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EL PATIO BUILDING
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TELEPHONE (505) 982-4285
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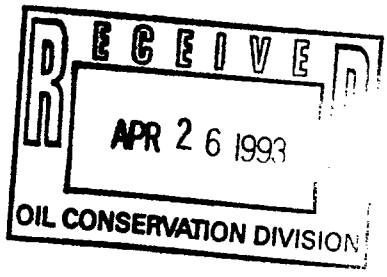
W THOMAS KELLAHIN*
*NEW MEXICO BOARD OF LEGAL SPECIALIZATION RECOGNIZED SPECIALIST IN THE AREA OF NATURAL RESOURCES-OIL AND GAS LAW

JASON KELLAHIN (RETIRED 1991)

April 26, 1993

HAND DELIVERED



Mr. William J. LeMay
Oil Conservation Division
310 Old Santa Fe Trail
Santa Fe, New Mexico 87501

Re: NMOCD Case 10513
Application of Hanley
Petroleum Inc. for
Determination of Well Costs
Lea County, New Mexico

Dear Mr. LeMay:

The referenced case was filed on June 3, 1992 and was docketed for hearing on Thursday, July 23, 1992.

Prior to the initial hearing in this case, Mr. James Bruce, who represents Santa Fe Energy Operating Partners, L. P., and I, who represent the applicant, entered into a joint stipulation requesting that this case be continued indefinitely to allow the parties time to undertake an audit of well costs for the Kachina "8" Well No 2.

That audit has been conducted and the parties are unable to resolve certain audit exceptions.

We are ready to proceed to hearing before the Division and request that this case be placed on the Examiner's docket now scheduled for May 20, 1993.

Very truly yours,

W. Thomas Kellahin

WTK/mg

cc: James Bruce, Esq.
William F. Carr, Esq.
Yates Petroleum Corporation
Hanley Petroleum Inc.

ltr426.215

KELLAHIN, KELLAHIN AND AUBREY
ATTORNEYS AT LAW
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W. THOMAS KELLAHIN*
KAREN AUBREY†

*NEW MEXICO BOARD OF LEGAL SPECIALIZATION RECOGNIZED SPECIALIST IN THE AREA OF NATURAL RESOURCES-OIL AND GAS LAW

†ALSO ADMITTED IN ARIZONA

JASON KELLAHIN (RETIRED 1991)

July 20, 1992

Mr. David R. Catanach
Oil Conservation Division
310 Old Santa Fe Trail
Santa Fe, New Mexico 87501

VIA FACSIMILE
(505) 827-5741

Re: NMOCD Case 10513
Application of Hanley Petroleum Inc.
for Determination of Well Costs
Lea County, New Mexico

Dear Mr. Catanach:

The referenced case appears on your docket and is scheduled for hearing on Thursday, July 23, 1992.

Mr. James Bruce, who represents Santa Fe Energy Operating Partners, L.P., and I, who represent the applicant, have entered into a joint stipulation requesting that this case be continued indefinitely to allow the parties time to undertake an audit of well costs for the Kachina "8" Well No. 2.

We propose that when the parties are ready to proceed to hearing, I will notify you and have the case scheduled for hearing.

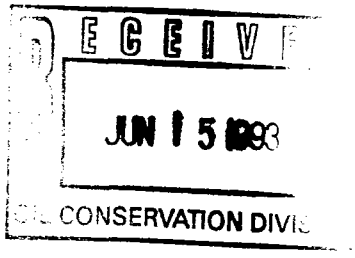
If this procedure is acceptable to the Division, please vacate the hearing set for July 23, 1992 and indefinitely continue the case. If this is not acceptable, please call me so I can notify Mr. Bruce and we can appear at the July 23, 1992 hearing.

Very truly yours,

W. Thomas Kellahin

WTK/kkl
ltrt720.215
cc **VIA FACSIMILE**
James Bruce (505) 982-8623
Steve Castle (915) 685-1104

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



IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
DIVISION FOR THE PURPOSE OF
CONSIDERING:

CASE NO. 10513

**APPLICATION OF HANLEY PETROLEUM INC.
FOR DETERMINATION OF REASONABLE WELL COSTS,
LEA COUNTY, NEW MEXICO**

PRE-HEARING STATEMENT

This pre-hearing statement is submitted by HANLEY PETROLEUM INC. as required by the Oil Conservation Division.

APPEARANCE OF PARTIES

APPLICANT	ATTORNEY
Hanley Petroleum Inc. 415 W. Wall, Suite 1500 Midland, Texas 79701 Attn: Jim Rogers (915) 684-8051	W. Thomas Kellahin KELLAHIN AND KELLAHIN P.O. Box 2265 Santa Fe, NM 87504 (505) 982-4285

OPPOSITION OR OTHER PARTY	ATTORNEY
Santa Fe Energy Operating Partners, L.P. Suite 1330 500 West Texas Midland, Texas	James Bruce Hinkle Law Firm P. O. Box 2068 Santa Fe, New Mexico 87504 (505) 982-4554

STATEMENT OF CASE

APPLICANT:

Hanley Petroleum Inc. has applied to the New Mexico Oil Conservation Division for a determination of reasonable well costs for the Kachina 8 Well #2, located in the SW/4NW/4 of Section 8, T18S, R33E, NMPM, Lea County, New Mexico and states:

(1) On March 7, 1991, the Division held a consolidated hearing of the Hanley Petroleum Inc. ("Hanley") compulsory pooling application in Case 10219 and the Santa Fe Energy Operating Partners, L. P. ("Santa Fe") compulsory pooling application in Case 10211.

(2) Hanley and Santa Fe each sought to pool the other in an 80-acre spacing unit in the W/2NW/4 of Section 8, T18S, R33E, Lea County, New Mexico for a well to be drilled to test the Wolfcamp formation in the South Corbin-Wolfcamp Pool.

(3) Hanley, with a 50% working interest, sought to be named operator for a well to be drilled in the north 40-acres of the spacing unit at an estimated cost of $667,782.

(4) Santa Fe, with a 25% working interest, sought to be named operator of the same spacing unit but proposed the well be located in the south 40-acres of the spacing unit on a tract owned 25% by Santa Fe and 25% by Heyco for a well estimated to cost $721,942.

(5) On March 29, 1991, the Division (Examiner Morrow) entered Order R-9480 granting the Santa Fe application and denying the Hanley application based upon the Examiner's conclusion that while either location would result in a successful Wolfcamp completion, the Santa Fe location was more appropriate because it conformed to an 80-acre diagonal well pattern.

(6) On June 12, 1991, the Commission entered Order R-9480-B (DeNovo) affirming the Examiner order and modifying the commencement date for the well to September 15, 1991.

(7) On June 21, 1991, Santa Fe notified Hanley of its right to elect to participate in the well as a consenting working interest owner under provisions of the compulsory pooling order.

(8) On July 19, 1991, Hanley exercised its election under the compulsory pooling order to voluntarily participate in the well.

(9) By letter agreement dated September 6, 1991, the parties agreed to use the COPAS Accounting Procedures to supplement details that the compulsory pooling order fails to cover.

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(12) On May 4, 1992, Santa Fe delivered to Hanley a itemized schedule of actual well costs showing a total cost of $893,715.93.

(13) The actual total well costs submitted by Santa Fe to Hanley are $171,773.93 more than Santa Fe's estimated well costs.

(14) In accordance with the Provisions of Ordering Paragraph (6) of Order R-9480, Hanley objected to the Santa Fe actual costs as not being reasonable and requested that the Division determine reasonable well costs after public notice and hearing.

(15) An audit was undertaken by Hanley which resulted in eight audit exceptions:

Exception No. 1: (coding error)	~~$271.75~~
Exception No. 2: (coding errors)	~~$490.89~~
Exception No. 3: (sales tax discounts)	$69.51
Exception No. 4: (OCD hearing legal expenses)	~~$6,000.45~~

Exception No. 5: (OCD hearing expenses)	$2,278.99
Exception No. 6: (overcharge for 22 sacks of Dispac)	$4,428.60
Exception No. 7: (370 feet of unused tubing)	$1,346.80
Exception No. 8: (parted 8 5/8th casing)	$91,670.10

(16) Santa Fe has accepted all audit exceptions except Exception No 8.

(17) A hearing is required to resolve Audit Exception No. 8.

(18) Prior to drilling the well, Hanley notified Santa Fe of the risk of collapsed casing if Santa Fe's used its proposed well design.

(19) Hanley requested in writing that Santa Fe use 8-5/8th 32.0 ppf K-55 casing to avoid the risk of collapsed casing.

(20) Santa Fe rejected Hanley's request.

(21) As Hanley predicted, the casing program designed and used by Santa Fe was inadequate and failed.

(22) Santa Fe's use of 8-5/8th 24.0 ppf K-55 was an act of gross negligence.

(23) The cost of the casing collapse should be paid by Santa Fe and not Hanley.

PROPOSED EVIDENCE

APPLICANT

WITNESSES	EST. TIME	EXHIBITS
Michael LeMond (comptroller)	30 min.	Est. 6
Greg Wilkes (petroleum engineer)	1 hour.	Est. 20

PROCEDURAL MATTERS

None applicable at this time.

KELLAHIN AND KELLAHIN

By: _____
W. Thomas Kellahin
P.O. Box 2265
Santa Fe, New Mexico 87504
(505) 982-4285

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Pre-hearing Statement was transmitted via facsimile to James Bruce, Esq., Santa Fe, New Mexico this 15th day of June, 1993.

_____
W. THOMAS KELLAHIN

HINKLE, COX, EATON, COFFIELD & HENSLEY

ATTORNEYS AT LAW

218 MONTEZUMA

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C. D. MARTIN
ROBERT P. TINNIN, JR.
MARSHALL G. MARTIN
OWEN M. LOPEZ
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JOHN J. KELLY
NICHOLAS J. NOEDING
T. CALDER EZZELL, JR.
WILLIAM B. BURFORD*
RICHARD E. OLSON
RICHARD R. WILFONG*
THOMAS J. McBRIDE
JAMES J. WECHSLER
NANCY S. CUSACK
JEFFREY L. FORNACIAR
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GREGORY J. NIBERT
DAVID T. MARKETTE*
MARK C. DOW

FRED W. SCHWENDIMANN
JAMES M. HUDSON
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WILLIAM P. JOHNSON
STANLEY K. KOTOVSKY, JR.
H. R. THOMAS
ELLEN S. CASEY
MARGARET CARTER LUDEWIG

S. BARRY PAISNER
STEPHEN M. CRAMPTON
MARTIN MEYERS
GREGORY S. WHEELER
ANDREW J. CLOUTIER
JAMES A. GILLESPIE
GARY W. LARSON
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JOHN R. KELLSETH, JR.
MARGARET R. McNETT
BRIAN T. CARTWRIGHT*
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ROBERT H. BETHEA*
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CHARLES A. SUTTON
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DARREN T. GROCE*
MOLLY McINTOSH
MARCIA B. LINCOLN
SCOTT A. SHUART*
DARREN L. BROOKS
CHRISTINE E. LALE
PAUL G. NASON
DARLA M. SILVA

*NOT LICENSED IN NEW MEXICO

CLARENCE E. HINKLE (1901-1985)
W. E. BONDURANT, JR. (1913-1973)
ROY C. SNODGRASS, JR. (1914-1987)

OF COUNSEL
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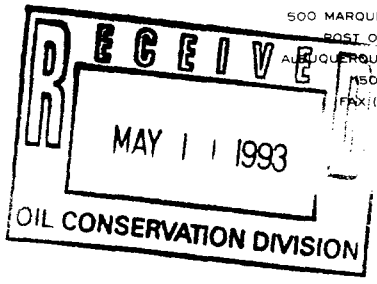
(505) 768-1500
FAX (505) 768-1529

May 11, 1993



Florene Davidson
Oil Conservation Division
310 Old Santa Fe Trail
Santa Fe, New Mexico 87503

Re: Santa Fe Energy Operating Partners, L.P.
Case No. 10,513

Dear Florene:

I am enclosing an original and two copies of a Motion for Continuance in the above-referenced matter.

Thank you for your assistance with this matter.

Very truly yours,

HINKLE, COX, EATON, COFFIELD
& HENSLEY

Fran Sowers, Secretary
to James Bruce

Enclosures

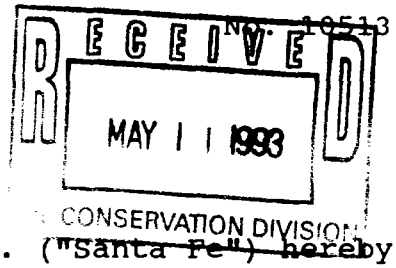
VIA HAND DELIVERY

FRS5\93924.c

BEFORE THE NEW MEXICO OIL CONSERVATION DIVISION

APPLICATION OF HANLEY PETROLEUM INC. FOR DETERMINATION OF REASONABLE WELL COSTS, LEA COUNTY, NEW MEXICO.

NO. 10513



MOTION FOR CONTINUANCE

Santa Fe Energy Operating Partners, L.P. ("Santa Fe") hereby moves for a four week continuance of the hearing in the above case, and in support thereof states:

1. The above case is currently scheduled for the May 20, 1993 Examiner hearing.

2. Santa Fe's drilling engineer (Darrel Roberts) is unavailable for the May 20 hearing.

3. Santa Fe's accountant (James Cassel) is unavailable for the June 3 hearing.

4. As a result, Santa Fe requests this matter be continued to the June 17, 1993 Examiner hearing.

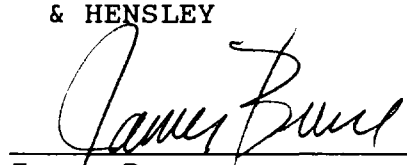
5. Counsel for Hanley Petroleum Inc. has been contacted, and does not oppose this motion.

WHEREFORE, Santa Fe requests the hearing in this case be continued to the June 17, 1993 hearing.

JGB5\93918.d

Respectfully submitted,

HINKLE, COX, EATON, COFFIELD
& HENSLEY

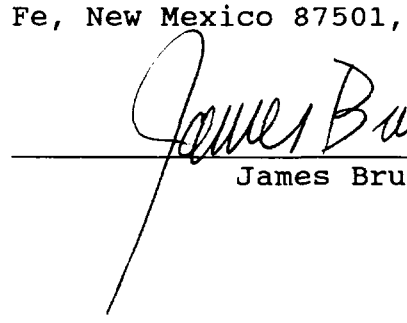


James Bruce
Post Office Box 2068
Santa Fe, New Mexico 87504-2068
(505) 982-4554

Attorneys for Santa Fe Energy
Operating Partners, L.P.

CERTIFICATE OF SERVICE

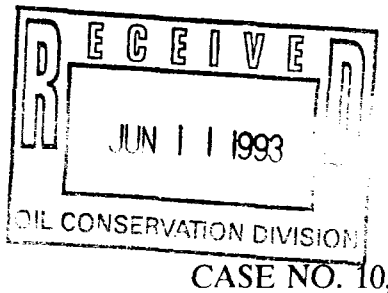
I hereby certify that a true and correct copy of the foregoing Motion for Continuance was hand-delivered to W. Thomas Kellahin, Esq., 117 N. Guadalupe, Santa Fe, New Mexico 87501, this 11th day of May, 1993.



James Bruce

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 HANLEY PETROLEUM INC. FOR DETERMINATION OF REASONABLE WELL COSTS, LEA COUNTY, NEW MEXICO.

CASE NO. 10,513

PRE-HEARING STATEMENT

This pre-hearing statement is submitted by Santa Fe Energy Operating Partners, L.P. as required by the Oil Conservation Division.

APPEARANCE OF PARTIES

APPLICANT

Hanley Petroleum Inc.
Suite 1500
415 West Wall
Midland, Texas 78701
(915) 684-8051

ATTORNEY

W. Thomas Kellahin
Kellahin & Kellahin
Post Office Box 2265
Santa Fe, New Mexico 87504
(505) 982-4285

OPPOSITION OR OTHER PARTY

Santa Fe Energy Operating Partners, L.P.
Suite 1330
500 West Texas
Midland, Texas 79701
(915) 686-6631
Attention: Curtis D. Smith

ATTORNEY

James Bruce
Hinkle, Cox, Eaton, Coffield & Hensley
Post Office Box 2068
Santa Fe, New Mexico 87504
(505) 982-4554

JGB5\93A34.d

STATEMENT OF CASE

APPLICANT

OPPOSITION

The well costs incurred by Santa Fe Energy Operating Partners, L.P., in the drilling of the Kachina 8 Fed. Well No. 2 were reasonable, and Hanley Petroleum Inc. should be required to pay its proportionate share thereof (50%).

PROPOSED EVIDENCE

APPLICANT

WITNESSES	EST. TIME	EXHIBITS

OPPOSITION

	WITNESSES	EST. TIME	EXHIBITS
1.	Darrell Roberts (Engineer)	20 minutes	(a) AFE and Supplemental AFE (b) Memo dated 12/08/92 with attachments dated 07/01/91 and 08/20/91 (c) Videotape of water-flow

			(d)	Correspondence between Santa Fe and Hanley Petroleum Inc.
2.	James Cassell (Accountant/Auditor)	20 minutes	(a)	COPAS 1984 Accounting Procedure/audit guidelines
			(b)	Letter dated 12/11/92 to Hanley Petroleum Inc.
			(c)	Letter dated 06/_/93 to Hanley Petroleum Inc.

PROCEDURAL MATTERS

Respectfully submitted,

HINKLE, COX, EATON, COFFIELD
& HENSLEY

James Bruce
Post Office Box 2068
Santa Fe, New Mexico 87504-2068
(505) 982-4554

Attorneys for Santa Fe Energy Opearting Partners, L.P.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Pre-hearing Statement was hand-delivered to W. Thomas Kellahin, Esq., Kellahin & Kellahin, 117 N. Guadalupe, Santa Fe, New Mexico 87501, this 14th day of June, 1993.

James Bruce

James Bruce

OPPOSITION OR OTHER PARTY	ATTORNEY
Santa Fe Energy Operating Partners, L.P. Suite 1330 500 West Texas Midland, Texas	James Bruce Hinkle Law Firm P. O. Box 2068 Santa Fe, New Mexico 87504 (505) 982-4554

STATEMENT OF CASE

APPLICANT:

Hanley Petroleum Inc. has applied to the New Mexico Oil Conservation Division for a determination of reasonable well costs for the Kachina 8 Well #2, located in the SW/4NW/4 of Section 8, T18S, R33E, NMPM, Lea County, New Mexico and states:

(1) On March 7, 1991, the Division held a consolidated hearing of the Hanley Petroleum Inc. ("Hanley") compulsory pooling application in Case 10219 and the Santa Fe Energy Operating Partners, L. P. ("Santa Fe") compulsory pooling application in Case 10211.

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

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
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CONSIDERING:

CASE NO. 10513

**APPLICATION OF HANLEY PETROLEUM INC.
FOR DETERMINATION OF REASONABLE WELL COSTS,
LEA COUNTY, NEW MEXICO**

PRE-HEARING STATEMENT

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APPLICANT	ATTORNEY
Hanley Petroleum Inc. 415 W. Wall, Suite 1500 Midland, Texas 79701 Attn: Jim Rogers (915) 684-8051	W. Thomas Kellahin KELLAHIN AND KELLAHIN P.O. Box 2265 Santa Fe, NM 87504 (505) 982-4285

(3) Hanley, with a 50% working interest, sought to be named operator for a well to be drilled in the north 40-acres of the spacing unit at an estimated cost of $667,782.

(4) Santa Fe, with a 25% working interest, sought to be named operator of the same spacing unit but proposed the well be located in the south 40-acres of the spacing unit on a tract owned 25% by Santa Fe and 25% by Heyco for a well estimated to cost $721,942.

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(overcharge for 22 sacks of Dispac)

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(370 feet of unused tubing)

Exception No. 8: $91,670.10
(parted 8 5/8th casing)

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(17) A hearing is required to resolve Audit Exception No. 8.

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PROPOSED EVIDENCE

APPLICANT

WITNESSES	EST. TIME	EXHIBITS
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Greg Wilkes (petroleum engineer)	1 hour.	Est. 20

PROCEDURAL MATTERS

None applicable at this time.

KELLAHIN AND KELLAHIN

By: _____
W. Thomas Kellahin
P.O. Box 2265
Santa Fe, New Mexico 87504
(505) 982-4285

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Pre-hearing Statement was transmitted via facsimile to James Bruce, Esq., Santa Fe, New Mexico this 15th day of June, 1993.

_____
W. THOMAS KELLAHIN

HINKLE, COX, EATON, COFFIELD & HENSLEY

ATTORNEYS AT LAW

218 MONTEZUMA

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OF COUNSEL
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MACK EASLEY
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RICHARD S. MORRIS

WASHINGTON, D.C.
SPECIAL COUNSEL
ALAN J. STATMAN*

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*NOT LICENSED IN NEW MEXICO

July 7, 1993

W. Thomas Kellahin, Esq.
Kellahin & Kellahin
117 N. Guadalupe
Santa Fe, New Mexico 87501

Re: Case No. 10,513, Hanley/Santa Fe Well Audit

Dear Tom:

At the last OCD hearing we briefly discussed (a) hearing dates, and (b) fact stipulations. As to a hearing date, I spoke last Friday with my auditor, Jim Cassel, about his availability. Unfortunately, he is leaving on July 10 for a five week business trip to South America. Therefore, I request a hearing date of August 26 or thereafter. Due to the issues discussed during my motion to dismiss, I believe I need Mr. Cassel present to testify at the hearing.

As to factual stipulations, I will be glad to work with you on one. Do you want to draft it, or do you want me to do a first draft? Please let me know.

Also, I would like to stipulate to documents in order to shorten the hearing. Enclosed are documents I wish to include in the record:

1. 07/01/91 letter, Hanley to Santa Fe.

2. 07/19/91 letter, Hanley to Santa Fe, with signed AFE attached.

3. 08/21/91 letter, Santa Fe to Hanley, with 08/20/91 memo attached.

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4. 11/25/91 letter, Hanley to Santa Fe.

5. 12/23/91 letter, Santa Fe to Hanley, with supplemental AfE and memos of 11/25/91 and 10/25/91 attached.

6. 12/26/91 letter, Hanley to Santa Fe, with signed AFE attached.

7. 05/18/92 letter, Hanley to Santa Fe, with signed AFE attached.

In addition, we would stipulate to the Hanley audit (your Exhibit 5), Santa Fe's first response (dated December 11, 1992), Santa Fe's second response (dated June 10, 1993), and Hanley's 09/06/91 letter to Santa Fe (Exhibit E to your application).

I will be writing a formal motion for continuance to the OCD. Please call me if you have any questions.

Very truly yours,

HINKLE, COX, EATON, COFFIELD & HENSLEY

James Bruce

Enclosures
c: Robert G. Stovall, Esq. (w/o encls.)
Curtis Smith (w/o encls.)
Darrell Roberts (w/o encls.)
James Cassell (w/o encls.)

VIA HAND DELIVERY

HINKLE, COX, EATON, COFFIELD & HENSLEY

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OIL CONSERVATION DIVISION

July 7, 1993

David R. Catanach
Oil Conservation Division
310 Old Santa Fe Trail
Santa Fe, New Mexico 87503

Robert G. Stovall, Esq.
Oil Conservation Division
310 Old Santa Fe Trail
Santa Fe, New Mexico 87503

Re: Case No. 10,513, Hanley/Santa Fe

Gentlemen:

By this letter Santa Fe Energy Operating Partners, L.P. requests that the above case be continued to the August 26, 1993 hearing. Santa Fe's auditor, James Cassel, is on a business trip to South America for five weeks commencing July 10, and thus is unavailable until mid-August. Due to issues discussed during the June 17 hearing, I need Mr. Casell present to testify. In addition, the extra time will allow both sides to prepare a factual

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stipulation so that the issues raised by Santa Fe's motion to dismiss (concerning the effect of signing an AFE) can be fully addressed.

Very truly yours,

HINKLE, COX, EATON, COFFIELD
& HENSLEY

James Bruce

c: W. Thomas Kellahin, Esq.
Curtis Smith
James Cassel

HINKLE, COX, EATON, COFFIELD & HENSLEY

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*NOT LICENSED IN NEW MEXICO

September 8, 1993

Robert G. Stovall, Esq.
Oil Conservation Division
310 Old Santa Fe Trail
Santa Fe, New Mexico 87503

Re: Case No. 10,513
(Hanley Petroleum)

Dear Bob:

It is my understanding from our discussions last week that due to Examiner hearing time constraints on September 9, the above case is one that will be given a specific hearing date in the future. I believe Tom Kellahin shares this understanding. As a result, I am not bringing in any witnesses for the September 9 hearing.

If you will recall, there are two main issues regarding the dispute over the casing:

1. The effect, if any, of Hanley signing the AFEs.

2. The engineering propriety of Santa Fe's casing program.

Tom and I will be meeting to stipulate to as many facts as possible, and suggest addressing only issue 1 at the hearing. Depending on the OCD's decision, issue 2 may or may not be moot.

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Please call Tom or me if you have any questions.

Very truly yours,

HINKLE, COX, EATON, COFFIELD
& HENSLEY

James Bruce

c: W. Thomas Kellahin, Esq.
(via Hand Delivery)

VIA HAND DELIVERY

BEFORE THE NEW MEXICO OIL CONSERVATION DIVISION

APPLICATION OF HANLEY PETROLEUM INC. FOR DETERMINATION OF REASONABLE WELL COSTS, LEA COUNTY, NEW MEXICO. **NO. 10513**

BRIEF OF SANTA FE ENERGY OPERATING PARTNERS, L.P.

I. INTRODUCTION

Santa Fe Energy Operating Partners, L.P. ("Santa Fe") is the operator of the Kachina "8" Fed. Well No. 2 ("the Well"), located in Unit E of Section 8, Township 18 South, Range 33 East, in Lea County. The Well is completed as a producing well in the South Corbin-Wolfcamp Pool.

The Well was drilled pursuant to Order Nos. R-9480, R-9480-A, and R-9480-B ("the Orders") entered in Case Nos. 10211 and 10219, which granted Santa Fe's application to force pool Hanley Petroleum Inc. ("Hanley"). Hanley agreed to pay its share of well costs under the Orders; no operating agreement was signed.

II. SEQUENCE OF EVENTS.

The parties have submitted to the Division a Stipulation of Admissibility, attaching nine items of correspondence between Santa Fe and Hanley. Hanley also submitted the Affidavit of James W. Rogers ("the Rogers Affidavit"). These documents establish the following:

Pursuant to the Orders, Santa Fe submitted to Hanley Order No. R-9480-B and an authorization for expenditure ("AFE")[1] by letter dated June 20, 1991. **Stipulation Item 1.** Hanley elected to join

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[1] Santa Fe's terminology is "well cost estimate."

in the Well by letter dated July 19, 1991. **Stipulation Item 5.** Attached to Hanley's letter was a signed AFE. **Id.**

Santa Fe proposed using 24 lb. 8 5/8" intermediate casing for the Well. **See AFE attached to Stipulation Item 1.** By letter dated July 1, 1991, Hanley requested different casing (32 lb. 8 5/8") than that proposed by Santa Fe. **Stipulation Item 4.** By letter dated August 31, 1991, Santa Fe rejected Hanley's casing request, and submitted engineering data supporting its position. **Stipulation Item 6.**

During the drilling of the Well, the casing collapsed, necessitating additional expense. Also, due to unsatisfactory results in the Wolfcamp "AG" zone, Santa Fe performed an additional acid treatment job on that zone. The working interest owners were kept apprised of these developments (**See Stipulation Item 7**), and on December 23, 1991 Santa Fe mailed to Hanley a supplemental AFE which set forth costs to remedy the casing collapse and to stimulate the Well. **Stipulation Item 8.** Hanley signed and returned the supplemental AFE. **Stipulation Item 9.**

Hanley subsequently filed its application for a determination of reasonable well costs, claiming among other things that Santa Fe's casing program was inappropriate.[2] At the initial hearing on this matter, Santa Fe asserted that by signing the AFE's Hanley agreed to all Well costs, and thus it could not object to the additional casing cost (approximately $92,000.00).

III. ISSUE.

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[2] Hanley has not objected to the cost for the additional stimulation.

By signing the AFE's did Hanley agree to pay the additional cost attributable to the casing collapse?

IV. DISCUSSION.

There is no clear-cut court ruling on this issue. However, court decisions indicate that a person who has agreed to pay his share of well costs is bound by an executed AFE.

Generally, execution of an AFE alone, without any other agreement to pay well costs, is insufficient to hold a person liable for well costs. **Sonat Exploration Company v. Mann, 785 F.2d 1232, 1234 (5th Cir. 1986)** (AFE not enforceable against person who has not signed an operating agreement); **Huffco Petroleum Corp. v. Massey, 660 F.Supp. 71 (S.D. Miss. 1986)** (there must be a written promise to pay well costs; execution of an AFE alone does not constitute a promise to pay), **aff'd on appeal 834 F.2d 540 (5th Cir. 1987).**

When a party signs an operating agreement, it is then bound by its execution of an AFE. **M&T, Inc. v. Fuel Resources Development Co., 518 F.Supp. 285 (D. Colo. 1981)** (person who signs operating agreement bound by signed AFE). Furthermore, execution of an AFE, even though an operating agreement is not signed, is binding if there is other evidence of an agreement to pay. **G.H.K. Co. v. Janco Investments, Inc., 748 P.2d 45, 47 (Okla. App. 1987)** (party who executed AFE, requested insurance on the well, and paid first invoice was liable for proportionate share of well costs).

In the present case, no operating agreement was signed. However, Hanley agreed to pay its share of well costs under the

force pooling Orders. **Stipulation Item 5.** With full knowledge of the facts, Hanley executed the AFE's. Under those circumstances, Hanley was bound by the AFE's.

One additional item must be addressed: The Rogers Affidavit states that it was not Hanley's intent to waive objection on the intermediate casing issues. **See Rogers Affidavit ¶¶ (4), 12.** However, this secret intent is not controlling because it was never expressed to Santa Fe. **Trujillo v. Glen Falls Insurance Co., 88 N.M. 279, 281, 540 P.2d 209 (1975)** ("The controlling intention of the parties is the mutually expressed assent and not the secret intent of a party"). Nowhere is Hanley's "intent" not to waive objection expressed in the correspondence. **Stipulation Items 1-9.** The correspondence between the parties establishes that the only "mutually expressed assent" was (a) Hanley's agreement to pay its share of well costs **(Stipulation Item 5)**, and (b) Hanley's agreement to pay for its share of costs due to the casing collapse. **Stipulation Item 9.**

V. CONCLUSION.

By agreeing to pay its share of well costs pursuant to the Orders, Hanley in effect signed an operating agreement. Thus, in executing the AFE's it was legally bound to pay its share of costs as set forth therein. As a result, Hanley consented to the additional casing expense,[3] and that portion of its claim should be denied.

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[3] Hanley does not assert the additional casing cost itself is unreasonable; rather, it asserts the original casing program was unreasonable.

HINKLE, COX, EATON,
COFFIELD & HENSLEY

By: _____

James Bruce
Post Office Box 2068
Santa Fe, New Mexico 87504-2068
(505) 982-4554

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Brief of Santa Fe Energy Operating Partners, L.P.** was mailed this 23rd day of September, 1993, to:

W. Thomas Kellahin
Kellahin & Kellahin
Post Office Box 2265
Santa Fe, New Mexico 87504-2265

_____
James Bruce

test. *Ass'n of Data Processing Serv. Organizations, Inc. v. Camp*, 397 U.S. 150, 90 S.Ct. 827, 25 L.Ed.2d 184 (1970). *See also, Warth v. Seldin*, 422 U.S. 490, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975). *Linda R. S. v. Richard D.*, 410 U.S. 614, 93 S.Ct. 1146, 35 L.Ed.2d 536 (1973). *Simon v. Eastern Ky. Welfare Rights Organization*, 426 U.S. 26, 38, 96 S.Ct. 1917, 1924, 48 L.Ed.2d 450 (1976). *Harrington v. Bush*, 553 F.2d 190, 205-06 n. 68 (D.C.Cir. 1977).

[2] The four prerequisites necessary for standing to sue are: (1) Injury to plaintiffs in fact, economic or otherwise; (2) plaintiffs must fall within the zone of interest to be protected or regulated by a given statute; (3) some actual or threatened injury must result from the putatively illegal action and; (4) the alleged injury must be likely to be redressed by a favorable decision of the tribunal.

These four areas of inquiry are sometimes termed the elements of (1) injury, (2) interest, (3) causation, and (4) redressability. *Rite-Research Improves Environ, Inc. v. Costle*, 78 F.R.D. 321, 323 (S.D.Fla.1978).

The statutes regulating the practice of acupuncture in Florida prior to adoption of the challenged act, which is Chapter 468, Florida Statutes, authorized acupuncturists to practice their calling solely under the direct supervision and control of a licensed physician—unless they were a licensed medical professional. Since plaintiffs herein are not licensed medical professionals under Florida law, plaintiff/acupuncturists could only practice acupuncture in Florida prior to the enactment of the challenged act under the direct supervision and control of licensed physicians in the limited capacity of a trained assistant. Fla.Stat. § 458.303(2).[1]

A reading of the exemption provisions of Chapter 468, Florida Statutes, the challenged act, reveals that it does not apply to persons regulated under Chapter 458 including its provisions for *trained assistants*. Specifically Fla.Stat. § 468.211, tentatively renumbered as Section 468.329, provides that the provisions contained in Chapter 468 will not apply to certain types of previously regulated medical practice.[2] It follows, therefore, that plaintiffs herein are not directly affected by the challenged act. They may continue to practice acupuncture in the future as they have in the past, that is, under the direct supervision and control of a licensed physician. No direct injury has been established. Plaintiffs may do today that which they could do yesterday. They are only precluded today from doing that which they could not have done yesterday. Such a situation is devoid of any injury in fact, economic or otherwise.

Plaintiffs' assertion that the challenged act discriminates against them by excluding certain categories of trained professionals from its operation is—at best—the assertion of indirect injury. The exemption section of the challenged act, Fla.Stat. § 468.211, tentatively renumbered as § 468.329, merely exempts from its operation certain classes of trained professionals already subject to control by the regulatory boards created in their respective fields.

[3] As to the first element of the standing test, it is clear that there is no valid injury in fact, economic or otherwise. No injury has been inflicted upon Plaintiffs by the challenged act. It allows plaintiffs to continue to practice acupuncture under the control and supervision of a licensed physician as they have in the past while expanding accessability for licensing by permitting them to practice independently upon certain licensing requirements being met.

[4] This first element of standing establishes a constitutionally necessary minimum requirement which must be present in every case. In its absence no other inquiry is relevant as standing to sue is absent. *Schlesinger v. Reservists Committee To Stop The War*, 418 U.S. 208, 227 n. 16, 94 S.Ct. 2925, 2935 n. 16, 41 L.Ed.2d 706 (1974); *Simon*, 426 U.S. at 39 n. 19, 96 S.Ct. at 1925 n. 19; *Harrington*, 553 F.2d at 205 n. 68.

No injury having been demonstrated, the rendering of a decision on the merits in this case would amount to an advisory opinion. Such opinions are not permitted under Article III of the United States Constitution, and hence the court is without jurisdiction of the subject matter of this action.

Accordingly, it is ORDERED AND ADJUDGED as follows:

1) That Defendants' Motion to Dismiss the amended complaint on behalf of the Plaintiff/Practicing Doctors of Acupuncture for lack of standing to sue be, and the same is hereby GRANTED.

2) That Plaintiffs' entire amended complaint be, and the same is hereby DISMISSED for the reasons set forth above as well as those contained in this Court's Order dated February 9, 1981.

3) That this cause is hereby dismissed, and the defendants shall go hence *sine die*.

4) Costs will be taxed against Plaintiffs upon appropriate application.

1. Fla.Stat. § 458.303(2) states in pertinent part that:

> Nothing ... shall be construed to prohibit any service rendered by a physician's trained assistant ... if such service is rendered under the direct supervision and control of a licensed physician. Further, nothing in this or any other chapter shall be construed to prohibit any service rendered by a physician's trained assistant in accordance with the provisions of this subsection.

2. Fla.Stat. § 468.211, tentatively renumbered as 468.329, states that:

> This part shall not apply to persons licensed under chapter 458 [physicians], chapter 459 [osteopathic medicine], chapter 460 [chiropractic medicine], chapter 461 [podiatry], chapter 462 [naturopathy] and chapter 466 [dentistry]. The *regulatory boards established by those chapters may promulgate rules governing the practice of acupuncture by their respective licensees.* (emphasis and bracketed material added).

M & T, INCORPORATED and W. C. McBride-Silurian Oil Company, Plaintiffs,

v.

FUEL RESOURCES DEVELOPMENT COMPANY, Defendant.

Civ. A. No. 79-K-322.

United States District Court, D. Colorado.

July 13, 1981.

Oil well owners brought action against another owner for allegedly due proportionate share of drilling costs. The District Court, Kane, J., held that: (1) nonoperating owner of oil well, who announced when predrilling cost estimates contained in "Authority for Expenditure" were reached that it would cease to pay its share of drilling costs, was liable to other owners for proportionate share of all necessary drilling costs to casing point; (2) the "Authority for Expenditure" gave executing owner of oil well interest no right to go "non-consent" at time estimate in the "Authority for Expenditure" was surpassed and to thereby avoid liability for proportionate share of oil well drilling costs above such estimate; and (3) record established that oil well drilling costs were reasonable and necessary, as required to impose on owner proportionate share of such costs as provided in owners' operating agreement.

Judgment for plaintiffs.

1. Mines and Minerals ⇐109

Nonoperating owner of oil well, who announced when predrilling cost estimates contained in "Authority for Expenditure" were reached that it would cease to pay its share of drilling costs, was liable to other owners for proportionate share of all necessary drilling costs to casing point, even though such costs exceeded estimates contained in the "Authority for Expenditure," where allocation of drilling costs was set forth in owners' operating agreement, such

agreement provided that owner consented to bear his proportionate share of all necessary drilling costs to casing point when owner consented to drilling of well, and cost estimates were exceeded in drilling of three previous wells and all owners paid their proportionate shares of overruns.

2. Mines and Minerals ⇐109

The "Authority for Expenditure" gave executing owner of oil well interest no right to go "non-consent" at time estimate in the "Authority for Expenditure" was surpassed and to thereby avoid liability for proportionate share of oil well drilling costs above such estimate.

3. Mines and Minerals ⇐109

Record established that oil well drilling costs were reasonable and necessary, as required to impose on owner proportionate share of such costs as provided in owners' operating agreement.

R. Brooke Jackson, William W. Maywhort, Holland & Hart, Denver, Colo., for plaintiffs.

Marsha K. Wightman, Richard W. Bryans, Kelly, Stansfield & O'Donnell, Denver, Colo., for defendant.

MEMORANDUM OPINION AND ORDER

KANE, District Judge.

Jurisdiction of this diversity case is admitted by the parties. It is a contract case concerning development and operation of oil and gas leases in the Johnny Moore Area in Jackson County, Colorado and concerns the pivotal question of when a party may, as they say in the trade, "go non-consent." M & T and McBride have sued to recover the unpaid balance of Fuelco's share of the costs, amounting to $150,927, incurred in the drilling of an oil well known as No. 1-25 Unit Well. The theory of recovery is based upon express and implied agreements among the parties, or their predecessors in interest, as well as upon the doctrine of estoppel. Plaintiffs also ask for attorney fees, pre-judgment interest and costs.

The parties have stipulated to the following facts:

1. M & T Incorporated ("M & T") is a corporation incorporated in Nevada with its principal headquarters and place of business in San Francisco, California.

2. W. C. McBride-Silurian Oil Company ("McBride") is a corporation incorporated in Delaware with its principal headquarters and place of business in St. Louis, Missouri.

3. Fuel Resources Development Company ("Fuelco") is a Colorado corporation with its principal place of business at 1250 Fourteenth Street, P.O. Box 840, Denver, Colorado 80201. Fuelco is a wholly-owned subsidiary of Public Service Company of Colorado.

4. On May 10, 1973, Fuelco, McBride and certain third parties entered into two written agreements, one entitled "Agreement" ("the 1973 Agreement") and the other entitled "Operating Agreement" ("the 1973 Operating Agreement").

5. The 1973 Agreement and the 1973 Operating Agreement generally concern the development of oil and gas leases of the parties to those agreements on certain lands within the Johnny Moore Area, in Jackson County, Colorado. The leaseholds subject to those agreements ("the Johnny Moore Leaseholds") are set forth in Exhibit A to the 1973 Agreement.

6. As of May 10, 1973, the Johnny Moore Leaseholds were owned by the following entities and in the following percentages:

McBride—37.5%
C. F. Braun & Company—37.5%
Antares Oil Corporation—9.375%
Franklin, Aston & Fair, Inc.—12.5%
Minerals, Ltd.—3.125%

7. Fuelco and McMoRan Exploration Company each earned a 25% ownership interest in the Johnny Moore Leaseholds, by sharing equally certain costs of drilling the first well on the leaseholds, which well was drilled during July through December 1973.

8. The well referred to in Stipulation No. 4(a)(7) was the "test well" under paragraph 3 of the 1973 Agreement and paragraph 7 of the 1973 Operating Agreement. It was known as the 25-1 State Well.

9. Fuelco served as the "operator" with respect to the drilling of the 25-1 State Well.

10. Immediately after Fuelco and McMoRan Exploration Company earned their 25% interests in the Johnny Moore Leaseholds, the ownership in said leaseholds became the following:

Fuelco—25.0%
McBride—18.75%
C. F. Braun & Company—18.75%
Antares Oil Corporation—4.6875%
Franklin, Aston & Fair, Inc.—6.25%
Minerals, Ltd.—1.5625%
McMoRan Exploration Company—25.0%

11. In 1974, Fuelco, McBride, McMoRan Exploration Company, C. F. Braun & Company, Antares Oil Corporation, Franklin, Aston & Fair, Inc., and Minerals, Ltd. drilled their second Johnny Moore well, which well is commonly referred to as the 42-26 State Well.

12. The ownership interests at the time of the drilling of the 42-26 State Well were the same as those set forth in Stipulation No. 4(a)(10), except that McMoRan's interest was 12.5% and Bridger Petroleum Corporation held an interest of 12.5%.

13. The operator with respect to the drilling of the 42-26 State Well was McBride.

14. On November 4, 1974, McBride made a non-consent election with respect to the 42-26 State Well; that is, McBride elected to decommit itself from participation in any expenditures which might be incurred in connection with the 42-26 State Well, after the non-consent point.

15. Following McBride's non-consent election with respect to the 42-26 State Well, Fuelco became the operator thereof.

16. McMoRan Exploration Company subsequently elected to go non-consent with respect to further operations on the 42-26 State Well.

17. Following the non-consent elections by McBride and McMoRan, the ownership interests in the 42-26 State Well were as follows:

Fuelco—40.5246%
McBride—0%
C. F. Braun & Company—28.8662%
Antares Oil Corporation—5.5591%
Franklin, Aston & Fair, Inc.—7.8125%
Minerals, Ltd.—1.8530%
Bridger Petroleum Corporation—15.3846%
McMoRan Exploration Company—0%

18. The participants in the drilling of the 42-26 State Well shared the costs and expenses incurred in the drilling of such well in proportion to their ownership interests at the time such costs and expenses were incurred.

19. In 1976, M & T acquired the entire interest of the parties to the 1973 Agreement and the 1973 Operating Agreement, or their successors in interest, in the Johnny Moore Leaseholds, except the interests of Fuelco and McBride.

20. In 1977, M & T, McBride and Fuelco agreed to attempt to establish a "federal unit" for the purpose of assisting them in the development of their leasehold interests on an approximately 4000-acre portion of the Johnny Moore Leaseholds.

21. One advantage of unitization is that leases within an approved unit can be continued in effect beyond expiration of their terms, by reason of qualifying unit production or exploration operations conducted in accordance with the unit agreements.

22. On July 26, 1977, M & T, McBride and Fuelco entered into two written agreements concerning federal utilization of the Johnny Moore Leaseholds: (a) Unit Agreement for the Development and Operation of the Johnny Moore Unit Area ("the Unit Agreement"); and (b) Unit Operating Agreement ("the Unit Operating Agreement").

23. Before a federal unit can become effective, it must be approved by the United States Geological Survey ("USGS"). On December 16, 1977, the USGS approved the federal unit, as described in the Unit Agreement and the Unit Operating Agreement. The Unit Agreement therefore became effective on that date.

24. The oil and gas leases which were subjected to the 1973 Agreement and the 1973 Operating Agreement and which were located within the unit boundaries remained in force after the execution of the Unit Agreement and the Unit Operating Agreement. Some of these oil and gas leases remain in force on the present date.

25. M & T, McBride and Fuelco did not expressly agree that the 1973 Agreement and the 1973 Operating Agreement would terminate upon execution of the Unit Agreement and the Unit Operating Agreement.

26. From July through December 1977, the third Johnny Moore well was drilled.

27. The well referenced in Stipulation No. 4(a)(26) is variously referred to as the 1-10 Unit Well, the 1-10 Federal Well or the No. 1-10 Well ("the 1-10 Unit Well").

28. The 1-10 Unit Well was located within the boundary of the Johnny Moore federal unit.

29. M & T served as the operator with respect to the drilling of the 1-10 Unit Well.

30. The 1-10 Unit Well failed to qualify as the "test well" under the Unit Agreement, because it was not drilled at an approved location.

31. The parties shared the expenses of the 1-10 Unit Well as follows: Fuelco—25%; McBride—18.75%; and M & T—56.25%.

32. Subsequent to the drilling of the 1-10 Unit Well, M & T, McBride and Fuelco considered several possible well locations and tentatively agreed to drill another well at a site proposed by Fuelco, subject to the approval of such location by the USGS.

33. The USGS approved the site referenced in Stipulation No. 4(a)(32), in March, 1978.

34. The well at the site referenced in Stipulation No. 4(a)(32) is commonly known as the 1-25 Unit Well.

35. The 1-25 Unit Well is the "test well" under paragraph 9 of the Unit Agreement, and is the "initial test well" under Article 3 of the Unit Operating Agreement.

36. M & T served as the operator with respect to the drilling of the 1-25 Unit Well.

37. The 1-25 Unit Well was drilled over a period commencing April 23, 1978, and concluding September 14, 1978.

38. At the time of commencement of drilling operations for the 1 25 Unit Well, unitized substances capable of being produced in paying quantities had not been discovered in the Johnny Moore Unit Area.

39. On July 14, 1978, Fuelco delivered to M & T a letter, under which Fuelco claimed to make a non-consent election effective at the exact point at which the estimated drilling costs set forth in a document entitled "Authority for Expenditure" or "AFE" for the 1-25 Unit Well had been spent.

40. Prior to delivery of the July 14, 1978 letter, Fuelco did not notify M & T or McBride that it was going to make a non-consent election under the terms of the Unit Operating Agreement.

41. On July 14, 1978, the 1-25 Unit Well had reached a depth of approximately 5,700 feet.

42. At the time of Fuelco's withdrawal, unitized substances capable of being produced in paying quantities had not been discovered in the Johnny Moore Unit Area.

43. Following Fuelco's departure, M & T and McBride continued drilling the 1-25 Unit Well.

44. M & T and McBride agreed to terminate drilling of the 1-25 Unit Well at a total depth of 9,401 feet.

45. The 1-25 Unit Well penetrated the Dakota and Lakota formations.

46. Prior to the drilling of the 25-1 State Well, the 42-26 State Well, the 1-10 Unit Well and the 1 25 Unit Well, the operator prepared and submitted to the other parties an "Authority (or Authorization) for Expenditure," or "AFE." Each of these AFE's was approved by all parties which owned portions of the Johnny Moore Leaseholds at the time.

47. Fuelco is engaged in the business of exploring for oil and gas and is familiar with oil and gas operations in the Rocky Mountain Area.

The 1-10 Unit Well referred to in the stipulated facts was completed as a producing well, although the completion occurred in a shallower geologic formation than anticipated and its production has been modest.

After the completion of the 1-10 Unit Well, M & T, McBride and Fuelco agreed to drill another well at a site proposed by Fuelco, subject to the receipt of the requisite federal approval of that site as the "test well" under the Unit Agreement and the Unit Operating Agreement. Such approval was obtained, and the 1-25 Unit Well was drilled at this site in 1978.

The instant dispute arises from the 1 25 Unit Well. The parties agreed to share drilling costs 56.25% M & T, 25% Fuelco and 18.75% McBride. This was in accord with the 1973 Operating Agreement and the course of dealing that the parties or their predecessors had followed from the 42 26 State Well forward. However, in the middle of drilling, when the pre-drilling costs estimates contained in the Authority for Expenditure, or AFE, were reached, Fuelco announced that it would cease to pay its share of the drilling costs. M & T and McBride were thereafter left to continue the drilling alone or to throw away their entire investment in the well to that point. They continued drilling until the Dakota-Lakota formations were tested, and at that point, in light of the test results and the burden of Fuelco's absence, they agreed to terminate drilling.

An AFE is a form which is widely used in the oil and gas industry when wells are drilled by multiple parties. The AFE sets forth the location of the well, its objective geological formation, an estimated depth at which that formation will be encountered, the estimated costs of drilling and completion, and miscellaneous other information. It is prepared by the "operator" of the well, and execution of the AFE by the non-operating owners of working interests in the underlying leaseholds is a written manifestation of their consent to participate in the well. It is axiomatic that drilling costs cannot be estimated with certainty and that an AFE is at best a good-faith estimate. AFE's are usually exceeded, often by very substantial amounts. This is particularly true in the North Park Basin, which includes the Johnny Moore Prospect. In drilling the 25-1 State Well, the 42 26 State Well, and the 1-10 Unit Well, the AFE estimates were all exceeded by substantial amounts.

In the oil and gas industry, it is understood and accepted that when one signs an AFE, he is committed to his proportionate share of the necessary costs in drilling to the objective specified in the AFE, unless the parties mutually agree to terminate drilling earlier or to attempt a completion at a shallower formation. The industry norms are consistent with the contracts and the parties' course of dealing with each other in the Johnny Moore Prospect.

In the instant case, the AFE reflected M & T's intention, as "operator," to drill and complete a test of the Entrada formation. The AFE further indicated M & T's belief that the objective formation would be encountered at a depth of 9,070 feet and that the "dry-hole" cost of the well would be $739,400.

Between the date of Fuelco's withdrawal and the date that drilling operations were concluded, M & T and McBride incurred expenditures in the amount of $603,708, in connection with the drilling operations on the 1-25 Unit Well, *i. e.*, the AFE was exceeded by that amount. Of that amount, three-fourths was paid by M & T and one-fourth was paid by McBride. M & T and McBride contend that Fuelco is liable for 25% of this amount, or $150,927 plus interest.

Fuelco contends that it did not agree to pay more than its share of the AFE cost estimate, but I find that it agreed to pay its share of the costs of drilling the well to its objective or to casing point. Fuelco contends that it could withdraw its consent (go "non-consent") at the AFE estimate. I find

that it could not and that such constituted a breach of the contracts, the AFE, the parties' prior dealings, and industry custom and practice. Further, Fuelco contends that the drilling costs were exorbitant. I find that the costs were necessary and reasonable in light of the difficult drilling conditions. Further, Fuelco was informed of the problems as they were incurred and participated in finding solutions to them.

I find that plaintiffs relied on Fuelco's participation when they undertook the drilling of the 1-25 Unit Well and that Fuelco is estopped to deny its full participation in the drilling of the well and in its responsibility for paying its full proportionate share of the costs.

[1] Fuelco's obligation to pay 25% of the costs is established in the 1973 Operating Agreement which is incorporated into the 1973 Agreement. The Operating Agreement provides in Article 3 that the costs of drilling the initial test well shall be borne by the parties "in accordance with separate agreement among themselves." I find that the "separate agreement" is the 1973 Operating Agreement. While Fuelco now contends that the 1973 Operating Agreement was terminated before the drilling of the 1 25 Unit Well, it didn't always. In fact, the true position of Fuelco in this litigation is already set out in the following document which, because of its poignancy, I quote in its entirety:

"INTER-DEPARTMENT MEMO- PUBLIC SERVICE COMPANY OF COLORADO

DATE October 4, 1977

TO Mr. David F. Cook — Supervisor, Engineering & Operations-Fuelco (Department or Division)

FROM W. E. Miller — Land Manager-Fuelco (Department or Division)

ATTN.

SUBJ. Johnny Moore Prospect Operations
Jackson County, Colorado

Pursuant to your request of this date a cursory review of the pertinent agreements strongly indicates that the original operating agreement of May 10, 1973 prevails over the subsequently executed unit operating agreement of September, 1977 pending approval of the unit agreement by the U. S. Geological Survey. The initial farmout agreement executed simultaneously with the operating agreement takes priority over the operating agreement.

Section 5 of the original operating agreement states as follows:

'The parties (Fuelco, succeeded by McBride) . . . . . shall be the operator of the unit area and shall conduct and direct and have *full control* of all operations on the unit area as permitted and required by, and within the limits of this agreement. It shall conduct all such operations in a good and workmanlike manner, but it shall have no liability as operator to the other parties for losses sustained, or liability incurred, except such as may result from gross negligence or breach of the provisions of this agreement.'

"Aside from granting the operator full authority and control, the operating agreement does not cover the situation of economic dissent during drilling operations short of casing point penetration. Provisions for removal of operator embody a one-year wait following change of operator and a 30-day notice period. Section 31(j) further provides that election of non-consent by any party with reference to completion operations forfeits that party's future interest and rights in the non-consent operation.

"It would appear that Fuelco has two primary choices at this stage. Fuelco could elect, due to economic hardship, to withdraw from operations of final penetration, forfeit all rights in the drill site spacing unit and expose itself to potential liability for such election. The second choice would be to thoroughly investigate the conduct of operations in the drilling of the current test well and, if sufficient justification exists, to challenge the workmanlike manner of such operations by operator, to promptly join in discussion of same with operator and other nonoperators directed toward initiating more economical operations or suspending operations pending replacement of operator. In any event, discussion of the situation with the operator prior to taking a firm stand or withdrawal is strongly recommended."

The method of allocation for the Johnny Moore wells is set forth in the 1973 Operating Agreement, paragraph 4 of which states:

Unless changed by other provisions of the [1973] Agreement, all costs and liabilities incurred in operations under this contract shall be borne and paid . . . by the parties as their interests are given in Exhibit A.

Those interests are: 25% Fuelco; 18.75% McBride; 56.25% other parties [since 1976, M & T]. Paragraph 11(a) provides that when a party consents to the drilling of a well, he consents to bear his proportionate share of all necessary drilling costs to the casing point.

I find that Fuelco consented to the drilling of the 1-25 Unit Well and is thus liable for its proportionate share of all necessary drilling costs to the casing point. In March 1978, Fuelco agreed to the location of the well. In April, Fuelco signed the AFE for the well. Further, Fuelco participated fully in the unitization procedures including the drilling of the requisite test well. When the 1-10 Unit Well did not qualify as a test well, the 1-25 Unit Well was drilled and Fuelco issued its AFE.

Fuelco's contention that the AFE set a ceiling upon the expenditures to which it consented is without merit. It is novel and somewhat imaginative, but nevertheless meritless. The overwhelming weight of the evidence establishes that an AFE is nothing more than an estimate. In the drilling of the three previous Johnny Moore wells the cost estimates were exceeded yet Fuelco paid its proportionate share of the overruns. The Tenth Circuit has already ruled in *Cleverock Energy Corp. v. Trepel*, 609 F.2d 1358 (1979) that AFE's do not limit or otherwise qualify the consent given to participate in a particular drilling operation. The rule is bedded not only in law and logic, but even more so in practicality. Given the uncertainties and risks implicit in drilling ventures, the oil and gas drilling industry could not function if forced to march to the exact measure of a budget which is considered to be at best an educated guess. *See also Buttes Gas & Oil Co. v. Willard Pease Co.*, 467 F.2d 281 (10th Cir. 1972).

[2] We next consider Fuelco's equally meritless assertion that it had the right to go non-consent at the time the AFE estimate was surpassed. Consent to drilling has certain limitations; it does not extend to completion attempts, deepenings or pluggings back. Typically non-consent elections can be made at those times or, usually, at the casing point. None of these events is related to the AFE estimate. Fuelco's attempt to go non-consent in the instant case was harnessed to the AFE and unrelated to any triggering event such as the casing point. The attempt to go non-consent here was in mid-phase of drilling and, as such, must be impermissible.

[3] As previously indicated the testimony discloses that the drilling costs were reasonable and necessary. The drilling event was seriously affected by specific geologic and mechanical problems. Fuelco received daily reports of these problems and actively participated in formulating solutions to the problems. None of the parties to the enterprise was incompetent. In fact all were highly skilled and knowledgeable. There is no doubt that the conditions found in the North Park Basin make drilling particularly difficult. Anticipation of conse-

quent high costs and overruns of substantial amounts are the rule rather than the exception. Suffice it to say that drilling in the North Park Basin is not an appropriate activity for timid souls. Given these conditions and the acknowledged skill and expertise of the parties, I find that the costs incurred were reasonable and necessary.

The final defense of Fuelco to avoid meeting its responsibility is that the plaintiffs did not drill to the Entrada formation which was the objective of the project. Fuelco cannot be heard to complain since it dropped out when the well had reached 5,700 feet and the decision to terminate was not made by the survivors of the agreement until drilling reached 9,401 feet. Had Fuelco stayed in, a different result might be reached, but Fuelco's dropping out was itself a significant factor to be considered by the survivors when they mutually agreed to stop.

In sum, I hold that the AFE was only an estimate; that approval of an AFE is a commitment to pay one's proportionate share of all reasonable and necessary costs incurred until the objective formation or casing point is reached or until the parties mutually agree to terminate. Further I hold that an AFE gives no right to go non-consent and that the point at which a party can go non-consent, in the absence of express written agreement, is determined by industry custom and practice. *See Wolfe v. Texas*, 83 F.2d 425 (10th Cir. 1936).

IT IS THEREFORE ORDERED that plaintiffs shall have judgment against defendant in the amount of $150,927 plus prejudgment interest in accordance with 73 C.R.S. § 5-12-102 and costs including reasonable attorney fees. Entry of judgment will be stayed for at least twenty days during which the parties are to confer and determine whether they can agree on the amount payable for reasonable attorney fees. If the parties cannot agree then within the twenty day period the plaintiffs shall so notify the court. Upon receipt of such notice I shall appoint an expert pursuant to the Rules of Evidence and set the matter for hearing at which time the court-appointed expert will be called and the parties may examine him or her and present other and additional evidence as they are advised.

Leon G. KAZANZAS, Jr., Plaintiff,

v.

WALT DISNEY WORLD CO., etc., Defendant.

No. 79-379-Orl-Civ-R.

United States District Court, M. D. Florida, Orlando Division.

July 14, 1981.

Employee brought action claiming that he was improperly discharged under the Age Discrimination Employment Act. The District Court, John A. Reed, Jr., J., held that plaintiff in action did not have knowledge of requirement that a claim be filed within 180 days after he was discriminated against and accordingly, filing period was tolled until plaintiff first consulted an attorney and learned of filing requirement.

Judgment to be entered.

Civil Rights ⇐33

The plaintiff in Age Discrimination in Employment Act action did not have knowledge of requirement that a claim be filed within 180 days after he was discriminated against as employer had not posted a notice conforming to applicable section and employer showed no prejudice from plaintiff's delay in filing the claim and, accordingly, filing period was tolled until plaintiff had consulted an attorney and learned of the filing requirement. Age Discrimination in Employment Act of 1967, § 7, 29 U.S.C.A. § 626.

W. Marvin Hardy, III, Gurney, Gurney & Handley, Orlando, Fla., for plaintiff.

John L. O'Donnell, Jr., of DeWolf, Ward & Morris, Orlando, Fla., for defendant.

MEMORANDUM OF DECISION

JOHN A. REED, Jr., District Judge.

Following a jury verdict which found that the plaintiff was discharged by the defendant in violation of the plaintiff's rights under the Age Discrimination in Employment Act, 29 U.S.C. § 621, et seq., the defendant on 5 May 1981 filed a motion for judgment notwithstanding the verdict or, in the alternative, for a new trial. The plaintiff on 4 May 1981 filed a motion to enter judgment on the jury verdict. The plaintiff later amended the motion by a supplement filed on 20 May 1981 which in effect asks the court to disregard the jury's finding that the plaintiff's discharge was not wilful and to enter a judgment against the defendant for liquidated damages.

The defendant's motion raises three issues: (1) whether or not the plaintiff's claim is barred by the application of Section 626(d)(1), Title 29, U.S. Code; (2) whether or not the plaintiff's claim is barred by the statute of limitations, and (3) whether or not there is sufficient evidence to support the verdict.

With regard to the first issue, the defendant contends that the plaintiff's claim is barred because the plaintiff failed to file a charge with the Secretary of Labor within 180 days of his discharge * as required by Section 626, Title 29, U.S. Code. The plaintiff contends that he is entitled to an equitable modification of the 180 day provision because of the defendant's failure to post a notice in conformity with Section 627, Title 29, U.S. Code. Pertinent to these contentions are the following facts. The plaintiff was discharged by the defendant on 26 February 1977. At the time of his discharge, the plaintiff knew that he could not be discriminated against because of his age. The plaintiff testified that he imagined the source of this knowledge was a poster in evidence as defendant's Exhibit 4 which had been placed on defendant's premises. As a management level employee, the plaintiff had read the collective bargaining contract which covered workers in the plaintiff's employment unit. Article 13 of the agreement in effect on 1 October 1976 provides:

> "The Company and the Union agree there shall be no discrimination against any employee or prospective employee due to race, color, creed, sex, age or national origin as provided in Federal and State legislation."

On the day of plaintiff's discharge, Gary Lawton, a personnel manager of defendant, told the plaintiff that Lonnie Linley, had made the decision to lay off the plaintiff and to retain Bill Cunningham, another of defendant's employees. At the same time, Lawton told the plaintiff that Bill Cunningham was seven years younger than the plaintiff, but that the plaintiff would be the first person to be recalled when an opening developed. Thus, when the plaintiff was discharged he was generally aware of a right not to be discriminated against on the basis of age and of facts which would reasonably lead the plaintiff to conclude that his discharge was based on age. Despite this knowledge, the plaintiff did not consult with an attorney until June, 1979. It was at that time he first acquired knowledge of the 180 day filing requirement. On 5 July 1979, the plaintiff's attorney mailed a notice of the plaintiff's charge to the Equal Employment Opportunity Commission office in Miami, Florida (see plaintiff's Exhibit B), and instituted the present action on 27 July 1979.

The evidence at trial revealed that the only notice relevant to age discrimination defendant posted at the plaintiff's former place of employment is the poster in evi-

* Florida's age discrimination act became effective 1 July 1978. It was not in effect at any time during the 180 day filing period established by 29 U.S.C. § 626(d)(1). For that reason 29 U.S.C. § 633(b) had no effect on the notice filing period. See § 23.167, Fla.Stat. Anno.

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

IN THE MATTER OF THE APPLICATION
OF HANLEY PETROLEUM INC. FOR
DETERMINATION OF REASONABLE WELL COSTS,
LEA COUNTY, NEW MEXICO.

CASE No 10513

HANLEY PETROLEUM INC.'S MEMORANDUM

This Memorandum is provided on behalf of Hanley Petroleum Inc. and in response to the Division's request for research concerning one of the issues involved in this case.

BACKGROUND:

On June 17, 1993, the Division commenced a hearing called upon the application of Hanley Petroleum Inc. for a determination by the Division of reasonable well costs in accordance with the terms of a compulsory pooling order (R-9480, as amended).

At that hearing the parties were presenting evidence concerning certain unresolved audit exceptions still in dispute between Santa Fe Energy Operating Partners, L.P. ("Santa Fe"), the operator, and Hanley Petroleum Inc. ("Hanley") the non-operating working interest owner.

Of particular interest is disputed Audit Exception No 8. involves whether Hanley should have to pay its share of $91,670.10 expended by Santa Fe on the subject well to repair the 22 ppg 8-5/8th intermediate casing which had failed.

UNCONTESTED FACTS:

Hanley and Santa Fe each sought to pool the other in an 80-acre spacing unit in the W/2NW/4 of Section 8, T18S, R33E, Lea County, New Mexico for a well to be drilled to test the Wolfcamp formation in the South Corbin-Wolfcamp Pool.

At the pooling hearing, Hanley submitted an AFE which proposed, among other things, the use of 900 feet of 32 ppg strength intermediate casing which would cost $2,610.00 more than the 24 ppg strength intermediate casing which Santa Fe's AFE proposed.

On March 29, 1991, the Division granted the Santa Fe application and denied the Hanley application. On June 12, 1991, the Commission approved the Division order.

The parties tried but failed to reach an agreement on a Joint Operating Agreement. Santa Fe committed Hanley's interest in the well pursuant to a compulsory pooling order.

On June 20, 1991, Santa Fe sent a letter with an AFE to Hanley notify Hanley of its right to make an election to participate under the compulsory pooling order as a consenting party. The Santa Fe AFE itemized the use of 24 ppg 8-5/8th intermediate casing at a cost of $36,804.00.

On June 25, 1991, Santa Fe sent another letter to Hanley advising Hanley it had until July 21, 1991 to make its election.

On July 1, 1991, Hanley sent a letter to Santa Fe expressing its concern over the strength of the weaker casing. On July 9, 1993, Hanley attempted to contact Santa Fe about this issue and on July 12, 1991 was told an answer would be coming.

In order to be a consenting party, Hanley had to make its election by Sunday, July 21, 1991.

Despite its efforts, Hanley had not received a response from Santa Fe concerning the casing strength and so on Friday, July 19, 1991 signed the AFE and forwarded it to Santa Fe in order to make a timely election to join in the well. (See Attachment "A," the Rogers' Affidavit).

On September 12, 1991, while drilling, the intermediate casing collapsed.

ISSUE:

What, if anything, is the affect of Hanley having signed the Santa Fe "AFE" which included the costs for the intermediate casing string at a casing-strength which Hanley had told Santa Fe was too weak and which later collapsed?

DISCUSSION:

(1) SIGNING AN AFE IN THE ABSENCE OF A JOA:

Signing an AFE does not create a contract. In the absence of a JOA, an AFE is not binding upon the parties. Sonat Exploration Company v. Mann, 785 F.2d 1232 (5th Cir. 1986). Copy attached.

AFEs are disseminated to satisfy Article VI.B.1 of the JOA, which mandates that notice be given of any proposed operation, specifying that work to be performed, the location, the proposed depth, objective formations and the estimated cost of the operation. AFEs are generally considered estimates of the costs anticipated and not firm commitments. For example, the Fifth Circuit in Sonat Exploration, supra., interpreting Mississippi law, held that AFEs executed by a non-operator who is not a party to a JOA do not obligate the non-operator to pay for the costs of drilling, completing or sidetracking a well.

Because of the contractual obligations set forth in the JOA, the parties are committed to a "AFE" election procedure for making decisions concerning the conduct of those operations. In M&T, Inc. v. Fuel Resources Development Co., 518 F.Supp. 285 (D. Colo. 1981), a non-operator declared his intention to go non-consent on a well that had exceed the AFE, but had not reached the objective depth. The court pointed out, "It is axiomatic that drilling costs cannot be estimated with certainty and that an AFE is at best a good-faith estimate. AFE's are usually exceeded, often by very substantial amounts." The court held that the JOA did not permit a party to go non-consent during the drilling phase and that the AFE was only an estimate of the costs and not a limitation on the operator's authority.

(2) SIGNING AN AFE PURSUANT TO A JOA:

It was expected that guidance for the Division on this issue might be obtained from an examination of the various AAPL Model Forms of Joint Operating Agreements ("JOA")

However, in this instance, the JOA-AFE procedures under any of the AAPL Model forms only provides a view of a "Catch-22" example which would make Joseph Heller proud.

Lewis G. Mosburg, Jr., a well recognized authority on Joint Operating Agreements, writes that the 1977 and 1982 versions of the AAPL Model Form JOA all contain important gaps--or uncertainties including:

> "Once an operation is proposed under the Model Form, the non-proposing parties must accept it exactly as made, or elect not to participate in the operation. No provision is made for proposing alternative methods of conducting the operation either as to method, depth or location." (at page 33),

and conversely:

> "Commitment to an operation is commitment to all expenses incurred in connection with that operation (with Exception of the "Casing Point Election" provided for in Option 1 of the Article VII.D.1)." (at page 34).

Lewis G. Mosburg, Jr. "Handbook on the AAPL Model Form Operating Agreement" (University of Tulsa-1989).

Although the 1989-Model Form added a new Article VI.B.6 labelled "Order of Preference of Operations" provides a balloting procedure for competing proposals, that process still would allow the majority owner to dictate the operation and compel the minority owner to make an "all or nothing" election on that operation. See Ellis, "An overview of Article VI" The Oil and Gas Joint Operating Agreement, Paper No. 3, Rocky Mt. Min. L. Fdn. 1990).

Thus, if the non-operator accepts the Operator's AFE but with conditions, then he runs the risk that the operator may claim that a non-operator by conditioning its acceptance has elected not to participate in the proposed operation.

As a result of signing a joint operating agreement some jurisdictions hold that any party approving an AFE is committed to participating in the operation even though it proves more costly than initially anticipated.

This is because Article VI B (1) of the JOA provides:

" The parties receiving such a notice shall have thirty (30) days after receipt of the notice within which to notify the party wishing to do the work whether they elect to participate in the cost of the proposed operation."

Accordingly, pursuant to the terms of a joint operating agreement, a party who agrees to the AFE is committed to participating in the operations set out therein, even though it proves more costly than initially anticipated. Cleverock Energy Corp. v. Trepel, 609 F. 2d. 1358 (10th Cir. 1979) and others.

(3) REMEDIES UNDER A JOA:

Even with the above flaws and limitations of a JOA, a party committed to a JOA can still sign the AFE and challenge an operation that exceeded the AFE by arguing that the excessive costs were "not necessary or property" as required by Article II.12 of the 1974 COPAS or Article 11.15 of the 1984 COPAS or that the costs were "not reasonable and necessary" as provided for in the common law rules relating to a drilling co-tenant's right to reimbursement.

Finally, Article V.A. provides the operator still is liable to the non-operating working interest owners if the operator's conduct is grossly negligent or for willful misconduct and those allegations can still be made even if the AFE is signed under a valid JOA.

(4) DIFFERENCES BETWEEN AN JOA AND A COMPULSORY POOLING ORDER:

The JOA is a voluntary agreement by the parties, the primary function of which is to designate one of the parties as the operator, describe the scope of the operator's authority, provide for the allocation of costs and production among the parties to the agreement, and provide for recourse among the parties if one or more default in their obligations.

The compulsory pooling order was entered over the objection of Hanley and INVOLUNTARILY pooled its interest to a well by an operator and at costs over which it had strong opposition.

The State of New Mexico has used its police powers to compel the consolidation of Hanley's interest over its objection. Now, in order to avoid the risk factor penalty, Hanley consented to pay for its share of the costs of the well. Therefore the correct issue in this case is not the affect of signing the AFE but is whether Santa Fe was reasonable in its use of the weaker intermediate casing when it was granted the privilege by the State of New Mexico to drill this well over the objection of Hanley.

(4) THE AFE AMBIGUITY:

To make an election to be a consenting party the compulsory pooling order required the prepayment of that parties share of the costs of the well. However, in this case, Santa Fe did not require Hanley to prepay its share in advance. The parties' modification of the order's election procedure along with Santa Fe's failure to timely respond to Hanley's concern over the casing creates an ambiguity over the affect of Hanley's signing the AFE. Although Hanley's signing of the AFE was gratuitous and not required under the terms of the pool order, its purpose and intent for signing the AFE cannot be determined from an examination of the AFE alone.

This ambiguity can only be resolved by extrinsic evidence of what Hanley meant when it signed the AFE and returned it to Santa Fe. That intent is expressed in detail in Mr. Rogers' affidavit and resolves the ambiguity. Hanley did not intend the AFE to constitute a waiver of its objection concerning the strength of this casing.

(5) WAIVER AND ESTOPPEL:

Lastly, it is worth comment that Santa Fe suffered no detriment as a consequence of Hanley's signing the AFE. With or without the signed AFE, Santa Fe intended to use the weaker casing. Hanley did not cause Santa Fe to do anything it had not already decided to do. There was no detrimental reliance upon the signed AFE by Santa Fe to create either a waiver by Hanley or cause it to be estopped from raising this issue. See Sonate Exploration, supra.

CONCLUSION

The facts and circumstances of this case demonstrate a compelling need for the Division to "upgrade" its compulsory pooling orders which have remained virtually unchanged for at least twenty years.

Now is the time for the Division to adopt appropriate portions of Article VI and Article VII of the 1989-AAPL Model Form Joint Operation Agreement for its compulsory pooling orders which would avoid the uncertainties and gaps that now exist and which affect this case and others.

In addition, this case represents an opportunity for the Division to adopt a solution for the industry which fills the current gap of uncertainty that now exists in similar JOA-AFE situations. To look to the AFE-JOA process in this instance for a reliable solution is simply to incorporated an existing flawed process into the compulsory pooling procedure.

We recommend that the Division find that Hanley's signature of the AFE was gratuitous, not necessary for the exercise of its election to participate under the pooling order and does not constitute approval for the use of the disputed casing material specified in the AFE.

Respectfully submitted,

W. Thomas Kellahin
KELLAHIN & KELLAHIN
Attorneys for Hanley Petroleum Inc.

merits' ... [referring to *Holmes*, 682 F.2d at 1146], we look to Mississippi [the applicable state] law." 689 F.2d at 588–89.

Although the suit now before us was not brought in diversity, we find Texas law controlling because the note and security agreement are governed by Texas law. *See United States v. Terrey*, 554 F.2d 685, 692–93 (5th Cir.1977) (holding state law applicable to a guaranty dispute involving federal agency where guaranty agreement was controlled by a security agreement that was governed by Texas law and where the application of Texas law would not frustrate the intent of the federal program). Additionally, we observe that the note and security agreement here were signed in Texas, the original parties to the note and security agreement are located in Texas, and the collateral is located in Texas.

Texas law, if anything, is more expansive as to the inclusion of attorneys' fees in the substantive amount in controversy than we found to be the case in Mississippi in our decision in *Oxford*. In Texas, attorneys' fees are included in the amount in controversy as long as the demand for them is not frivolous. *See Barnes v. Bituminous Casualty Corporation*, 495 S.W.2d 5, 9 (Tex.Civ.App.—Amarillo 1973, writ ref'd n.r.e.). Both attorneys' fees sought under a note or contract, as is the case here, and those sought under a statute are includable. *Id.* Thus in Texas it is clear that attorneys' fees awardable by note or contract are includable in the amount substantively in controversy in Texas and thus are an "integral part of the merits." *Oxford*, 689 F.2d at 588 (discussing the *Holmes* test). As such, it is equally clear that because a motion for such attorneys' fees is an integral part of the merits, it is a motion to alter or amend the judgment for the purposes of Rule 4(a)(4). Since both Hooper's and the FDIC's notices of appeals were filed during the pendency of a motion to alter or amend, we find their notices a nullity and dismiss for lack of jurisdiction.[2]

2. We do not decide whether the district court's order granting the FDIC's motion to alter or amend is in fact a presently appealable order or whether the deadline for a notice of appeal has passed; we decide only that the notices of appeal by Hooper and FDIC were void.

Conclusion

Having found the only notices of appeal by Hooper and the FDIC nullities, we dismiss for want of appellate jurisdiction.

DISMISSED.

SONAT EXPLORATION COMPANY, etc., Plaintiff-Appellant,

v.

William D. MANN and Mann Production, Inc., Defendants-Appellees.

No. 84–4845.

United States Court of Appeals, Fifth Circuit.

March 14, 1986.

Operator of exploratory gas well sought recovery of drilling expenses. The United States District Court for the Southern District of Mississippi, Charles Clark, Circuit Judge, sitting by designation, held that neither authorizations for expenditures signed by nonoperators nor their conduct obligated them to pay drilling costs. Operator appealed. The Court of Appeals, Politz, Circuit Judge, held that authorizations for expenditures executed by nonoperator who was not a party to operating agreement covering gas well did not obligate him to pay drilling costs demanded by operator.

Affirmed.

1. Mines and Minerals ⇐109

Authorizations for expenditures executed by nonoperator who was not a party to operating agreement covering explorato-

ry gas well did not obligate him to pay drilling costs demanded by operator.

2. Estoppel ⇐85

Operator of exploratory gas well suffered no detriment as a consequence of alleged misrepresentations of nonoperator as to payment for drilling costs; misrepresentations did not cause operator to do anything it would not otherwise have done.

Jefferson D. Stewart, Grunini, Grantham, Grower & Hewes, James A. Keith, Jackson, Miss., for plaintiff-appellant.

Michael Hartung, Moore, Royals & Hartung, Jackson, Miss., for defendants-appellees.

Appeal from the United States District Court for the Southern District of Mississippi.

Before WISDOM, POLITZ and TATE, Circuit Judges.

POLITZ, Circuit Judge:

In this diversity jurisdiction case, we must determine the legal effect, under Mississippi law, of the execution of an AFE ("Authorization for Expenditure") by a non-operator who was not party to the operating agreement covering the subject exploratory gas well. The district court concluded that neither the AFEs signed by the defendants nor their conduct obligated them to pay the drilling costs demanded by Sonat Exploration Company. For the reasons assigned, we affirm.

Facts

In the summer of 1977, Sonat, Texas Crude, Inc., and Stone Oil Corporation entered into a field-wide operating agreement, reflecting their plans for the exploration and development of minerals in West Sandy Hook, a field which straddled the line between Louisiana and Mississippi. Each party to the operating agreement accepted responsibility for one-third of the exploration and development costs. Sonat was designated the operator.

In 1980 William D. Mann, an oil and gas investor, purchased acreage within the West Sandy Hook area. He subsequently sold a portion to Gus and Jonelle Primos, reserving a 0.3710940 percent mineral interest. At Sonat's request, Mann and Primos committed their acreage "for the purpose of the formation of an Exploratory Unit" by the Mississippi Oil and Gas Board. A 640-acre gas drilling unit was established.

In June of 1981, Primos assigned a 0.3125 percent working interest in the drilling unit to Mann Production, Inc. (hereafter, with Mann individually, collectively referred to as "Mann").

In 1981 Sonat drilled, completed, and sidetracked an exploratory gas well, identified as Forbes No. 2 Well, at a total cost of $7,292,708.12. Sonat attributed $27,216 to Mann's individual interest and $22,486 to his corporation's interest. No part of these costs has been paid.

Neither Mann nor Primos were asked to sign either the operating agreement or any other instrument ratifying or adopting that agreement. Mann individually signed three AFEs, dated February 9, 1981, September 21, 1981, and October 19, 1981. As president of Mann Production, Inc., he signed one AFE dated October 19, 1981. These four AFEs contained the estimates of various expenses to drill, complete, and sidetrack Forbes No. 2 Well. In each AFE, the words "Accepted and Agreed" appeared immediately above Mann's signature. Each AFE contained a breakdown by category of expense and apportioned the estimated total cost to an attached list of working interest owners. The September AFE packet indicated that an 11.4843750 working interest owner opted not to participate further. The suggestion that the expenses attributable to this "non-consenting" interest were apportioned prorata to the other working interest owners is not supported by the attachments to the AFEs.

Sonat's assistant vice president for drilling and production usually tried to get all interest owners to sign an operating agree-

ment. If they were unsuccessful in this effort, but the working interest owner subsequently signed an AFE, Sonat's representative testified that Sonat simply would treat that owner as a party to the operating agreement.

Periodically during the drilling activity Sonat sent Mann drilling reports, invoices, and billing statements. After the well was abandoned, Mann received a bill, in response to which he wrote Sonat "relative to our outstanding balance with your Company," and raised over 30 questions about the billing, requested a copy of the operating agreement and the signature page to that agreement, and concluded by saying that after receipt of the requested information "we will make disposition of this outstanding balance." Mann ultimately declined to pay and this litigation ensued. The district court dismissed Sonat's complaint, finding that Sonat: (1) had not sustained its burden of proving that Mann had undertaken in writing to pay a portion of the costs of drilling Forbes No. 2 Well; (2) had not demonstrated an industry custom or practice which would bind the signer of an AFE, who had not signed or ratified an operating agreement, to pay the estimated costs; and (3) had not shown detrimental reliance, even though Mann's conduct was adjudged "misleading."

Analysis

Sonat maintains that the trial court was incorrect in its legal assessment of the AFEs under Mississippi law and in its finding of no detrimental reliance. Sonat first argues that an AFE, standing alone, constitutes a binding promise to pay a stated share of drilling and completion costs. No supporting authority was furnished to the trial court and our attention has been invited to none.

Our research discloses no authority for the proposition that an AFE is enforceable against one who has not signed an accompanying operating agreement. The case cited by appellant, *M & T, Inc. v. Fuel Resources Development Co.*, 518 F.Supp. 285 (D.Colo.1981), involved an AFE issued pursuant to a valid operating agreement between the parties. The cited secondary authority, Young, *Oil and Gas Operating Agreements: Producers 88 Operating Agreements, Selected Problems and Suggested Solutions*, 20 Rocky Mtn. Min.L. Inst. 197, 203–08 (1975), addresses the AFE only in the context of a coexisting operating agreement. We find no case in which the signer of an AFE has been held liable solely because of the execution of the AFE. We find no secondary authority espousing such a result.[1]

Finding no dispositive Mississippi statutory or jurisprudential authority, we must, as an *Erie* court, "reach the decision that we think [the forum] state court would reach." *Dipascal v. New York Life Ins. Co.*, 749 F.2d 255, 260 (5th Cir.1985). In doing so we are to "decide ... the issue as we believe a Mississippi court would decide it." *Green v. Amerada-Hess Corp.*, 612 F.2d 212, 214 (5th Cir.), *cert. denied*, 449 U.S. 952, 101 S.Ct. 356, 66 L.Ed.2d 216 (1980). It is our task to "predict the course of the Mississippi Supreme Court ... [presuming] 'that the Mississippi courts would adopt the prevailing rule if called upon to do so.'" *Turbo Trucking Co. v. Underwriters at Lloyd's*, 776 F.2d 527, 529 (5th Cir.1985) (*quoting Hensley v. E.R. Carpenter Co.*, 633 F.2d 1106, 1109 (5th Cir.1980)). In making our *Erie* prediction, we are largely guided by the conclusions of the trial judge, "schooled and skilled in the law of his state." *Turbo Trucking Co.*, 776 F.2d at 529.

The Authorization for Expenditure form utilized by Sonat contains no language which may be taken as a promise by Mann to pay a part of the reflected costs. Neither attached sheet, one a breakdown of the cost estimate and the other a listing of working interest owners with a cost appor-

1. We have been cited to no authority which would permit a contract involving mineral development, such as is here presented, to be oral. We tend to the conclusion that the Mississippi Supreme Court would require that contracts involving oil and gas development be reduced to writing. *See generally Bell v. Hill Bros. Const. Co., Inc.*, 419 So.2d 575 (Miss.1982).

tionment, contains language that may be so considered. The district court's conclusion that the AFEs filed in evidence do not constitute a promise to pay is manifestly correct.

The trial judge also found that neither party offered satisfactory evidence of a binding industry custom or practice involving the signing of an AFE by the owner of a working interest who had not signed or ratified the pertinent operating agreement. We come to the same conclusion after a studied perusal of the record. If there indeed is an industry custom or practice, it is not reflected in the evidence now before the court. If it was Sonat's intention to rely, in whole or in part, on a custom or practice followed in the oil industry, it did not acquit its burden of proof as to that custom or practice.

Contractual Ambiguity and Extrinsic Evidence

Under Mississippi law, custom and usage may be used to interpret a vague or ambiguous contract. *O.J. Stanton & Co. v. Mississippi State Hwy. Comm'n*, 370 So.2d 909 (Miss.1979). But they may not be used to create a contract. *Firemen's Fund Ins. Co. v. Williams*, 170 Miss. 199, 154 So. 545 (1934). The existence of a clear and valid contract between the parties necessitates the exclusion of evidence of custom and usage. *Magnolia Lumber Corp. v. Czerwiec Lumber Co.*, 207 Miss. 738, 43 So.2d 204 (1949). Also, parol evidence may not be used in the interpretation of an unambiguous contract. *Noble v. Logan-Dees Chevrolet-Buick, Inc.*, 293 So.2d 14 (Miss. 1974).

The AFEs were offered in evidence as the factual basis for Sonat's contention that Mann contracted to pay a portion of the drilling, completion, and sidetrack expenses. The AFEs are not ambiguous. To the contrary, they are quite specific. Arguably, one could suggest that the "Accepted and Agreed" entry is a modicum of written evidence of a promise to pay. Accepting such *arguendo*, parol evidence would avail appellant naught. Sonat's vice president stated that Sonat generally tried to make all working interest owners parties to the operating agreement. This suggests the imperative of the operating agreement. An expert's testimony lent support to the argument that an AFE is only binding if appended to an operating agreement. We have come to that conclusion after reviewing the few cases involving AFEs and some of the literature on the subject. We agree with the passing reference of our Tenth Circuit colleagues in *Cleverock Energy Corp. v. Trepel*, 609 F.2d 1358, 1360 (10th Cir.1979), that an AFE is merely "an estimate of costs without binding effect in the industry."

[1] We are persuaded that the AFEs at bar do not, on their faces, create a legally binding obligation of Mann to pay a share of the drilling, completion, and sidetrack expenses incurred by Sonat.

Sonat's second contention is that the trial judge erred in failing to rule that Mann Production, Inc. was liable for all expenses attributable to the interest acquired from Gus and Jonelle Primos. There is no merit to this contention. Mann could not have a greater obligation to pay than Primos. The Primos and Mann positions were identical. Neither signed nor ratified the operating agreement. The AFEs did not create binding obligations for either.

Detrimental Reliance

[2] The final issue raised on appeal in that the trial court erred in finding that Sonat suffered no detriment as a consequence of Mann's misrepresentations. We find no detrimental reliance. Mann's misrepresentations did not cause Sonat to do anything it would not otherwise have done, particularly the things done because required by the agreement. Sonat's vice president in charge of drilling was precise and certain. Sonat would have followed the exact same course of activity whether Mann committed his less than 2% interest or declined to do so. Further, the suggestion that Sonat might have shifted the portion of costs attributed to Mann before the well was abandoned but could not do so afterwards is simply not persuasive.

For the foregoing reasons, the judgment of the district court is AFFIRMED.

Jesse M. SANCHEZ, Plaintiff-Appellant,

v.

UNITED STATES POSTAL SERVICE, Defendant-Appellee.

No. 85-2296
Summary Calendar.

United States Court of Appeals, Fifth Circuit.

March 21, 1986.

Employee brought civil rights action against Postal Service, alleging Service discriminated against employee on basis of national origin in refusing to promote him. The United States District Court for the Western District of Texas at San Antonio, H.F. Garcia, J., entered judgment in favor of Postal Service and employee filed pro se appeal, alleging trial counsel failed to provide him with effective assistance of counsel and requesting new trial. The Court of Appeals held that: (1) Sixth Amendment right to effective assistance of counsel did not apply in civil litigation, and (2) allegation that attorney mishandled case was grounds for potential cause of action against attorney for malpractice.

Affirmed.

1. Federal Civil Procedure ⇐1951

Sixth Amendment right to effective assistance of counsel does not apply to civil proceedings. U.S.C.A. Const.Amend. 6.

2. Federal Courts ⇐753

Allegation that attorney representing employee in civil rights action mishandled case was grounds for potential cause of action against attorney for malpractice, but was not grounds for appeal in civil rights action. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.; U.S.C.A. Const.Amend. 6.

Jesse M. Sanchez, pro se.

Helen M. Eversberg, U.S. Atty., and Jack B. Moynihan, Asst. U.S. Atty., San Antonio, Tex., Wyneva Johnson and Lori J. Dym, Office of Labor Law, U.S. Postal Service, Washington, D.C., for U.S. Postal Service.

Appeal from the United States District Court for the Western District of Texas.

Before RUBIN, REAVLEY and HILL, Circuit Judges.

PER CURIAM:

Plaintiff Jesse Sanchez appeals from a judgment entered in favor of the defendant United States Postal Service (Postal Service) in this civil rights case. Sanchez presents a single issue in his appeal: whether the alleged ineffective assistance rendered by his trial counsel entitles him to a new trial. Finding Sanchez' contention in direct contravention with established circuit precedent, we affirm.

I.

Sanchez, an employee of the Postal Service, filed this civil action pursuant to Title VII of the Civil Rights Act of 1964, specifically 42 U.S.C. § 2000e-16. Sanchez alleged that the Postal Service discriminated against him on the basis of his national origin when the Postal Service did not promote him. Following a bench trial, at which a private attorney specializing in civil rights litigation represented Sanchez, the district court held that the Postal Service had articulated a legitimate, nondiscriminatory reason for Sanchez' nonselection and that Sanchez had failed to establish that the reason was merely a pretext for discrimination. The district court entered judgment in favor of the Postal Service. Sanchez then filed his pro se appeal with

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June 3, 1992

RECEIVED
JUN 03 1992
OIL CONSERVATION DIVISION

Mr. William J. LeMay
Oil Conservation Division
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HAND DELIVERED

RE: Application of Hanley Petroleum Inc. for Determination of Reasonable Well Cost pursuant to NMOCD Order R-9480

Case 10513

Dear Mr. LeMay;

On behalf of Hanley Petroleum Inc., we are hereby filing an objection to the actual costs of the subject well as submitted by Santa Fe Energy Operating Partners, L. P.

We request that this matter be set on the Division Examiner's docket scheduled for July 23, 1992.

Very truly yours,

W. Thomas Kellahin

WTK/jcl
Enclosure
cc: with Enclosure
Hanley Petroleum Inc.
James Bruce, Esq.
William F. Carr, Esq
By Certified Mail Return Receipt Requested
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October 1, 1993

David R. Catanach
Oil Conservation Division
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Santa Fe, New Mexico 87503

Robert G. Stovall, Esq.
Oil Conservation Division
310 Old Santa Fe Trail
Santa Fe, New Mexico 87503

Gentlemen:

Re: Case No. 10,513 (Hanley Petroleum/Santa Fe Energy).

Subsequent to the filing of my brief in the above matter, I received the affidavit of Santa Fe's well auditor, James L. Cassel. For what it is worth, the original affidavit is submitted herewith, which Santa Fe requests to be incorporated in the record. According to Mr. Cassel, a working interest owner is bound by the types of charges he approved on the AFE, although he may always challenge the amount of charges. Santa Fe submits that by approving the two AFEs, which set forth the charges for the 24 lb. 8-5/8" and 32 lb. 8-5/8" casing, Hanley Petroleum agreed to the type of expense, and is bound thereby.

Very truly yours,

HINKLE, COX, EATON, COFFIELD
& HENSLEY

James Bruce

c: W. Thomas Kellahin, Esq.
(w/encl.)

JGB5\93H38.c

BEFORE THE NEW MEXICO OIL CONSERVATION DIVISION

APPLICATION OF HANLEY PETROLEUM, INC. FOR DETERMINATION OF REASONABLE WELL COSTS, LEA COUNTY, NEW MEXICO.

No. 10,513

AFFIDAVIT OF JAMES L. CASSEL

STATE OF TEXAS)
)ss.
COUNTY OF HARRIS)

James L. Cassel, being duly sworn upon his oath, deposes and states:

1. I am a Certified Public Accountant and I am employed by Santa Fe Energy Resources, Inc. ("Santa Fe") as a Senior Auditor to manage Santa Fe's audits of non-operated properties, as well as Santa Fe's actions regarding audits conducted of Santa Fe's records by non-operating parties.

2. I have 23-plus years experience in auditing well costs, including drilling operations, producing operations, and oil/gas revenues generated by these operations. Types of arrangements audited include casing point, non-consent, carried interest, and net-profit interest, among others.

3. I am personally familiar with the well costs for the Kachina Fed. 8 Well No. 2.

4. COPAS accounting procedures provide that a non-operator has the right to audit costs to determine the propriety, or correctness, of the costs charged to the property being audited. That right, however, does not extend to questioning the incurrence

of the expense or nature of the expense if the necessity for incurring such expense has already been approved in the Authority for Expenditure (AFE). An over-expenditure of the AFE can be questioned if it exceeds a pre-determined percentage of the originally approved amount. COPAS guidelines explain that when judging an over-expenditure of the AFE, the comparison of actual costs incurred is made to the total of the AFE rather than to its component parts. The relevant explanation can be found in COPAS Bulletin No. 10, Section V, paragraph B6 (attached as Exhibit No. 1).

5. Oil industry accounting standards conform the COPAS guidelines outlined above: Judgment of performance against the AFE is based upon the total authorized amount, rather than its component parts.

6. The well cost estimates (authorizations for expenditure) for the Kachina Fed. 8 Well No. 2 were within the above guidelines.

7. All portions of the operation to drill and complete the Kachina Fed. 8 Well No. 2 were properly covered by an AFE. Each of the applicable AFEs were approved by the working interest owners in the well. The types of charges incurred were the same as those specified in the approved AFEs. The auditors have the right to question and take exception to the amount of any charges which are incorrectly coded or allocated to the property, or which were not approved by their company, if such approval was necessary. They do not have the right to question charges whose nature was approved and were properly incurred for the benefit of the property.

James L. Cassel

SUBSCRIBED AND SWORN TO before me this 27th day of September, 1993, by James L. Cassel.

Donna H. Shearer
Notary Public

My commission expires:
5/30/94

DONNA H. SHEARER
Notary Public, State of Texas
My Commission Expires 5/30/94

BULLETIN NO. 10

PETROLEUM INDUSTRY ACCOUNTING EDUCATIONAL TRAINING GUIDE

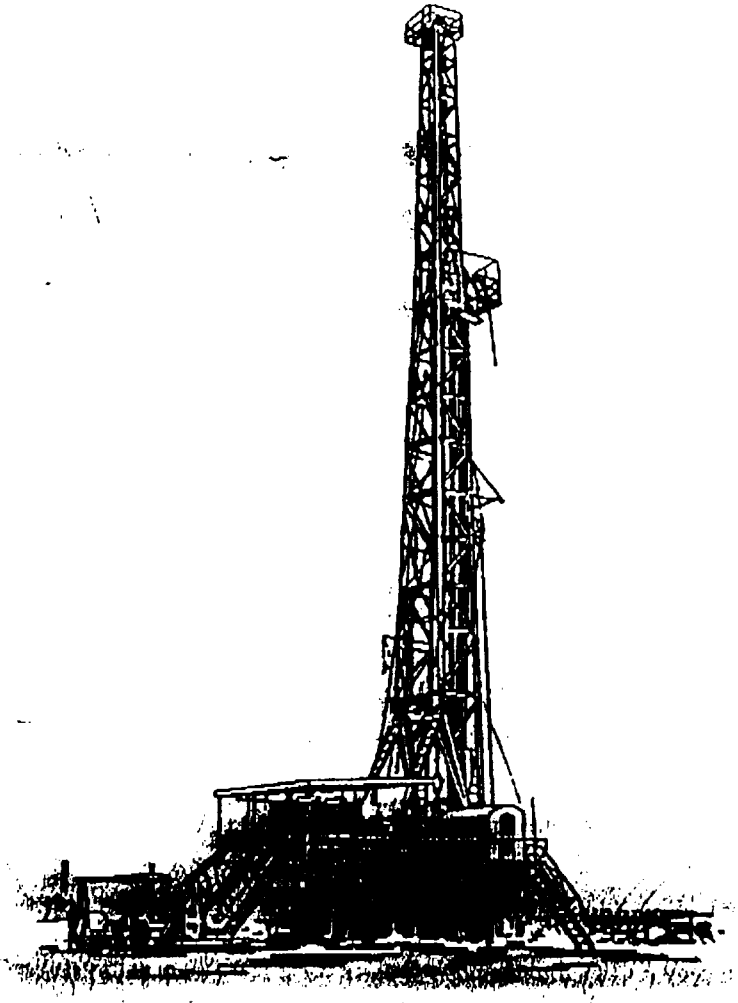

EXHIBIT NO. 1

RECOMMENDED BY COPAS

COUNCIL OF PETROLEUM ACCOUNTANTS SOCIETIES

May be purchased direct from the publisher
Kraftbilt Products, P.O. Box 800, Tulsa, Okla. 74101

REVISED: April, 1990

controlling costs is the Authorization for Expenditures system that was mentioned in Section III in the discussion of accounting for geological and geophysical exploration.

Where the Authorization for Expenditure (AFE) is used, approval is given for spending money for specific projects as required. Outlays are based as far as possible on predetermined budgets which set out anticipated needs for various types of expenditures. After the budget has been established and funds earmarked for general purposes, operating departments request approval for expenditures for carrying out projects.

Approval by means of an AFE should be required for acquisition of each major fixed asset. It is customary and desirable to require an AFE for all costs incurred in drilling and equipping oil and gas properties, purchasing drilling equipment and service units, constructing buildings, and other major projects. It is not practical, however, to obtain specific approval for minor capital items that are bought in routine operations, so standing authorizations for small purchases are generally provided. In most companies AFEs are not required for operating expenses other than for costs of well work-over project. Even for work-over jobs, an AFE is usually unnecessary unless the total estimated cost is greater than some specified amount, for example, $20,000.

a. Summary of procedures used for AFE's

The following summary outlines procedures used by one oil company in its AFE system and suggests the nature of forms and records required to implement the system.

(1) Asset acquisitions and construction are budgeted, where possible, at least one year in advance.

(2) Authority for carrying out a specific project is requested by proper operating personnel, usually the district superintendent or division superintendent.

(3) Approval is given by appropriate management officials for carrying out each project. The approval is in the form of an Authorization for Expenditure. Each AFE is assigned a number and the project it covers is identified by the AFE number.

(4) All costs of a project are accumulated, and periodic computer runs summarize costs by each cost category. A Work in Progress ledger (called by some companies the AFE ledger, Incomplete Construction ledger, or Work in Progress ledger) is maintained. The ledger provides a record of the costs of each project. Classification of costs in the ledger is usually identical or closely similar to that on the AFE.

(5) When a project has been completed, a voucher is prepared to transfer all costs accumulated under the AFE to the proper asset or expense account. Costs incurred are compared with amounts authorized by the AFE, and major discrepancies are closely analyzed.

b. Illustration of AFE

The AFE in Figure 5-9, page 60, contains approval to drill an exploratory well on the R. L. Jones lease. The AFE shows a detailed breakdown of the total expected drilling costs of $616,200 for intangibles and $54,500 for casing and other sub-surface equipment. Authorization is complete when proper signatures have been affixed to the request. A time limit should be set for beginning the project, after which a new appropriation will have to be made for the project to start. This

is necessary in order that financial requirements may be better estimated a controlled.

When the drilling is finished, all accumulated costs of an AFE are totaled ai compared with the amounts estimated in the AFE and transferred to the ass accounts or expense account, as previously illustrated.

c. Supplemental AFEs

The AFE form illustrated in Figure 5-9 shows details of the appropriated or estimated amounts for various categories of costs. Periodically, as the project progresses, expenditures actually incurred to date are compared with estimated costs. It may become evident as the work progresses that the amounts authorized for certain elements of cost will be insufficient. Costs in excess of the authorized amount will usually be allowed without additional authorization if they are relatively small. If the anticipated over-expenditure is in excess of a certain amount, however, a supplemental authorization should be required. A typical rule is outlined below:

A supplemental authorization is required:

- when appropriations providing for cost of $150,000, or less will be over-expended by $6,000 or more,
- when appropriations providing for cost of more than $150,000, but less than $1,500,000, will be over-expended by 4 percent or more, and
- when appropriations providing for cost of $1,500,000 will be over-expended by $60,000 or more.

A frequently found rule requires a new AFE whenever actual costs exceed the estimates by more than ten percent. Comparisons of authorized costs and actual costs are necessary to indicate under-expenditures as well as over-expenditures.

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

IN THE MATTER OF THE APPLICATION
OF HANLEY PETROLEUM INC. FOR A
DETERMINATION OF REASONABLE WELL COSTS,
LEA COUNTY, NEW MEXICO

CASE: 10513

AFFIDAVIT OF JAMES W. ROGERS

STATE OF TEXAS)
) SS.
COUNTY OF MIDLAND)

JAMES W. ROGERS, being duly sworn upon oath deposes and states:

(1) I am a Certified Professional Landman and am Vice President Land of Hanley Petroleum Inc. I have been employed in that capacity by Hanley Petroleum Inc. since 1982. I was personally involved in all decisions made by Hanley Petroleum Inc. concerning the subject well and the various AFE's submitted by Santa Fe to Hanley.

(2) By letter dated July 1, 1991, I expressed to Santa Fe our concerns about the inadequate strength of the intermediate casing Santa Fe proposed to use in this well. This letter was sent in response to Santa Fe's letter of June 25, 1991 wherein they advised that we had 30 days from June 20, 1991 (or July 21, 1991) under Division Order #R-9480-B in which to make an election to either join as a paying participant in the well or go non-consent.

(3) On July 9, 1991, after not hearing from Santa Fe, concerning the suggested changes as pointed out in Hanley's letter, I called Larry Murphy, Santa Fe Landman. Larry Murphy called back on July 12, 1991 and advised he would send Santa Fe's comments the following week.

(4) Inasmuch as I had not heard back from Santa Fe concerning the suggested changes by Friday, July 19, 1991, Mr. Robbins was compelled to sign the AFE on behalf of Hanley in order to avoid the non-consenting penalty provision of Order R-9480-B. I forwarded the AFE to Santa Fe with my cover letter dated July 19, 1991 in order to meet the deadline for joining which was Sunday, July 21, 1991. In doing so, it was not our intent to waive our objection to the strength of the intermediate casing. However, I was afraid to except the casing string for fear of having Santa Fe then argue that Hanley had failed to properly and timely elect in the well.

(5) On August 23, 1991, I did receive Santa Fe's letter dated August 21, 1991 in reply to our July 1, 1991 Letter Agreement in which they rejected our request to use the stronger casing.

(6) On August 30, 1991, all negotiations ceased in the attempt of the parties to enter into an acceptable operating agreement, thus necessitating the drilling of the test well under the New Mexico Oil Commission Order R-9480-B dated June 12, 1991.

(7) The test well was spudded on September 12, 1991, and on September 30, 1991, while drilling, the intermediate casing collapsed. Hanley personnel, at that time, reminded Santa Fe that we had objected to running the lighter casing and that the running of the stronger casing would have been cheap under the then existing circumstances.

(8) The well reached Total Depth of 11,480' on October 14, 1991 at which time production casing was run, the rig was released and there was no attempt to complete the well until November 4, 1991. At that time, and continuing until November 13, 1991, a completion of one of the potentially productive zones was attempted which proved to be unsuccessful.

(9) From November 13, 1991 to December 30, 1991, the well was shut in.

(10) Inasmuch as Hanley's Federal Lease was due to expire on midnight December 31, 1991, absent actual operations or established production, I pursued with Santa Fe a dialog to establish actual operations or production in this well in order to save Hanley's lease. On November 25, 1991, I wrote a letter to Santa Fe expressing our concern about this matter. On December 17, and 18, 1991, W. R. Huck, Hanley's Engineering Consultant had conversations with Santa Fe's reservoir engineer concerning completion of the well.

(11) On December 23, 1991, Santa Fe furnished Hanley with a copy of the Supplemental AFE.

(12) On December 26, 1991, Mr. Robbins, on behalf of Hanley Petroleum, signed the Supplemental AFE. It was our intent to approve the AFE in order to have Santa Fe (the operator of the well as mandated by the Pooling Order) continue with efforts to establish continuous operations or production prior to midnight December 31, 1991 to save our lease. It was not our intent, by signing the AFE, to waive our right to have the Division determine reasonable total well cost, including resolving the dispute over the strength of the intermediate casing.

(13) Again, we signed the AFE's in order to avoid being a non-consenting party under the Pooling Order and to ensure the saving of our Federal Lease. As a consenting party to the Pooling Order, we thought we still had a right to have the Division to determine reasonable well costs.

Further affiant sayeth not:

James W. Rogers

STATE OF TEXAS §
§
COUNTY OF MIDLAND §

Subscribed and sworn to before me this 21st day of September, 1993.

Notary Public

My Commission expires:

MYRNA L. WINN
NOTARY PUBLIC
State of Texas
Comm. Exp. 08-04-94

BEFORE THE NEW MEXICO OIL CONSERVATION DIVISION

APPLICATION OF HANLEY PETROLEUM INC. FOR DETERMINATION OF REASONABLE WELL COSTS, LEA COUNTY, NEW MEXICO. **NO. 10513**

BRIEF OF SANTA FE ENERGY OPERATING PARTNERS, L.P.

I. INTRODUCTION

Santa Fe Energy Operating Partners, L.P. ("Santa Fe") is the operator of the Kachina "8" Fed. Well No. 2 ("the Well"), located in Unit E of Section 8, Township 18 South, Range 33 East, in Lea County. The Well is completed as a producing well in the South Corbin-Wolfcamp Pool.

The Well was drilled pursuant to Order Nos. R-9480, R-9480-A, and R-9480-B ("the Orders") entered in Case Nos. 10211 and 10219, which granted Santa Fe's application to force pool Hanley Petroleum Inc. ("Hanley"). Hanley agreed to pay its share of well costs under the Orders; no operating agreement was signed.

II. SEQUENCE OF EVENTS.

The parties have submitted to the Division a Stipulation of Admissibility, attaching nine items of correspondence between Santa Fe and Hanley. Hanley also submitted the Affidavit of James W. Rogers ("the Rogers Affidavit"). These documents establish the following:

Pursuant to the Orders, Santa Fe submitted to Hanley Order No. R-9480-B and an authorization for expenditure ("AFE")[1] by letter dated June 20, 1991. **Stipulation Item 1.** Hanley elected to join

---

[1] Santa Fe's terminology is "well cost estimate."

in the Well by letter dated July 19, 1991. **Stipulation Item 5.** Attached to Hanley's letter was a signed AFE. **Id.**

Santa Fe proposed using 24 lb. 8 5/8" intermediate casing for the Well. **See AFE attached to Stipulation Item 1.** By letter dated July 1, 1991, Hanley requested different casing (32 lb. 8 5/8") than that proposed by Santa Fe. **Stipulation Item 4.** By letter dated August 31, 1991, Santa Fe rejected Hanley's casing request, and submitted engineering data supporting its position. **Stipulation Item 6.**

During the drilling of the Well, the casing collapsed, necessitating additional expense. Also, due to unsatisfactory results in the Wolfcamp "AG" zone, Santa Fe performed an additional acid treatment job on that zone. The working interest owners were kept apprised of these developments (**See Stipulation Item 7**), and on December 23, 1991 Santa Fe mailed to Hanley a supplemental AFE which set forth costs to remedy the casing collapse and to stimulate the Well. **Stipulation Item 8.** Hanley signed and returned the supplemental AFE. **Stipulation Item 9.**

Hanley subsequently filed its application for a determination of reasonable well costs, claiming among other things that Santa Fe's casing program was inappropriate.[2] At the initial hearing on this matter, Santa Fe asserted that by signing the AFE's Hanley agreed to all Well costs, and thus it could not object to the additional casing cost (approximately $92,000.00).

III. ISSUE.

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[2] Hanley has not objected to the cost for the additional stimulation.

By signing the AFE's did Hanley agree to pay the additional cost attributable to the casing collapse?

IV. DISCUSSION.

There is no clear-cut court ruling on this issue. However, court decisions indicate that a person who has agreed to pay his share of well costs is bound by an executed AFE.

Generally, execution of an AFE alone, without any other agreement to pay well costs, is insufficient to hold a person liable for well costs. **Sonat Exploration Company v. Mann, 785 F.2d 1232, 1234 (5th Cir. 1986)** (AFE not enforceable against person who has not signed an operating agreement); **Huffco Petroleum Corp. v. Massey, 660 F.Supp. 71 (S.D. Miss. 1986)** (there must be a written promise to pay well costs; execution of an AFE alone does not constitute a promise to pay), **aff'd on appeal 834 F.2d 540 (5th Cir. 1987).**

When a party signs an operating agreement, it is then bound by its execution of an AFE. **M&T, Inc. v. Fuel Resources Development Co., 518 F.Supp. 285 (D. Colo. 1981)** (person who signs operating agreement bound by signed AFE). Furthermore, execution of an AFE, even though an operating agreement is not signed, is binding if there is other evidence of an agreement to pay. **G.H.K. Co. v. Janco Investments, Inc., 748 P.2d 45, 47 (Okla. App. 1987)** (party who executed AFE, requested insurance on the well, and paid first invoice was liable for proportionate share of well costs).

In the present case, no operating agreement was signed. However, Hanley agreed to pay its share of well costs under the

force pooling Orders. **Stipulation Item 5.** With full knowledge of the facts, Hanley executed the AFE's. Under those circumstances, Hanley was bound by the AFE's.

One additional item must be addressed: The Rogers Affidavit states that it was not Hanley's intent to waive objection on the intermediate casing issues. **See Rogers Affidavit ¶¶ (4), 12.** However, this secret intent is not controlling because it was never expressed to Santa Fe. **Trujillo v. Glen Falls Insurance Co., 88 N.M. 279, 281, 540 P.2d 209 (1975)** ("The controlling intention of the parties is the mutually expressed assent and not the secret intent of a party"). Nowhere is Hanley's "intent" not to waive objection expressed in the correspondence. **Stipulation Items 1-9.** The correspondence between the parties establishes that the only "mutually expressed assent" was (a) Hanley's agreement to pay its share of well costs **(Stipulation Item 5)**, and (b) Hanley's agreement to pay for its share of costs due to the casing collapse. **Stipulation Item 9.**

V. CONCLUSION.

By agreeing to pay its share of well costs pursuant to the Orders, Hanley in effect signed an operating agreement. Thus, in executing the AFE's it was legally bound to pay its share of costs as set forth therein. As a result, Hanley consented to the additional casing expense,[3] and that portion of its claim should be denied.

---

[3] Hanley does not assert the additional casing cost itself is unreasonable; rather, it asserts the original casing program was unreasonable.

HINKLE, COX, EATON,
COFFIELD & HENSLEY

By: James Bruce

James Bruce
Post Office Box 2068
Santa Fe, New Mexico 87504-2068
(505) 982-4554

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Brief of Santa Fe Energy Operating Partners, L.P.** was mailed this 23rd day of September, 1993, to:

W. Thomas Kellahin
Kellahin & Kellahin
Post Office Box 2265
Santa Fe, New Mexico 87504-2265

James Bruce

James Bruce

HINKLE, COX, EATON, COFFIELD & HENSLEY

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October 1, 1993

David R. Catanach
Oil Conservation Division
310 Old Santa Fe Trail
Santa Fe, New Mexico 87503

Robert G. Stovall, Esq.
Oil Conservation Division
310 Old Santa Fe Trail
Santa Fe, New Mexico 87503

Gentlemen:

Re: Case No. 10,513 (Hanley Petroleum/Santa Fe Energy).

Subsequent to the filing of my brief in the above matter, I received the affidavit of Santa Fe's well auditor, James L. Cassel. For what it is worth, the original affidavit is submitted herewith, which Santa Fe requests to be incorporated in the record. According to Mr. Cassel, a working interest owner is bound by the types of charges he approved on the AFE, although he may always challenge the amount of charges. Santa Fe submits that by approving the two AFEs, which set forth the charges for the 24 lb. 8-5/8" and 32 lb. 8-5/8" casing, Hanley Petroleum agreed to the type of expense, and is bound thereby.

Very truly yours,

HINKLE, COX, EATON, COFFIELD
& HENSLEY

James Bruce

James Bruce

c: W. Thomas Kellahin, Esq.
(w/encl.)

JGB5\93H38.c

NEW MEXICO ENERGY, MINERALS
& NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION
2040 South Pacheco Street
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September 20, 1996

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James Bruce, Esq.
Hinkle, Cox, Eaton, Coffield & Hensley
218 Montezuma
P.O. Box 2068
Santa Fe, NM 87504-2068

RE: Case No. 10513
Application of Hanley Petroleum Inc.

Gentleman:

Enclosed are copies of letters (i) dated March 23, 1995 from Mr. Kellahin to the Division and (ii) June 2, 1995 from the Division to both of you regarding the above-referenced case. The Division is holding this case file open pending further action by the parties. Please let us know what you intend to do so we can either close this case file or set it for hearing.

Please call me if you have any questions at 827-8156.

Sincerely,

Rand Carroll
Legal Counsel

cc: David Catanach, Hearing Examiner

STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION DIVISION
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June 2, 1995

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Santa Fe, NM 87504-2068

RE: NMOCD Case No. 10513 (Hanley Petroleum)

Gentleman:

In response to Mr. Kellahin's letter dated March 23, 1995, to Messrs. Catanach and Carroll requesting a ruling on an issue in the above-referenced case, set forth below is the OCD determination of the issue which the parties can rely on in determining their future actions in this case.

ISSUE: What is the effect of Hanley Petroleum electing to participate in the subject well under the compulsory pooling order and signing the AFE provided by Santa Fe Energy to Hanley in conjuntion with that order upon its right to later question the casing strength of casing listed on that AFE?

RULING: The OCD will treat Hanley's election under the compulsory pooling order and its signing the AFE as Hanley's assent to the casing strength listed on that AFE which will foreclose Hanley from later questioning Santa Fe's decision to use that casing. Hanley's election under the compulsory pooling order evidenced its agreement to pay for its share of well costs and for that purpose was the equivalent of signing an operating agreement. The AFE will be treated as part of that agreement as it sets forth the types of costs to which the parties agreed although the amounts may later be adjusted. The OCD does not believe that signing an AFE while maintaining unexpressed reservations about certain costs should preserve Hanley's right to later contest those costs.

We hope this ruling allows both parties to assess their respective positions and determine

what their next courses of action will be. If you have questions, please feel free to call me at 827-81565.

Sincerely,

/S/

Rand Carroll, Counsel

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*NEW MEXICO BOARD OF LEGAL SPECIALIZATION RECOGNIZED SPECIALIST IN THE AREA OF NATURAL RESOURCES-OIL AND GAS LAW

JASON KELLAHIN (RETIRED 1991)

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March 23, 1995

Mr. David R. Catanach
Oil Conservation Division
2040 South Pacheco
Santa Fe, New Mexico 87505

HAND DELIVERED

Rand Carroll, Esq.
Oil Conservation Division
2040 South Pacheco
Santa Fe, New Mexico 87505

Re: ***NMOCD Case 10513***
Application of Hanley Petroleum Inc. for
Determination of Well Costs
Lea County, New Mexico

Gentlemen:

The referenced case was heard on September 23, 1993 at which time further proceedings were suspended pending a ruling by the Division on the following issue:

> What, if anything, is the affect of Hanley Petroleum Inc. having signed the Santa Fe "AFE" which included the costs for the intermediate casing string at a casing-strength which Hanley had told Santa Fe Energy Operating Partners, L. P. was too weak and which later collapsed?"

Mr. James Bruce, who represents Santa Fe Energy Operating Partners. L. P., and I, who represent the applicant, each submitted written memorandums on this issue.

My recollection is the matter was referred to Mr. Bob Stovall, who was the Division attorney at that time, to review and to make a recommendation to the Examiner.

I would appreciate you determining what ever happen with this issue so that we may proceed to some conclusion.

Very truly yours,

W. Thomas Kellahin

cc: James Bruce, Esq.

cc: Hanley Petroleum Inc.
Attn: James Rogers

NEW MEXICO ENERGY, MINERALS
& NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION
2040 South Pacheco Street
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March 10, 1995

Kellahin & Kellahin
Attn: W. Thomas Kellahin
P. O. Box 2265
Santa Fe, New Mexico 87504

Re: *Reopened Case No. 10,513, Application of Hanley Petroleum, Inc. for determination of reasonable well costs, Lea County, New Mexico.*

Dear Mr. Kellahin:

Subsequent to our conversation about two weeks ago concerning the subject matter, Mr. LeMay has requested that I consider this matter high priority. Please provide me a rough draft order dismissing this case. I apologize for any inconvenience my delay has caused in this matter. Thank you.

Sincerely,

Michael E. Stogner
Chief Hearing Officer/Engineer

cc: Case File 10,513
William J. LeMay - OCD Director, Santa Fe
James Bruce, Counsel for Santa Fe Energy Resources, Inc. - Santa Fe

HINKLE, COX, EATON, COFFIELD & HENSLEY, L.L.P.

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October 8, 1996

Rand Carroll
New Mexico Oil Conservation Division
2040 South Pacheco Street
Santa Fe, New Mexico 87505

Re: Case No. 10513
Application of Hanley Petroleum Inc.

Dear Mr. Carroll:

Santa Fe Energy Resources, Inc. would like to see the above case closed. However, since it is Hanley's application, the final word, I believe, rests with Mr. Kellahin.

Very truly yours,

HINKLE, COX, EATON, COFFIELD & HENSLEY, L.L.P.

James Bruce

cc: W. Thomas Kellahin

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W THOMAS KELLAHIN*
*NEW MEXICO BOARD OF LEGAL SPECIALIZATION RECOGNIZED SPECIALIST IN THE AREA OF NATURAL RESOURCES-OIL AND GAS LAW
JASON KELLAHIN (RETIRED 1991)

TELEPHONE (505) 982-4285
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March 23, 1995

Mr. David R. Catanach
Oil Conservation Division
2040 South Pacheco
Santa Fe, New Mexico 87505

HAND DELIVERED

RECEIVED
MAR 23 1995
Oil Conservation Division

Rand Carroll, Esq.
Oil Conservation Division
2040 South Pacheco
Santa Fe, New Mexico 87505

Re: ***NMOCD Case 10513***
Application of Hanley Petroleum Inc. for Determination of Well Costs
Lea County, New Mexico

Gentlemen:

The referenced case was heard on September 23, 1993 at which time further proceedings were suspended pending a ruling by the Division on the following issue:

> What, if anything, is the affect of Hanley Petroleum Inc. having signed the Santa Fe "AFE" which included the costs for the intermediate casing string at a casing-strength which Hanley had told Santa Fe Energy Operating Partners, L. P. was too weak and which later collapsed?"

Mr. James Bruce, who represents Santa Fe Energy Operating Partners, L. P., and I, who represent the applicant, each submitted written memorandums on this issue.

My recollection is the matter was referred to Mr. Bob Stovall, who was the Division attorney at that time, to review and to make a recommendation to the Examiner.

I would appreciate you determining what ever happen with this issue so that we may proceed to some conclusion.

Very truly yours,

W. Thomas Kellahin

cc: James Bruce, Esq.

cc: Hanley Petroleum Inc.
Attn: James Rogers

STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION DIVISION
2040 S. PACHECO
SANTA FE, NEW MEXICO 87505
(505) 827-7131

June 2, 1995

W. Thomas Kellahin, Esq.
117 North Guadalupe
P.O. Box 2265
Santa Fe, NM 87504-2265

James Bruce, Esq.
Hinkle, Cox, Eaton, Coffield & Hensley
218 Montezuma
P.O. Bow 2068
Santa Fe, NM 87504-2068

RE: NMOCD Case No. 10513 (Hanley Petroleum)

Gentleman:

In response to Mr. Kellahin's letter dated March 23, 1995, to Messrs. Catanach and Carroll requesting a ruling on an issue in the above-referenced case, set forth below is the OCD determination of the issue which the parties can rely on in determining their future actions in this case.

ISSUE: What is the effect of Hanley Petroleum electing to participate in the subject well under the compulsory pooling order and signing the AFE provided by Santa Fe Energy to Hanley in conjuntion with that order upon its right to later question the casing strength of casing listed on that AFE?

RULING: The OCD will treat Hanley's election under the compulsory pooling order and its signing the AFE as Hanley's assent to the casing strength listed on that AFE which will foreclose Hanley from later questioning Santa Fe's decision to use that casing. Hanley's election under the compulsory pooling order evidenced its agreement to pay for its share of well costs and for that purpose was the equivalent of signing an operating agreement. The AFE will be treated as part of that agreement as it sets forth the types of costs to which the parties agreed although the amounts may later be adjusted. The OCD does not believe that signing an AFE while maintaining unexpressed reservations about certain costs should preserve Hanley's right to later contest those costs.

We hope this ruling allows both parties to assess their respective positions and determine

what their next courses of action will be. If you have questions, please feel free to call me at 827-81565.

Sincerely,

Rand Carroll, Counsel

KELLAHIN AND KELLAHIN
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March 18, 1997

HAND DELIVERED

Mr. Michael E. Stogner
Chief Hearing Examiner
Oil Conservation Division
2040 South Pacheco
Santa Fe, New Mexico 87505

Re: ***NMOCD Case 10513***
Application of Hanley Petroleum Inc. for Determination of Well Costs
Lea County, New Mexico

Dear Mr. Stogner:

In response to your letter of March 10, 1997, and by way of comment, I do not understand why Director LeMay has asked that you consider entry of an order in this matter a "high priority." This matter stopped being a high priority with my client in June, 1995. My records reflect that at the last hearing held on September 23, 1993, Examiner Catanach suspending further action in this case pending a legal ruling by Mr. Robert Stovall, the Division's legal counsel, on a legal issue involved in this case. On June 2, 1995, Mr. Rand Carroll, now the Division's legal counsel, ruled on the issue. Thereafter, Hanley, who disagreed with the rule of the Division's attorney, elected to voluntarily dismiss its case.

In any event, I have prepared and enclosed a suggested order. Please call me if you need anything else.

Regards,

W. Thomas Kellahin

cc: James Bruce, Esq.
cc: Hanley Petroleum Inc.
Attn: James Rogers

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

IN THE MATTER OF THE HE

IN THE MATTER OF THE APPLICATION OF HANLEY PETROLEUM INC. FOR DETERMINATION OF REASONABLE WELL COSTS, LEA COUNTY, NEW MEXICO.

CASE No. 10513
Order No. R-____

ORDER OF THE DIVISION

MAR 18 1997

BY THE DIVISION:

This case came on for hearing at 8:15 a.m. on June 17, 1993 and again on September 23, 1993, at Santa Fe, New Mexico, before Examiner David R. Catanach and thereafter docketed for hearing on December 5, 1996 before Examiner Michael E. Stogner.

NOW, on this ____ day of March, 1997, the Division Director, having considered the testimony, the record, and the recommendations of the Examiner, and being fully advised in the premises,

FINDS THAT:

(1) On June 17, 1993, the Division commenced a hearing called upon the application of Hanley Petroleum Inc. for a determination by the Division of reasonable well costs in accordance with the terms of a compulsory pooling order (R-9480, as amended).

(2) At that hearing the parties commenced presenting evidence concerning certain unresolved audit exceptions still in dispute between Santa Fe Energy Operating Partners, L.P. ("Santa Fe"), the operator, and Hanley Petroleum Inc. ("Hanley") the non-operating working interest owner.

(3) Of particular interest was disputed Audit Exception No 8. which involved whether Hanley should have to pay its share of $91,670.10 expended by Santa Fe on the subject well to repair the 22 ppg 8-5/8th intermediate casing which had failed.

(4) Hanley and Santa Fe each sought to pool the other in an 80-acre spacing unit in the W/2NW/4 of Section 8, T18S, R33E, Lea County, New Mexico for a well to be drilled to test the Wolfcamp formation in the South Corbin-Wolfcamp Pool.

(5) At the pooling hearing, Hanley submitted an AFE which proposed, among other things, the use of 900 feet of 32 ppg strength intermediate casing which would cost $2,610.00 more than the 24 ppg strength intermediate casing which Santa Fe's AFE proposed.

(6) On March 29, 1991, the Division granted the Santa Fe application and denied the Hanley application. On June 12, 1991, the Commission approved the Division order.

(7) The parties tried but failed to reach an agreement on a Joint Operating Agreement. Santa Fe committed Hanley's interest in the well pursuant to a compulsory pooling order.

(8) On June 20, 1991, Santa Fe sent a letter with an AFE to Hanley notify Hanley of its right to make an election to participate under the compulsory pooling order as a consenting party. The Santa Fe AFE itemized the use of 24 ppg 8-5/8th intermediate casing at a cost of $36,804.00.

(9) On June 25, 1991, Santa Fe sent another letter to Hanley advising Hanley it had until July 21, 1991 to make its election.

(10) On July 1, 1991, Hanley sent a letter to Santa Fe expressing its concern over the strength of the weaker casing. On July 9, 1993, Hanley attempted to contact Santa Fe about this issue and on July 12, 1991 was told an answer would be coming.

(11) In order to be a consenting party, Hanley had to make its election by Sunday, July 21, 1991.

(12) Despite its efforts, Hanley had not received a response from Santa Fe concerning the casing strength and so on Friday, July 19, 1991 signed the AFE and forwarded it to Santa Fe in order to make a timely election to join in the well.

(13) On September 12, 1991, while drilling, the intermediate casing collapsed.

(14) The case was continued until September 23, 1993, when the Division suspending further proceedings pending a ruling by the Division on the following issue:

> What, if anything, is the affect of Hanley having signed the Santa Fe "AFE" which included the costs for the intermediate casing string at a casing-strength which Hanley had told Santa Fe was too weak and which later collapsed?

(15) Hanley contended that Hanley's signature on the AFE was gratuitous, not necessary for the exercise of its election to participate under the pooling order and did not constitute approval for the use of the disputed casing material specified in Santa Fe's AFE.

(16) Santa Fe contended that Hanley's signature on the AFE consisted a waiver of any objection to the grade of casing used in the wellbore.

(17) By letter dated June 2, 1995, the counsel for the Division ruled that:

> "The OCD will treat Hanley's election under the compulsory pooling order and its signing the AFE as Hanley's assent to the casing strength listed on that AFE which will foreclose Hanley from later questioning Santa Fe's decision to use that casein. Hanley's election under the compulsory pooling order evidence its agreement to pay for its share of well costs and for that purpose was the equivalent of signing an operating agreement. The AFE will be treated as part of that agreement as it sets forth the types of costs to which the parties agreed although the amounts may later be adjusted. The OCD does

not believe that singing an AFE while maintaining unexpressed reservations about certain costs should preserve Hanley's right to later contest those costs."

(17) In October, 1996, Hanley advised the Division that it desired to have its application dismissed.

IT IS THEREFORE ORDERED THAT:

(1) The application of Hanley Petroleum Inc. in Case 10513 for a determination by the Division of reasonable well costs in accordance with the terms of a compulsory pooling order (R-9480, as amended) be and hereby is **dismissed.**

(2) Jurisdiction is hereby retained for the entry of such further orders as the Division may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

WILLIAM J. LEMAY
Director