

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

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

ORIGINAL

CASE 15316
(cont'd)

APPLICATION OF APACHE CORPORATION FOR
APPROVAL OF A PROJECT AREA ENCOMPASSING
COMMUNITIZED LANDS in T. 17S, R. 31E,
N.M.P.M., EDDY COUNTY, NEW MEXICO.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

JULY 23, 2015

Santa Fe, New Mexico

2015 AUG 12 P 4:24
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BEFORE: PHILLIP GOETZE, CHIEF EXAMINER
GABRIEL WADE, LEGAL EXAMINER

This matter came on for hearing before the
New Mexico Oil Conservation Division, Phillip Goetze,
Chief Examiner, and Gabriel Wade, Legal Examiner, on
July 23, 2015, at the New Mexico Energy, Minerals, and
Natural Resources Department, Wendell Chino Building,
1220 South St. Francis Drive, Porter Hall, Room 102,
Santa Fe, New Mexico.

REPORTED BY: ELLEN H. ALLANIC
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CALIFORNIA CSR 8670
PAUL BACA COURT REPORTERS
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Albuquerque, New Mexico 87102

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17 I N D E X

18 CASE NUMBER 15316 CALLED

19 APACHE CORPORATION CASE-IN-CHIEF:

20 WITNESS MARK HENKHAUS

21		Direct	Redirect	Further
22	By Mr. DeBrine	5		

23		EXAMINATION		
24	Examiner Goetze	14		

25

1 WITNESS ELIZABETH JANE (JANIE) SOLEY

2 Direct Redirect Further

3 By Mr. DeBrine 19

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10 E X H I B I T I N D E X

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Exhibits Offered and Admitted

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21	Nestegg Energy Corporation Document	24
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1 (Time noted 4:15 p.m.)

2 EXAMINER GOETZE: Back on the record. Case
3 15316, Application of Apache Corporation for approval of
4 a project area Encompassing Communitized Lands in T.
5 17S, R. 31E, N.M.P.M., Eddy County, New Mexico.

6 Call for appearances.

7 MR. DeBRINE: Good afternoon, Mr. Examiner.
8 Earl DeBrine and Jennifer Bradfute with the Modrall
9 Sperling firm for the Applicant, Apache Corporation.

10 EXAMINER GOETZE: Do you have any other
11 appearances?

12 MR. BRUCE: Jim Bruce of Santa Fe
13 representing Nestegg Energy Corporation. I have no
14 witnesses.

15 EXAMINER GOETZE: Very good.

16 MR. HERRMANN: Keith Herrmann representing
17 the OCD, also no witnesses.

18 EXAMINER GOETZE: Very good.

19 MR. DeBRINE: And this was a continuation of
20 a hearing because of a notice issue. And there were a
21 couple of issues the Examiner wanted us to address, so
22 we'll have two witnesses to address the issues raised by
23 the Examiner in the last hearing.

24 EXAMINER GOETZE: Okay. Would the witnesses
25 please stand, identify yourself, and you'll be sworn in.

1 (WHEREUPON, the presenting witnesses
2 were administered the oath.)

3 EXAMINER GOETZE: We thank you for coming
4 back here. Let's start with your presentation.

5 MR. DeBRINE: I call Mark Henkhaus.

6 MARK HENKHAUS
7 having been first duly sworn, was examined and testified
8 as follows:

9 DIRECT EXAMINATION

10 BY MR. DeBRINE:

11 Q. Could you please state your name.

12 A. My name is Robert Mark Henkhaus.

13 Q. Could give the Examiner a brief summary of your
14 background and experience.

15 A. I am currently employed with Apache Corporation
16 in the Permian region in Midland as the regulatory
17 manager. I've been with Apache for almost three years.

18 Prior to that, I was a regulatory manager with
19 EX-Co Resources in Dallas, from 2009 to 2012. And prior
20 to that, I was the district director for the Laredo
21 Commission of Texas in Midland from 1990 to 2009.

22 I am a graduate of Texas A and M, Bachelor of
23 Science petroleum engineering, 1982.

24 Q. Have you previously testified before the
25 Division?

1 A. I have.

2 Q. Was your testimony accepted as an expert in
3 petroleum engineering in the matter?

4 A. It was.

5 MR. DeBRINE: We would tender the witness as
6 an expert in petroleum engineering.

7 EXAMINER GOETZE: He is so qualified.

8 Q. Are you familiar with the application that's been
9 filed by Apache in this case?

10 A. Yes, sir.

11 Q. Were you also present during the initial hearing
12 on June 23rd where the Examiner raised some questions
13 concerning the implementation of the Com agreement?

14 A. I was.

15 Q. Have there been any further developments since
16 the hearing with regard to the determination of the
17 effective date of the Com agreement with the BLM?

18 A. Yes, there has.

19 Q. Could you please tell us what those might be.

20 A. We had some conversations with Mr. Miller and
21 some conversations with the BLM regarding the effective
22 date of the agreement. And the effective date of the
23 agreement was -- as agreed to was a November 2013 date
24 or the date of first production.

25 We have since had the BLM address that, and they

1 have struck the first production statement, and now the
2 effective date will be November 1, 2014, period.

3 And that will be the firm effective date of the
4 agreement.

5 Q. If you could turn to Exhibit 13 and identify
6 that.

7 A. Yes, sir. This is a letter from the BLM where
8 they are acknowledging and agreeing to that change in
9 the CA.

10 Q. Did you provide a copy of the BLM's letter
11 modifying the effective date of the Com agreement to
12 Mr. Miller, Nestegg's president?

13 A. Yes, we did.

14 Q. And what was his response? If you could identify
15 Exhibit 14?

16 A. Exhibit 14 is a print-out of an e-mail Mr. Miller
17 sent to Chris Lanning, our landman. And he sent that
18 e-mail on July 20th after receiving a copy of the
19 revised CA.

20 Q. And could you just read what his response was?

21 A. Yes, sir.

22 Mr. Miller said, "Chris, congratulations as you
23 have saved Apache from some real potential headaches in
24 the future. It is only a shame you are not able to get
25 it done before the OCD hearing. Thanks, Ray."

1 Q. Since the June 23rd hearing, have you had an
2 opportunity to discuss how the implementation of the Com
3 agreement will be handled with the Division's district
4 offices in Hobbs and Artesia given the November 1, 2013,
5 effective date?

6 A. Yes, sir. I have had those conversations.

7 Q. Who did you speak to?

8 A. I spoke to Randy Dade, the district manager in
9 Artesia. And I spoke to Paul Kautz, the geologist in
10 Hobbs.

11 Q. And did you explore with them all the technical
12 issues that would be involved with regard to
13 implementation of the agreement concerning the filing of
14 amended C-115 reports?

15 A. Yes, sir, I did, with both of them.

16 Q. And did Mr. Dade express any concerns to you?

17 A. Mr. Dade, he wanted me to ensure that we talked
18 to Mr. Kautz in Hobbs. Since Artesia was short of a
19 geologist, Mr. Kautz is taking care of the Artesia
20 geology and pool issues from Hobbs.

21 So I did tell Mr. Dade that we would talk to him.
22 And after explaining to Mr. Dade what we were doing, he
23 really had no objections other than acknowledging the
24 fact that the C-115s would have to be re-filed. And
25 that in itself can be an issue but it can be done.

1 Q. What is the process for accomplishing the
2 changes?

3 A. The C-115s are essentially the production
4 reports. And they are filed on a monthly basis and they
5 are an electronic upload from each operator to the OCD
6 system.

7 Q. Is there anything extraordinary about filing
8 amended C-115 reports?

9 A. Not in itself, no, sir.

10 Q. Does the Division have instructions with regard
11 to how those amended reports are accomplished?

12 A. They do.

13 Q. And could you turn to Exhibit 15 and identify it.

14 A. Exhibit 15 is the instructions from the website
15 that explains how to amend or correct C-115 filings.

16 Q. And that is something that Apache has done and
17 as a matter of course with regard to its operation in
18 New Mexico from time to time?

19 A. Yes, sir. It does happen, our reports do have to
20 be revised for various causes. But, yes, we have done
21 that.

22 Q. Is it unusual for the BLM to approve a Com
23 agreement with a retroactive effective date?

24 A. No, sir, not really.

25 Q. Are there other situations that you can think of

1 that would call for the filing of amended C-115 reports?

2 A. Yes, sir. For instance, in cases where a Com
3 agreement is in place or being negotiated, wells drilled
4 and completed, the Com agreement will tend to establish
5 an effective date, the date the agreement was applied
6 for, which will require corrections.

7 And there are cases when an exploratory unit has
8 been established and the wells drilled, that production
9 will initially be allocated back to the owners of that
10 tract. When the wells are added to the participating
11 area, then that production will have to be reallocated.
12 And that will sometimes go back several months as well.

13 Q. The Examiner in the previous hearing also raised
14 a question with regard to the gravity of oil being
15 produced from the formations in the communitized, the
16 BTU of the gas being produced in the communitized lands.

17 Have you undertaken an investigation of the oil
18 gravity and BTU content of the gas wells out there to
19 provide the Examiner with the information he was
20 requesting?

21 A. Yes, sir. Specifically at the Examiner's
22 request, we did exactly that.

23 Q. Let's look at Exhibit 16.

24 A. Okay. Exhibit 16 is a copy of some analysis we
25 had on the oil from the three productive zones within

1 the Yeso Pool, Upper Blinebry, Lower Blinebry, Paddock.
2 And in this analysis, we did specific gravity or EPI
3 gravity, the same way of saying -- a different way of
4 saying the same thing, and a total sulphur analysis as
5 well.

6 Q. And were there any significant differences
7 between the gravity of the oil or the sulphur content of
8 the oil produced from the various wells?

9 A. No, sir. The gravities were actually fairly
10 consistent from approximately 33 to 36 degrees APA. The
11 sulphur, there was sulphur present in all the samples,
12 somewhat less than one percent, between one-half and one
13 percent total sulphur.

14 Q. How about the BTU content of the Gavelon spud,
15 also similar?

16 A. The BTU content on the gas from the samples we
17 took was also very similar, reflecting any -- a common
18 source of supply for the gas.

19 Q. Based on the different constituents of the oil
20 and the BTU content of the gas, was there any difference
21 in the settlement price for the gas produced from the
22 different wells?

23 A. No, sir. I actually took the time to verify with
24 our gas marketer and our oil sellers. And I verified
25 that, in fact, this production was being sold at the

1 same price. Essentially there is no difference in this
2 production from an ownership or a pricing standpoint.

3 Q. Do you believe that the granting of Apache's
4 application is in the interest of conservation, will
5 prevent waste and protect correlative rights?

6 A. Absolutely.

7 Q. The only other working interest owner in this
8 communitized area is COG Operating; is that correct?

9 A. That is correct.

10 Q. Did COG send a letter of support to the Division
11 concerning Apache's application?

12 A. Yes, they did.

13 Q. Could you turn to Exhibit 17.

14 A. Exhibit 17 is a copy of Concho's letter of
15 support to the Division and that letter of support was
16 provided by Raymond Reyes who is their asset manger for
17 the New Mexico Shelf area.

18 Q. During the hearing on June 23rd, there was a
19 question raised with regard to the adequacy of the
20 notice of publication in the newspaper with regard to
21 the original application.

22 Has Apache since that date filed or published new
23 notice identifying the overriding royalty owners that it
24 didn't get a return receipt card back from?

25 A. Yes, sir. We republished, specified the owners

1 that we could not get return cards from. And we did not
2 receive any contact from any of those owners.

3 Q. And if you turn to Exhibit 18, is that the new
4 affidavit of notice showing the amended publication
5 notice?

6 A. Yes, sir. Exhibit 18 is the affidavit and copies
7 of the proof of mailing, the return cards, and then the
8 revised notices is the last page of that exhibit.

9 MR. DeBRINE: I have no further questions.
10 And we move the admission of Apache Exhibits 13 through
11 18.

12 MR. BRUCE: No objection.

13 EXAMINER GOETZE: No objections, then
14 Exhibits 13 through 18 are so entered.

15 (Apache Corporation Exhibits 13 through 18
16 were offered and admitted.)

17 EXAMINER GOETZE: Mr. Bruce, any questions?

18 MR. BRUCE: Just a point of clarification,
19 you mentioned Mr. Ray Miller; he's a representative of
20 Nestegg Energy Corporation, isn't he?

21 THE WITNESS: Yes, I understand that Ray
22 Miller does represent Nestegg Energy. Yes, sir.

23 MR. BRUCE: Okay. That's all.

24 EXAMINER GOETZE: Mr. Herrmann, any
25 questions?

1 MR. HERRMANN: No, sir.

2 EXAMINATION BY EXAMINER GOETZE

3 EXAMINER GOETZE: So you'll have to bear
4 with me, I'm coming in as the third examiner on this
5 case. So the discussion with Paul Kautz, in that
6 discussion, the issues of pools and allocations, was
7 there some sort of agreement borne out of that
8 discussion?

9 THE WITNESS: I don't know that I would call
10 it an agreement. But we did agree of what the issues
11 would be. And I offered several means to resolve the
12 issues.

13 It was a very good discussion. Mr. Kautz
14 was certainly understanding of what we were trying to do
15 and -- but he did express some significant and real
16 concerns of his as well.

17 EXAMINER GOETZE: And what were those?

18 THE WITNESS: From my notes, he was
19 concerned about several issues. One was the fact that
20 pool revisions can be date sensitive. And our
21 application here is to shrink the Fran-Glorieta pool and
22 create a new pool. So that would affect the booking of
23 production to the pools.

24 There would be a reassignment of property
25 names and numbers, which would be -- I assume a filing

1 of a sundry notice on a well by well basis, which is
2 burdensome, but we can certainly do that.

3 He was concerned the taxation and revenue
4 department may have some issues. I don't know that the
5 production numbers are going to change if the production
6 is rebooked. I don't know if there is going to be a net
7 effect on revenue paid to the state.

8 I think that it will be barrel for barrel
9 when it's all said and done. But I understand that will
10 require corrected filings with the taxation and revenue
11 department as well. (will)
columns

12 He was concerned there had been some columns
13 approved in the Aztec district up in this J Basin. And
14 those issues were a long time in getting worked out.
15 And I believe he said we are not completely worked out
16 as of yet in fact.

17 So he was concerned that we were going to
18 create issues and perhaps consequences that we were not
19 aware of in doing this. And I certainly respect that.

20 He was concerned about the filing of the
21 C-115's; in New Mexico when you have to revise
22 production numbers, you have to correct the numbers and
23 then upload the entire production database for that
24 month from an operator to the system, which is a
25 burdensome process.

1 That's a lot of data. It needs to be done.
2 It needs to be verified before you go to the next month.
3 We are aware of that. We are prepared to deal with
4 that. And our production accountant has actually talked
5 to the Division to find out what issues that will cause
6 and how to overcome those issues should they arise.

7 And he was also concerned that by making
8 this date effective in the past, it's going to create a
9 large amount of work for the Division, understanding the
10 Division's staffing levels are very limited. I don't
11 know how you all do what you do with the staff you've
12 got, to be honest.

13 But it will be a burden on the Division,
14 both in Hobbs for Mr. Kautz or Artesia and here in Santa
15 Fe.

16 I offered perhaps a way that Apache could
17 assist with that, even as far as perhaps providing the
18 funds to hire a contractor to come in and help relieve
19 that workload as well.

20 He did not know how that would work. But
21 that is something I think we'd be willing to explore if
22 we could.

23 EXAMINER GOETZE: Okay. We had a change of
24 the post dating or, actually, we established
25 November 1st.

1 THE WITNESS: November 1st, 2013 is a firm
2 date now. It doesn't refer to the start of production.

3 EXAMINER GOETZE: Was that date included in
4 this latest round of notification that you sent out?

5 THE WITNESS: I am going to have to check to
6 see if you would give me a second.

7 (Pause.)

8 THE WITNESS: No, sir. I don't see that
9 that particular date was referenced. In the notice we
10 published the case number, who the owners we could not
11 identify were, what the date of the hearing was -- let
12 me see. Let me make sure that's the correct one.

13 MR. DeBRINE: And if I could speak to that,
14 Mr. Examiner. The notice is just a general notice of
15 what we are seeking through the application. The
16 original communitization agreement provided for
17 November 1, 2013, or the date of first production.

18 And Mr. Miller raised a question, saying
19 that was potentially ambiguous. We didn't think it was
20 because the BLM actual approval letter provides for a
21 November 1st effective date. But in order to address
22 Mr. Miller's concern, we went back to the BLM and got
23 the amendment so that --

24 EXAMINER GOETZE: So it's clear and
25 specific.

1 MR. DeBRINE: So there would be no
2 ambiguity, right.

3 EXAMINER GOETZE: But at this point that
4 date was not included in your latest notification
5 process?

6 MR. DeBRINE: Well, notice of our
7 application --

8 EXAMINER WADE: The original notice, the
9 original application did state the November of 2013
10 date?

11 MR. DeBRINE: Yes.

12 EXAMINER WADE: Okay.

13 EXAMINER GOETZE: Let's see. The
14 post-dating discussion, does that include vertical
15 wells?

16 THE WITNESS: No, sir, it does not. It is
17 horizontal only.

18 EXAMINER GOETZE: Again, bear with me.

19 The only comment I will throw in on this is
20 that you are in an area bringing these pools together
21 where we had to reestablish them and it created kind of
22 a nightmare. So I think a more concerted effort with
23 the district is required to make sure we have a vehicle
24 in place so that we know where we're going down the
25 road.

1 And the only other thing I have to add is no
2 more questions. Thank you.

3 THE WITNESS: Yes, sir. Thank you.

4 EXAMINER GOETZE: Do you have a second one?

5 MR. DeBRINE: Yes. Elizabeth Soley is our
6 next witness.

7 EXAMINER GOETZE: Thank you.

8 ELIZABETH JANIE SOLEY
9 having been first duly sworn, was examined and testified
10 as follows:

11 DIRECT EXAMINATION

12 BY MR. DeBRINE:

13 Q. Please state your name.

14 A. Elizabeth Jane Soley and I go by Janie.

15 Q. Who do you work for?

16 A. Apache Corporation in Houston, Texas.

17 Q. And what is your position with Apache?

18 A. I am a revenue manager of the Permian area there.

19 Q. Could you give the Examiner a brief summary of
20 your educational background and work experience in the
21 oil and gas industry?

22 A. Yes. I have 31 years of experience in oil and
23 gas accounting. Thirteen of those have been spent in
24 revenue accounting.

25 And I have an accounting degree from Louisiana

1 Tech University. And I worked for Arco Oil and Gas and
2 Vasstar Resources and BP. And I have been with Apache
3 for ten years.

4 Q. What are your duties as revenue manager for
5 Apache?

6 A. Well, I have a team; they're responsible for the
7 allocation and distribution of revenue for the
8 Permian -- for Apache's Permian region.

9 Q. Have you looked into how Apache will handle the
10 reporting and distribution of revenue from the
11 communitized lands given the November 1st, 2013,
12 effective date?

13 A. Yes. For the reporting, we actually have already
14 begun to report to the O and R based on the new
15 communitization agreement number. And that actually
16 took place in May, so that is already done.

17 As for the revenue, the corrections that we're
18 making in the revenue distribution part of the world, we
19 are working on that now. That's in process.

20 Q. And in order to implement this change, what did
21 Apache have to do?

22 A. For the reporting, they had to reverse out the
23 original reporting that was done based on the standalone
24 leases and submit new reports based on the
25 communitization. And that is what they did. So that is

1 complete.

2 And for us, we had to have for the revenue side,
3 for the revenue distribution, we had to have new
4 ownership decks set up that were based on the
5 communitization ownership. That's in the agreement.
6 And that was set up for us all the way back to November
7 of '13.

8 And right now we are in the process of going back
9 and reprocessing the monthly data through the system and
10 reversing it from the standalone ownership to the
11 communitization ownership. And that will reallocate all
12 the revenue.

13 Q. And when the revenue is reallocated, how do you
14 handle overrun payments?

15 A. If someone was overpaid, our system will create a
16 negative payable for them. And then we will -- Apache
17 will recoup funds from them on their current and future
18 payments until that is made up.

19 If we have underpaid someone, then we will
20 distribute the funds to them.

21 Q. Is there anything unusual about how Apache would
22 handle the negative balance that might be associated
23 with certain owners on these communitized lands?

24 A. No. From time to time, we have overpaid people,
25 and our system has a mechanism in place to make up these

1 balances.

2 MR. DeBRINE: No further questions.

3 EXAMINER GOETZE: Mr. Bruce.

4 MR. BRUCE: No questions.

5 EXAMINER GOETZE: Mr. Herrmann?

6 MR. HERRMANN: No questions.

7 EXAMINER GOETZE: Counselor Wade, do you
8 have any after this long day, any questions from the
9 last portion of this hearing?

10 EXAMINER WADE: I don't think I have any
11 questions.

12 EXAMINER GOETZE: Very good.

13 At this point, I don't have any questions.
14 You presented a good set of responses to our questions.
15 I see no reason as to why this case cannot go under
16 advisement. But there still is a long distance of
17 things that need to be resolved with it, especially with
18 consideration of the district and the pools. I think
19 this is going to have to be an ongoing process.

20 Unless you have anything else to add to
21 this, you have no other comments regarding this case?

22 MR. DeBRINE: No, Mr. Examiner. I would
23 just add that the implementation issues are dictated by
24 the BLM that was established in the other hearing. That
25 was a no-give for them. That's the effective date that

1 we have to live with.

2 We tried to get that changed to make it a
3 little easier on us and you. But that's the date that
4 the BLM is sticking to. And so we are doing everything
5 we can on our end to implement this as painlessly as
6 possible. And we will work with the Division so it is
7 as painless on you as well.

8 And we believe the application should be
9 granted and those issues can be worked out with a
10 continuing dialogue with the Division, and district
11 offices too, to implement the approval of the
12 communitized area.

13 EXAMINER GOETZE: Very well.

14 MR. BRUCE: Mr. Examiner, one thing.

15 EXAMINER GOETZE: Yes, sir. Mr. Bruce, go
16 ahead.

17 MR. BRUCE: Before the last hearing, Counsel
18 for Apache presented a brief asserting that my client
19 didn't have standing, and I asked for time to present a
20 response to that.

21 EXAMINER GOETZE: Oh.

22 MR. BRUCE: And I'm not going to argue it.
23 I am going to give it to you, so, if you have insomnia
24 tonight, you can read it. And that's it.

25 EXAMINER GOETZE: So this is a response, and

1 we don't have to say no. Very well. We shall include
2 your response as a part of the record and we shall note
3 it.

4 Any objections on your part as far as --
5 MR. DeBRINE: No. No. He was given the
6 opportunity to present that, and the Division can decide
7 whether there's --

8 EXAMINER GOETZE: Whether it's good or bad.
9 There's been a bunch of surprises today.

10 At this point, I see no reason to continue
11 on. Let's go ahead and take case No. 15316 under
12 advisement. We may be visiting this again though. But
13 at this point, let us take up the information and we'll
14 move forward and see what we get. Okay.

15 MR. DeBRINE: Thank you, Mr. Examiner.

16 EXAMINER GOETZE: And so ends today's
17 hearing.

18 (NESTEGG ENERGY CORPORATION'S RESPONSE
19 INCLUDED AS PART OF THE RECORD.)

20
21 (Time noted 4:45 p.m.)
22

23 I do hereby certify that the foregoing is
24 a complete record of the proceedings in
25 the Examiner hearing of Case No. 15316
heard by me on July 23, 2013
Phillip R. Leitz, Examiner
Oil Conservation Division

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

7 REPORTER'S CERTIFICATE

8
 9 I, ELLEN H. ALLANIC, New Mexico Reporter CCR
 10 No. 100, DO HEREBY CERTIFY that on Thursday, July 23,
 11 2015, the proceedings in the above-captioned matter were
 12 taken before me, that I did report in stenographic
 13 shorthand the proceedings set forth herein, and the
 14 foregoing pages are a true and correct transcription to
 15 the best of my ability and control.
 16

17
 18 I FURTHER CERTIFY that I am neither employed by
 19 nor related to nor contracted with (unless excepted by
 20 the rules) any of the parties or attorneys in this case,
 21 and that I have no interest whatsoever in the final
 22 disposition of this case in any court.
 23
 24
 25

Ellen Allanic

ELLEN H. ALLANIC, CSR
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