

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:

ORIGINAL

CASE 15401

APPLICATION OF APACHE CORPORATION FOR
APPROVAL OF THE FIRE EAGLE STATE SAN ANDRES
EXPLORATORY UNIT, LEA COUNTY, NEW MEXICO

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

November 12, 2015

Santa Fe, New Mexico

BEFORE: WILLIAM V. JONES, CHIEF EXAMINER
GABRIEL WADE, LEGAL EXAMINER

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This matter came on for hearing before the
New Mexico Oil Conservation Division, William V. Jones,
Chief Examiner, and Gabriel Wade, Legal Examiner, on
November 12, 2015, at the New Mexico Energy, Minerals,
and Natural Resources Department, Wendell Chino
Building, 1220 South St. Francis Drive, Porter Hall,
Room 102, Santa Fe, New Mexico.

REPORTED BY: ELLEN H. ALLANIC
NEW MEXICO CCR 100
CALIFORNIA CSR 8670
PAUL BACA COURT REPORTERS
500 Fourth Street, NW
Suite 105
Albuquerque, New Mexico 87102

A P P E A R A N C E S

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For the Applicant

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I N D E X

CASE NUMBER 15401 CALLED
(No exhibits were marked.)

Reporter's Certificate

PAGE
17

1 (Time noted 9:03 a.m.)

2 EXAMINER JONES: And at this time let's call
3 case No. 15401, Application of Apache Corporation for
4 Approval of the Fire Eagle State San Andres Exploratory
5 Unit, Lea County, New Mexico.

6 Can we again reiterate the appearances in
7 this case.

8 MS. KESSLER: Jordan Kessler --

9 EXAMINER JONES: Applicant first, I guess.

10 MS. BRADFUTE: Hi. Jennifer Bradfute and
11 Earl DeBrine for Apache Corporation.

12 MS. KESSLER: And on behalf of COG
13 Operating, Jordan Kessler from Holland and Hart, the
14 Santa Fe Office.

15 MR. CARR: And William F. Carr, Senior
16 Counsel, Concho Resources.

17 EXAMINER JONES: Any other appearances.

18 (No response.)

19 MR. WADE: Want to see if there's any
20 preliminarily matters.

21 MS. BRADFUTE: Yes, we would. We wanted to
22 address Concho's entry of appearance in this case under
23 the rules.

24 And, really, first, we wanted to point out
25 that this seems to be a technical issue. My

1 understanding is that they have entered an appearance
2 claiming that they were entitled to notice.

3 They're a working interest owner that is
4 located outside of the unit. They have two cases on the
5 docket today, so they received notice of the
6 applications through the docket system well in advance
7 to file a prehearing statement and submit some idea of
8 their arguments to the Division.

9 Under the rules, working interest owners who
10 are offset to a unit are not entitled to notice. If you
11 look at rule 19.15.16.7, subsection L-2, that section
12 defines what a project area is under the Division's
13 rules. And then if you look at M-1, it states that
14 units, exploratory units, are considered standard
15 project areas under the rules.

16 And so offsets are not typically entitled to
17 notice for standard project area applications. It is a
18 considered a project area under the rules.

19 And then if you look at rule 19.15.4.10,
20 that rule specifies who can become a party to the case.
21 If you look under subsection 82 of that rule, it says
22 that a person to whom statute law order requires notice
23 can become a party to the case.

24 As we have just kind of gone through and
25 looked at the first rule, Concho is not entitled to

1 notice as an offset party in the case. And they don't
2 have an interest included with the unit that's the
3 subject of this application.

4 Recently Holland and Hart presented a case
5 to the Division, and I have a copy of that transcript.
6 And that case number is case 15387.

7 And in that case, if you look on page 18,
8 the question of whether or not notice was necessary to
9 parties located outside of a unit area was addressed by
10 the Division.

11 And I believe Mr. Wade specifically asked
12 questions about who would be entitled to notice. And
13 Holland and Hart clarified the exact position that I
14 just explained, that under the rules a unit is
15 considered a project area.

16 The Division entered an order finding that
17 notice was properly given in this case, and in this case
18 no notice was provided to the offset owners.

19 MR. WADE: Did you give -- within the
20 transcript, did you give a --

21 MS. BRADFUTE: It is on page 18. And if you
22 begin by looking at lines 13 -- well, actually, a little
23 bit further up. If you begin looking at line 10.

24 MR. WADE: Where I ask, "If you execute a
25 unit...?"

1 MS. BRADFUTE: Yes.

2 MR. WADE: Okay.

3 MS. BRADFUTE: And then, again, the issue
4 was briefly discussed on page 19, looking at lines 11
5 through 15.

6 And in this case that I provided the
7 transcript for, 15387, no notice was provided to offset
8 owners and the Division did enter an order in the case,
9 finding that notice had been properly given to all
10 effective parties.

11 And so what the position is that we are
12 taking is that Concho is not an effective party
13 who is entitled to enter an appearance in this case
14 because they were not entitled to notice under the
15 rules.

16 In addition, the lessee of record, who
17 Concho's interest is derived from, has executed
18 a waiver waiving any objections to this application and
19 has indicated that they are ratifying the unit
20 agreement.

21 MS. KESSLER: Mr. Examiners, Ms. Bradfute is
22 correct in that Concho did not receive notice of this
23 case and did find out about this unit case through
24 looking at the docket which was posted on the Division
25 website.

1 Now, despite the fact that there are Concho
2 cases on this docket, Concho does not look at that
3 docket every day to verify whether or not they have an
4 interest in that docket. But they did find this case
5 and realized that not only are their correlative rights
6 impacted, but they are directly excluded from this unit.
7 From the somewhat gerrymandered boundaries of the unit,
8 their interests are cut out.

9 Because their correlative rights are
10 affected, there is standing to intervene under Division
11 regulation 19.15.4.10; Parties that properly intervene
12 are entitled to cross-examine witnesses -- which is
13 exactly what COG would like to do in this case.

14 I am looking in particular also at
15 19.15.4.11, which allows intervening examiners to allow
16 intervenors to participate if the intervenor has
17 identified with a written notice on or after the date
18 provided previously or by oral exam on the record of
19 that hearing.

20 Now, Concho, as soon as it found out that
21 its correlative rights were being negatively affected by
22 Apache's application, did contact counsel. And I
23 immediately entered an appearance. But that is the
24 reason for the intervention at this point.

25 MR. WADE: So at this point, COG just seeks

1 to cross-examine and not present any witnesses?

2 MS. KESSLER: That's correct, Mr. Examiner,

3 MR. WADE: And you referred to 4.10 as
4 allowing you to be a party in this case?

5 MS. KESSLER: That's correct.

6 MR. WADE: Entitled to notice or a party
7 because of correlative rights being affected?

8 MS. KESSLER: Because of correlative rights
9 being affected.

10 MR. WADE: So the question of whether you're
11 entitled to direct notice isn't what you're necessarily
12 arguing this morning?

13 MS. KESSLER: My fault.

14 MR. WADE: So I think what you are pointing
15 to is 15.4.10-A2, and I am reading, A person to whom
16 statute, rule, or order requires notice -- no?

17 MS. KESSLER: No.

18 MR. WADE: I am seeing shaking heads "no."

19 MS. KESSLER: It would be the --

20 MR. WADE: "Properly intervenes"?

21 MS. KESSLER: Yes. Under Rule 19.15.4.11.

22 And as I stated earlier, this is soundly
23 within the Division Examiners' discretion and, also,
24 again, the reason for COG's late intervention was
25 because no direct notice was received.

1 MR. WADE: Okay. Now the only other
2 question that I have is, under 4.10 and, it seems, 4.11
3 it's silent as to what a party in your situation really
4 can to. I think it is clear that you can't present
5 technical evidence. But where does it say you are
6 allowed to cross-examine?

7 MS. KESSLER: Mr. Examiner, we would submit
8 that as an intervenor, we are entitled to cross-examine
9 witnesses.

10 MS. BRADFUTE: And, Mr. Examiner, if I could
11 interject. Under rule 19.15.4.11, under A, it specifies
12 that when a person has standing to intervene in a case,
13 they must file written notice of the intervention with
14 the Division at least one business day before the date
15 for filing of a prehearing statement.

16 And then there are particular requirements
17 when a party wants to intervene as to what information
18 they're supposed to provide. They need to provide the
19 intervenor's name, but they also needed to provide the
20 nature of the intervenor's interest in the application,
21 which has not yet been provided to Apache, and the
22 extent to which the intervenor opposes the issuance of
23 the order that the applicant seeks.

24 And that advanced notice is important here
25 because COG clearly was aware of the docket and they had

1 time to provide that information in advance.

2 MS. KESSLER: Mr. Examiner, the rule also
3 states that by oral appearance on the record at the
4 hearing -- which is exactly what is happening at this
5 point -- the intervenor may properly intervene.

6 And I would also submit that it is important
7 to receive notice so that the case can be properly
8 prepared, so that all the parties can have discussions
9 beforehand, and no such notice was provided to COG,
10 despite the fact, once again, that its acreage is being
11 directly excluded and that its correlative rights are
12 being negatively impacted here. And the right to
13 cross-examine witnesses to determine the extent of their
14 development plan and to see exactly how their horizontal
15 development will affect Concho is crucial.

16 MR. WADE: Has there been any discussion
17 between the parties to that effect, maybe a continuance?

18 MS. KESSLER: Concho would be very happy
19 with a two-week continuance and planned to ask for one
20 at the close of this hearing. However, because the
21 Division was closed yesterday and because we didn't
22 receive notice of this case and of Concho's rights and
23 acreage in this case until Tuesday afternoon, the day
24 before Veteran's Day, which, again, led to the office
25 being closed yesterday, a continuance was not

1 discussed.

2 MR. WADE: So I am assuming you would be
3 asking for a continuance so you would have the time to
4 put on a direct case?

5 MR. CARR: Yes.

6 MR. WADE: Because the information that you
7 would like to present may not come out through cross
8 anyhow?

9 MS. KESSLER: Yes.

10 MR. CARR: Yes.

11 MS. BRADFUTE: And, Mr. Examiner,
12 Ms. Kessler talks about notice but that goes to the very
13 beginning of this discussion. Notice has not been
14 required to offset working interest owners. Here the
15 lessee has signed and executed a waiver and they've
16 indicated in writing that they are going to ratify the
17 unit agreement. And so Concho wouldn't have been a
18 party that was entitled to notice of this application at
19 the outset.

20 MR. WADE: If I understand COG's argument,
21 they are not saying that they necessarily should have
22 received direct notice. What they are saying is offset,
23 these correlative rights are being affected, that they
24 should be considered a party.

25 MS. KESSLER: That is correct.

1 MR. WADE: What I see as a practical
2 solution would be to give a continuance to allow the
3 parties to discuss some of these issues and see where
4 they might be able to meet. Because, otherwise, even if
5 you were able to present direct and COG is able to
6 cross-examine, they are still going to request a
7 continuance at the end of your hearing, anyhow, to put
8 on direct evidence later.

9 MR. DeBRINE: Mr. Examiner, if I could
10 respond briefly. If the Division is inclined to grant
11 the continuance, that we ought to address that now,
12 rather than going through the time and effort of
13 presenting the witnesses.

14 We would oppose a continuance because we
15 came out here at great expense to present the case.
16 Concho has two cases on the docket. They had actual
17 notice by the application that went out to them.

18 When the Division provided notice, they could
19 have investigated and filed a prehearing statement and
20 timely entered an appearance. And we don't know why
21 they didn't, why they slept on it until the last minute
22 and filed a late entry of appearance in intending to
23 intervene.

24 We don't believe they should be afforded the
25 status of a party and be allowed to participate, and we

1 should go forward and not continue the case.

2 MR. CARR: May it please the Examiner, I
3 would like to respond to Mr. DeBrine.

4 MR. WADE: Yes.

5 MR. CARR: In terms of our status or right
6 to be considered a party, if you look at Exhibit 4 from
7 the preceding case, it shows the unit boundary for the
8 proposed unit. And if you move across the southern
9 boundary, there is, for some reason, a chunk out.
10 That's the Concho acreage.

11 They plan to develop north, west and east of
12 our acreage. We are not sleeping on rights. When we
13 get no notice, it's just the fact. In this kind of
14 case, you don't require it.

15 But when we did discover it, we contacted
16 Apache. And we are here today because wells north,
17 wells west, wells east of our acreage will drain our
18 acreage unless we develop it.

19 And if you look at their exhibit, you can
20 say, Go for it and develop your own land. But as we
21 heard the testimony in the prior case, you need a
22 horizontal well to do it. And we would have to go south
23 and you can see what happens to the reservoirs due
24 south.

25 This is a correlative rights case. I don't

1 care what your other rules say. You're charged with
2 protecting correlative rights, preventing waste, and if
3 you don't let us in, if you don't give us time to
4 prepare, you are violating those rights, and we will
5 have to review them with the Commission.

6 MR. WADE: There's always that consideration
7 between the parties as well. I mean, you could put on a
8 case and have it subject, obviously, to appeal. So I
9 think it may be worthwhile for the parties to at least
10 discuss this.

11 So, at any rate, the rules make it clear
12 that informal processes are, I think, designed to allow
13 as many parties who have legitimate issues to come
14 forward and have the ability to flush them out. And for
15 good cause, the Examiners can allow late intervenors to
16 enter appearances.

17 So I think what I would like to do is ask
18 for a five-minute recess so Mr. Jones and I can speak.

19 (Brief recess.)

20 EXAMINER JONES: We are back on the record
21 in case No. 15401. And we are going to continue the
22 case for two more weeks. So if somebody will tell me
23 when two more weeks is -- November the 26th --

24 MR. DeBRINE: Mr. Examiner, I believe that's
25 Thanksgiving. Because of the timing of the drilling --

1 in the unit it's going to be likely the same rig that's
2 going to move from one to the other and with timing
3 issues, perhaps, we can request a special hearing date
4 that works for the parties, so that we can have it heard
5 as quickly as possible.

6 MR. WADE: I think it is possible if you can
7 get together and come up with some dates. At any rate,
8 what we'd like to do is allow the parties sometime to
9 have discussion. So it would still have to be a couple
10 of weeks roughly down the road.

11 How about we set it for the next hearing
12 date and allow the parties to discuss an off-docket date
13 possibility?

14 MR. CARR: Mr. Examiner, if we reach an
15 agreement, we will notify you immediately of that fact.

16 MR. DeBRINE: Are there any particular dates
17 for us to consider based on the Division's schedule?

18 MR. WADE: Obviously, stay away from
19 Thanksgiving. And we are off two days during that week,
20 so Thursday and Friday. If we continue it to
21 December 3rd, the parties can discuss the possible
22 off-docket date, if needed, or just have discussions in
23 general.

24 EXAMINER JONES: Okay. We haven't admitted
25 any exhibits in that case at all, so we should give them

1 back. So at this point, it is continued to December
2 3rd, but the parties can let us know.

3 MS. BRADFUTE: Okay.

4 (Time noted 9:28 a.m.)

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

_____, Examiner
Oil Conservation Division

1 STATE OF NEW MEXICO)
 2) ss.
 3 COUNTY OF BERNALILLO)
 4
 5
 6

7 REPORTER'S CERTIFICATE

8
 9 I, ELLEN H. ALLANIC, New Mexico Reporter CCR
 10 No. 100, DO HEREBY CERTIFY that on Thursday, November
 11 12, 2015, the proceedings in the above-captioned matter
 12 were taken before me, that I did report in stenographic
 13 shorthand the proceedings set forth herein, and the
 14 foregoing pages are a true and correct transcription to
 15 the best of my ability and control.

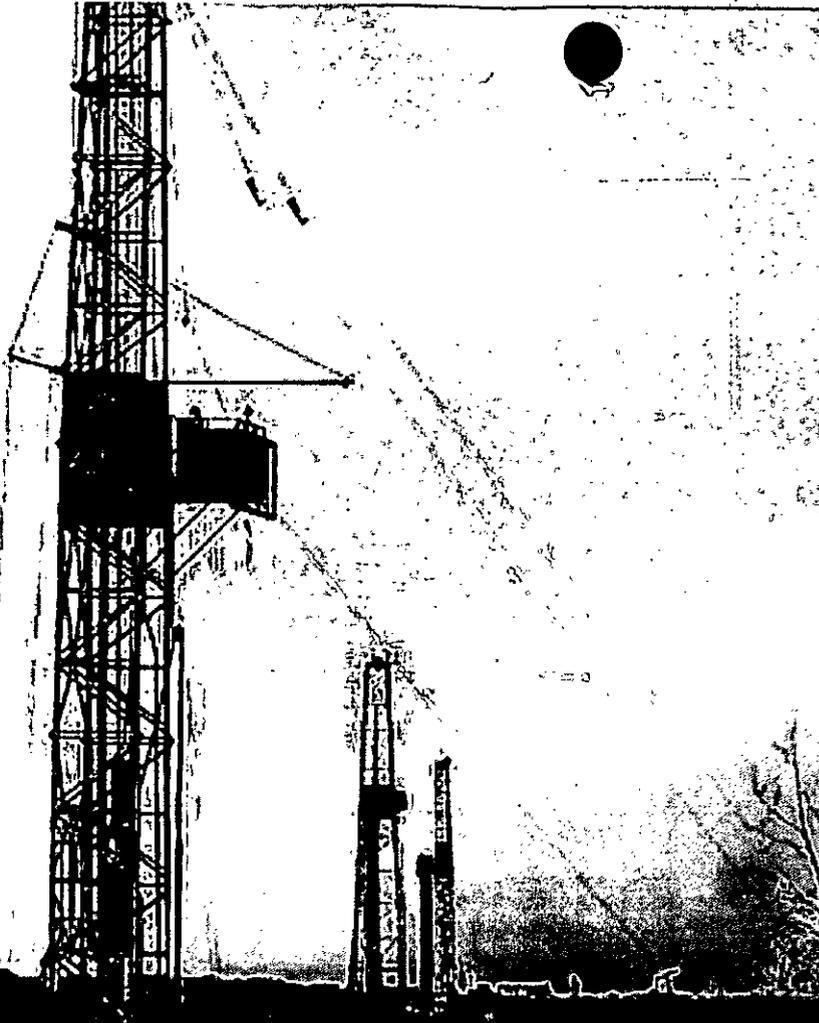
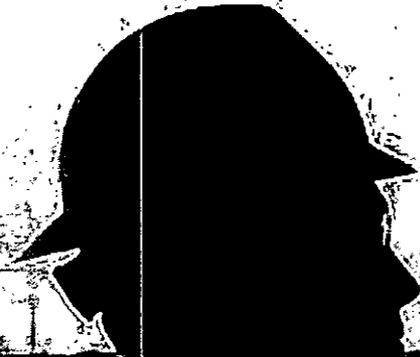
16
 17 I FURTHER CERTIFY that I am neither employed by
 18 nor related to nor contracted with (unless excepted by
 19 the rules) any of the parties or attorneys in this case,
 20 and that I have no interest whatsoever in the final
 21 disposition of this case in any court.

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 23
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ELLEN H. ALLANIC, CSR
 NM Certified Court Reporter No. 100
 License Expires: 12/31/15



Apache



October 2015

FIRE EAGLE AND PACIFICO UNITS

LEA COUNTY, NM

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

**APPLICATION OF APACHE CORPORATION
FOR APPROVAL OF THE FIRE EAGLE STATE
SAN ANDRES EXPLORATORY UNIT,
IN LEA COUNTY, NEW MEXICO.**

CASE NO. 15401

**EXAMINER HEARING
THURSDAY, NOVEMBER 12, 2014 @ 8:15 A.M.
1220 SOUTH ST. FRANCIS DR, SANTA FE, NM**

APACHE CORPORATION'S EXHIBIT LIST

- 1. APPLICATION**
- 2. STATE/FEE EXPLORATORY UNIT: UNIT AGREEMENT FOR THE DEVELOPMENT AND OPERATION OF THE PACIFICO STATE SAN ANDRES UNIT AREA.**
- 3. PRELIMINARY APPROVAL – PROPOSED STATE SAN ANDRES UNIT BY THE STATE OF NEW MEXICO COMMISSIONER OF PUBLIC LANDS DATED OCTOBER 27, 2015.**
- 4. AFFIDAVIT OF NOTICE.**
- 5. GEOLOGIC DESCRIPTION/DISCUSSION.**
- 6. PAY TOP STRUCTURE (FT. SUBSEA).**
- 7. PAY SOPHIH (FT).**
- 8. WEST – EAST CROSS SECTION.**
- 9. NORTH – SOUTH CROSS SECTION.**
- 10. HEADINGTON CORRESPONDENCE.**

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

**APPLICATION OF APACHE CORPORATION
FOR APPROVAL OF THE FIRE EAGLE STATE
SAN ANDRES EXPLORATORY UNIT, IN LEA
COUNTY, NEW MEXICO.**

CASE NO. _____

APPLICATION

Apache Corporation ("Apache") by and through its attorneys, Modrall, Sperling, Roehl, Harris & Sisk, P.A., files this application with the Oil Conservation Division for an order approving its Fire Eagle State San Andres Exploratory Unit pursuant to 19.15.20.14 NMAC. In support of its application, Apache states:

1. The proposed Unit Area for the Unit consists of approximately 3,360 acres of state lands situated in Lea County, New Mexico, described as follows:

Township 10 South, Range 36 East, N.M.P.M.:

Section 2: All
Section 3: All
Section 4: All
Section 9: N/2
Section 10: N/2 and SW/4
Section 11: All

2. Apache (OGRID No. 873) is the designated operator under the Unit Agreement. The unitized interval is the stratigraphic equivalent of the San Andres formation defined at a depth of 4,243' down to the base of the formation at a measured depth of 5,643' as encountered in the Gainer 22 #1 well (API No. 30-025-38792) in Section 22, Township 10 South, Range 36 East, Lea County, New Mexico.

Case No. 15401

Apache
Exhibit 1

3. The Unit Agreement has been approved by a sufficient percentage of the interest owners within the proposed Unit Area to provide effective control of unit operations.

4. Apache has received preliminary approval of the Unit Agreement from the New Mexico State Land Office.

5. The entire Unit Area will be developed and operated as a single participating area.

6. Pursuant to 19.15.20.14 NMAC, after notice and hearing, the Division may approve the combining of contiguous spacing units into a unitized area.

7. Approval of this Application will be in the best interest of conservation, the prevention of waste and the protection of correlative rights.

WHEREFORE, Apache Corporation requests that this Application be set for hearing before an Examiner of the Oil Conservation Division on November 12, 2015, and that after notice and hearing as required by law, the Division enter its order granting this Application.

Respectfully submitted,

MODRALL, SPERLING, ROEHL, HARRIS
& SISK, P.A.

By: 

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Case No. _____: **Application Of Apache Corporation For Approval Of the Fire Eagle State San Andres Exploratory Unit, Lea County New Mexico.** Applicant seeks approval of its Fire Eagle State San Andres Exploratory Unit consisting of approximately 3,360 acres of state lands situated in all or parts of Sections 2, 3, 4, 9, 10, and 11 of Township 10 South, Range 36 East, N.M.P.M., Lea County, New Mexico. The unitized interval is the stratigraphic equivalent of the San Andres formation defined at a depth of 4,243' down to the base of the formation at a measured depth of 5,643' as encountered in the Gainer 22 #1 well (API No. 30-025-38792) in Section 22, Township 10 South, Range 36 East, Lea County, New Mexico. The subject acreage is located approximately 4.5 miles Southeast of Crossroads, New Mexico.