

STATE OF NEW MEXICO

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION DIVISION

ORIGINAL

Application of Burlington Resources Oil and Gas
Company pursuant to N.M.S.A. 1978 Section 7217, for
an order pooling all interests in the Mesaverde and
Dakota formation in San Juan County, New Mexico.

Case No. 14526

AUGUST 19, 2010
8:15 A.M.
Santa Fe, New Mexico

HEARING EXAMINER: DAVID BROOKS
TECHNICAL ADVISOR: TERRY WORNELL

For The Applicant:

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2010 AUG 31 P 4:19

1 (Note: In session at 8:15.)

2 HEARING EXAMINER BROOKS: We will call the
3 docket to order. This is the Oil Conservation
4 Division Docket 28-10, August 19, 2010. I am David
5 Brooks, Presiding Examiner, and this is Terry
6 Wornell, the Technical Advisor. We have some
7 continuances and dismissals. On Page 1, Case 14387
8 is dismissed. On Page 2, Case No. 14522 is
9 continued to September 30th. On Page 3, Case No.
10 14509 is dismissed. Case No. 14510 is dismissed.
11 Case 14489 is dismissed. On Page 4, Case No. 8752
12 is continued to September 2nd. Case 14520 is
13 continued to September 2nd. Case 14524 is continued
14 to September 2nd. On Page 5, Case No. 14512 is
15 dismissed. Case No. 14514 is continued to September
16 2nd. Case 14515 is dismissed. Case No. 14413 is
17 continued to September 2nd.

18 Any corrections, revisions, additions?
19 Very good then. At this time I will call Case No.
20 14526, Application of Burlington Resources Oil and
21 Gas Company pursuant to N.M.S.A. 1978 Section 7217,
22 seeks an order pooling all mineral -- well, it's a
23 long title. Seeks an order pooling all interests in
24 the Mesaverde and Dakota formation in San Juan
25 County, New Mexico. I would call for appearances.

1 MR. KELLAHIN: Mr. Hearing Examiner, I'm
2 Tom Kellahin of the Santa Fe law firm of Kellahin &
3 Kellahin appearing this morning on behalf of the
4 applicant, and I have one witness to be sworn.

5 THE WITNESS: I'm Terry Simcoe, Certified
6 Professional Landman with ConocoPhillips and their
7 wholly owned subsidiary, Burlington Resources.

8 TERRY SIMCOE
9 after having been first duly sworn under oath,
10 was questioned and testified as follows:

11 EXAMINATION

12 BY MR. KELLAHIN

13 Q. Again, for the record, Mr. Simcoe, would
14 you please state your name and occupation?

15 A. I'm Terry Simcoe, landman.

16 Q. Where do you currently reside?

17 A. I live in Farmington, New Mexico.

18 Q. And you are currently employed by whom?

19 A. ConocoPhillips and its wholly owned
20 subsidiary, Burlington Resources.

21 Q. On prior occasions have you testified
22 before the examiners of the New Mexico Oil
23 Conservation Division?

24 A. Yes, sir. My last appearance before the
25 Commission was October 2nd, 2008.

1 Q. At that time did you testify as a
2 certified professional petroleum landman?

3 A. Yes, sir.

4 Q. Are you familiar with the land issues
5 involved in the current application?

6 A. I am.

7 Q. Have you been involved on behalf of your
8 company in association with other members of the
9 company in preparing for the drilling of the two
10 subject wells?

11 A. That's correct.

12 Q. As part of that effort, have you made
13 yourself knowledgeable about the interest owners and
14 their proportionate share of the spacing units?

15 A. Yes, sir.

16 Q. As a result of that effort, do you now
17 have certain conclusions and opinions and exhibits
18 to share with the examiner?

19 A. I do.

20 MR. KELLAHIN: Mr. Examiner, we tender
21 Mr. Simcoe as an expert petroleum landman.

22 HEARING EXAMINER BROOKS: So qualified.

23 Q. Mr. Simcoe, if you will take the exhibit
24 book, if you will open up the cover, the three-ring
25 binder is subdivided by tabs, and then within the

1 context of the tabs it's my understanding that
2 exhibit numbers are associated with the tabs and
3 there may be an Exhibit 1 or Exhibit 1A kind of
4 arrangement.

5 A. That's correct.

6 Q. So let's start then with Exhibit Tab 1.
7 If you will turn past the tab, let's look past the
8 cover sheet to Exhibit 1 and we see what, sir?

9 A. That's the locator map showing the San
10 Juan Basin in the northwest corner of New Mexico and
11 the southwest corner ever Colorado.

12 Q. Is there an indication on this exhibit the
13 approximate location of the two wells involved in
14 the application?

15 A. Yes, sir. There's a red dot approximately
16 in the middle of the plat that shows the approximate
17 location of these two wells.

18 Q. Behind this general locator map in Tab 1
19 there's an additional display is there not?

20 A. Yes, sir. There's a nine-spot of the
21 sections around the subject property. The drilling
22 and spacing unit is outlined in red and the two
23 wells are shown and their approximate locations on
24 the drill block.

25 Q. As depicted in the north half of Section

1 2, in addition to the two subject wells there are
2 other well symbols associated with the spacing unit?

3 A. That's correct. There are other wells
4 drilled within that spacing unit as well as other
5 wells shown in the other sections surrounding the
6 spacing unit.

7 Q. To your knowledge are all the wells in
8 that spacing unit identified and coded on this
9 exhibit?

10 A. They are not all coded, no, sir. They are
11 coded as to the type of well but not the actual well
12 names.

13 Q. When you look at the north half of Section
14 2, is the north half of Section 2 a single lease or
15 is it subdivided into multiple leasehold interests?

16 A. It's in multiple leaseholds. If you will
17 look at Tab 2 --

18 Q. Just a second. I'm turning to Tab 2.
19 Behind the exhibit cover sheet?

20 A. There's a close-up of the drill spacing
21 unit as was in Tab 1. Behind that is a plat showing
22 the leasehold and it's color-coded as to the four
23 state leases involved. And under that plat is a key
24 sheet that shows the ownership of those leases.

25 Q. Before you continue, you are looking at

1 the color-coded tab of the subdivision of the north
2 half of 2?

3 A. Yes, that's correct.

4 Q. The advertisement to the case indicates
5 there's a slight acreage difference between a Dakota
6 spacing unit and the Mesaverde spacing unit for the
7 north half?

8 A. That's correct.

9 Q. Can you explain why that occurs?

10 A. There are four lots in this section. If
11 you look at the plat, you can see it's got a crooked
12 north line, which is common in the San Juan Basin.
13 We have some peculiar surveys. There's frequently
14 lots along the northern tier of sections and western
15 tiers. This is northern tier section.

16 So in the past, prior to all of the lots
17 being surveyed, some of the drill spots -- drill
18 blocks were dedicated to the north half as being 320
19 acres. So the Dakota is different from what came
20 later with Mesaverde when it was declared after the
21 survey and actually shows the actual acreage of the
22 lots and the south half/north half.

23 Q. Is this similar to other properties that
24 Burlington operates where you have differences in
25 surveys like this?

1 A. Yes, sir. This is not an uncommon
2 situation where due to the period of time involved
3 for when the APDs were issued we may show a normal
4 north half 320 or may actually show the north half
5 of the section as lots and have a different acreage
6 figure. It could be greater than 320 or less.

7 Q. Are the accounting procedures in place for
8 Burlington such that they account for the difference
9 in acreage?

10 A. Yes. Each zone is accounted for
11 independently based on the acreage contributed by
12 each lease.

13 Q. When we look at this color-coded display,
14 having seen how the north half of 2 is subdivided,
15 can you relate the code to the parties still
16 involved for which you seek a pooling application
17 order?

18 A. Yes, sir.

19 Q. Can we turn to the next page after this
20 color display?

21 A. Yes. I have the parties in a color-code
22 to the side of those parties showing which lease
23 they are involved in. So the actual subject of this
24 pooling hearing today is the lease B11126-78, the
25 green and turquoise lease.

1 Q. So all the parties that you intend to pool
2 have an interest that derives from that particular
3 tract?

4 A. That one lease, yes, that one tract.

5 Q. Subsequently, when we look at the
6 proportionate interest associated with those
7 parties, it's been calculated on the basis of the
8 spacing unit size itself?

9 A. Yes, for each zone. So the interests will
10 be different in the Mesaverde than they are in the
11 Dakota because of that drill block difference.

12 Q. Let's turn now, Mr. Simcoe, to Tab 3 and
13 let's look at the documents behind this tab
14 starting, first of all, with Exhibit 3A. Would you
15 identify for us what we are seeing now?

16 A. Yes. This is a Division Form C102 for the
17 State Com SRC 1B well, which is currently scheduled
18 to be the first well drilled. And this is the
19 E-mail version of that form.

20 Q. Followed by that first page, what's the
21 next page?

22 A. This is the official plat of the well
23 showing the surface location and a directional down
24 hole bottom hole location. Each lease is also
25 depicted on there.

1 Q. And this would be the C 102 for the first
2 one?

3 A. That's correct, the 1B.

4 Q. Now, let's turn to that information for
5 the next well, which is behind Exhibit 3B.

6 A. Again, we have an APD, Form 102 for the 1C
7 well that's the State Com SRC 1C, and behind that
8 102 is another official plat of the drill block
9 showing the location of this well. This is a
10 straight hole.

11 Q. Let's turn to Tab 4 now, and behind
12 Exhibit 4 then you have a spreadsheet, part of which
13 is color-coded with red?

14 A. Yes, sir.

15 Q. Is this a document that you prepared?

16 A. Yes, sir. This is a spreadsheet showing
17 the total ownership of all the parties in the well
18 or in each well. The two columns on the right, the
19 outside being the Dakota, the inside being the
20 Mesaverde showing the parties' interests in each
21 zone, and the parties in red are those we are
22 seeking to have force-pooled. All the other parties
23 have joined the well.

24 Q. Within the colored area, let's look at the
25 columns starting after the name that indicate

1 additional information. At the top, you will
2 have -- let's start with Sharon Brown in red.

3 A. Yes.

4 Q. And then over at the next column there's
5 something that refers to 1952, JOA. What does that
6 mean?

7 A. There is an old operating agreement from
8 1952 covering this drill block, and it was for the
9 Mesaverde. So the parties shown with a yes in that
10 column were parties or the heirs to the original
11 party of that original JOA.

12 Q. So when we look at that, the parties in
13 red then, the Brown people --

14 A. Yes, the Brown family.

15 Q. The Brown family, that family interest
16 were signatories at some point in the old '52 gas
17 agreement?

18 A. That's correct. One of their
19 predecessors.

20 Q. When you look at the rest of the parties
21 to be pooled in red, none of those interests were
22 affected by that '52 agreement?

23 A. No, sir. They are all Dakota interests.
24 That's BP, Energen, WWR Enterprises, Marcia Berger
25 Estate and the Estate of Roger B. Nielsen.

1 Q. As to the second group, have you proposed
2 to these interest owners the execution of a modern
3 contemporary joint operating agreement?

4 A. Yes, sir. And it is also -- further down
5 in the booklet here, we have tried to negotiate with
6 all the parties to get them on a modern form of
7 operating agreement, and I can address each of the
8 parties as we go on as to where we stand with each
9 of them. It is, I must admit, not uncommon for
10 certain parties to be unresponsive.

11 Q. Have the Brown parties been offered the
12 same opportunity to update their '52 agreement to
13 the current modern joint operating agreement you are
14 proposing?

15 A. Yes, sir. And there's letters showing
16 that in the booklet. We will get to those.

17 Everyone has been accorded the same
18 opportunity and given the reason why this is a
19 desirable thing for us to accomplish to get a modern
20 operating agreement to cover these two wells.

21 Q. If you will turn behind the current
22 exhibit we are talking about, come to tab 5. If you
23 will turn past the tab, we are looking at Exhibit
24 5A. What are you showing now, Mr. Simcoe?

25 A. These are the parties' names and addresses

1 showing their interest in both the Mesaverde and/or
2 Dakota, as the case may be. And these are the
3 addresses we use to make contact with these parties.

4 Q. Again, for the Mesaverde and/or the
5 Dakota, this represents their interest in the
6 spacing unit?

7 A. That's correct.

8 Q. To the best of your knowledge, is this
9 address list current and effective?

10 A. Yes, sir. As of the date of filing of
11 this hearing was current and correct.

12 Q. If you will turn now -- we are still
13 behind Tab 5 -- turn to what is marked as Exhibit
14 5B. What are we seeing here, sir?

15 A. This is the Exhibit A to the proposed
16 operating agreement, the 2010 agreement. It starts
17 off with a caption as to what the Exhibit A is, and
18 then goes through a synopsis of where the lands are,
19 what's involved. You can see the Dakota is larger
20 than the Mesaverde in this case. The restrictions,
21 if any, according to this operating agreement, would
22 be limited to the Mesaverde and the Dakota, so it's
23 not tall formations. Then again, we see the
24 addresses and interests of all the parties and the
25 fact that the operator will be Burlington Resources

1 Oil and Gas Company, LP.

2 Q. Except for the parties outlined on the red
3 spreadsheet, are all other interest owners committed
4 to and have they executed the 010 joint operating
5 agreement?

6 A. Yes, sir, they have all signed and agreed
7 to the drilling of both wells.

8 Q. As part of that process, have they also
9 agreed to a cost allocation and accounting
10 procedures associated with these wells?

11 A. Yes, sir. With our operating agreement is
12 a model form COPAS, the 2005 version. It's also in
13 the book further down. Each of the parties has
14 agreed to that and two other conditions that we have
15 put in the 2010 joint operating agreement.

16 Q. Let's turn back specifically to the
17 parties identified in red on the spreadsheet and
18 talk about your contacts with those individuals and
19 companies. If you will turn to Tab 6 behind the tab
20 there's the exhibit cover sheet and then there's a
21 chronology.

22 A. Yes, sir. The chronology is somewhat
23 abbreviated, and the reason for that is that many of
24 these parties are parties in other wells and we have
25 regular contact with them on a variety of other

1 issues. So for certain of the parties there's an
2 ongoing dialogue. And I have not gone to the
3 trouble of enumerating all of those, but I addressed
4 in this specific chronology these specific well
5 proposals.

6 Q. When you turn past the chronology, what's
7 the next document you have?

8 A. These are the letters that began this
9 process. The well was originally proposed in
10 writing on April 25th.

11 Q. That's the first letter we are looking at?

12 A. That is the first letter. It says
13 "non-operators" and it says "see attached ownership
14 list," and again, it's these same parties we have
15 seen before and there is an exhibit with the letter
16 that goes through each of the parties.

17 Q. Without reading the letter, what are you
18 intending to do?

19 A. We are notifying them that Burlington
20 Resources intends to drill the State Com SRC 1B and
21 1C in the north half of Section 2, 29 North Range 8
22 West, and what we intend to do -- we are also
23 proposing that they sign an operating agreement
24 which is enclosed with the letter and memorandum of
25 operating agreement that can be recorded in the

1 county to let people know that there is an agreement
2 covering the real estate involved.

3 And we have a communitization agreement to
4 communitize these four state leases. Also there's a
5 ballot letter, and with the ballot letter would be
6 an AFE.

7 Q. As part of this letter did you advise the
8 parties that Burlington did not believe that '52
9 agreement was sufficient to cover this particular
10 operation?

11 A. Yes. This was the first time this was
12 brought up formally with these parties, and we
13 referred to the 1952 agreement and indicate that
14 there's no agreement covering the Dakota. So
15 the '52 agreement in and of itself is not going to
16 be sufficient to accomplish the purpose of drilling
17 and commingling these two wells.

18 Q. Subsequent to that letter, after the
19 letter then, there's the mailing list for all of
20 these parties?

21 A. That's correct. And you will find at the
22 end of this exhibit the copies of the return
23 receipts from the certified mailing.

24 Q. When you turn past the April 25th letter,
25 the next correspondence I show in the book is May

1 27.

2 A. That's correct.

3 Q. What are you trying to do here?

4 A. This is a ballot letter. With this would
5 have been the AFEs for the two letters. You will
6 see the second page is the ballot itself which the
7 parties sign and send back to us. Again, the same
8 mailing list is attached.

9 Q. Later in the exhibit book we have the
10 actual AFEs that were sent?

11 A. Yes, sir.

12 Q. Have you received any objection to the
13 estimated well cost for either of these wells?

14 A. No, sir.

15 Q. After the May 27th letter there's another
16 letter saying May 27th. Is that duplication of what
17 I just looked at or is that something else? That's
18 for the other well?

19 A. That's right. One is for 1B and the other
20 is for 1C.

21 Q. That will end the documents behind Tab 6?

22 A. There's a July 15th letter also.

23 Q. What were you doing in that letter?

24 A. This is another attempt to try to get
25 these people from whom we had not heard anything to

1 respond. Also it's correcting the legal description
2 discrepancy in the earlier letters refer to Range 10
3 West and it's actually Range 8 West.

4 Q. When we move past Tab 6 we start 7. Tab 7
5 has a single exhibit marked Exhibit 7?

6 A. Yes, sir.

7 Q. What is this, sir?

8 A. This is the 1952 operating agreement and
9 it says on the face of it it's a gas operating
10 agreement. The history of the San Juan Basin is
11 such that due to the period of time that the basin
12 got underway in the late '40s/early '50s, there were
13 a variety of documents used to accomplish the
14 purpose of the operators.

15 While this says gas operating agreement,
16 it is an operating agreement and they went by other
17 names as well, but in this case that's what it was
18 called. This predates the American Association of
19 Professional Landmen Form 610 which we take for
20 granted today is the form of operating agreement.
21 But many of the terms in this agreement are familiar
22 to people familiar with the Form 610.

23 So this is my exhibit to show what we have
24 covering the Brown family as to this drill spot.
25 The drill block itself, and you can see within the

1 document it only refers to one well in the
2 Mesaverde.

3 Q. At the time this was done, what was the
4 well density in the Mesaverde?

5 A. It was one well. It was based on the
6 initial density that the commissioner's predecessor
7 stated 320 acres for a gas well.

8 Q. As part of this execution of the operating
9 agreement, did the operator at this time drill the
10 single Mesaverde well?

11 A. That's correct. That would have been the
12 parent well, the SRC 1.

13 Q. Can you continue to use this operating
14 agreement to cover the Brown interest for the two
15 new wells?

16 A. I really prefer not to do that, because
17 the fact that this document is silent to so many
18 things that we now understand as required by the
19 Commission itself with its rulings on increased
20 density and how we may commingle wells.

21 Subsequently, the business itself has
22 evolved to the point where we have carrying
23 provisions for parties who don't wish to
24 participate. All of those things are missing from
25 this agreement. I don't believe that I can use this

1 to effectively carry the Brown interest into this
2 drill block, so I am stymied in the drilling of
3 these two wells.

4 Q. Have you had any objection from the Brown
5 interest owners as to modifying the 52 agreement?

6 A. No, sir, I have had no response at all.

7 Q. They have not executed the contemporary
8 2010 --

9 A. No, sir, they have not responded in any
10 way.

11 Q. Is there a provision in the old '52
12 agreement to acknowledge the fact that the division
13 may change the rules that are subject?

14 A. There is a statement in here.
15 Interestingly, it's early in the document. Of
16 course, now that I said that, I can't come right to
17 it. But there is an acknowledgment that the
18 agreement itself is subject to changes in the rule
19 by both the federal and state governments.

20 Q. Let me see if I can find it. If you look
21 at 22-4 XX 1B. It's on Page 7 down at the bottom.
22 It says "regulations."

23 A. Yes.

24 Q. That's what you are looking for, right?

25 A. That's right. "All of the provisions of

1 this agreement are hereby expressly made subject to
2 all applicable federal and state laws, orders, rules
3 and regulations of any constituted authority."

4 Q. Subsequent to this contract then the
5 Division, as you know, has changed the spacing for
6 Dakota Mesaverde?

7 A. Yes, sir.

8 Q. And that's what you are trying to do,
9 infill well the spacing?

10 A. That's correct. In the interest of
11 following those increased density rules.

12 Q. Let's turn now to Exhibit Tab 8. If you
13 will turn past the Exhibit 8 tab, we come across a
14 joint operating agreement. This is Model Form 1982?

15 A. That's correct.

16 Q. Is this the preferred form of model
17 operating agreement that Burlington chooses for this
18 property?

19 A. This is our preferred form. We believe
20 that the '82 form of this agreement best addresses
21 the concerns and conditions that we find in the San
22 Juan Basin.

23 Q. Is this form widely used by your company?

24 A. Yes, it is, and other companies as well.

25 Q. I note at the bottom it says the well name

1 in small print and says "BP Form." What's that
2 mean?

3 A. Larger operators tend to have certain
4 conditions and terms that they wish to see in their
5 operating agreement, and while we are certainly
6 probably the largest operator in the San Juan Basin,
7 we do acknowledge that other people have some
8 difference in opinion as to what they want to see in
9 the operating agreement, so we do negotiate with
10 other firms and include the terms they like in the
11 operating agreement that we propose to them.

12 So in this case this is the BP form, which
13 has been accepted by other operators in the basin as
14 well. And people, when they see that, know that
15 those terms that BP has requested are in the
16 operating agreement. And this is the operating
17 agreement that was proposed to all of the parties.

18 Q. Does this operating agreement also include
19 detailed cost accounting procedures?

20 A. Yes, sir. It addresses the accounting in
21 a couple of different ways. One of them, as I
22 mentioned previously, is a Model Form COPAS, which
23 is attached to this operating agreement as an
24 exhibit. But also there's a cost allocation formula
25 that is a part of this as an addendum. It's in the

1 Article 15 added material that actually states
2 what's common practice in the San Juan Basin among
3 many operators as to how we will allocate the
4 drilling cost by zone and how we will arrive at a
5 production allocation.

6 Q. We will come back to that in a moment.

7 A. All right.

8 Q. When you look through the operating
9 agreement, is there a proposed COPAS overhead
10 charges for the drilling and completion of these
11 well bores?

12 A. That's correct.

13 Q. If you look at the COPAS attachment -- I
14 think it's on Page 10.

15 A. This is our 2005 COPAS that I referred to
16 earlier, and in the overhead rates --

17 Q. Should be the bottom of Page 10?

18 A. We are charging the current rate as
19 established by COPAS in April of 2010. A drilling
20 rate of \$7500 and a producing well rate of \$750.

21 Q. Is that the general range of overhead,
22 producing and completion well rates charged by your
23 company and others for this zone?

24 A. Yes. This is common not just to our
25 company but to all of the other operators I am

1 familiar with who all embrace the COPAS. Because
2 the recent COPAS forms for the last 25 years that I
3 am aware of have allowed cost escalation, and they
4 do that inflation or deflation in April of every
5 year.

6 Q. Insofar as this particular agreement is
7 affected, there are interest owners that have
8 committed to this?

9 A. Yes, sir. And I have not received any
10 objection to it.

11 Q. Behind Exhibit Tab 9, so we can focus on
12 issues other than matters raised in the current
13 joint operating agreement, you pulled out for Tab 9
14 the accounting procedures?

15 A. This is an addendum to the Model Form 610
16 and incorporated within Article 15 of that model
17 form, and these are the cost allocations that I
18 referred to as being common in the San Juan Basin
19 among many operators. To have a mechanism to
20 commingle wells and attribute the drilling and
21 completion cost by zone. Because it's not uncommon
22 in the basin for people to have an interest in one
23 zone and not another. So we need some kind of a
24 mechanism to allow the distribution of cost rather
25 than a percentage basis.

1 Q. Do you have that mechanism in place in
2 the '52 agreement?

3 A. No.

4 Q. Would you turn to Page 3 of the cost
5 allocation, Page 3 of 11. There's an indication by
6 formation, an agreed-upon percentage allocation?

7 A. Yes, and this has been heard by the
8 Commission before. The operators in the basin agree
9 to this cost split because we typically drill
10 Fruitland Coal picture cliff wells or we drill
11 Mesaverde/Dakota wells and to have a fair and
12 equitable cost distribution we use the formulas
13 shown on Page 3.

14 Q. Is it your request of the examiner that
15 this particular accounting procedure be adopted in
16 whichever form pooling order the division chooses to
17 issue?

18 A. I would like that. It would certainly
19 simplify our accounting to take care of these
20 parties which each have different rights and
21 different zones. In fact, Burlington is the only
22 company that owns in both zones.

23 Q. Let's turn now to Exhibit Tab 10 and look
24 first at Exhibit Tab A. What are we seeing?

25 A. These are AFEs behind the tab, and the

1 first one is for the 1B well for the Dakota, and we
2 are showing the anticipated cost. The typical
3 operating agreement requires that the operator
4 furnish a time frame, location and cost of the well,
5 and then in the case of ConocoPhillips and
6 Burlington Resources give a little more information,
7 and it's this form AFE that we send to our
8 co-operators.

9 You will see at the bottom it shows
10 percentage of total well cost, and there's a 60, 30
11 and 50 percent shown for drilling completion and
12 facilities. The intent there is to show that the
13 Dakota will pay 60 percent of the drilling cost. We
14 anticipate completion cost because of what's
15 required to complete the Mesaverde, the Dakota will
16 only pay 30 percent of the completion cost.

17 But, in fact, the way that this is handled
18 is each zone pays its own cost. We are just giving
19 an indication to the co-owners that we believe it
20 will be 30 percent for the Dakota. Then all surface
21 facilities and after-completion work is split 50/50
22 between the zone so they share equally in the well
23 head and any downstream equipment, tankage or
24 separators, that sort of thing.

25 Q. The second page then does that for the

1 Mesaverde?

2 A. Correct, for the 1B well. The third page
3 is the accumulation of both. That's the synopsis of
4 the other two pages.

5 Q. Then we turn to the second well.

6 A. Yes. We will have the same exact exhibits
7 and you will see a difference in cost because one of
8 these is a straight hole. The 1B is a directional
9 hole so the costs are greater for the directional
10 hole.

11 Q. Have you received any objection from any
12 of the parties --

13 A. None.

14 Q. -- concerning the costs?

15 A. No one has objected at all.

16 Q. Let's turn now to Tab 11 and behind Tab 11
17 is Exhibit 11. What have you included at this point
18 in the exhibit book, Mr. Simcoe?

19 A. For the convenience of the Commission, I
20 inserted both of the orders that allow increased
21 density drilling of both Mesaverde and Dakota. The
22 first order here was Case No. 12069 and the Order
23 R10987 A. The first day of February, 1999 the
24 Commission issued this ruling, and this is for
25 increased density of the Mesaverde pool for the

1 purposes of conservation and efficient drainage of
2 the pool.

3 Q. Has the Commission already made findings
4 with regards to prevention of waste associated with
5 the drilling of the infield wells?

6 A. Yes, sir. There was a series of hearings,
7 if I recall, doing just that. They had expert
8 testimony by both geologists and engineers to
9 justify this hearing and its ruling.

10 Q. Then by reference you are using this order
11 to show the necessity for modifying the '52
12 agreement?

13 A. That's correct.

14 Q. Do you have a comparable order associated
15 with the Dakota?

16 A. Yes, I do.

17 Q. If you will turn to Tab 12.

18 A. If you will go to 12, that's Case No.
19 12290 and the order number is R10987 B. This was on
20 the 30th of June, 2000. It's a similar order
21 affecting the Dakota.

22 Q. And again, there are findings about waste
23 and the necessity for the additional infield wells
24 at the option of the operator?

25 A. That's correct.

1 Q. Following 12 there's Tab 13. Behind Tab
2 13 there's my certificate of mailing of
3 notification. Have you reviewed this document?
4 Were all these notices sent to the correct addresses
5 for the parties to be pooled?

6 A. Yes. And I want to point out one thing.
7 Your letter, the third line up, refers to Karen
8 Nielsen. I wish to address that so there's no
9 misunderstanding. Roger B. Nielsen died earlier
10 this summer, and his probate is yet to be set.
11 Karen Nielsen is his wife. My understanding is that
12 you have spoken with her and I have spoken with her.
13 She refuses to sign anything until the court
14 acknowledges that she is the personal representative
15 of Roger B. Nielsen. She would not even sign the
16 return receipt for the certified mailing.

17 So you will find that there's no evidence
18 of contact with her, but both Mr. Kellahin and
19 myself have, in fact, been in touch with her.

20 MR. KELLAHIN: In addition, Mr. Examiner,
21 the last page of the certificate is a copy of the
22 newspaper publication in which we have notified all
23 of the parties to be pooled by the newspaper
24 publication, and I have the original here in my hand
25 for your attention.

1 (Note: Hands document to Examiner.)

2 Q. So with the exception of Karen Nielsen and
3 the estate of Roger Nielsen, all other parties have
4 been personally contacted and served with this
5 application?

6 A. That's correct.

7 Q. Were Exhibits 1 through 13 compiled by you
8 or under your direction or supervision?

9 A. That's correct.

10 MR. KELLAHIN: Mr. Examiner, that
11 concludes my examination of Mr. Simcoe. We move the
12 introduction of Exhibits 1 through 13.

13 HEARING EXAMINER BROOKS: Okay. Exhibits
14 1 through 13 are admitted.

15 (Note: Exhibits 1 through 13 admitted.)

16 HEARING EXAMINER BROOKS: I guess I will
17 start just where you left off. Where is the list
18 that has the parties highlighted in red? I found it
19 a minute ago and I was unable to find it readily.

20 THE WITNESS: That would be Tab 4.

21 HEARING EXAMINER BROOKS: Tab 4. Okay.
22 So these -- all of these parties are to be pooled;
23 is that correct?

24 THE WITNESS: That's correct.

25 HEARING EXAMINER BROOKS: That explains

1 that. I was confused about the Nielsen estate.
2 They are a party to be pooled.

3 THE WITNESS: Yes. Typically Roger
4 Nielsen would join on wells. I think his wife just
5 is a little apprehensive about what her rights are
6 after his death and wants to make sure that she is
7 not running afoul of the probate code.

8 HEARING EXAMINER BROOKS: And these
9 parties have not signed the proposed new joint
10 operating agreement?

11 THE WITNESS: That's correct. You will
12 notice among them is BP and Energen.

13 HEARING EXAMINER BROOKS: Right. Of
14 course, those that are BP and Energen and WWR and
15 the Berger Estate and the Nielsen Estate own only in
16 the Dakota?

17 THE WITNESS: Yes, sir.

18 HEARING EXAMINER BROOKS: So they are not
19 parties to the 1952 operation?

20 THE WITNESS: That's correct.

21 HEARING EXAMINER BROOKS: There's no
22 operating agreement covering that.

23 THE WITNESS: There's nothing for the
24 Dakota. These would be the first wells to penetrate
25 the Dakota in this drill block.

1 HEARING EXAMINER BROOKS: The Browns are
2 successors in interest to the parties to the
3 operating agreement, which is what exhibit number?

4 THE WITNESS: As I recall, their
5 predecessor.

6 MR. KELLAHIN: That's Exhibit 7.

7 THE WITNESS: Probably their grandfather
8 was an original lessee on the state lease, as I
9 recall.

10 HEARING EXAMINER BROOKS: Okay. This is
11 the state lease?

12 THE WITNESS: These are all state leases,
13 yes, sir.

14 HEARING EXAMINER BROOKS: Okay. It's
15 not -- I was thinking it was federal. I should have
16 picked up on that. Okay. The original operating
17 agreement is between Francis L. Harvey and the Texas
18 Company.

19 THE WITNESS: Yes, sir.

20 HEARING EXAMINER BROOKS: And do you know
21 which one of those Brown was a successor to?

22 THE WITNESS: Brown is under Harvey. We
23 are the Texas Company interest as successor.

24 HEARING EXAMINER BROOKS: I assumed that
25 was probably the case but I wanted to verify that.

1 Okay. Now, I have not had a chance to look at this
2 operating agreement that's Exhibit 2. I will do so,
3 but I hadn't looked at it. Does it -- you said it
4 doesn't provide for the drilling of this proposed
5 well. Does it have any subsequent operations
6 provisions?

7 THE WITNESS: No, sir. Typical of the
8 time period, it addressed one well obligation and it
9 was not uncommon at the time.

10 HEARING EXAMINER BROOKS: Doesn't have any
11 provisions whatever about what would happen if they
12 drilled another well?

13 THE WITNESS: No, sir. As we look at this
14 today we wonder why those people weren't a little
15 more far-sighted, but they believed the density
16 would be 320 acres and probably what they were going
17 to find in the San Juan Basin was typical of gas
18 wells they would find of other wells in the United
19 States and one well would drain 320 acres.

20 HEARING EXAMINER BROOKS: I think that's
21 not too unusual for the way the industry was. It
22 was not recognized there would --

23 THE WITNESS: And, of course, the
24 Commission is looking at us drilling on a 40-acre
25 space and we have the pilot projects going on. So

1 things do change through time, and I think they just
2 weren't looking at the possibility of the formations
3 to be as tight as they are and increased density
4 would be required for efficient drainage.

5 HEARING EXAMINER BROOKS: You talked about
6 several people you negotiated with and I have
7 trouble keeping it in mind. Have the Browns simply
8 been unresponsive?

9 THE WITNESS: They are completely
10 unresponsive. My view of this is I don't know them
11 at all, but I know other parties in a similar
12 situation. Their interest is an in investor
13 interest. It's mailbox money. They are not really
14 sophisticated oil and gas operators. So probably
15 they are mystified by the things that we take for
16 granted in the industry like an operating agreement
17 or AFE.

18 My belief is that whoever was predecessor
19 in title to them probably was more sophisticated if
20 in the ways of doing business in our industry.

21 HEARING EXAMINER BROOKS: Very likely.

22 THE WITNESS: They are probably just
23 apprehensive about, you know, signing something with
24 a big oil company. I am hypothesizing because I
25 really don't know.

1 HEARING EXAMINER BROOKS: But they haven't
2 refused to execute a new operating agreement?

3 THE WITNESS: No, they just have not
4 responded.

5 HEARING EXAMINER BROOKS: Okay. Now, I
6 want to talk to you about the survey situation
7 because I don't really understand the legal
8 implications of resurveys real well. This change in
9 acreage, is this the result of an official survey?

10 THE WITNESS: Yes, there was a survey
11 performed -- a couple of them since 1950. What they
12 did is go in and resurvey all of the sections. If
13 you look at a map of the San Juan Basin, there's
14 some real peculiar townships.

15 HEARING EXAMINER BROOKS: I am very aware
16 of that.

17 THE WITNESS: And that's what this is
18 acknowledging, that many of the lines are not
19 straight and many of the sections are not 640 acres.
20 So as a result of that, depending on when the
21 original well permit was issued, it might be the
22 north half equaled 320 acres or in the case of the
23 Dakota now we have a survey that shows the actual
24 lot sizes so the Dakota APD is showing the acreage
25 of the lots and the south half/north half.

1 HEARING EXAMINER BROOKS: At the time that
2 the Dakota was originally set up, did I understand
3 you to say they treated this 320 --

4 THE WITNESS: The Mesaverde was 320.

5 HEARING EXAMINER BROOKS: That's right.
6 Because that was under the old operating agreement.

7 THE WITNESS: Yes.

8 HEARING EXAMINER BROOKS: And actually,
9 the title would be by the section, would it not?
10 Under the lease? Do you know?

11 THE WITNESS: For each party?

12 HEARING EXAMINER BROOKS: Yeah.

13 THE WITNESS: Yes. If I go back and look
14 at these old state leases, they will show a
15 subdivision as a regular 40-acre subdivision and the
16 section. The State apparently adopted these surveys
17 as they became available or passed by the USGS when
18 they did the survey. And it's my understanding that
19 there was an adoption of a correction to the state
20 leases to accommodate a greater or lesser acreage
21 based on what the surveys showed.

22 So in the case of greater, as these are,
23 then 40-acre subdivision, the leases were not
24 limited to 40 acres but they were grown to encompass
25 the entire size of the lot which replaced that

1 regular sectional subdivision of 40 acres. So in
2 other words, northeast/northwest, no longer 40
3 acres. I have it written down on the plat. It's
4 41.29 or something.

5 HEARING EXAMINER BROOKS: The total unit,
6 is it more than 320 acres?

7 THE WITNESS: It is now for the Dakota.
8 As far as the Mesaverde is concerned, we administer
9 it as if it was regular sectional subdivisions.

10 HEARING EXAMINER BROOKS: But that
11 wouldn't be actually in accordance with the way the
12 title is, would it? The title would go by the
13 official survey, would it not?

14 THE WITNESS: They don't go back and
15 change those leases. They did that by
16 accommodation. So the acreage will be what the
17 acreage is ruled to be for that particular use. So
18 in the Mesaverde it's 320 acres. For the Dakota
19 it's now 326 point something. So the title to the
20 leases, by accommodation they were originally
21 40-acre regular sectional subdivisions. They have
22 been increased or in some cases decreased to fit the
23 actual lease size. So the title is still clear.
24 There are no gaps or omissions in the chain of
25 title.

1 HEARING EXAMINER BROOKS: Yeah. I would
2 assume the state lease would go ahead and cover as
3 to all formations that additional acreage; is that
4 correct?

5 THE WITNESS: That's correct.

6 HEARING EXAMINER BROOKS: You will have to
7 pardon me because what I know about titles is mostly
8 about Texas and you know we have survey vacancy
9 issues in Texas.

10 THE WITNESS: We don't have that here.

11 HEARING EXAMINER BROOKS: I was aware we
12 don't have that here but I wasn't aware how it
13 actually worked. What you have actually done is
14 basically, by agreement of everybody, if I
15 understand rightly, you have simply continued in
16 effect as to the Mesaverde the distribution of
17 interest as it was originally set up based on the
18 320 acres. Is that a correct description?

19 THE WITNESS: No, sir. We do for the 320.
20 But for the increased size of the Dakota we actually
21 give credit for the lot size for the owners.

22 HEARING EXAMINER BROOKS: I was asking
23 Mesaverde.

24 THE WITNESS: Each of those owners will be
25 accorded a -- for instance, one-eighth for the 40

1 acres.

2 HEARING EXAMINER BROOKS: They are treated
3 at if it's a 320-acre unit in 40-acre subdivisions
4 even though that's not the case.

5 THE WITNESS: That's correct.

6 HEARING EXAMINER BROOKS: But everyone
7 agreed to it?

8 THE WITNESS: That's correct.

9 HEARING EXAMINER BROOKS: Basically they
10 all signed division orders accepting that
11 distribution on that basis?

12 THE WITNESS: Yes, sir.

13 HEARING EXAMINER BROOKS: And you
14 continued to distribute it on that basis?

15 THE WITNESS: Yes, sir.

16 HEARING EXAMINER BROOKS: And will
17 continue to do so. What about the pooled parties
18 that are not parties to an operating agreement?

19 THE WITNESS: They will still be accorded
20 the same consideration.

21 HEARING EXAMINER BROOKS: And --

22 THE WITNESS: We don't play with
23 somebody's interest. They own a lease and the size
24 of that lease may vary, but the interest is what it
25 is according to the drill block. That doesn't vary.

1 HEARING EXAMINER BROOKS: Okay. I can
2 understand the practical reasons for doing that.
3 I'm not sure I understand the legal basis for it.
4 But in this case nobody's interest is being reduced
5 by virtue of the --

6 THE WITNESS: Nobody is being penalized,
7 no, sir.

8 HEARING EXAMINER BROOKS: Because the
9 whole unit has gotten getting bigger, not smaller.

10 THE WITNESS: Just for the Dakota, and in
11 that case the people actually have a benefit because
12 the interest is greater than 40 acres.

13 HEARING EXAMINER BROOKS: That's what I
14 was saying. If you treating in the Mesaverde,
15 treating the people as -- it makes some difference
16 in the allocation between them. It doesn't make any
17 difference in their total interest.

18 THE WITNESS: No.

19 HEARING EXAMINER BROOKS: Because the unit
20 has gotten bigger, not smaller. Like I say, I don't
21 really understand the legal basis for doing this. I
22 certainly understand the practical basis, because
23 people get nervous whenever their percentage
24 interest is revised. That would likely create
25 controversy. Okay. Thank you. I believe that's

1 all my questions.

2 MR. WORNELL: I have no questions for
3 Mr. Simcoe.

4 THE WITNESS: Thank you, gentleman.

5 MR. KELLAHIN: Mr. Examiner, to aid you, I
6 have gone back through and found the few Supreme
7 Court cases and the division cases that have dealt
8 with these old '51 and '52 gas contracts.

9 HEARING EXAMINER BROOKS: That would be
10 helpful.

11 MR. KELLAHIN: And the Division's
12 modification of the old agreements to make them
13 current.

14 HEARING EXAMINER BROOKS: That would be
15 helpful. If there's nothing further, Case 14526
16 will be taken under advisement.

17 (Note: The proceedings were concluded.)

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I do hereby certify that the foregoing is
a complete record of the proceedings at
the Examiner hearing of Case No. 14526
heard by me on Aug 19 2010
David K. Smith Examiner
Oil Conservation Division

REPORTER'S CERTIFICATE

I, JAN GIBSON, Certified Court Reporter for the State of New Mexico, do hereby certify that I reported the foregoing proceedings in stenographic shorthand and that the foregoing pages are a true and correct transcript of those proceedings and was reduced to printed form under my direct supervision.

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


JAN GIBSON, CCR-RPR-CRR
New Mexico CCR No. 194
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