

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

ORIGINAL

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

APPLICATION OF BURLINGTON RESOURCES  
OIL & GAS COMPANY, LP, FOR COMPULSORY  
POOLING, SAN JUAN COUNTY, NEW MEXICO

Case No. 14734

TRANSCRIPT OF PROCEEDINGS  
EXAMINER HEARING

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BEFORE: TERRY WARNELL, Presiding Examiner  
DAVID K. BROOKS, Legal Examiner

October 13, 2011

Santa Fe, New Mexico

This matter came on for hearing before the  
New Mexico Oil Conservation Division, TERRY WARNELL,  
Presiding Examiner, and DAVID K. BROOKS, Legal Examiner,  
on Thursday, October 13, 2011, at the New Mexico Energy,  
Minerals and Natural Resources Department, 1220 South St.  
Francis Drive, Room 102, Santa Fe, New Mexico.

REPORTED BY: Jacqueline R. Lujan, CCR #91  
Paul Baca Professional Court Reporters  
500 Fourth Street, N.W., Suite 105

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FOR THE APPLICANT:

KELLAHIN & KELLAHIN  
W. THOMAS KELLAHIN, ESQ.  
706 Gonzales Road  
Santa Fe, New Mexico 87501  
(505) 982-4285

FOR KOCH EXPLORATION COMPANY:

MONTGOMERY & ANDREWS  
J. SCOTT HALL, ESQ.  
325 Paseo de Peralta  
Santa Fe, New Mexico 87501  
(505) 982-3873

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1 EXAMINER WARNELL: Let's go back on the  
2 record with Docket 30-11, and we'll call Case 14734, the  
3 application of Burlington Resources Oil & Gas Company,  
4 LP, for compulsory pooling, San Juan County, New Mexico.  
5 Call for appearances.

6 MR. KELLAHIN: Mr. Examiner, I'm Tom  
7 Kellahin, of the Santa Fe law firm of Kellahin &  
8 Kellahin, appearing this morning on behalf of Burlington.  
9 And I have one witness to be sworn.

10 MR. HALL: Scott Hall, Montgomery &  
11 Andrews, Santa Fe, appearing on behalf of Koch  
12 Exploration Company, and I have no witnesses this  
13 morning.

14 EXAMINER WARNELL: Please stand and state  
15 your name.

16 MR. SIMCOE: Terry Simmcoe.

17 (One witness was sworn.)

18 MR. KELLAHIN: Mr. Examiner, with your  
19 permission, let me give you a brief introduction to where  
20 the testimony will go this morning.

21 This is an application by Burlington for a  
22 compulsory pooling order for the east half of Section 2.  
23 In processing this case, Mr. Simcoe and I are making some  
24 general assumptions that accommodate the reality of what  
25 they want to accomplish.

1           This well location is right on the very  
2 western edge of something called the Dufers Point  
3 Gallup-Dakota Pool. To the east of this well location,  
4 most of the wells in the pool are operated by Merrion.  
5 George Sharp is the principal involved in the company  
6 that we've worked with.

7           We are unable to apply the Basin Dakota and  
8 Mancos rules to the east half of Section 2 routinely  
9 because George Sharp and Merrion have already got the  
10 northeast quarter dedicated to the Gallup. This old  
11 Gallup pool has used Gallup in a way that doesn't  
12 indicate that it's confined simply to the Gallup.

13           The operators, as a matter of history and  
14 course, have perforated what is considered to be the  
15 Mancos, which will be from the base of the Point Lookout  
16 all the way down to the top of the Graneros and sometimes  
17 all the way to the top of the Dakota.

18           So we have this odd situation in the east half  
19 of Section 2 where the northeast quarter stands alone  
20 with regards to that pool. And because we are within two  
21 miles of the pool, we have an odd creature. What we're  
22 going to ask you to do is allow us to treat the southeast  
23 quarter as a stranded spacing unit under the Basin Mancos  
24 rules.

25           The reality of that will be that we will be

1 allowed to dedicate the Dakota on 320, and then we'll  
2 treat the Gallup on 160, and that should stop the flow of  
3 this odd transition from Dufers to Basin Mancos.

4 There was a need to hurry up and file this and get  
5 this done because we begin to lose leases after the first  
6 of the year. Our global plan is to come back and address  
7 specifically the Dufers Gallup-Dakota pool, as well as  
8 other pools that cause difficulties with the Basin  
9 Mancos.

10 It's a topic that Steve Hayden was working on  
11 before his death, had testified in that Basin Mancos  
12 hearing about commingling and other things with these  
13 pools that were old Dakota pools that were public pools.  
14 So our project goes far beyond what we're presenting  
15 today.

16 To get to where we're trying to go then, we  
17 have worked out a solution with Merrion, and they're  
18 going to participate in this well. We've also looked for  
19 all of the interest owners affected and that would  
20 participate under the pooling order. All of those have  
21 been found and contacted. And the only difference is  
22 that Koch Exploration has contacted us and we have  
23 negotiated what we think, through Mr. Hall's assistance,  
24 is a solution to their concerns.

25 The last concern that we are dealing with is

1 going to be discussed in Exhibit 13 of the exhibit book,  
2 and it has to do with how you allocate the production.  
3 So there is a suggested amendment to the JOA for Koch  
4 that has a little different concept in it that Mr. Simcoe  
5 and I will discuss shortly.

6 In summary then, we're asking for a pooling  
7 order. We will obtain from the district in Aztec an  
8 exception for the stranded spacing unit. So it's our  
9 suggestion that you need not deal with a nonstandard  
10 proration unit, because we're going to do that under the  
11 Mancos rules.

12 In addition, Mr. Hall and I agree that a  
13 commingling process needs to approve the action of  
14 commingling the Gallup with the Mancos, and we will  
15 prepare and file a C-107 A. There's a sample in the book  
16 for you to look at. But the filing of that will be done  
17 by Mr. Simcoe later in the process, and that will be  
18 processed with the district.

19 At the end of all this, we're going to ask you  
20 to take the case under advisement and leave the record  
21 open for seven to 10 days to allow Mr. Hall and I to  
22 provide you the last language changes for what is now a  
23 variation of the oil allocation procedure under Exhibit  
24 13.

25 And with those statements then, I'd like to

1 proceed with my questions for Mr. Simcoe.

2 EXAMINER WARNELL: No opening comments?

3 MR. HALL: No.

4 TERRY SIMCOE

5 Having been first duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. KELLAHIN:

8 Q. For the record, sir, would you please state  
9 your name and occupation?

10 A. My name is Terry Simcoe. I'm a Certified  
11 Professional Landman.

12 Q. On prior occasions have you testified and  
13 qualified as an expert petroleum landman before the  
14 Division?

15 A. I have.

16 Q. And on prior occasions, you've testified  
17 before Examiner Warnell; have you not?

18 A. I have indeed.

19 Q. As part of your duties and responsibilities,  
20 have you made yourself familiar with the ownership  
21 involved in the east half of the Section 2 we're talking  
22 about?

23 A. Yes, sir.

24 Q. As part of your duties, have you also  
25 contacted all of the interest owners in the appropriate

1 spacing units for the east half of this wellbore?

2 A. I have done my best to do so. There are  
3 always some people who are difficult or impossible to get  
4 ahold of. And you will find some of those names in the  
5 exhibits as we get into this, and those are the parties  
6 with whom we are dealing today that we need to have force  
7 pooled. They're unresponsive.

8 Q. In each instance, though, you have actually  
9 obtained service on those people through Certified Mail  
10 receipts?

11 A. That's correct.

12 Q. And they simply have not responded?

13 A. They have not responded.

14 Q. Was I correct in my opening in characterizing  
15 the fact that you and Koch and their attorneys are  
16 working with us in trying to resolve their questions  
17 about the cost and the production allocation procedures  
18 proposed?

19 A. Yes, sir. We've had numerous conversations by  
20 email and telephone.

21 Q. Have you prepared an exhibit book for the  
22 Examiner to see that discusses all the issues involved in  
23 this compulsory pooling case?

24 A. Yes, sir. I've passed these out. There are  
25 13 tabs within the book that go through each of the items

1 that we're going to discuss.

2 Q. And the project we're discussing is a project  
3 for which you have the responsibility?

4 A. That's correct.

5 MR. KELLAHIN: We tender Mr. Simcoe as an  
6 expert petroleum landman.

7 EXAMINER WARNELL: So recognized.

8 Q. (By Mr. Kellahin) Mr. Simcoe, let's turn to  
9 Tab 1. Turn behind the cover sheet. And before we  
10 describe it in detail, tell us generally what we're  
11 looking at when we look at this first display.

12 A. This is a township plat of the area around the  
13 well location, which is highlighted with red dot. And it  
14 shows the footages of this well in Section 2, Township 25  
15 North, Range 9 West.

16 Q. What does the color code tell us?

17 A. If you look at that green outline, that is the  
18 Huerfano Unit. We are the operator, Burlington  
19 Resources, of the Huerfano Unit. The red line that's  
20 kind of diagonally running through that is U.S. 550, the  
21 highway between Farmington and Albuquerque.

22 Q. I see within the green outline there are areas  
23 that are outlined in blue. What's the significance of  
24 that?

25 A. Those blue outlines indicate portions of the .

1 leasehold within the unit that are not committed to the  
2 unit. And that comes into play with our request  
3 concerning the Dufers Point Gallup-Dakota pool that  
4 Mr. Kellahin mentioned up front.

5 Q. Let's turn now to Exhibit Tab Number 2, and  
6 turn to the next plot and continue with that discussion.  
7 First of all, tell us what we're looking at generally.

8 A. This is a closer-up view of that same plat.  
9 In the business, this is typically known as a nine spot.  
10 It's the nine sections surrounding the well location.

11 And you can see the blue line more clearly  
12 represented in there. I'm sorry it doesn't line up with  
13 the internal markings within the section. But that's a  
14 database problem, relating our two different map layers.

15 What's critical to this well is that well  
16 that's identified at the Yucca Com. That's Merrion's  
17 Dufers Point Gallup-Dakota pool well that we're  
18 offsetting.

19 You'll also see to the west a well symbol in  
20 the northwest of the southwest quarter. That's the  
21 Huerfano Unit 309, and that is a Dakota well that we're  
22 offsetting.

23 So this well for us is a strategic well offset  
24 to the north by Gallup production and to the west by  
25 Dakota production. It's not easily seen, but there's a

1 green line just to the right of the well dot, the red  
2 well dot, and that is the boundary of the Huerfano Unit.

3 Q. When we look at the Dakota well in the west  
4 half, who's the operator?

5 A. We're now the operator. But that well was  
6 originally drilled by XTO on an agency from Burlington  
7 Resources.

8 Q. So when you look at the east half of Section  
9 2, is the proposed subject well we're dealing with today  
10 the first Dakota well in the spacing unit?

11 A. It will be the first Basin Dakota well. It  
12 was important to me to make that distinction, because we  
13 have developed the Huerfano Unit -- Dakota on the Basin  
14 Dakota rules.

15 Q. With the Dakota spacing set up as a stand-up  
16 east half of Section 2, what is your preference as to how  
17 to handle the Mancos in association with the Dakota?

18 A. Further on in the book, we'll discuss what  
19 Merrion did with the Yucca Number 1. I've got a type log  
20 from that well in the file. Because they're not part of  
21 the unit, their leasehold is not committed to the unit.

22 That Dufers Point well presented me with a  
23 philosophical problem of how to handle the Mancos in our  
24 well because they're on a 160 spacing, and Mancos would  
25 require me to be on a 320. So to honor what their well

1 already has dedicated to it and still honor the Dakota --  
2 Basin Dakota rule, I was unable to make it a 320 for the  
3 Basin Mancos.

4 And that's why Mr. Kellahin suggested, in his  
5 initial comments, that we would want to apply to the  
6 district for a stranded spacing unit. So I've gone ahead  
7 with this action today predicated on creating a 160  
8 spacing unit for our Mancos portion of our well and a 320  
9 spacing unit for the Dakota portion of our well.

10 Q. We'll come to it later in the book. But will  
11 the Examiner and Mr. Brooks be able to see how we account  
12 for the costs of production associated with the  
13 difference in ownership in the two spacing units?

14 A. Yes, sir. We've split those costs out in our  
15 cost estimate, which is included.

16 Q. Let's now turn to the vertical intervals in  
17 discussion. The next display is a portion of a  
18 cross-section, is it not, or a log set?

19 A. This is a log section from the Yucca Number 1,  
20 the Merrion well that we're directly offsetting. And you  
21 can see highlighted in red are the perforated intervals.  
22 Those perforations are shown by pink lines in the center  
23 of the log. The --

24 EXAMINER BROOKS: This is the page right  
25 behind --

1 THE WITNESS: Right behind that plat.

2 EXAMINER BROOKS: That we were looking at?

3 THE WITNESS: Correct.

4 So you see in large print it says, "Upper  
5 Mancos," and right above that it says, "Top Mancos/Base  
6 Point Lookout." And Merrion virtually opened everything  
7 that had any kind of log characteristic indicating  
8 production from that point right below the base of the  
9 Point Lookout virtually through the upper portion of the  
10 Dakota, including the Graneros.

11 Q. (By Mr. Kellahin) When you look at this type  
12 log for the Yucca well, what on here indicates those  
13 points in which they made perforations?

14 A. The pink lines in the center between the two  
15 log indications, the squiggly lines of the log.

16 Q. The red rectangles represent what?

17 A. The actual producing areas within the  
18 wellbore.

19 Q. And the nomenclature for those areas blocked  
20 out in the red triangles are identified how?

21 A. Well, we realize, as Mr. Kellahin alluded,  
22 that we have a nomenclature problem across the basin  
23 which is going to be addressed in future hearings, and  
24 that's the use of the word, "Gallup."

25 Very often, as is the case here, the word,

1 "Gallup," means shale, and it's the Mancos shale. It was  
2 not typically used across the basin as an identifier. I  
3 believe that's because early on in the history of the  
4 basin, the first production within the shale was oil  
5 production from what they called the Gallup.

6 It was a sandstone along the southwest part of  
7 the basin, and I've indicated that in here. I had my  
8 geologist do that. It says, "True Gallup." That's where  
9 the Gallup production would have historically been.

10 But you can see they virtually opened up the  
11 entire shale section, which is all of the Mancos. So we  
12 decided it was best in this case to actually call it  
13 that. So we have upper Mancos, middle Mancos. And then  
14 the lower Mancos has come to be used in several different  
15 names, one of which is Niobrara, one of which is lower  
16 Mancos, one of which is Gallup.

17 We are going to start proposing from our shop  
18 that that be called, in the lower Mancos, the El Vado,  
19 which is a known local name for that lower shale  
20 interval, so that we can avoid confusion of what we're  
21 actually talking about. We want to try to refine this.  
22 It has implications for all operators in the basin as we  
23 move forward with development of this shale resource.

24 Q. This is the log for the Yucca well operated by  
25 Merrion?

1 A. That's correct.

2 Q. Is Merrion a participant in the subject well  
3 that's before Examiner Warnell this morning?

4 A. I have an agreement with Merrion, and they are  
5 supporting this effort today.

6 Q. Have you discussed with Merrion whether their  
7 definitions of Mancos, as you described them to Examiner  
8 Warnell, are consistent with what they do with their  
9 other wells operated in the Dufers Point Gallup-Dakota  
10 pool?

11 A. Yes. Mr. Sharp did respond to that very  
12 question and said that they basically opened up the  
13 entire shale section and not that lower portion, which  
14 would be called true Gallup, as it's indicated on this  
15 type log. They have, in fact, opened up the entire  
16 Mancos section. And they do operate most of those Dufers  
17 Point wells.

18 Q. Would you turn to the next page and describe  
19 what we placed in the exhibit book at this point?

20 A. We've included Order Number R-7435, which was  
21 back in 1984. And it was the application of Merrion Oil  
22 and Gas for special pool rules concerning the Dufers  
23 Point Gallup-Dakota oil pool.

24 And I wanted to include this in the book for  
25 the reason that we stated earlier, that this order does

1 affect the northeast quarter of Section 2, and I'm  
2 offsetting that. So I've got a pool rule in effect for  
3 part of my well spacing unit, and I want to honor that  
4 and have my southeast quarter of that section shown to be  
5 a stranded spacing unit under the Mancos rules, which  
6 then would give me the ability to honor this rule for the  
7 Yucca well.

8 Q. Following the order itself, have you included  
9 a portion of the entire description as currently provided  
10 by the industry?

11 A. Yes, sir. That is a Byram synopsis of the  
12 Dufers Point Gallup rule, and it gives the various orders  
13 affecting that and acreage covered by section, township  
14 and range.

15 Q. Following that, do you have a plat showing the  
16 acreage affected by Dufers Point?

17 A. Yes, sir. It looks like eight section -- six  
18 section -- or six township plat.

19 Q. Just a minute.

20 A. And just roughly drawn on there with Xs are  
21 the acreage that's encompassed by Dufers Point rules.  
22 And up in the upper left-hand corner, you see Section 2  
23 as a heavy black outline around the east half, and that's  
24 where we are. So Dufers Point affects the northeast  
25 quarter, but not the southeast quarter.

1 Q. Let's turn to Tab 3.

2 A. Included here are the well staking plats for  
3 the 102 for --

4 Q. You've turned past the title page?

5 A. Yes, sir. I'm sorry. I went through the  
6 title page, which is Exhibit 3.

7 Q. And the next page, sir?

8 A. Is the surveyor certification for the Gallup  
9 portion -- the Mancos portion of this well with a 160  
10 spacing, and this will be the C-102 exhibit plat.  
11 Following that is the Dakota plat, showing the east half.  
12 Same thing. It's the plat for the C-102. Following that  
13 is the narrative portion of the C-102.

14 Q. You've got the first page of the APD, and it's  
15 been assigned an API number?

16 A. Yes. That API number is 3004535291.

17 Q. And has the Division's Aztec office approved  
18 your drilling permit?

19 A. I don't know the answer to that. I believe  
20 that it has. The well is currently on our schedule for  
21 early in the first quarter.

22 Q. The reason to have it scheduled now is what  
23 reason?

24 A. We have schedule difficulties because of  
25 wintering in the basin. And to best utilize our drilling

1 rigs, it's important to get this in when we have the  
2 ability to do so. But I do have contractual obligations  
3 with other partners in the well, which we will get to  
4 when we see who the parties in the well are. And to  
5 honor those obligations, I've got to drill this well  
6 within the early part of 2012.

7 Q. Let's turn to Tab 4 and past the cover sheet  
8 of 4 and have you identify the parties that would be  
9 participating in the well and show us which ones, by some  
10 indication, have not yet agreed to participate.

11 A. This is a list of the participants in the  
12 well. It's split into two columns on the right, the  
13 Gallup interest and the Dakota interest. The interest  
14 shown in red are the parties who did not respond to our  
15 proposal.

16 You'll notice the top one is Koch Exploration.  
17 They have the largest of the minority interest. And this  
18 has hopefully been resolved, it's the indication today.  
19 The other parties that you see are those parties I spoke  
20 of from whom we have difficulty ever receiving a  
21 response, and they're frequently the source of force  
22 pooling hearings.

23 Q. When you look at the spreadsheet and you go  
24 down to the Koch interest in red, right across there is a  
25 column that has an N in it. Do you now have service of

1 notice on Koch and their appearance in this case?

2 A. Yes. Of course Mr. Hall is here on their  
3 behalf, and they have, in fact, acknowledged receipt of  
4 the proposal.

5 Q. When we turn past Tab 4 and start 5, past the  
6 cover for Exhibit 5A, what now are we looking at?

7 A. This again is a re-statement of the parties in  
8 the well, with their addresses, and the parties to whom  
9 we have not been able to receive service.

10 Q. When we turn to what is marked as Tab 5B and  
11 turn past that cover sheet, we're looking at something  
12 that is captioned Exhibit A. What is this?

13 A. Yes, sir. We proposed separate operating  
14 agreements. And the question may arise that if we're in  
15 a federal unit, why would we have new operating  
16 agreements?

17 The reason for that is we have a leasehold  
18 that's not committed to the unit. And to be able to  
19 handle those parties, I proposed to them a modern  
20 operating agreement.

21 And one of the things that we did within those  
22 operating agreements was include the cost structure from  
23 the unit so that we would not have unbalanced accounting  
24 to the various parties.

25 So you'll see later, as we go through the

1 COPAS, that we've embraced the drilling well rate and  
2 producing well rate as escalated in the unit agreement  
3 itself, not what we would normally propose as a new well,  
4 had that not been the case.

5 But what you see here is an Exhibit A to one  
6 of those operating agreements, showing the parties to  
7 whom that operating agreement was proposed and their  
8 percentage ownership in each of the zones. The Mancos  
9 again being called Gallup here, because the offset well  
10 was a Gallup or a Dufers Point Gallup-Dakota well.

11 Q. To distinguish between the two JOAs, this one  
12 is entitled, "Burlington," and first nonoperator is XTO?

13 A. That's correct. We have XTO, Energen, and the  
14 rest of the parties shown here.

15 Q. As we look down this list, are there people  
16 that have signed this contract?

17 A. Yes. Virtually everyone has signed this,  
18 except those parties to whom we could not receive service  
19 who we mentioned previously. One party who did not  
20 execute this agreement is Energen. They've chosen to use  
21 the unit operator agreement, as they are a participant  
22 within the unit, and we have agreed to that.

23 Q. When we turn past Exhibit A for the XTO  
24 operating agreement, there's another Exhibit A. Is this  
25 the one that relates to the Burlington/Koch proposed JOA?

1           A.       That is correct. The reason for this is that  
2 three years ago, more or less, we negotiated a model form  
3 to be used with Koch Exploration when they're a partner  
4 in our wells, and certain language is slightly different.  
5 The accounting procedure is the same.

6                     One of the notable differences with Koch was  
7 Koch wanted to have a production allocation method  
8 clearly stated as an exhibit within their operating  
9 agreement, and we've acceded to that request by them and  
10 used this typically with Koch in wells in which they're a  
11 party. So you see a different Exhibit A, with that  
12 difference being the allocation of production.

13           Q.       The existing Burlington/Koch JOAs for other  
14 wells --

15           A.       Yes, sir.

16           Q.       -- do they include a cost allocation procedure  
17 like you've now proposed to Koch for the current subject  
18 well?

19           A.       That's correct.

20           Q.       Are those cost allocation procedures the same  
21 that you're utilizing for those participants under the  
22 XTO JOA?

23           A.       Yes. The cost procedure that we've included  
24 is our common cost procedure for all operations within  
25 the basin.

1 Q. And to aid the Examiner, we have a subsequent  
2 exhibit that shows how you make the cost calculation and  
3 the actual numbers for Koch if you run through the  
4 spreadsheet?

5 A. That's correct.

6 Q. When we turn to the subject of the production  
7 allocation, how is the Koch JOA presented for wells other  
8 than the subject well? How is the production allocation  
9 method -- what's that methodology?

10 A. We negotiated a document which is called  
11 Spinner Test method, and it has an example -- when we  
12 first negotiated this approximately three years ago, it  
13 was for Mesaverde/Dakota wells.

14 And I included it for this well as a method  
15 for determining the gas production from the Dakota. And  
16 I changed the language slightly to say that this was not  
17 the only method available, and that Burlington Resources  
18 would use methods that are standard in the industry and  
19 approved by the Commission.

20 Q. On Tuesday of this week, did Koch provide us  
21 with a suggested revision to that exhibit that added a  
22 different methodology for the allocation of Gallup and  
23 Dakota?

24 A. Yes. As I understand it, Koch was concerned  
25 that a fair distribution of the liquids produced be made

1 to the parties in the well, as the ownership in the  
2 Mancos is different from the ownership in the Dakota.  
3 And the method they've proposed is, in fact, one that's  
4 commonly used in the industry and one we use ourselves  
5 for liquids.

6 And that is based actually in looking at  
7 offset wells within X distance of the proposed location  
8 and averaging, actually, the production and what has been  
9 proposed back and forth now. And I think we've got an  
10 agreement that we will look at the wells in the  
11 nine-section offset around this location that produce  
12 liquid and come up with what we think will be an  
13 equitable arrangement for liquid from the Dakota, and  
14 that will be attributed to the Dakota. The balance of  
15 the liquid will be attributed to the Mancos.

16 And we've found over time that Dakota  
17 production is pretty stable through its history because  
18 the liquids produced are part of the gas stream. We  
19 anticipate that the production of liquids from the Mancos  
20 will be more of a traditional oil well profile. If you  
21 need further science behind that, I brought a reservoir  
22 engineer that can go into it a little more intelligently  
23 than I can.

24 Q. The concept, though, is to find Gallup wells  
25 that are like-kind to the subject well?

1           A.       Exactly.  Where there's anomalous wells,  
2 they'll be addressed as such.  And I think we've agreed  
3 with Koch we'll throw out the low and throw out the high  
4 of the like wells that are left.  And there's quite a  
5 large number, actually.  We'll be able to average those  
6 sensibly and come to a reasonable allocation method.

7                       So I believe that our allocation procedure is  
8 going to be acceptable to Koch and acceptable to  
9 Burlington Resources.

10           Q.       As a result of the time frame in the fall,  
11 that's a process that our engineers are working on, but  
12 is not completed as of this moment?

13           A.       That's correct.  Tuesday afternoon just didn't  
14 give us enough time to go through the volume necessary  
15 and do a proper reservoir analysis to get the numbers  
16 together to actually plug a number into the Koch  
17 suggested exhibit.

18                       MR. KELLAHIN:  Mr. Examiner, as a  
19 footnote, at the conclusion of the hearing, we'll ask you  
20 to take this case under advisement, but to leave it open  
21 for 10 days so that Mr. Hall and I can supplement Exhibit  
22 13 and give you the final information with regards to  
23 that issue, and you'll have that then to complete the  
24 record.

25                       MR. HALL:  We've agreed to that.

1 Q. (By Mr. Kellahin) Continue on, Mr. Simcoe.  
2 We're ready to look at Tab Number 6.

3 A. Past the title page, you'll find the  
4 chronology of events, and you'll see this well was  
5 proposed nearly four years ago. Figuring out the title  
6 in the well was nightmarish, to say the least. And there  
7 was a great deal of correspondence back and forth among  
8 various parties, including our title examiner and title  
9 attorney. It took place until we were actually in a  
10 position to propose the well this summer.

11 MR. KELLAHIN: Excuse me, Mr. Simcoe.

12 Mr. Examiner, can you hear the witness over  
13 the noise?

14 EXAMINER WARNELL: Yes.

15 MR. KELLAHIN: That may be Mr. Carr trying  
16 to get in. I tried to lock him out, but I think he's  
17 still trying to get in.

18 Q. (By Mr. Kellahin) Proceed, Mr. Simcoe.

19 A. Sorry for the interruption.

20 So we have gone through the steps necessary to  
21 notify all the parties in the well and advertise as  
22 required by the rules. And you'll see towards the end  
23 the conversations and steps we've taken to work something  
24 out with Koch.

25 Q. In summary of all your contacts now, are you

1 satisfied at this point in time that you've made a fair  
2 and reasonable effort to consolidate on a voluntary basis  
3 all the participants in this well?

4 A. Yes, sir, I have.

5 Q. And there will be parties for which you have  
6 not obtained agreement?

7 A. Yes. Everyone has been notified, but there  
8 are parties who have been unresponsive.

9 Q. At this point in time, do you think it's  
10 appropriate for the Division to enter a compulsory  
11 pooling order against those parties?

12 A. I would request that, yes.

13 Q. Let's turn now past the tabulation of the  
14 chronology, still within Tab 6, and there's a couple of  
15 letters. Would you define the first one?

16 A. These are examples of the correspondence. The  
17 first was necessary because we have uncommitted unit  
18 acreage, we need to get a communitization agreement in  
19 place to cover the leasehold. So you see a letter to the  
20 parties requesting that they execute the communitization.  
21 And then there's a description list on pages 2 and 3  
22 showing the parties that were contacted for the  
23 communitization.

24 Q. If you'll turn past the June 30th letter, do  
25 you find the letter labeled July 13th?

1           A.     Yes. This is our last letter. It shows a  
2 revision to the parties. This is called our ballot  
3 letter. It tells everybody their percentage of each  
4 formation that's going to be produced, and it gives them  
5 notice that we intend to force pool the well if we don't  
6 receive some kind of an indication from them.

7                     Following that is a ballot receipt that we  
8 asked them to fill out and return to us that they either  
9 approve or disapprove of the well proposal.

10           Q.     Does this letter also include a proposed AFE  
11 with it?

12           A.     Yes, it does. And after the -- well, it's in  
13 the next exhibit.

14           Q.     I just want to make sure the letter itself  
15 also was included.

16           A.     Yes. It had the cost estimate with it,  
17 commonly known as an AFE. There's a list of parties that  
18 we did notify, with their addresses here.

19           Q.     There are no missing unknown parties or people  
20 that have not responded, at least parties for which you  
21 have not had service?

22           A.     There's no one that I've not been able to  
23 contact. They've just been unresponsive.

24           Q.     Turn to Tab 7 for me. And past the cover  
25 sheet, what's the first thing we're going to find here?

1           A.     This is the first of the operating agreements  
2     that I mentioned before with all the parties except Koch.  
3     And I've got evidence of the signatures there that the  
4     parties who did join with the -- agreed to the operating  
5     agreement.

6           Q.     We should have subdivided this, Mr. Simcoe.  
7     But can you help us find where we start with the  
8     Burlington/Koch proposed JOA?

9           A.     If we move past the --

10          Q.     You'll come to a tab marked 7B.

11          A.     Approximately halfway through Tab 7, there's  
12     7B. Behind 7B is the form that was proposed to Koch, and  
13     it is identified as such on its face as the Huerfano Unit  
14     Com 311 Gallup and Dakota Formations Koch Form.

15          Q.     And this is the form that Burlington and Koch  
16     have agreed to for operating other wells?

17          A.     That's correct --

18          Q.     And to change --

19          A.     Modified, of course, for this well.

20          Q.     What we're doing now is looking over at the  
21     modification to the Spinner allocation method, and we're  
22     adding a new component to that procedure?

23          A.     That's correct. If you look at Article XV J,  
24     which is about halfway back in the Koch portion of this  
25     tab, you'll see what was proposed to Koch as an

1 allocation method.

2 EXAMINER WARNELL: I'm not with you there.

3 THE WITNESS: It's approximately an eighth  
4 of an inch above Tab 8. It's titled, "Article XV J,  
5 Revenue Allocation Procedure - Spinner Test."

6 EXAMINER WARNELL: Do you have that,  
7 David?

8 EXAMINER BROOKS: Yeah. I believe it's  
9 the top -- no, no. I have the wrong one. This is XV J.

10 THE WITNESS: It's further back, sir.  
11 It's right above Tab 8.

12 EXAMINER BROOKS: This is in the COPAS  
13 accounting procedure?

14 THE WITNESS: It's right ahead of the  
15 COPAS procedure.

16 EXAMINER BROOKS: I had the COPAS  
17 procedure. Exhibit A is the land data, and then we have  
18 Article XVI. I think Article XV J is entitled,  
19 "Nonconsent wells."

20 MR. KELLAHIN: If you'll find page 15 of  
21 the JOA that's got a signature on it and thumb back --

22 THE WITNESS: It's just right ahead of  
23 that signature page.

24 MR. KELLAHIN: -- three pages, you'll find  
25 it.

1 EXAMINER BROOKS: I think I have --

2 EXAMINER WARNELL: It says, "Spinner  
3 Test."

4 THE WITNESS: Yes.

5 EXAMINER BROOKS: Okay, yeah. I found  
6 revenue application procedure. Okay.

7 MR. KELLAHIN: I apologize. We should  
8 have tabbed that for you.

9 EXAMINER BROOKS: Pages should be  
10 numbered. Everybody thinks if you bring things in books,  
11 you don't have to number the pages, and then you can't  
12 find the exhibits.

13 MR. KELLAHIN: That's our usual practice.  
14 We just didn't do it here. I'm sorry.

15 EXAMINER BROOKS: I remember a hearing  
16 before the Commission as part of the Pit Rule proceeding  
17 when Mr. Fesmire made everybody go through their books  
18 and number the pages, and we did that while in the middle  
19 of the hearing.

20 MR. KELLAHIN: We won't do this again,  
21 sir.

22 EXAMINER BROOKS: Okay.

23 Q. (By Mr. Kellahin) Let's turn past this. If  
24 you'll turn to Tab 8?

25 A. Past the cover page --

1           Q.     Let's talk about how the concept of cost  
2 allocation that's set forth in the proposed Koch JOA is  
3 derived.

4           A.     This is actually a more in-depth discussion of  
5 the cost allocation procedure within the COPAS. And this  
6 came into being in the past because of the nature of the  
7 San Juan Basin having multiple completions within a  
8 wellbore and how you're going to handle the accounting  
9 for drilling costs among the various owners of the  
10 various depths. It's not uncommon to have diverse  
11 ownership between the formations.

12                     And the OCD has previously approved this.  
13 It's been included in numerous hearings. Industry, not  
14 just our own company, but other companies embrace this as  
15 a method. And while it goes through a lot of words to  
16 get there, you'll see on the second page of it that you  
17 get an algebraic formula that when you use the depth of  
18 the formations themselves as a number and you run the  
19 chain calculation between the various depths of the base  
20 of each formation, you come out with a percentage number.

21                     And they're stated on page 3, for instance,  
22 the Fruitland Coal and PC and the Mesaverde and Dakota.  
23 But I've got another chart back here further that shows  
24 all of the currently producing formations. And right  
25 above Tab 9 there are two pages. The first one, not the

1 one closest to page 9, but --

2 Q. Let me interrupt you, Mr. Simcoe. You're  
3 looking at this one with the yellow highlights on it?

4 A. That's correct. If you take all of the  
5 language here in this Article 59, this is a calculation  
6 based on that for each of the zones and averaged actually  
7 across the basin. And we found that out of the 11,000  
8 wells that we produce, this is very accurate. It's  
9 within 1 percent always.

10 And you can look and see at the bottom,  
11 Mancos/Dakota, it's 45/55. And that's based on the  
12 relative depths of the two formations.

13 Q. After running through all those calculations  
14 and following the procedures within the cost allocation  
15 portion of the JOA, do you have a display in actual  
16 dollars and cents that shows how you propose to allocate  
17 the cost of this well to Koch?

18 A. Yes, I do. When I received Koch's opposition  
19 notice last week, I did this and actually ran it through  
20 the formula that's shown on the previous page. And each  
21 step is stated there, the depth allocation from the  
22 formula itself, 45, 55, the drilling cost estimate in  
23 which each zone pays for the drilling cost, and then  
24 Koch's percentage ownership of each zone applied to those  
25 numbers and the resulting Koch shares of the drilling

1 cost by formation and then as a total for the entire well  
2 for drilling costs.

3 Q. In your opinion, is this a fair and reasonable  
4 method for cost allocation for this well?

5 A. Yes. And it is industry standard.

6 Q. Can you turn to Tab 9 for me now? And let's  
7 look at the proposed AFE.

8 A. Yes. The way that we generate our cost  
9 estimates, we show each formation and all the costs  
10 associated. So the first column would be drilling, and  
11 the second column is completion. And those are  
12 anticipated completion costs.

13 Next we show a P&A cost. If we don't find  
14 anything, we'll put a number in there. Typically, we'll  
15 show a line of zeros in our cost estimate because we  
16 expect to find production, and we need to have a  
17 placeholder within our software. So you see zeros in  
18 there, and it shows zero for P&A. But should the well be  
19 P&A'd, the cost will be supplied at the time. And then  
20 facility costs are shown in the last column to the right.

21 So you see the first page is the Basin Dakota.  
22 Then the second page is for the Mancos. Again, it's  
23 called Gallup here because of that offset well being a  
24 Gallup Dufers Point. Then page 3 is the combined totals  
25 for each of the actions anticipated.

1           So the drilling expense for the total well is  
2     \$892,124.36. But completed with facilities, the total  
3     cost is expected to be \$1,809,794.56.

4           Q.     Does this proposed AFE for the subject well  
5     compare favorably to like-kind wells drilled in these  
6     formations?

7           A.     Yes, sir. This is what we expect in our own  
8     wells and what we also see from other operators that send  
9     us cost estimates.

10          Q.     Do you have a recommendation to the Examiner  
11     for the overhead costs to be associated with the pooling  
12     order, the drilling well overhead rates and the producing  
13     well rates?

14          A.     Yes, sir. As I mentioned before, in the  
15     operating agreements that we submitted to the parties, we  
16     have embraced the operating rates from the Huerfano Unit  
17     as they have been escalated over time. They're \$3,000  
18     per day drilling and \$350 per month operating.

19          Q.     Would you propose that be included in the  
20     Examiner's order for pooling in this case?

21          A.     I do. It's fair and equitable.

22          Q.     How long is an escalating factor that's  
23     utilized by you and the industry for escalation of those  
24     costs?

25          A.     Yes. We embrace, as most operators do, the

1 annual COPAS escalation.

2 Q. Has there been any objection from any party  
3 with regards to the adoption of a cost plus 200 percent  
4 risk component by the Examiner, if an order is entered in  
5 this case?

6 A. No, sir. No one has shown any opposition.

7 Q. If you'll turn now to Tab 10.

8 A. We deleted Tab 10. We were going to include a  
9 hearing order there, and it's not felt to be germane at  
10 this point.

11 Q. There is no Exhibit 10? Let's turn to what is  
12 marked as Exhibit 11. What's behind this tab?

13 A. This is the Certificate of Mailing in  
14 compliance with Order R-8054.

15 Q. The certificate is my certificate. And it's  
16 followed by the notice letter itself, copies of the green  
17 cards, and then a copy of the actual amended application?

18 A. Yes, sir.

19 Q. That entire package went to all of these  
20 parties?

21 A. And then following those green card copies is  
22 the amended application.

23 Q. If you turn to Tab 12 with me now, past the  
24 cover tab, we're now looking at downhole commingling.  
25 Would you identify what the Examiner is seeing when he

1 looks at this page?

2 A. Yes. As Mr. Kellahin mentioned at the  
3 beginning, I have included a C-107 as an example. And  
4 this will be submitted when it's appropriate to do so to  
5 the Aztec office.

6 Q. And following the form itself?

7 A. There is the certified plat for the well.

8 Q. And following the plat, there is -- what am I  
9 looking at? There's a forecast of production here from  
10 that well?

11 A. Yes. It's a decline curve. You have to turn  
12 the book sideways. It looks too good if you look at it  
13 the other way.

14 Q. That's simply part of the submittal for the --

15 A. Yes. That's the science backup for the 107.

16 Q. Let's turn now to Tab 13.

17 A. Tab 13 shows the Spinner Test method. This is  
18 the Article XV J again as amended by Koch and submitted  
19 to us on Tuesday.

20 And that highlighted portion at the top is the  
21 language that they've submitted to us that will result in  
22 a number being placed in the statement up there as to  
23 what will be attributed to the Dakota as barrels of  
24 liquid per one million cubic feet of gas. The number,  
25 6.53 barrels, is currently in the proposal from Koch.

1 And that's the number that we've mentioned previously as  
2 being worked on by our engineers and will be submitted to  
3 Koch, and we should come up with an agreement between Mr.  
4 Kellahin and Mr. Hall.

5 Q. Let's summarize then what is going to be  
6 different about the proposal that we're not yet seeing.

7 A. The difference is that number is probably  
8 going to escalate. If I were to hazard a guess, I'd say  
9 it would be in the 15 to 20 barrels per million cubic  
10 feet, instead of the 6.53.

11 Q. What's the methodology to be applied to arrive  
12 at that number?

13 A. As previously stated, we're looking at the  
14 offset wells in a nine-section offset, the nine spot, as  
15 previously mentioned. We're going to look at like wells  
16 that have Dakota and Mancos production and come up with  
17 what we believe is a good expectation of what Dakota in  
18 this area will give up as a stable liquid per million  
19 cubic feet of gas.

20 Q. When the engineers finish that calculation, we  
21 will have available and provide to the Examiner and to  
22 Mr. Hall the worksheet showing the map, wells selected,  
23 the inventory and how the math was done to make the  
24 average?

25 A. That's correct. Yes, sir.

1 Q. It's that part of the record that we want to  
2 supplement?

3 A. We just didn't have time to get that work done  
4 before today's hearing.

5 EXAMINER WARNELL: You can get that done  
6 within 10 days?

7 MR. KELLAHIN: Yes.

8 THE WITNESS: We hope to have it done  
9 certainly early next week, if not sooner.

10 Q. (By Mr. Kellahin) That concludes your  
11 presentation?

12 A. That is all, sir.

13 MR. KELLAHIN: With your permission,  
14 Mr. Examiner, we move the introduction of Burlington  
15 Exhibits 1 through 13, as indicated in the exhibit book.

16 MR. HALL: No objection.

17 EXAMINER WARNELL: Exhibits 1 through 13  
18 are admitted.

19 (Exhibits 1 through 13 were admitted.)

20 MR. KELLAHIN: That concludes our  
21 presentation.

22 EXAMINER WARNELL: All right. Before you  
23 start, Mr. Hall, let's take a two-minute break. I need  
24 to run across the hall.

25 (A recess was taken.)

1 EXAMINER WARNELL: Okay. Let's go back on  
2 the record. Mr. Hall?

3 CROSS-EXAMINATION

4 BY MR. HALL:

5 Q. Very brief questions about your Exhibit 8 on  
6 the cost allocation procedures. Can you tell us, does  
7 this methodology have some foundation in a COPAS  
8 publication? Where did this derive from?

9 A. It does come from the COPAS procedures. I'm  
10 sorry, I'm not an expert on COPAS. I can't give you the  
11 articles. This is a procedure that we've been using for  
12 many years, and we include it in every operating  
13 agreement.

14 Q. It's in use by other operators within the --

15 A. This, or something similar to it.

16 Q. Can you explain to me how the dryhole cost  
17 provisions would work? If, say, you had a dry hole in  
18 the Dakota, how are those costs handled?

19 A. Well, as shown on our cost allocation, we show  
20 what we anticipate the drilling expense of the total well  
21 is, and that is the dry hole expense. The completion is  
22 a separate entity after the hole has reached TD. If  
23 we're actually faced with a dry hole, then at that point  
24 the P&A costs would be generated and submitted to the  
25 parties in the well.

1           But the operator would, of course, reserve the  
2 right to plug the well, as a prudent operator, with the  
3 notice procedure in the operating agreement.

4           Q.     Is there some consideration given to  
5 incremental costs because a well is a dual completion or  
6 a multiple completion? In other words, because you're  
7 drilling down past the Gallup into the Dakota, does your  
8 per-footage well cost increase incrementally?

9           A.     Yes. As shown here, the Dakota would pay 55  
10 percent of the well, where the Mancos would be pay 45  
11 percent of the well. That's to reach the base of the  
12 Mancos. Because the two are virtually contiguous zones,  
13 that's why that spread is only 10 percent.

14                  Typically, for instance, if a Mesaverde/Dakota  
15 well were the target, it's 40 percent for the Mesaverde  
16 and 60 percent for the Dakota, because those two  
17 formations are separated in this case by the Mancos.

18           Q.     So the costs are affected -- the costs are  
19 allocated on more than just a depth basis; is that  
20 correct?

21           A.     No. It's actually the depth basis that  
22 arrives at those percentages. The total depth of the  
23 well, which is through the base of the Dakota, and the  
24 total depth of the Mancos to the base of the Mancos,  
25 that's the relationship, the 45, 55. So the Dakota is

1 paying 55 percent of the total drilling cost.

2 Q. But in fact, your footage unit costs don't  
3 remain constant based on depth; isn't that accurate to  
4 say? If you have a deeper well, you're drilling to  
5 deeper formations, you're using different casing, which  
6 requires heavier casing uphole?

7 A. If I understand what you're getting at, I  
8 would have to disagree. There's only one casing string  
9 run in the well that's unique, and that goes from our  
10 surface casing all the way to the base. There's not a  
11 separate procedure.

12 This is not like a very deep well that we  
13 might have elsewhere in the country. The total depth of  
14 these wells is approximately 7,000 feet. So when we're  
15 talking about the differential between the Mancos and the  
16 Dakota, we're talking about a distance that's somewhere  
17 around 6,500 feet and total depth, which is 7,000 feet.

18 Q. So the allocation is simply based on depth?

19 A. Yes. And the footage, as I understand it, is  
20 not changing as we go deeper because we're not running  
21 multiple strings of casing or drilling different size  
22 holes at different points in the well.

23 Q. Referring back to your type log under Exhibit  
24 Tab 2, it's pretty much beside the point, but I'm curious  
25 to know which of these zones is the zone that is

1 targeted?

2 A. We're going to look at the entire Mancos  
3 section, as Merrion did in this well. The part that we  
4 believe is going to be liquid rich is what we're calling  
5 the El Vado here. You see a separate box for that. And  
6 we believe that that's where the majority of the liquid  
7 that Merrion has produced is coming from.

8 I believe they opened this entire section in  
9 the spirit of the exuberance at the time, wanting to see  
10 whatever they can produce. But we believe that this El  
11 Vado section and the Basal Niobrara is probably where the  
12 liquid rich portion of this Mancos is.

13 Q. It's a highly fractured section? You don't  
14 know?

15 A. You're talking to a landman here.

16 MR. HALL: That's all the questions I  
17 have.

18 EXAMINER WARNELL: Well, thank you.  
19 Mr. Brooks?

20 EXAMINER BROOKS: No questions.

21 EXAMINATION

22 BY EXAMINER WARNELL:

23 Q. I'm not sure I got the overhead down right.

24 A. 3,000 drilling, 350 operating.

25 Q. I did get it right. And the downhole

1 commingle will be done administratively?

2 A. Yes, sir, based on that stranded spacing unit.  
3 That's part of the Mancos rule.

4 EXAMINER WARNELL: You have nothing  
5 further, Mr. Hall?

6 MR. HALL: One question. Thanks for  
7 reminding me.

8 Is it your understanding that the cost  
9 allocation methodology requires approval of the District  
10 Office; do you know?

11 MR. KELLAHIN: My answer is it does not.  
12 Two different things here. We're looking at the  
13 production allocation under commingling. The cost  
14 allocation is not necessarily something you do,  
15 Mr. Examiner. We wanted you to know what it was framed  
16 for under the consent agreements.

17 In the pooling order, actual costs and their  
18 allocations are the subject of postorder, postdrilling  
19 disputes. And there's a procedure for your rules in a  
20 cost hearing, which is where I think it ends up going if  
21 there's a difference about how we're going to do this.

22 MR. HALL: I misspoke. I was looking at  
23 an older Meridian order for this pool. And it does speak  
24 to Division approval of the allocations --

25 EXAMINER BROOKS: I wonder if that's -- I

1 don't recall that we've ever had this issue come up in a  
2 compulsory pooling proceeding that I've participated in.  
3 But approval of the reasonableness of the costs, I agree  
4 with you, that's subject -- under the way our orders are  
5 structured, that's to be done at a subsequent proceeding.

6 Allocation is a somewhat different question,  
7 though, than reasonableness of costs. And normally we  
8 attempt to deal with the allocation in the compulsory  
9 pooling proceeding, if it's an issue. If they  
10 contemplate downhole commingling, we've taken evidence on  
11 that before. I'm not sure just what procedure you  
12 contemplate here.

13 MR. KELLAHIN: We're happy either way. We  
14 gave you enough information today. In case this came up  
15 and you felt it necessary to address this allocation, we  
16 have it for you.

17 EXAMINER BROOKS: Yeah, I would think it  
18 appropriate to address the allocation of the costs in the  
19 compulsory pooling order. Obviously, we can't deal with  
20 the reasonableness of the costs until we know numerically  
21 what they are.

22 MR. KELLAHIN: Okay. I guess we're in  
23 agreement on that

24 EXAMINER WARNELL: Mr. Kellahin, could you  
25 work up a draft down the road?

1 MR. KELLAHIN: That's my plan,  
2 Mr. Examiner. We'll submit you a draft order.

3 EXAMINER WARNELL: Thank you. That would  
4 be helpful.

5 MR. KELLAHIN: I want to wait for Mr. Hall  
6 and the engineers to get that Exhibit 13 straight. And  
7 then we will give you a draft order, and I'll circulate  
8 that to Mr. Hall.

9 EXAMINER WARNELL: Very well. I think  
10 with that, we'll take Case Number 14734 under advisement,  
11 with the understanding, as mentioned earlier, that you  
12 have 10 days.

13 MR. KELLAHIN: Yes, sir.

14 MR. HALL: We will let you know if we  
15 cannot get it finished in 10 days. But it's my  
16 expectation --

17 EXAMINER WARNELL: Don't do that. Ten  
18 days. With that, that concludes Docket Number 30-11.

19 \* \* \*

20  
21 I do hereby certify that the foregoing is  
22 a complete record of the proceedings in  
the Examiner hearing of Case No. \_\_\_\_\_  
heard by me on \_\_\_\_\_

23 \_\_\_\_\_, Examiner  
24 Oil Conservation Division

25

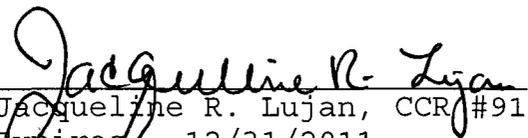
REPORTER'S CERTIFICATE

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I, JACQUELINE R. LUJAN, New Mexico CCR #91, DO  
HEREBY CERTIFY that on October 13, 2011, proceedings in  
the above captioned case were taken before me and that I  
did report in stenographic shorthand the proceedings set  
forth herein, and the foregoing pages are a true and  
correct transcription to the best of my ability.

I FURTHER CERTIFY that I am neither employed by  
nor related to nor contracted with any of the parties or  
attorneys in this case and that I have no interest  
whatsoever in the final disposition of this case in any  
court.

WITNESS MY HAND this 26th day of October, 2011.

  
Jacqueline R. Lujan, CCR #91  
Expires 12/31/2011