

Jones, William V., EMNRD

From: Hayden, Steven, EMNRD
Sent: Thursday, June 04, 2009 1:57 PM
To: Altomare, Mikal, EMNRD; Brooks, David K., EMNRD; Ezeanyim, Richard, EMNRD; Macquesten, Gail, EMNRD; Fesmire, Mark, EMNRD; Sanchez, Daniel J., EMNRD
Cc: Perrin, Charlie, EMNRD; Roberts, Kelly G, EMNRD
Subject: BLM notice of drainage issue
Attachments: Colorado FC Drainage Notice.tif

FYI. This is not related to calling the Coalbed Methane Committee (CMC) back into being. Areas that will potentially be drained by the increased well density in Colorado are separate from any infill areas that may be defined and acted on by the CMC. There may be cases brought to hearing that will request increased density in the row of sections along the Co/NM state line and the criteria will be this order.

The first meeting of the new CMC will be on July 14th at 9:00 AM and will probably be held at the BLM, FFO since it looks like there will be too many people there for our conference room. Any requests for increased infill to the Basin Fruitland Coal Pool should be referred to the CMC through me at the Aztec OCD office.

Thank you

Steve Hayden

505 334 6178-Office

District Geologist

505 320 0545-Mobile

NM OCD District 3

505 334 6170-Fax

1000 Rio Brazos Rd.

Aztec, NM 87410



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Farmington Field Office
1235 La Plata Highway, Suite A
Farmington, New Mexico 87401



IN REPLY REFER TO
NM Drainage (DR)
3162 2 (NMF01100)

June 3, 2009

RCVD JUN 4 '09
OIL CONS. DIV.

Notification of Potential Drainage

DIST. 3

CERTIFIED-- RETURN RECEIPT REQUESTED
7008 1140 0004 7851 8460

Ms Sharon Zubrod
ConocoPhillips Company
San Juan Business Unit
3401 E 30th Street
Farmington, NM 87402

Re Potential Drainage of Federal Minerals

Dear Ms Zubrod

The Farmington Field Office (FFO) is currently reviewing the potential drainage of federal leases along the New Mexico/Colorado border. This potential exists when federal leases can be adversely affected by production from non-federal offset wells.

The State of Colorado currently allows Fruitland Coal wells to be drilled on an 80 acre well density. Current Fruitland Coal well density in New Mexico is 160 acres per well. This well density differential creates potential drainage situations that require appropriate protective measures.

The FFO recognizes that well development along the Colorado/New Mexico border was somewhat restricted due to topography and wildlife issues. The Farmington Resource Management Plan (RMP) was approved on September 2003, and appropriate management prescriptions were established for the border area lands. However, before the RMP was approved, the Rattlesnake Canyon Habitat Management Plan limited new road construction to well pads and encouraged the use of directional drilling technology to minimize the fragmentation of wildlife habitat and limit surface disturbance. The Rattlesnake Canyon Special Management Area established under the FFO RMP now addresses the appropriate management prescriptions and best management practices (BMPs) for this area.

We recognize the historical regulatory impediments to protecting federal mineral estates along the Colorado/New Mexico border against drainage of oil and gas resources, however, with appropriate mitigation measures and BMPs, we believe protective measures against drainage from the Colorado side of the San Juan Basin should now be aggressively pursued. We encourage ConocoPhillips to seek exception from the current well density limitations in the Fruitland Coal formation from the NMOCD to allow for optional 80 acre infill wells along the state line. The FFO will support an optional infill provision before the NMOCD. This provision would allow your company to take appropriate drainage protective measures when and where deemed necessary.

The New Mexico lands where potential drainage could occur due to the Fruitland Coal well density differences are as follows

1) **Allison Unit, T. 32N, R. 7W, Unit Operator: Burlington.**

Affected lands Lots 5-13, sec 9
NE/4, sec 16

2) **San Juan 32-7 Unit, T. 32N, R. 7W, Unit Operator: ConocoPhillips.**

Affected lands All, sec 7
All, sec 8
NW/4SW/4, Lots 4, 14 sec 9
NW/4, sec 16
N/2, sec 17
N/2, sec 18

3) **San Juan 32-8 Unit, T. 32N, R. 8W, Unit Operator: ConocoPhillips.**

Affected lands All, sec 9
N/2, sec 14
N/2, sec 15
N/2, sec 17

Affected lands located in T. 32N, R. 8W. that are not in the San Juan 32-8 Unit:

Affected lands All, sec 7 NMNM-33053, Lessees Burlington 87.5%, et al
All, sec 8 NMNM-33054, Lessees Burlington 87.5%, et al
All, sec 10 NMNM-6889, Lessee Burlington 100%
All, sec 11 NMNM-6890, Lessee Burlington 100%
All, sec 12 NMNM-9037, Lessee Burlington 100%
N/2, sec 13 NMNM-6892 Lessee Burlington 100%
N/2, sec 16 Fee acreage
N/2, sec 18 NMNM-33055, Lessees Burlington 87.5%, et al

4) **San Juan 32-9 Unit, T. 32N, R. 9W, Unit Operator: Burlington.**

Affected lands All, sec 9
All, sec 10
NW/4, sec 13
NW/4, sec 14
NE/4, sec 16
N/2, sec 18

Affected lands located in T. 32N, R. 9W, that are not in the San Juan 32-9 Unit:

Affected lands Lots 13-16, sec 7 NMSF-079048, Lessee ConocoPhillips 100%
Lot 18, sec 7 NMSF-079625, Lessee ConocoPhillips 100%
Lots 7-12, 17, sec 7 NMSF-079148, Lessees of Record Other
All, sec 8 NMSF-078687, Lessee ConocoPhillips 100%
All, sec 11 NMSF-079320, Lessee Burlington 100%
All, sec 12 NMSF-079329, Lessee ConocoPhillips 100%
NE/4, sec 13 NMSF-079329, Lessee ConocoPhillips 100%
Lots 1,2 4,5 (NE/4), sec 14 NMSF-079322, Lessee ConocoPhillips 100%
N/2, sec 15 NMSF-078687, Lessee ConocoPhillips 100%
NW/4, sec 16 State acreage
N/2, sec 17 NMSF-078513, Lessee Burlington 100%

5) **San Juan 32-9 Unit, T. 32N, R. 10W, Unit Operator. Burlington.**

Affected lands All, sec 11
All, sec. 12
N/2, sec 13
N/2, sec 14

Affected lands located in T. 32N, R. 10W that are not in a Unit.

Affected lands Lots 6-12, sec 7 NMSF-078215, Lessees Burlington 68 75%, et al
Lot 1, sec 7 Fee acreage
Lots 5, 6, 9, 10, sec 8 NMSF-078655, Lessee ConocoPhillips 100%
Lots 7, 8, sec 8 NMNM-013367A, Lessee of Record Other
S/2SW/4, sec 8 Fee acreage
Lots 9, 10, 11, 12, (S/2S/2), sec 9 NMNM-013367, Lessee Burlington 100%
Lots 5, 6, 7, 8, sec 9 NMNM-015545, Lessees of Record Other
Lots 5, 6, sec 10 NMSF-078699, Lessee Burlington 100%
Lots 2, 3, 4, SW/4SE/4, S/2SW/4, sec 10 Fee acreage
SW/4NW/4, sec 15 NMNM-012648, Lessee ConocoPhillips 100%
Lots 1, 2, sec 15 NMSF-078699, Lessee Burlington 100%
N/2NW/4, SE/4NW/4, W/2NE/4, sec 15 Fee acreage
N/2, sec 16 State acreage
Lots 1, 2, 3, 4, 5, 6, sec 17 NMSF-078655, Lessee ConocoPhillips 100%
W/2NW/4, sec 17 Fee acreage
Lots 5, 6, 8, 9, 11, 12 (N/2), sec 18 NMSF-078215A, Lessee Burlington 100%

6) **Cox Canyon Unit, T. 32N, R. 11W, Unit Operator: Williams Prod. Co.**

Affected lands Lots 1, 2, S/2SE/4 (SE/4), sec 8
All, sec 9
N/2, sec 16
E/2NW/4, NE/4, sec 17

Affected lands located in T. 32N, R. 11W that are not in a Unit:

Affected lands SE/4SW/4, Lot 5, sec 7, NMSF-078118, Lessee ConocoPhillips 100%
Lots 1, 2, 3, 4, S/2SE/4, sec 7 Fee acreage
Lots 3, 4, S/2SW/4 (SW/4), sec 8 Fee acreage
Lots 1, 3, sec 10 NMSF-078119B, Lessees Burlington 50%, et al
Lot 4, sec 10 NMNM-010909, Lessee of Record Other
Lot 2, S/2S/2, sec 10 Fee acreage
SE/4SE/4, sec 11 NMSF-078119A, Lessees Burlington 50%, et al
Lots 1, 2, 3, 4, S/2SW/4, SW/4SE/4, sec 11 Fee acreage
Lots 1, 2, 3, 4, S/2S/2 (All), sec 12 NMSF-078119, Lessee ConocoPhillips 100%
N/2, sec 13 NMSF-078119 Lessee ConocoPhillips 100%
E/2NE/4, SW/4NE/4, sec 14 NMSF-078119, Lessee ConocoPhillips 100%
NW/4, NW/4NE/4, sec 14 Fee acreage
E/2NW/4, sec 15 NMSF-078119, Lessee ConocoPhillips 100%
SW/4NW/4, sec 15 NMNM-010909, Lessee of Record Other
NW/4NW/4, NE/4, sec 15 Fee acreage
W/2NW/4, sec 17 NMSF-078118, Lessee ConocoPhillips 100%
Lots 1, 2, E/2 NW/4, NE/4, sec 18 NMSF-078118, Lessee ConocoPhillips 100%

7) **Affected lands located in T. 32N, R. 12W that are not in a Unit.**

Affected lands Lots 7, 8, 9, 10, sec 9, NMNM-03371, Lessee Burlington 25%, et al
Lots 5, 6, 11, sec 9, NMNM-019414, Lessee of Record Other

SE/4SE/4, sec 9 Fee acreage
Lot 5, SE/4SE/4, sec 10, NMSF-078312, Lessee Burlington 100%
Lots 2, 3, 4, S/2SW/4, SW/4SE/4, sec 10 Fee acreage
SW/4SE/4, S/2SW/4, Lots 1,2,3,4, sec 11, NMSF-078312, Lessee Burlington 100%
SE/4SE/4, sec 11 Fee acreage
Lot 4, sec 12, NMSF-078312, Lessee Burlington 100%
Lots 1, 2, 3, S/2S/2, sec 12 Fee acreage
NW/4, Lots 1, 2, S/2NE/4, sec 13, NMSF-078147A
W/2NW/4, sec 14, NMSF-078312, Lessee Burlington 100%
E/2NW/4, NE/4, sec 14 Fee acreage
E/2NE/4, sec 15, NMSF-078312, Lessee Burlington 100%
NW/4, W/2NE/4, sec 15 Fee acreage
N/2, sec 16 State acreage

NEW DRAINAGE REGULATIONS

Enclosed is a copy of the new Drainage Regulations that provides clarification of your drainage responsibilities. The Farmington Field Office (FFO) will continue to monitor federal drainage within the jurisdictional area of the Farmington Field Office.

If you have any questions regarding this correspondence, please direct them to me. My phone number is (505) 599-6387.

Sincerely,

/s/ Dave Mankiewicz

Dave Mankiewicz
Assistant Field Manager, Minerals

cc Mr. Mike McGovern
ConocoPhillips

Mr. Vern Hansen
Williams Production Company, LLC
P O Box 3102
Tulsa, Oklahoma 74101-3102

Mr. Charlie Perrin
NMOC
1000 Rio Brazos Road
Aztec, New Mexico 87410

§ 3162.2 as paragraphs (a) and (b) of this new section

§ 3162.2-1 Drilling and producing obligations

* * * * *

14 Add new §§ 3162.2-2 through 3162.2-15 to read as follows

Sec

3162.2-2 What steps may BLM take to avoid uncompensated drainage of Federal or Indian mineral resources?

3162.2-3 When am I responsible for protecting my Federal or Indian lease from drainage?

3162.2-4 What protective action may BLM require the lessee to take to protect the leases from drainage?

3162.2-5 Must I take protective action when a protective well would be uneconomical?

3162.2-6 When will I have constructive notice that drainage may be occurring?

3162.2-7 Who is liable for drainage if more than one person holds undivided interests in the record title or operating rights for the same lease?

3162.2-8 Does my responsibility for drainage protection end when I assign or transfer my lease interest?

3162.2-9 What is my duty to inquire about the potential for drainage and inform BLM of my findings?

3162.2-10 Will BLM notify me when it determines that drainage is occurring?

3162.2-11 How soon after I know of the likelihood of drainage must I take protective action?

3162.2-12 If I hold an interest in a lease, for what period will the Department assess compensatory royalty against me?

3162.2-13 If I acquire an interest in a lease that is being drained, will the Department assess me for compensatory royalty?

3162.2-14 May I appeal BLM's decision to require drainage protective measures?

3162.2-15 Who has the burden of proof if I appeal BLM's drainage determination?

§ 3162.2-2 What steps may BLM take to avoid uncompensated drainage of Federal or Indian mineral resources?

If we determine that a well is draining Federal or Indian mineral resources, we may take any of the following actions:

(a) If the mineral resources being drained are in Federal or Indian leases, we may require the lessee to drill and produce all wells that are necessary to protect the lease from drainage, unless the conditions of this part are met. BLM will consider applicable Federal, State, or Tribal rules, regulations, and spacing orders when determining which action to take. Alternatively, we may accept other equivalent protective measures;

(b) If the mineral resources being drained are either unleased (including those which may not be subject to leasing) or in Federal or Indian leases, we may execute agreements with the owners of interests in the producing

well under which the United States or the Indian lessor may be compensated for the drainage (with the consent of the Federal or (in consultation with the Indian mineral owner and BIA) Indian lessees, if any).

(c) We may offer for lease any qualifying unleased mineral resources under part 3120 of this chapter or enter into a communitization agreement, or

(d) We may approve a unit or communitization agreement that provides for payment of a royalty on production attributable to unleased mineral resources as provided in § 3181.5

§ 3162.2-3 When am I responsible for protecting my Federal or Indian lease from drainage?

You must protect your Federal or Indian lease from drainage if your lease is being drained of mineral resources by a well

(a) Producing for the benefit of another mineral owner,

(b) Producing for the benefit of the same mineral owner but with a lower royalty rate, or

(c) Located in a unit or communitization agreement, which due to its Federal or Indian mineral owner's allocation or participation factor, generates less revenue for the United States or the Indian mineral owner for the mineral resources produced from your lease

§ 3162.2-4 What protective action may BLM require the lessee to take to protect the leases from drainage?

We may require you to

(a) Drill or modify and produce all wells that are necessary to protect the leased mineral resources from drainage,

(b) Enter into a unitization or communitization agreement with the lease containing the draining well, or

(c) Pay compensatory royalties for drainage that has occurred or is occurring

§ 3162.2-5 Must I take protective action when a protective well would be uneconomical?

You are not required to take any of the actions listed in § 3162.2-4 if you can prove to BLM that when you first knew or had constructive notice of drainage you could not produce a sufficient quantity of oil or gas from a protective well on your lease for a reasonable profit above the cost of drilling, completing, and operating the protective well

§ 3162.2-6 When will I have constructive notice that drainage may be occurring?

(a) You have constructive notice that drainage may be occurring when well

completion or first production reports for the draining well are filed with either BLM, State oil and gas commissions, or regulatory agencies and are publicly available

(b) If you operate or own any interest in the draining well or lease you have constructive notice that drainage may be occurring when you complete drill stem, production, pressure analysis, or flow tests of the well

§ 3162.2-7 Who is liable for drainage if more than one person holds undivided interests in the record title or operating rights for the same lease?

(a) If more than one person holds record title interests in a portion of a lease that is subject to drainage, each person is jointly and severally liable for taking any action we may require under this part to protect the lease from drainage, including paying compensatory royalty accruing during the period and for the area in which it holds its record title interest

(b) Operating rights owners are jointly and severally liable with each other and with all record title holders for drainage affecting the area and horizons in which they hold operating rights during the period they hold operating rights

§ 3162.2-8 Does my responsibility for drainage protection end when I assign or transfer my lease interest?

If you assign your record title interest in a lease or transfer your operating rights, you are not liable for drainage that occurs after the date we approve the assignment or transfer. However, you remain responsible for the payment of compensatory royalties for any drainage that occurred when you held the lease interest

§ 3162.2-9 What is my duty to inquire about the potential for drainage and inform BLM of my findings?

(a) When you first acquire a lease interest, and at all times while you hold the lease interest, you must monitor the drilling of wells in the same or adjacent spacing units and gather sufficient information to determine whether drainage is occurring. This information can be in various forms, including but not limited to, well completion reports, sundry notices, or available production information. As a prudent lessee, it is your responsibility to analyze and evaluate this information and make the necessary calculations to determine

(1) The amount of drainage from production of the draining well,

(2) The amount of mineral resources which will be drained from your Federal or Indian lease during the life of the draining well, and

§ 3130.3 [Amended]

9 Amend § 3130.3 by revising the cross reference of "§ 3100.3" to read "§ 3162.2."

PART 3160—ONSHORE OIL AND GAS OPERATIONS

10 Revise the authority citation for part 3160 to read as follows:

Authority 25 U.S.C. 396d, 30 U.S.C. 189 and 359, 43 U.S.C. 1733 and 1740, and 40 Opinion of the Attorney General 41

§ 3160.0-5 [Amended]

11 Amend § 3160.0-5 as follows by
a Removing the paragraph designations (a) through (w) and alphabetizing all definitions,

b Adding new definitions for *Drainage*, *Protective well*, and *Record title holder*, and revising the definitions of *Lessee* and *Operating rights owner* to read as follows.

* * * * *

Drainage means the migration of hydrocarbons, inert gases (other than helium), or associated resources caused by production from other wells

* * * * *

Lessee means any person holding record title or owning operating rights in a lease issued or approved by the United States

* * * * *

Operating rights owner means a person who owns operating rights in a lease. A record title holder may also be an operating rights owner in a lease if it did not transfer all of its operating rights

* * * * *

Protective well means a well drilled or modified to prevent or offset drainage of oil and gas resources from its Federal or Indian lease

* * * * *

Record title holder means the person(s) to whom BLM or an Indian lessor issued a lease or approved the assignment of record title in a lease

* * * * *

12 Amend § 3162.2 as follows by

§ 3162.2 [Amended]

a Revising the heading,

b Adding "(s)" after "operating rights owner" in paragraph (b) and (c) each time it appears, and by adding the term "a lessee(s) and" before "operating rights owners" each time it appears; and

c removing paragraph (a)

§ 3162.2 Drilling, producing, and drainage obligations

* * * * *

13 Add a new § 3162.2-1 and redesignate paragraphs (b) and (c) of

(3) Whether a protective well would be economic to drill

(b) You must notify BLM within 60 days from the date of actual or constructive notice of

(1) Which of the actions in § 3162 2-4 you will take, or

(2) The reasons a protective well would be uneconomic

(c) If you do not have sufficient information to comply with § 3162 2-9(b)(1), indicate when you will provide the information

(d) You must provide BLM with the analysis under paragraph (a) of this section within 60 days after we request it

§ 3162 2-10 Will BLM notify me when it determines that drainage is occurring?

We will send you a demand letter by certified mail, return receipt requested, or personally serve you with notice, if we believe that drainage is occurring. However, your responsibility to take protective action arises when you first knew or had constructive notice of the drainage, even when that date precedes the BLM demand letter

§ 3162 2-11 How soon after I know of the likelihood of drainage must I take protective action?

(a) You must take protective action within a reasonable time after the earlier of

(1) The date you knew or had constructive notice that the potentially draining well had begun to produce oil or gas, or

(2) The date we issued a demand letter for protective action

(b) Since the time required to drill and produce a protective well varies according to the location and conditions of the oil and gas reservoir, BLM will determine this on a case-by-case basis. When we determine whether you took protective action within a reasonable time, we will consider several factors including, but not limited to

(1) Time required to evaluate the characteristics and performance of the draining well,

(2) Rig availability,

(3) Well depth,

(4) Required environmental analysis,

(5) Special lease stipulations which provide limited time frames in which to drill, and

(6) Weather conditions

(c) If BLM determines that you did not take protection action timely, you will owe compensatory royalty for the period of the delay under § 3162 2-12

§ 3162.2-12 If I hold an interest in a lease, for what period will the Department assess compensatory royalty against me?

The Department will assess compensatory royalty beginning on the

first day of the month following the earliest reasonable time we determine you should have taken protective action. You must continue to pay compensatory royalty until

(a) You drill sufficient economic protective wells and remain in continuous production,

(b) We approve a unitization or communitization agreement that includes the mineral resources being drained,

(c) The draining well stops producing, or

(d) You relinquish your interest in the Federal or Indian lease

§ 3162 2-13 If I acquire an interest in a lease that is being drained, will the Department assess me for compensatory royalty?

If you acquire an interest in a Federal or Indian lease through an assignment of record title or transfer of operating rights under this part, you are liable for all drainage obligations accruing on and after the date we approve the assignment or transfer

§ 3162 2-14 May I appeal BLM's decision to require drainage protective measures?

You may appeal any BLM decision requiring you take drainage protective measures. You may request BLM State Director review under 43 CFR 3165 3 and/or appeal to the Interior Board of Land Appeals under 43 CFR part 4 and subpart 1840

§ 3162 2-15 Who has the burden of proof if I appeal BLM's drainage determination?

BLM has the burden of establishing a *prima facie* case that drainage is occurring and that you knew of such drainage. Then the burden of proof shifts to you to refute the existence of drainage or to prove there was not sufficient information to put you on notice of the need for drainage protection. You also have the burden of proving that drilling and producing from a protective well would not be economically feasible

§ 3165 3 [Amended]

13 Amend § 3165 3 by adding the phrase "and the lessee(s)," after "appropriate party" in the first sentence of paragraph (a)

14 Amend § 3165 4 by adding a new paragraph (e)(4) to read as follows

§ 3165 4 Appeals

* * * * *

(e) * * *

(4) When an appeal is filed under paragraph (a) of this section from a decision to require drainage protection, BLM's drainage determination will remain in effect during the appeal,

notwithstanding the provisions of 43 CFR 4 21. Compensatory royalty and interest determined under 30 CFR Part 218 will continue to accrue throughout the appeal

[FR Doc. 01-446 Filed 1-9-01; 8:45 am]

BILLING CODE 4310-54-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 213

[Docket No. RST-90-1, Notice No. 9]

RIN 2130-AB32

Track Safety Standards

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT)

ACTION: Final rule

SUMMARY: FRA amends the Track Safety Standards to provide procedures for track owners to use Gage Restraint Measuring Systems (GRMS) to assess the ability of their track to maintain proper gage. Under the current Track Safety Standards, track owners must evaluate a track's gage restraint capability through visual inspections conducted at frequencies and intervals specified in the standards. With this amendment, track owners may monitor gage restraint on a designated track segment using GRMS procedures. Individuals employed by the track owner to inspect track must be permitted to exercise their discretion in judging whether the track segment should also be visually inspected by a qualified track inspector.

DATES: *Effective Date* This final rule is effective April 10, 2001.

FOR FURTHER INFORMATION CONTACT: Allison H. MacDowell, Office of Safety Enforcement, Federal Railroad Administration, 1120 Vermont Avenue, NW, Mail Stop 25, Washington, DC 20590 (telephone 202-493-6236), or Nancy Lommen Lewis, Office of Chief Counsel, Federal Railroad Administration, 1120 Vermont Avenue, NW, Mail Stop 10, Washington, DC 20590 (telephone 202-493-6047).

SUPPLEMENTARY INFORMATION:

Introductory Statement

Historically, railroads assess a track's ability to maintain gage through visual inspections of cross-ties and rail fastening systems. The maintenance decisions which determine cross-tie and rail fastener replacement within the