

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: )  
APPLICATION OF BURLINGTON RESOURCES OIL )  
AND GAS COMPANY TO AMEND THE SPECIAL )  
RULES AND REGULATIONS FOR THE BASIN- )  
DAKOTA GAS POOL FOR PURPOSES OF CHANGING )  
WELL LOCATION REQUIREMENTS FOR DAKOTA )  
WELLS, RIO ARRIBA AND SAN JUAN COUNTIES, )  
NEW MEXICO )

CASE NO. 12,290

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: MICHAEL E. STOGNER, Hearing Examiner

February 17th, 2000

Santa Fe, New Mexico

09 MAR - 2 PM 1:24

OIL CONSERVATION DIV

This matter came on for hearing before the New Mexico Oil Conservation Division, MICHAEL E. STOGNER, Hearing Examiner, on Thursday, February 17th, 2000, at the New Mexico Energy, Minerals and Natural Resources Department, Porter Hall, 2040 South Pacheco, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

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February 17th, 2000  
Examiner Hearing  
CASE NO. 12,290

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## A P P E A R A N C E S

## FOR THE DIVISION:

LYN S. HEBERT  
Deputy General Counsel  
Energy, Minerals and Natural Resources Department  
2040 South Pacheco  
Santa Fe, New Mexico 87505

## FOR THE APPLICANT:

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

## ALSO PRESENT:

G.D. Simon  
Petroleum Engineering Consultant  
Data Consultants Incorporated  
P.O. Box 14749  
Albuquerque, NM 87191

\* \* \*

1           WHEREUPON, the following proceedings were had at  
2 10:37 a.m.:

3           EXAMINER STOGNER: At this time I will call Case  
4 Number 12,290.

5           MS. HEBERT: Application of Burlington Resources  
6 Oil and Gas Company to amend the special rules and  
7 regulations for the Basin-Dakota Gas Pool for purposes of  
8 changing well location requirements for Dakota wells, Rio  
9 Arriba and San Juan Counties, New Mexico.

10          EXAMINER STOGNER: Call for appearances.

11          MR. KELLAHIN: Mr. Examiner, I'm Tom Kellahin of  
12 the Santa Fe law firm of Kellahin and Kellahin, appearing  
13 on behalf of the Applicant.

14          EXAMINER STOGNER: Any other appearances at this  
15 time?

16          MR. SIMON: Mr. Examiner, we -- On behalf of the  
17 Ute Mountain Ute Tribe, we might want to make a statement.

18          EXAMINER STOGNER: Okay, why don't you come  
19 forward, Mr. Simon --

20          MR. SIMON: Thank you.

21          EXAMINER STOGNER: -- and then at that time I  
22 would ask you to identify yourself further, and we'll  
23 definitely let you make a statement on behalf of the tribe.

24                 Any other appearances at this time?

25                 Mr. Kellahin, are there any witnesses to be sworn

1 in at this point?

2 MR. KELLAHIN: No, Mr. Examiner.

3 EXAMINER STOGNER: Okay. For the record, this  
4 case was heard back on November 18th, 1999. At that time  
5 it was continued to today, or subsequent dockets, to  
6 address certain issues that came up about the boundary of  
7 the Dakota Pool and clarification of what could have been  
8 or what might have been some miscommunication with certain  
9 owners of mineral interest up there.

10 So Mr. Kellahin, I guess that's what we're here  
11 today for --

12 MR. KELLAHIN: Yes, sir.

13 EXAMINER STOGNER: -- to wrap this thing up and  
14 take it under advisement?

15 Mr. Kellahin?

16 MR. KELLAHIN: Thank you, Mr. Examiner.

17 Mr. Examiner, we presented this case to you at a  
18 Division Examiner Hearing on November 18th, 1999. You may  
19 recall we're dealing with the Basin-Dakota Gas Pool.

20 This Application is a companion case to a  
21 Division case heard and decided back on February 1st of  
22 1999, in which, after a hearing before you, the Blanco-  
23 Mesaverde Gas Pools were revised, and those rules, pursuant  
24 to Order Number R-10,987-A, were modified so that instead  
25 of the original 790-foot setbacks to the boundaries of a

1 quarter section, they were relaxed to 660 feet, plus the  
2 interior setback was relaxed from 130 feet to a quarter-  
3 quarter, to not closer than 10 feet.

4 And then finally, the Blanco-Mesaverde Gas Pool  
5 rules further relaxed well-location requirements for the  
6 federal exploratory units in the San Juan Basin, such that  
7 so long as your well was not within 660 feet of the  
8 boundary of the unit, you could encroach upon interior  
9 spacing unit lines up to but not closer than 10 feet.

10 At the presentation made to you back on November  
11 18th, 1999, and following that presentation, there were  
12 certain questions you asked me to return today to address.  
13 The first one of those was to provide you with a correction  
14 as to the Basin-Dakota Pool map. That has been an  
15 interesting exercise for me, Mr. Examiner, and I will show  
16 you the state of my effort to accomplish that.

17 If you'll turn to what is marked as proposed  
18 Exhibit 9 for today's hearing you will see a plat. That  
19 plat has located on it Dakota producing wells, and then  
20 superimposed is a boundary.

21 And as you know and will remember, when the  
22 Division adopted the Blanco-Mesaverde Gas Pool -- I'm  
23 sorry, the Basin-Dakota Gas Pool, and went through various  
24 revisions as to what was going to happen with the Dakota  
25 wells, on November 4th, 1960, in Order Number R-1670-C, the

1 Commission abolished some 13 Dakota pools and created the  
2 Basin-Dakota Gas Pool. And it was to cover all of San Juan  
3 and Rio Arriba Counties, except they excluded the Barker  
4 Creek-Dakota and the Ute Dome-Dakota Gas Pools.

5 Those are shown as areas on your map that are  
6 shaded in blue, and they are in the northwestern portion of  
7 your display. The Barker Creek-Dakota is the northern one.  
8 The one to the southeast of Barker Creek is the Ute Dome  
9 Dakota.

10 Over the years, then, the Division has excluded  
11 other portions of Rio Arriba County and San Juan Counties  
12 from the Basin-Dakota Gas Pool when it created and expanded  
13 other Dakota Pools, which the Division considered caused  
14 the automatic contraction of the Basin-Dakota Gas Pool.

15 An example of that is the area shaded down to the  
16 south and east. That big area is the West Lindrith-Gallup-  
17 Dakota Pool.

18 What this map does not yet show is the fact that  
19 it is Division practice to exclude other pools, either gas  
20 or oil, that have Dakota in the name. I talked with Frank  
21 Chavez of the Aztec office. He has advised me that apart  
22 from the typical convention, which is to have the Division  
23 issue a nomenclature case contracting an existing pool when  
24 it correspondingly expands another pool, apparently  
25 starting when Mr. Stamets was Director, the Division

1 developed a practice of developing new Dakota Pools, either  
2 oil or gas, but not formally contracting by issuing an  
3 order the conflicting acreage out of the Basin-Dakota Gas  
4 Pool.

5           So what you have before you is what we think is  
6 the Basin-Dakota Gas Pool, but it does not exclude all of  
7 the named pools that Mr. Chavez has advised me about. So  
8 there's still a plat before you that has to be utilized  
9 with care, because when you look at a certain area you  
10 cannot tell by looking at that map exactly what has been  
11 excluded.

12           To confirm that question you had, Exhibit Number  
13 10 is my letter to Mr. Chavez, and attached to that is his  
14 response back to me, and I have subsequently supplemented  
15 this correspondence by talking to Mr. Chavez.

16           One of the other things that you asked me to  
17 confirm with Mr. Chavez is whether or not the notification  
18 list that Burlington had received from the Aztec office for  
19 providing notice to the operators in the pool prior to the  
20 last hearing was accurate and complete. I have reconfirmed  
21 with Mr. Chavez that the list he provided to Burlington is  
22 the same list he faxed to me back in December. I have been  
23 through that list again, and to the best of my knowledge,  
24 all parties that are listed by the Aztec office as Dakota  
25 operators have been provided notice of this particular rule

1 change.

2 So at this point, unless you desire that I do  
3 further work on the plat, we believe we've satisfied the  
4 notice requirements, and we have updated and corrected the  
5 pool map as I've already described.

6 The other issues you asked me to address were an  
7 entirely different topic, and they had to do with federal  
8 exploratory units and participating areas, and at your  
9 convenience I'm prepared to address that subject.

10 EXAMINER STOGNER: Okay, let's -- At this time,  
11 I'll accept Exhibit Number 9 and make that a part of the  
12 record, reflecting the Basin-Dakota Pool as the Division  
13 sees it and as it's in our records.

14 And yes, you're right, this pool has been treated  
15 somewhat different. It was one of the first perhaps  
16 Basinwide, countywide pools established. It's treated more  
17 like a 104 rule or a statewide rule than anything else.  
18 And in talking with Mr. Chavez on this issue, I believe I  
19 had even seen some language at one time that could have  
20 been interpreted when this pool or when the older pools  
21 were set up that other Dakota oil pools could be  
22 established here, and it would be understood that those  
23 pools essentially would be formed within that Basin-Dakota  
24 Pool, and it was automatically excluded. If it didn't say  
25 that, that's the way it's been treated up there.

1           So policy has set -- This procedure and policy  
2 has established that tradition up there in this particular  
3 pool. However, that's what makes this unique, just to the  
4 other pools in the state where, like you said, if a pool  
5 takes the place or moves into or encroaches upon another  
6 pool, then it is withdrawn through the nomenclature.  
7 That's what makes the nomenclature so valuable.

8           And even so, if a new Dakota pool within here,  
9 within this area, was to be established, that would be  
10 created through nomenclature, and it would be understood.

11           Notification, your Exhibit Number, I believe --  
12 what, 10? --

13           MR. KELLAHIN: Yes, sir.

14           EXAMINER STOGNER: -- will be admitted into  
15 evidence at this time also.

16           Okay, now you're going to address the other  
17 concerns that I had about within the exploratory unit  
18 areas?

19           MR. KELLAHIN: Yes, Mr. Examiner. Before I do  
20 that, I wish to comment that following the notifications  
21 the only affected party that has contacted me are  
22 representatives of the Ute Mountain Ute Tribe, and I have  
23 met with Jerry Simon and other members of the Tribe to  
24 discuss what, if any, impact occurs on tribal lands as  
25 regards to this proposed change in the pool rules.

1 I went to Farmington and met with them and  
2 described for them what we were doing and hopefully  
3 answered their questions and concerns, and Mr. Simon is  
4 here today and he can speak to what their position is.

5 Other than involvement with the Bureau of Land  
6 Management and requests from the Tribe, I'm not aware of  
7 any other party that has contacted either me or Burlington  
8 to express concerns about the proposed rule change.

9 The next topic, Mr. Examiner, deals with the  
10 federal exploratory units in the San Juan Basin. You may  
11 remember when you heard the Mesaverde pool rule change, we  
12 presented evidence about the participating areas in these  
13 units, and so the Blanco-Mesaverde Pool has a rule change  
14 that creates flexibilities in the interiors of these  
15 exploratory units.

16 When we came back to you in November on the  
17 Dakota Pool, you expressed concern about potential  
18 correlative rights violations within the exploratory units  
19 and asked me to prepare a memorandum for you, advising you  
20 what my opinion was concerning those potential issues.

21 To aid you in understanding the memorandum that's  
22 before you, if you'll turn past page 6, which is the  
23 conclusion page, there is a plat. It's a hypothetical  
24 plat, and it's intended to be an illustration so I can  
25 describe for you the various fact situations I have

1 analyzed to satisfy whether or not there was a correlative  
2 rights violation.

3           You may remember in the federal exploratory units  
4 in the San Juan Basin whether they are some of the named  
5 units like Alison or Huerfano, or whether they're the  
6 township-numbered units, for example, like the 28-and-7 or  
7 the 29-and-7. They all are common in that they are divided  
8 units. And what we mean by a divided unit is, they have a  
9 component contained within their unit agreements for  
10 participating areas.

11           By contrast, an undivided unit would be a unit  
12 that did not have participating areas and which, regardless  
13 of where the well is drilled, the working interest and  
14 royalty owners share based upon their acreage percentage of  
15 the entire unit.

16           These divided units in the San Juan Basin  
17 function in a different way, and a key component of those  
18 exploratory units is this concept of a participating area.  
19 And what that simply means is, as you drill a well, for  
20 example, a Dakota well, and you establish that that well is  
21 commercial, using the criteria, then they designate an  
22 initial participating area around that wellbore. Then  
23 further expansions of the participating area continue as  
24 further wells are drilled and deemed to be commercial.

25           The purpose of this is to share production

1 revenues with only those interest owners in a participating  
2 area, because that is the area considered reasonably proven  
3 productive of unitized substances in paying quantities, or  
4 which are necessary for unit operations. And production is  
5 allocated accordingly.

6 So the issue is, in these federal units you can  
7 have within the unit a participating area in the Dakota  
8 that's less than the entire unit area.

9 And so, for example, if you'll take the  
10 illustration and you'll look at the Drillblock A -- it's in  
11 the south half of Section 22 -- you can see the  
12 hypothetical has a drillblock in the unit, but it is not  
13 part of the participating area at this point.

14 And let's assume that that well is drilled in the  
15 southeast corner of Section 22 and is just 10 feet off the  
16 line. It's obvious to conclude that there's going to be  
17 drainage outside of Drillblock A. And the issue is whether  
18 or not the correlative rights of the interest owners in the  
19 participating area are violated. My conclusion is, they  
20 are not.

21 If the well drilled in Drillblock A is deemed  
22 commercial, then the operator is obligated to submit an  
23 application to the Bureau of Land Management, and the  
24 participating area is expanded and would include, then, the  
25 south half of Section 22, the end result, then, is, all

1 parties' working interest and royalty now share in  
2 production from the encroaching well.

3 Another hypothetical is to turn that around the  
4 other way, and I think I've got my well spotted slightly  
5 off-pattern, but the illustration will work. If you'll  
6 look down in Section 28, there's Drillblock B. Let's  
7 assume for this illustration that the offending well is in  
8 the participating area. For example, let's put it over in  
9 Section 27.

10 So there is a Drillblock B that does not yet have  
11 a Dakota well. It's a prospective drillblock, no well. It  
12 is being encroached upon by a distance of 10 feet. The  
13 issue is whether or not the working interest and royalty  
14 owners in the south half of Section 28 have their  
15 correlative rights impaired by this action. My conclusion  
16 is, they do not.

17 The unit agreement provides a mechanism for the  
18 expansion of the participating area, to include the south  
19 half of Section 28, even if those owners don't drill a  
20 well. The process is to expand to include the south half  
21 of 28, because by geologic inference, then, productivity in  
22 the Dakota is being contributed to the encroaching well.

23 The Bureau of Land Management can take that  
24 application, and based upon geologic inference, even in the  
25 absence of a protection well, expand the participating

1 area. The net result is, the owners in the south half of  
2 28 then participate on an equal basis with the parties  
3 sharing in production in the offending well, correlative  
4 rights are balanced and no adverse consequences occur.

5 Let's assume that you don't exercise the option  
6 to expand it without a well. It's certainly possible that  
7 the working interest owners in the south half of 28 may  
8 decide to drill a well. They will have the benefit under  
9 the unit process to not have a well directly 10 feet from a  
10 competing well. They could simply drill a well anywhere in  
11 the drillblock. If it is deemed commercial, the south half  
12 of 28 comes into the PA and everybody shares on the same  
13 percentage, correlative rights are protected.

14 There are two other hypotheticals I can think of.  
15 One occurs in what we call a partially committed  
16 drillblock. And what that means is, for example, in  
17 Drillblock A let's assume all the working interest owners  
18 are committed, but there is a fee tract involved, and the  
19 fee royalty owner refuses to ratify the unit. There will  
20 be, then, if the encroaching well in the PA is draining  
21 Drillblock A, there will be a potential correlative rights  
22 violation for the fee royalty owner who has not ratified  
23 the agreement and therefore wouldn't share in the PA  
24 production.

25 That royalty owner has several options, all of

1 which protect their correlative rights.

2           They could, if they decide, petition and be  
3 included in the unit and ratify the unit. Should they not  
4 choose to do that, then they still have their underlying  
5 lease rights and the obligation of the working interest  
6 owners in their lease tract, and they could compel the  
7 working interest owners to drill them a protection well.  
8 And so a well in the south half of 22 would have to be  
9 drilled.

10           Should the working interest owners decide not to  
11 do that, the uncommitted royalty owner still has relief in  
12 that they could sue for compensatory royalties, and you can  
13 work out the formula by which royalties would have to be  
14 paid to them based upon drainage and the compensatory  
15 royalty process.

16           The last illustration is over in Section 25 where  
17 you see the entire west half of 25 is an open window in the  
18 unit. We have constructed the proposed rule change, such  
19 that if there is an open tract in the unit, the unit could  
20 not encroach upon that tract. They've got to maintain the  
21 660 boundary setback that we have proposed and which is  
22 currently included in the Mesaverde pool rules.

23           Those are all the hypotheticals I could think of  
24 in which parties would have an encroaching well within the  
25 unit concept and would have a potential correlative rights

1 concern, and in each of those instances we find that there  
2 exists a proper and an appropriate solution to that issue,  
3 such that the Division can relax the rules, if you choose  
4 to do so, and, in doing so, continue to protect correlative  
5 rights.

6 To aid you in further understanding, I have  
7 provided three pages of definitions that are essential for  
8 understanding the process in the San Juan Basin. I've  
9 provided you a memo and explained to you in writing what  
10 I've just described to you verbally.

11 In addition, should you choose to engage in  
12 research on this topic, I have a notebook here containing  
13 about five or six different treatises on subject of  
14 participating areas. I have a copy of the Bureau of Land  
15 Management manual of operations so that you can see how  
16 they handle PA participations. And if you care to indulge  
17 in the tedium of looking at some of these old agreements, I  
18 have them.

19 The conclusion, though, is as I've summarized it  
20 for you, Mr. Examiner.

21 And that concludes my presentation.

22 EXAMINER STOGNER: Thank you. Of course, I  
23 wouldn't indulge personally on that, I would ask my legal  
24 counsel to do that, and I would keep that in consideration.

25 Does anybody else have anything further in this

1 case at this time?

2 I've noticed that you've given me a rough draft;  
3 is that correct?

4 MR. KELLAHIN: Yes, sir, and there there's a disk  
5 here on the table that has that on a diskette.

6 EXAMINER STOGNER: Also I'll include in the  
7 record in this matter, yesterday we had faxed to us a  
8 letter from the BLM San Juan Resource Area Office out of  
9 Durango, Colorado. It was delivered to Dave Catanach, but  
10 it's part of the record in this matter, and made some  
11 comments and statements concerning this matter and also  
12 reminded us of a memorandum of understanding that any draft  
13 order that would be issued by this Division would be first  
14 reviewed by them.

15 And before I take this into conclusion, I'll take  
16 statements at this time.

17 Mr. Simon, would you identify yourself?

18 MR. SIMON: Mr. Examiner, I'm Jerry Simon. I'm a  
19 petroleum engineering consultant to the Ute Mountain Ute  
20 Tribe, and we wanted to make a statement in support of the  
21 petition as presented by Mr. Kellahin.

22 We also want to take this opportunity to thank  
23 Mr. Kellahin and Burlington for their willingness to  
24 discuss the issue prior to this hearing with the tribe and  
25 its representatives. And accordingly, as the petition

1 might affect the Ute Mountain Ute lands, we again support  
2 Mr. Kellahin and Burlington.

3 Thank you.

4 EXAMINER STOGNER: Thank you, Mr. Simon.

5 Anything further?

6 MR. KELLAHIN: No, sir.

7 EXAMINER STOGNER: This matter will be taken  
8 under advisement.

9 (Thereupon, these proceedings were concluded at  
10 11:05 a.m.)

11 \* \* \*

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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. 12290,  
heard by me on 17 February 2000.  
*Michael H. ...*  
Off Conservation Division, Examiner

## CERTIFICATE OF REPORTER

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

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

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

WITNESS MY HAND AND SEAL February 21st, 2000.




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STEVEN T. BRENNER  
 CCR No. 7

My commission expires: October 14, 2002