objection to the unorthodox location within 20 days after the Director has received the application.

(5) The Division Director may set any application for administrative approval of an unorthodox location for public hearing, and may require that a directional survey be run in the unorthodox well to establish the actual location of the producing interval(s).

104.G. Whenever an exception is granted, the Division may take such action as will offset any advantage which the person securing the exception may obtain over other producers by reason of the unorthodox location.

104.H. If the drilling tract is within an allocated oil pool or is placed within such allocated pool at any time after completion of the well and the drilling tract consists of less than 39 1/2 acres or more than 40 1/2 acres, the top unit allowable for such well shall be increased or decreased in the proportion that the number of acres in the drilling tract bears to 40.

104.I. If the drilling tract is within an allocated gas pool or is subsequently placed within an allocated gas pool, and the drilling tract consists of less than 158 acres or more than 162 acres in 160-acre pools, or less than 316 acres or more than 324 acres in 320-acre pools, the top allowable for such well shall be decreased or increased in the proportion that the number of acres in the drilling tract bears to a standard spacing unit for the pool.

104.J. In computing acreage under Rules 104.H and 104.I above, minor fractions of an acre shall not be counted but 1/2 acre or more shall count as 1 acre.

104.K. The provisions of Rules 104.H and 104.I above shall apply only to wells completed after January 1, 1950. Nothing herein contained shall affect in any manner any well completed prior to the effective date of this rule and no adjustments shall be made in the allowable production for any such wells by reason of these rules.

104.L. In order to prevent waste the Division may, after notice and hearing, fix different spacing requirements and require greater acreage for drilling tracts in any defined oil pool or in any defined gas pool notwithstanding the provisions of Rules 104.B and 104.C above.

104.M. The Division may approve the pooling or communitization of fractional lots of 20.49 acres or less with another oil spacing unit when:

(1) The tracts involved are contiguous;

(2) They are part of the same basic lease, carrying the same royalty interest; and

(3) The ownership of the tracts involved is common.

104.N. Application to the Division for pooling shall be accompanied by three (3) copies of a certified plat showing the dimensions and acreage involved in the pooling, the ownership of all leases and royalty interests involved, and the location of any proposed wells.

104.O. The Division shall wait at least ten days before approving any such pooling, and shall approve such pooling only in the absence of objection from any party entitled to notice. In the event that a party entitled to notice objects to the pooling, the Division shall consider the matter only after proper notice and hearing.

104.P. The Division may waive the ten-day waiting period requirement if the applicant furnishes the Division with the written consent to the pooling by all offset operators involved.

104.Q. The Division may consider that the requirements of Rules 104.M(2) and (3) have been fulfilled if the applicant furnishes with each copy of each application to the Division a copy of executed pooling agreement communitizing the tracts involved.

104.R. **REPEALED**

DOCKET: I MINER HEARING - THURSDAY - FEBRI 8, 1996
8:15 A.M. - 2040 South Pacheco
Santa Fe, New Mexico

Dockets Nos 6-96 and 7-96 are tentatively set for February 22, 1996 and March 7, 1996. Applications for hearing must be filed at least 23 days in advance of hearing date. The following cases will be heard by an Examiner:

CASE 11458: **Application of Oxy USA Inc. for unorthodox gas well location, Eddy County, New Mexico.** Applicant seeks approval to drill its Oxy 33 Federal Well No. 1 at an unorthodox gas well location 510 feet from the South line and 660 feet from the East line (Unit P) of Section 33, Township 19 South, Range 28 East. The S/2 of Section 33 is to be dedicated to this well forming a standard 320-acre gas spacing and proration unit for any and all production from the top of the Wolfcamp formation to be base of the Morrow formation. Applicant further requests approval of the unorthodox well location as to all prospective pools or formations including but not limited to the North Burton Flat-Wolfcamp Gas Pool, the Winchester-Morrow Gas Pool, the Winchester-Strawn Gas Pool, and the Angell Ranch Atoka-Morrow Gas Pool. Said well is located approximately 9 miles east of Lakewood, New Mexico.

CASE 11453: **(Continued from January 25, 1996, Examiner Hearing.)**

Application of Oxy USA Inc. for an unorthodox gas well location, Eddy County, New Mexico. Applicant seeks approval to drill its Government S Well No. 9 at an unorthodox gas well location 660 feet from the North line and 660 feet from the East line (Unit A) of Section 3, Township 20 South, Range 28 East. The N/2 of Section 3 is to be dedicated to this well forming a standard 320-acre gas spacing and proration unit for any and all production from the top of the Wolfcamp formation to the base of the Morrow formation. Applicant further requests approval of the unorthodox well location as to all prospective pools or formations including but not limited to the North Burton Flat-Wolfcamp Gas Pool, the Winchester-Morrow Gas Pool, the Winchester-Strawn Gas Pool, the Winchester-Atoka Gas Pool and the Burton Flat-Morrow Gas Pool. Said well is located approximately 10 miles east

CASE 11454: **(Continued from January 25, 1996, Examiner Hearing.)**

Application of Oxy USA Inc. for an unorthodox gas well location, Eddy County, New Mexico. Applicant seeks approval to drill its Oxy 4 Federal Well No. 1 at an unorthodox gas well location 1980 feet from the North line and 2130 feet from the West line (Unit F) of Section 4, Township 20 South, Range 28 East. The W/2 of Section 4 is to be dedicated to this well forming a standard 320-acre gas spacing and proration unit for any and all production from the top of the Wolfcamp formation to the base of the Morrow formation. Applicant further requests approval of the unorthodox well location as to all prospective pools or formations including but not limited to the North Burton Flat-Wolfcamp Gas Pool, the Winchester-Morrow Gas Pool, and the Burton Flat-Morrow Gas Pool, Said well is located approximately 9 miles east of Lakewood, New Mexico.

CASE 11459: **Application of Conoco, Inc. to Amend Division Administrative Order DHC-1170, Lea County, New Mexico.** Applicant seeks to amend the original allowable set forth in Division Order DHC-1170 which approved the commingling of production from the Blinebry Oil and Gas Pool and the Warren-Tubb Gas Pool in its Warren Unit Well No. 95, located 660 feet from the South and East lines (Unit P) of Section 28, Township 20 South, Range 38 East. Said well is located approximately 7 miles north of Eunice, New Mexico.

CASE 11435: **(Readvertised)**

Application of Shell Western E&P Inc. to Amend Division Administrative Order DHC-1149, Lea County, New Mexico. Applicant seeks to amend Division Order DHC-1149 to allow commingled oil production from the Vacuum-Wolfcamp and Vacuum-Middle Pennsylvanian Pools not to exceed 300 barrels/day, and to allow water production not to exceed 300 barrels/day, from the State "A" Well No. 10, located in Unit A of Section 31, Township 17 South, Range 35 East. Said well is located approximately 1 mile southeast of Buckeye, New Mexico.

CASE 11460: **Application of Santa Fe Energy Resources, Inc. for a unit agreement, Lea County, New Mexico.** Applicant seeks approval of the Tom Cat Unit Agreement for an area comprising 2,560 acres, more or less, of federal, state, and fee lands consisting of all or parts of Sections 15-17 and 20-22, Township 23 South, Range 32 East. Said unit area is centered approximately 5 miles northeast of the intersection of State Highway 128 with the Eddy/Lea County line.

CASE 11461: **Application of Santa Fe Energy Resources, Inc. for compulsory pooling and an unorthodox gas well location, Lea County, New Mexico.** Applicant seeks an order pooling all mineral interests from the surface to the base of the Devonian formation underlying the following described acreage in Section 29, Township 22 South, Range 34 East, and in the following manner: All of Section 29 to form a standard 640-acre gas spacing and proration unit for any and all formations and/or pools developed on 640-acre spacing within said vertical extent, including the Undesignated North Bell Lake-Devonian Gas Pool; and the E/2 of Section 29 to form a standard 320-acre gas spacing and proration unit for any and all formations and/or pools developed on 320-acre spacing within said vertical extent, including the Undesignated Antelope Ridge-Atoka Gas Pool. Said units are to be dedicated to the applicant's Shamrock "29" Fed Com. Well No. 1 to be drilled at an orthodox gas well location 1330 feet from the North and East lines (Unit G) of the Section. Also to be considered will be the cost of drilling and completing said well and the allocation of the costs thereof, as well as actual operating costs and charges for supervision, designation of applicant as operator of the well and a charge for the risk involved in drilling said well. Said units are located approximately 16 miles southwest of Eunice, New Mexico.

CASE 11456: **(Continued from January 25, 1996, Examiner Hearing.)**

Application of Santa Fe Energy Resources, Inc. for compulsory pooling, Lea County, New Mexico. Applicant seeks an order pooling all mineral interests from the surface to the base of the Bone Spring formation underlying the NE/4 NE/4 of Section 18, Township 23 South, Range 32 East, forming a standard 40-acre oil spacing and proration unit for any and all formations and/or pools developed on 40-acre spacing within said vertical extent. Said unit is to be dedicated to the applicant's Tomcat 18 Fed. Well No. 1 to be drilled at an orthodox oil well location. Also to be considered will be the cost of drilling and completing said well and the allocation of the costs thereof, as well as actual operating costs and charges for supervision, designation of applicant as operator of the well and a charge for the risk involved in drilling said well. Said unit is located approximately 4 miles north of the intersection of Highway FAS 1271 and the border between Lea and Eddy Counties.

CASE 11462: **Application of Exxon Corporation for a non-standard gas proration unit and simultaneous dedication, Lea County, New Mexico.** Applicant seeks to establish a non-standard 240-acre gas spacing and proration unit for Blinebry Oil and Gas Pool production comprising the E/2 W/2, SW/4 SW/4, and NW4 SW/4 of Section 2, Township 22 South, Range 37 East. Said unit is to be dedicated to the existing New Mexico "S" Well Nos. 14, 38, 28, 27, 21, and 42, located in Unit letters C, E, F, K, L, and N, respectively. Said proration unit is located two miles southeast of Eunice, New Mexico.

CASE 11169: **(Continued from January 25, 1996, Examiner Hearing.)**

In the matter of Case No. 11169 being reopened pursuant to the provisions of Division Order No. R-10327, which order promulgated temporary special rules and regulations for the North Hardy Tubb-Drinkard Pool in Lea County, New Mexico. Operators in the subject pool may appear and present evidence and testimony as to the nature of the reservoir with regards to making these rules permanent.

CASE 11463: **Application of Robert L. Bayless for downhole commingling, San Juan County, New Mexico.** Applicant, seeks approval to downhole commingle production from Fulcher Kutz-Pictured Cliffs and Aztec Fruitland Sand Pools within the wellbore of its Horn Canyon Well No. 1 located 1190 feet from the North line and 1055 feet from the West line (Unit D) of Section 15, Township 28 North, Range 11 West. Said well is located approximately 4 miles south of Bloomfield, New Mexico.

CASE 11464: **Application of Penwell Energy, Inc. for pool creation, special pool rules and a discovery allowable, Eddy County, New Mexico.** Applicant seeks the creation of a new pool for the production of oil from the Bone Spring formation comprising the W/2 NE/4 of Section 7, Township 22 South, Range 26 East, the assignment of a discovery allowable, and the promulgation of special pool rules therefor including provisions for 80-acre oil spacing units and designated well location requirements. Said area is located approximately 15 miles south of Loving, New Mexico.

CASE 11465: **Application of Cobra Oil & Gas Corporation for a unit agreement, Lea County, New Mexico.** Applicant seeks approval of the Lewis Unit Agreement for an area comprising 80 acres of State lands in portions of Sections 3 and 4, Township 10 South, Range 36 East. Said unit area is located approximately 15 miles north-northeast of Tatum, New Mexico.

CASE 11466: **Application of Cobra Oil & Gas Corporation for unorthodox oil well location, Lea County, New Mexico.** Applicant seeks approval to drill its State 3 Com Well No. 1 at an unorthodox location 675 feet from the South line and 114 feet from the West line (Unit M) of Section 3, Township 10 South, Range 36 East. The SW/4 SW/4 of said Section 3 is to be dedicated to the well. Applicant further requests approval of the unorthodox location as to all prospective pools or formations including but not limited to the Devonian formation. Said well is located approximately 15 miles north-northeast of Tatum, New Mexico.

CASE 11339: (Continued from January 11, 1995, Examiner Hearing.)

Application of Yates Petroleum Corporation for directional drilling and an unorthodox bottomhole location, Eddy Eddy County, New Mexico. Applicant, in the above-styled cause, seeks authority to drill its Zinnia Federal Unit Well No. 1 from a unorthodox surface location 1980 feet from the North line and 910 feet from the West line (Unit E) of Section 27, Township 20 South, Range 29 East, to an unorthodox bottomhole gas well location within 50 feet of a point 1980 from the North line and 2405 feet from the East line (Unit G of Section 27, to test he Strawn and Morrow formations, Undesignated East Burton Flat-Strawn Gas Pool and Wildcat Morrow. The N/2 of Section 27 is to be dedicated to this well forming a standard 320-acre gas spacing and proration unit for both formations. Said well is located approximately 11 miles northeast of Carlsbad, New Mexico.

CASE 11399: (Continued from January 11, 1995, Examiner Hearing.)

In the matter of the hearing called by the Oil Conservation Division ("Division") on its own motion to permit the operator, Diamond Back Petroleum Inc. and all other interested parties to appear and show cause why the following two wells located in Eddy County, New Mexico, should not be plugged and abandoned in accordance with a Division-approved plugging program. Further, should the operator fail to properly plug any or all of said wells, the Division seeks an order directing the operator to pay the costs of such plugging and if failing to do so, ordering a forfeiture of the plugging bond, if any, covering said wells:

Margie Kay Well No. 1, located 1980 feet from the North line and 1980 feet from the West line (Unit F) of Section 7, Township 17 South, Range 28 East.

Margie Kay Well No. 1, located 1980 feet from the South line and 660 feet from the West line (Unit L) of Section 7, Township 17 South, Range 28 East.

CASE 11448: (Continued from January 11, 1996, Examiner Hearing.)

In the matter of the hearing called by the Oil Conservation Division ("Division") on its own motion to permit Rhonda Operating Co., owner/operator, American Employers' Insurance Company, surety, and all other interested parties to appear and show cause why the State 29 Well No. 2, located 1977 feet from the North line and 670 feet from the East line (Unit H) of Section 29, Township 8 South, Range 33 East, Chaves County, New Mexico (which is approximately 17 miles southeast of Kenna, New Mexico), should not be plugged and abandoned in accordance with a Division-approved plugging program. Should the operator fail to properly plug said well, the Division should then be authorized to take such action as is deemed necessary to have the well properly plugged and abandoned and to direct the owner/operator to pay the costs of such plugging.

CASE 11467: Application of the Oil Conservation Division for a show cause hearing requiring Southwest Water Disposal, Inc. (SWD) to appear and show cause why it should not be ordered to comply with its permit requirements and close its commercial clay lined surface evaporation pond located in the SE/4 SW/4, Section 32, Township 30 North, Range 9 West, San Juan County, New Mexico. Said facility is located approximately 3 miles north-northeast of Blanco, New Mexico.

CASE 11457: (Continued from January 25, 1996, Examiner Hearing.)

In the matter of the application of the New Mexico Oil Conservation Division for a show cause hearing requiring Petro-Thermo Corporation to appear and show cause why its Goodwin Treating Plant located in the SW/4 NW/4 of Section 31, Township 18 South, Range 37 East, Lea County, New Mexico should not: (1) be ordered to cease operations, (2) have its permit to operate revoked, (3) be closed and cleaned up, (4) be closed by the Division if Petro-Thermo does not close it, (5) have the costs of closure and cleanup assessed against Petro-Thermo if closed by the Division, and (6) have its $25,000 bond forfeited. Said plant is located approximately 9 miles west of Hobbs, New Mexico.

DOCKET: C MISSION HEARING - THURSDAY - FEBR RY 15, 1996
9:00 A.M. - 2040 SOUTH PACHECO - SANTA FE, NEW EXICO
The Land Commissioner's designee for this hearing will be Jami Bailey

CASE 11468: The Oil Conservation Division is calling a hearing on its own motion to consider proposed April, 1996 - September, 1996 gas allowables for the prorated gas pools in New Mexico. Allowable assignment factors are being distributed with an OCD Memorandum dated January 26, 1996. If requests for changes are not received at the February 15, 1996 hearing, these factors will be used to assign allowables for the April - September period.

CASE 10907: **Readvertised**

In the matter of the hearing called by the Oil Conservation Division to amend Rules 1111, 1112 and 1115 of its General Rules and Regulations. The Oil Conservation Division seeks to amend its General Rules and Regulations to provide for the filing of Forms C-111, C-112, and C-115, respectively, on the last business day of the month following the month of production and to provide for the imposition of penalties for failure to file timely and accurate reports.

CASE 11352: **Readvertised**

In the matter of the hearing called by the Oil Conservation Division to amend Rule 116 of its General Rules and Regulations pertaining to the notification of fires, breaks, leaks, spills and blowouts. The proposed amendments to Rule 116 would include and/or exclude certain situations from its coverage.

CASE 11358: **De Novo**

Applicant, in the above-styled cause, as operator of the Ross Ranch "22" well No. 2 (**API No. 30-015-27458**), located 1980 feet from the North line and 660 feet from the West line (Unit E) of Section 22, Township 19 South, Range 25 East, North Dagger Draw-Upper Pennsylvanian Pool, seeks an order from the Division rescinding: (1) Administrative Order SWD-336, dated March 3, 1988, which order permitted Yates Petroleum Corporation to utilize its Osage Well No. 1 (**API No. 30-015-20890**), located 1980 feet from the North and East lines (Unit G) of Section 21, Township 19 South, Range 25 East, as a salt water disposal well into the Canyon formation; and, (2) Order No. R-7637, dated August 23, 1984, which order authorized Anadarko Petroleum Corporation to dispose of produced salt water into the Cisco/Canyon formations through its Dagger Draw SWD Well No. 1, (**API No. 30-015-25003**), located 1495 feet from the North line and 225 feet from the West line (Unit E) of said Section 22. The 160 acres comprising the NW/4 of said Section 22, in which the Ross Ranch "22" Well No. 2 is therein dedicated, is located approximately 4 miles southwest by west of Seven Rivers, New Mexico. Upon application of Nearburg Exploration Company, only that portion of this case pertaining to the recision of Division Order No. R-7637 will be heard De Novo pursuant to the provisions of Rule 1220.

CASE 11353: **(Continued from January 18, 1996, Commission Hearing.)**

In the matter of the hearing called by the Oil Conservation Division to amend Rule 303.C. of its General Rules and Regulations pertaining to downhole commingling. The proposed amendments to Rule 303.C. would provide for administrative approval of applications for types of downhole commingling currently requiring notice and hearing.

February 25, 1999

Litigation Update

Johnson et al. v. Burlington Resources Oil & Gas Co., No. CV 25,061/25,062, Supreme Court –

We are awaiting the decision of the Supreme Court.

August 4, 1998
Litigation Update

Johnson et al. v. Burlington Resources Oil & Gas Co., No. CV 97-572-3, Eleventh Judicial District, San Juan County —

Johnson filed an Answer Brief and the Oil Conservation Commission filed a Reply Brief on June 20. The Supreme Court will decide the matter on the briefs. No oral argument is required.

ATTEST A TRUE COPY
Clerk of the Supreme Court
of the State of New Mexico

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

MANDATE NOS.25,061/25,062

TO the District Court sitting in and for the county of San Juan, GREETINGS:

WHEREAS, in cause numbered CV-97-572-3 on your civil docket wherein Timothy B. Johnson, et al., were plaintiffs, New Mexico Oil Conservation commission and Burlington Resources Oil & Gas Company were defendants; and;

WHEREAS, the cause and judgment were afterwards brought into this Court by defendants for review by appeal, whereupon such proceedings were had that on April 13, 1999, an opinion was issued affirming the judgment of the district court.

NOW, THEREFORE, this cause is remanded to you for further proceedings, if any, consistent and in conformity with the opinion of this Court.

WITNESS, The Hon. Pamela B. Minzner, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 29th day of April, 1999.

(S E A L)

Kathleen Jo Gibson, Chief Clerk of the Supreme Court of the State of New Mexico