

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 CONOCOPHILLIPS COMPANY
AND BURLINGTON RESOURCES OIL & GAS COMPANY, LP TO
REOPEN CASES 11601, 11626, 11627, 11628, 11629,
11708, 11709, 11685, 12136 AND 11815 TO AMEND
THE DIVISION ORDERS ENTERED THEREIN TO PERMIT THE
ALLOCATION OF PRODUCTION IN COMMINGLED WELLS BY
ALTERNATIVE METHODS APPROVED BY THE DIVISION
PRIOR TO COMMINGLING, RIO ARRIBA AND SAN JUAN
COUNTIES, NEW MEXICO

CASE NOS. 11601, 11626, 11627, 11628, 11629, 11708,
11709, 11685, 12136, 11815

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TRANSCRIPT OF PROCEEDINGS
Examiner Hearing
October 14, 2010
8:22 a.m.
1220 South St. Francis Drive
Santa Fe, New Mexico 87504

BEFORE: TERRY WARNELL, HEARING EXAMINER
DAVID BROOKS, LEGAL EXAMINER

REPORTED BY: CONNIE JURADO, RPR, NM CCR #254
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15

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1 MR. WARNELL: It has been suggested
2 this morning, and a good suggestion it was, that we
3 go ahead and kind of flip everything over and start
4 in reverse order. So if we go to the very last case
5 on page 6, Case Number -- the first case we will call
6 is Case 11601 or Cases 11601, 11626, 11627, 11628,
7 11629, 11708, 11709, 11685, 12136, and 11815. I
8 don't know how those got out of order. All those
9 cases have been reopened. Call for appearances.

10 MR. CARR: May it please the
11 examiner, my name is William F. Carr with the Santa
12 Fe office of Holland & Hart. We represent
13 ConocoPhillips Company and Burlington Resources Oil &
14 Gas Company, LP, in this matter, and I have one
15 witness.

16 MR. WARNELL: Any other appearances?

17 MS. AUBREY: May it please the
18 examiner, Karen Aubrey, Santa Fe, New Mexico. I am
19 representing Robert Westfall. Mr. Westfall is a
20 royalty owner.

21 MR. WARNELL: Very well. Thank you.
22 Would the witnesses please -- I'm sorry.

23 MR. BRUCE: Mr. Examiner?

24 MR. WARNELL: Mr. Bruce.

25 MR. BRUCE: Jim Bruce of Santa Fe

1 representing Devon Energy Production Company, LP. I
2 have no witnesses.

3 MS. AUBREY: And Mr. Examiner, I have
4 one witness.

5 MR. WARNELL: Okay. Will the
6 witnesses please stand. State your name and be
7 sworn.

8 (Note: The witnesses were duly sworn.)

9 MR. CARR: May it please the
10 Examiner, ConocoPhillips and Burlington Resources
11 bring this application today, and we will just refer
12 to both of them collectively as ConocoPhillips, and
13 what they seek is an amendment to certain orders that
14 approved applications for reference cases in certain
15 units in the San Juan Basin.

16 These units are now operated by
17 ConocoPhillips. They plan -- as the testimony will
18 show, they plan to use a new technology, gas
19 composition analysis, to allocate commingled
20 production in new wells. This method of allocating
21 production was approved by the director of the OCD
22 earlier this year, and certain limitations were
23 imposed on its use.

24 The evidence will show that it can
25 only be used for newly commingled wells, and it is

1 limited to commingling production from the
2 Basin-Dakota and the Blanco-Mesaverde Pools. It can
3 only be used where adequate data is available. It
4 requires continued sampling and testing of the well
5 until stabilized production rates are established for
6 each of the commingled zones, and it requires that
7 supporting data be filed by the operator with the OCD
8 so it can assure the accuracy of the allocation
9 before approving the allocation.

10 Arguments will show it is accurate,
11 it is easier, much less costly, and it is a better
12 operating practice because you merely sampled a well,
13 not shutting it down and incurring risks that are
14 associated with it. But we're not here today to seek
15 approval of use of gas composition analysis. That
16 has been approved. After that was approved,
17 ConocoPhillips discovered that it brought all these
18 cases for reference cases so it could commingle
19 production in these units and not be required to
20 notify every unit owner every time they commingled
21 any well.

22 These orders provide in the order
23 paragraphs that for commingled wells, the applicant
24 shall not be required to submit support or
25 justification for utilizing a given method or formula

1 for allocation of production. So you would think,
2 looking at the order paragraph alone, that we're
3 authorized to do this.

4 There is nothing in the rules of the
5 OCD that would preclude this, but when you look at
6 the orders, the findings -- and they are all slightly
7 different. The cases were almost identical when
8 presented, but they went to different examiners, and
9 the orders vary slightly.

10 While they all authorized
11 commingling, authorized the reference case as to
12 various criteria, economic criteria and notice, they
13 contained findings which might be interpreted to
14 limit allocation only to the subtraction method and
15 to a fixed allocation method.

16 As I said, we're not asking
17 permission to use gas composition analysis. We
18 believe it is authorized under the rules and has been
19 approved by the director, but we don't want to use it
20 in those cases where it makes -- complies with the
21 other limitations and then discover that there is an
22 interpretation that we run afoul of these reference
23 cases. So for that reason, we're seeking to amend
24 all of these prior orders.

25 And our exhibits are set out in

1 individual binders for each unit. As I told
2 Mr. Brooks, we clearly have the weight of the
3 evidence today. The books are, I would say,
4 identical, but they are not quite identical. They
5 are similar. They each contain a plat, an order, and
6 notice information.

7 But we would like to review here
8 today with you in detail the book on the Canyon Largo
9 Unit, and I will tell you, we selected that one
10 because in the order, in the reference order in that
11 case, it contains language that is the most
12 restrictive of any language, and it will show you
13 what the problem is and why we're seeking to amend
14 these orders.

15 I have once witness, Chuck Creekmore,
16 who I would like to call at this time.

17 MR. WARNELL: Before we do that, Mr.
18 Carr, I'm sorry, Ms. Aubrey, I didn't ask if you had
19 any opening statements or comments.

20 MS. AUBREY: No, we don't have any
21 openings.

22 MR. WARNELL: No? Okay. Please.

23 CHARLES CREEKMORE

24 After having been first duly sworn under oath,
25 was questioned and testified as follows:

EXAMINATION

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BY MR. CARR:

Q Would you state your full name for the record, please?

A Charles Creekmore.

Q Mr. Creekmore, where do you reside?

A I reside in Farmington, New Mexico.

Q And by whom are you employed?

A I am employed by ConocoPhillips, but I also do work for both ConocoPhillips and Burlington Resources.

Q And what is your current position with Conoco and Burlington?

A I am a staff landman with them.

Q Have you previously testified before the New Mexico Oil Conservation Division?

A Yes, I have.

Q How recently was that?

A I believe it was a year ago that I testified here, and I testified in the late '80s on a federal unit that I put together.

Q Have you ever testified before Examiner Warnell?

A I'm not sure.

Q Would you review for the examiner --

1 A I've been here when he's -- with other
2 landmen, but I'm not sure that I actually testified.

3 Q Could you review your educational
4 background and work experience for Mr. Warnell and
5 Mr. Brooks?

6 A I have a bachelor's degree from Knox
7 College in Galesburg, Illinois, and I have another
8 bachelor's degree from the University of Tulsa, and I
9 have a juris doctorate from the University of Tulsa.

10 Q And for whom have you worked?

11 A I have worked for City Service, which
12 turned into OXY. I have also worked for Williams
13 Companies. I have also worked for ConocoPhillips for
14 the last three years.

15 Q And in these capacities, did you work as a
16 landman?

17 A As a landman.

18 Q And for how many years have you actually
19 worked as a landman?

20 A I have been a landman since almost 30
21 years since 1981. I did work five years for the
22 State of Oklahoma, Tulsa County, as an assistant
23 district attorney, and then I -- that's when I went
24 back to the land work three years ago, a little over
25 three years ago.

1 Q Are you the person in ConocoPhillips
2 responsible for the application here today?

3 A Yes, I am.

4 Q Have you prepared exhibits for
5 presentation in this --

6 A Yes, I have.

7 MR. CARR: We tender Mr. Creekmore as
8 an expert in petroleum land matters.

9 MS. AUBREY: No objection.

10 MR. WARNELL: So recognized.

11 Q (By Mr. Carr) Mr. Creekmore, could you
12 summarize for the examiner what ConocoPhillips seeks
13 in this hearing?

14 A We reviewed all of our federal units, and
15 we seek the amendment of these ten -- the orders that
16 have the reference cases for these ten units that we
17 have combined today, both on behalf of ConocoPhillips
18 and Burlington Resources, and they are in Rio Arriba
19 County and San Juan Counties, New Mexico.

20 And we want to allow the allocation of
21 downhole commingling in the wellbores by an
22 alternative method than those set out in the
23 reference orders that we have. We also want to have
24 the exemption notice for the individual wells that
25 were set out in the original reference orders carried

1 over with this gas allocation method.

2 Q By amending these orders, it would place
3 them -- it would put alternative methods of
4 commingling in those reference cases?

5 A Yes.

6 Q And you could cite that as to the approved
7 economic criteria, the notice criteria, and the
8 commingling?

9 A Yes.

10 Q Why does ConocoPhillips seek these
11 amendments?

12 A We would like to continue doing what we're
13 doing presently with the present methods that are
14 approved and with this new approved method.

15 Q And if you are allowed to do what you're
16 doing presently, that would mean you would operate
17 the existing commingled wells under the current
18 allocation exactly as they are being operated; is
19 that correct?

20 A Yes.

21 Q Do the current rules of the division
22 restrict or limit the methods operators are allowed
23 to use to allocate production in downhole commingled
24 wells?

25 A No.

1 Q Where are the limitations found that
2 you're concerned about here today?

3 A The limitations are the -- what we feel
4 that these orders in these -- that reference these
5 units are more or less restrictive and are not --
6 don't allow us -- well, we're not sure they allow us
7 to do this, and we want to remove any doubt that they
8 don't allow us to do this in the Mesaverde, the
9 Dakota Reservoirs for this gas allocation method.

10 Q Mr. Creekmore, what units are involved in
11 this case?

12 A Well, the units in the order reference ten
13 of the units we operate out there, and I can go
14 through each one of them.

15 Q Are they identified in the exhibit packet?

16 A Yes, they are.

17 Q And where would you find the list?

18 A In the application.

19 Q And is that application included behind
20 Tab 5 in each of the exhibit books?

21 A Yes, it is. They are referenced in the
22 letter that I sent, and then attached to that is the
23 order, which -- or I mean, the application, I'm
24 sorry, which has them set out there.

25 Q And the application identifies the units?

1 A Identifies the units.

2 Q And the application was provided with the
3 notice letters?

4 A Yes.

5 Q Have you prepared a separate exhibit book
6 for each of the ten units involved in this
7 application?

8 A Yes, I have.

9 Q Are they identical?

10 A They are similar.

11 Q They each contain the same basic exhibits?

12 A Yes.

13 Q Each has a plat?

14 A Yes.

15 Q Each has the order approving the reference
16 case?

17 A Yes.

18 Q And each contains the prior approval from
19 the OCD for the use of this method?

20 A Yes.

21 Q And each has notice information?

22 A Yes.

23 Q Okay. Let's go to what has been marked
24 ConocoPhillips Exhibit Number 1. Would you identify
25 that, please?

1 A That is the Canyon Largo Unit.

2 Q Exhibit book?

3 A Exhibit book, yes.

4 Q And it contains eight tabs, correct?

5 A Yes.

6 Q The same eight tabs are found in each of
7 the exhibit books?

8 A Yes.

9 Q Why did ConocoPhillips select the Canyon
10 Largo Unit to be the one that we reviewed in detail?

11 A It has similar language to all of the
12 other units, but it also has a couple of additional
13 restrictions in it that we wanted to clarify by
14 amendment.

15 Q Let's go to the exhibit book, and I would
16 ask you to go behind Tab 1 and identify what that is.

17 A Okay. All of these have a cover page, and
18 Tab 1 just identifies the basin basically. It shows
19 Farmington, Bloomfield, Aztec, and then it identifies
20 the unit, and it specifies where the unit is on
21 the -- sets out where the unit is in the basin.

22 Q And this is a general orientation map?

23 A Yes.

24 Q And do each of the exhibit books contain a
25 similar map for the unit that is the subject of each

1 of those applications?

2 A The specific unit that is covered by that
3 book, yes.

4 Q Would you go to the material behind Tab 2
5 in this exhibit book?

6 A Yes.

7 Q And what is that?

8 A The first exhibit is the Canyon Largo,
9 Mesaverde participating area. And then the second
10 tab is the Dakota -- well, it is the unit boundaries,
11 and it specifically shows the participating area of
12 the Mesaverde before and the Dakota because that's
13 what we're concentrating on here today.

14 Q Why are these participating areas
15 significant?

16 A Well, the participating areas, once a well
17 qualifies for the participating area, they then share
18 an oil production, have an undivided interest in oil
19 production from that point going forward. The wells
20 are initially developed on a drill block basis, and
21 then once they qualify for the participating area,
22 they are developed on an undivided basis.

23 Q And if you were to add a well to a
24 participating area and commingle production, you
25 would have to notify all interest owners in all the

1 affected participating areas?

2 A In all the participating areas.

3 Q And that creates a very substantial notice
4 burden?

5 A Yes, it does.

6 Q And that was the reason behind the
7 original reference cases or one of the reasons?

8 A Yes.

9 Q Let's go to the information behind Tab 3.
10 What is this?

11 A Under each of the Tab 3s in each of the
12 books, you will find the order which is the reference
13 case for each of the specific units and specifies
14 what -- how operations are to be performed on -- and
15 it concentrates on the commingled wells in those
16 units.

17 Q Behind Tab 3 in this book, we have Order
18 Number R 10786, correct?

19 A Yes.

20 Q Is that the reference case order for the
21 Canyon Largo Unit?

22 A Yes, it is.

23 Q And does it approve a reference case for
24 economic criteria, notice requirements, and downhole
25 commingling?

1 A Yes, it does.

2 Q Do we seek any change in the orders as
3 they relate to any current activity in these units?

4 A No.

5 Q What methods of allocating production
6 between formations are authorized by this order?

7 A Well, most of them in this -- this one in
8 particular -- the pages are sticking together here.
9 I'm sorry. Well, most of them set out that they are
10 a reference case, and then they discuss the
11 subtraction method and then they discuss a flow
12 method as two alternative methods that can be used in
13 determining how to determine how the production from
14 the Mesaverde and Dakota or the commingled formations
15 are to be determined.

16 Q Does paragraph 3 provide that applicant
17 shall not be required to submit justification for
18 utilizing a given method or formula for allocating
19 commingled production?

20 A Yes.

21 Q Would you turn to the findings in this
22 order. And I direct your attention to Findings 11
23 through 14.

24 A Okay.

25 Q What do 11 and 12 provide?

1 A Eleven and 12, like I discussed earlier,
2 under 11 A, it discusses the subtraction method, and
3 under B, the flow method. A is a method that -- I
4 can go ahead and read them if you want or --

5 Q Mr. Creekmore, this order approves --
6 references those two methods of allocation, does it
7 not?

8 A Yes.

9 Q And then Finding 12, does it authorize the
10 use of these methods?

11 A Yes.

12 Q What does Findings 13 and 14 provide?

13 A Well, in this particular order reference
14 case 13 provides, "In addition to the above, the
15 applicant proposed utilizing a formula by which the
16 production allocation may be determined by utilizing
17 the BTU content and/or API gravity of the commingled
18 stream." And 14, "The proposed formula described in
19 Finding Number 13 above should be used only to verify
20 the results of production allocation derived by the
21 methods described in Finding Number 11 above."

22 Q When you read these findings and the order
23 paragraph together, is there a question whether or
24 not you may use gas composition analysis --

25 A Yes, there is.

1 Q -- to allocate production in this unit?

2 A Yes, there is.

3 Q And is that what you're trying to clarify
4 in these cases?

5 A Yes, it is.

6 Q Is the Canyon Largo the only one of these
7 orders that contains this express limitation?

8 A This Article 13 and 14, yes.

9 Q Are the findings in the other orders vague
10 in terms of whether or not they are limiting the
11 kinds of allocation methods authorized?

12 A In these -- in this unit and the other
13 nine units that we've brought before you, yes, we
14 believe so.

15 Q Is the use of gas composition analysis an
16 accurate way to allocate production?

17 A Yes, it is.

18 Q What are the benefits that come from using
19 this method?

20 A Well, there's several benefits. One is
21 the cost. It's considerably less expensive. We're
22 estimating it will cost about \$1,500 plus or minus,
23 as opposed to the flow method requires you to bring a
24 rig onto the location, and which costs -- the
25 estimates I have heard between \$40,000 to \$60,000,

1 and you have the increased danger of bringing a rig
2 on site, safety issues. You have the risk of when
3 you go down to the formations of damaging the
4 wellbore. Whereas the gas allocation method, you
5 take a sample at the surface.

6 Q Is it easier to use a gas
7 composition analysis --

8 A Yes, very much. You don't, as I said,
9 have to bring a rig on site.

10 Q Is there less risk of damaging the well?

11 A Yes.

12 Q Has ConocoPhillips reviewed gas
13 composition analysis as a method to allocate
14 production with the Oil Conservation Division?

15 A Yes, they have.

16 Q And when did that occur?

17 A We met with the acting director -- in my
18 notes, the date -- let me look at the order. We met
19 on May 13 of this year with Mr. Fesmire, the acting
20 director, and Mr. Will Jones was also in attendance.

21 Q And did you explain how the gas
22 composition analysis worked?

23 A Our engineer, Clayton McWhite, explained
24 the system, yes.

25 Q Did you also meet with the Aztec office?

1 A We also met with the Aztec -- well, the
2 Aztec office attended a meeting with the BLM, and we
3 have made the presentation to the BLM and to the
4 Aztec office of the NMOCD.

5 Q Did the director of the OCD approve the
6 use of gas composition analysis?

7 A Yes, he did.

8 Q And how was that approval indicated?

9 A We received an approval letter that was
10 dated August 4, 2010, and it is signed by Mark E.
11 Fesmire, Acting Director.

12 Q And is that included in the exhibit
13 package?

14 A Yes. It is Exhibit 8. A copy of that
15 letter is provided.

16 Q Does the approval of the acting director
17 limit the use of this method?

18 A I'm sorry?

19 Q Does the approval letter limit the use of
20 gas composition analysis?

21 A Yes, it does.

22 Q And what are those limitations?

23 A Let me find that.

24 Q Mr. Creekmore, what formations is it
25 limited to?

1 A Well, first of all, they do limit it to
2 the Mesaverde and the Dakota.

3 Q And is it limited to newly commingled
4 wells?

5 A Yes.

6 Q Won't affect any existing commingled
7 wells?

8 A Does not affect existing wells.

9 Q Is it limited to situations where there is
10 a sufficient database to make an allocation?

11 A The process is limited to knowing the end
12 points between the Mesaverde and the Dakota so that
13 you can make an analysis with your sample as to how
14 much of that sample comes from the Mesaverde
15 Formation and how much of it comes from the Dakota
16 Formation based on these end points that are a known
17 quantity.

18 Q Does it require that supporting data for
19 each commingled well be submitted to the OCD for
20 review?

21 A Yes.

22 Q Does it require the results of the initial
23 sample?

24 A Yes.

25 Q How many samples are required? Do you

1 know?

2 A There may -- well, there will be an
3 initial sample and enough samples until the formation
4 is determined to be stabilized. And then once the
5 formation -- the determination that the allocation
6 factor between the Mesaverde and Dakota has
7 stabilized, then that will be the final analysis, and
8 that will be submitted to the NMOCD.

9 Q So what you're doing is sampling until you
10 know what comes out of the Mesaverde -- how much, and
11 you know how much comes out of the Dakota?

12 A Yes.

13 Q And then you submit that data to the OCD?

14 A Yes.

15 Q Then they approve that data?

16 A Yes.

17 Q And that's when the allocation method is
18 established?

19 A Yes.

20 Q And it is only for newly commingled wells?

21 A Yes.

22 Q And it is only for these two formations?

23 A Yes.

24 Q Have you provided notice of this hearing?

25 A Yes, we have.

1 Q And to whom was notice provided?

2 A Notice was provided to all of the working
3 royalty and overriding royalty, all interest owners
4 in the units.

5 Q Let's go to Tab 4. Could you identify the
6 information behind Tab 4?

7 A Tab 4 is a list of all of the owners, and
8 because of the voluminous number of owners and the
9 owners that owned in the -- many of these owners
10 owned in more than one unit, we -- and because the
11 case was combined, we sent one notice to each owner.

12 Q Behind Tab --

13 A And some of these include -- we had to go
14 on royalty and overriding loyalty owners that we
15 didn't disburse on, and other companies where we had
16 to contact them, also, and find out who their owners
17 were.

18 Q And the first page are the companies that
19 you had to contact to be certain you had people to
20 whom they were obtained?

21 A Yes.

22 Q And did they notify those owners, or did
23 you get the names and did ConocoPhillips notify them?

24 A We got the names, and we ended up
25 notifying them.

1 Q And then behind 4 B, you have a long list.
2 What are those?

3 A Actually, 4 A is the list of the owners.
4 4 B was the -- where we had the owners distributing.
5 4 A is in this book. This is the list of all of the
6 owners.

7 Q That you notified?

8 A That we notified.

9 Q How many people did you notify?

10 A There were 12,000 -- I mean 1,259
11 certified letters that we sent out.

12 Q Let's look at Exhibit Number 5. What is
13 behind that tab?

14 A This is the letter that we sent out
15 where -- it's a letter explaining what we were --
16 what the case was about, with the attachment of our
17 application to the letter.

18 Q And this is the material that was sent to
19 each of the 1,259 --

20 A Yes.

21 Q -- names?

22 A Yes.

23 Q What does Exhibit 6 do -- or the -- I'm
24 sorry. Tab 6, what is that?

25 A Well, this is copies of the certified

1 green cards, but because they were so voluminous and
2 we combined the units, I have two separate exhibits
3 of all the green cards that we have. Do you want me
4 to --

5 Q Are those just separate binders that
6 contain each of the return receipts?

7 A Yes.

8 Q And they are marked 11 and 12?

9 A Yes, they are.

10 MR. CARR: They are large. There are
11 1,200 green cards, and we only have one copy of
12 those. If anyone wants another copy --

13 MS. AUBREY: No.

14 MR. CARR: But we have one for the
15 official record that shows we have notified these
16 people and gotten the cards back.

17 MR. WARNELL: 1,259?

18 MR. CARR: 1,259. We might have Mr.
19 Bruce check them all.

20 Q (By Mr. Carr) Mr. Creekmore, what is
21 behind Tab 7 in this exhibit book?

22 A Tab 7 is the affidavit of publication that
23 was filed in both Rio Arriba -- for Rio Arriba and
24 San Juan County.

25 Q What response did you receive to this

1 letter?

2 A As far as inquiries?

3 Q Yes.

4 A At the back of Tab 5, I put a listing of
5 the inquiries that I received from individuals. Some
6 names based on when I received the calls and things
7 like that. I had to spell some of the names
8 phonetically and missed a couple of names, but
9 basically, these are the parties that made follow-up
10 calls.

11 Q Were there also discussions concerning the
12 application with BP?

13 A Yes, there were.

14 Q And was there a request for continuance
15 from BP and Mr. Westfall?

16 A They had asked for that.

17 Q Did we also need to continue because we
18 received late some additional names from Williams?

19 A Yes. Williams provided their owners that
20 they distributed to a little late, so we went ahead
21 and compared their names to our names. Those names
22 that we had already sent out notice, we didn't send
23 notice, but new names, we sent out additional
24 notices.

25 Q In what unit or units does Mr. Westfall

1 own an interest?

2 A Well, I just found out about Mr. Westfall
3 yesterday, and from what I understand, it is 29 --
4 San Juan 29-6 Unit.

5 Q And what is your understanding about his
6 interest?

7 A Well, as I said, I just found out about it
8 yesterday, but our notes indicate that he is the
9 successor in interest from an Archie Westfall, and
10 Mr. Archie Westfall did not sign the ratification to
11 the unit, so he was a nonsignatory.

12 Q And that means that he's paid on actual
13 production from wells on the drill blocks on which he
14 owns his interests --

15 A Yes.

16 Q -- not on a unit basis?

17 A He is paid on a drill block basis and not
18 on a unit basis.

19 Q Will what you're proposing affect any of
20 the existing wells in which Mr. Westfall has an
21 interest?

22 A No.

23 Q It would only apply to new wells. In your
24 opinion, will it accurately allocate production in
25 those wells --

1 A Yes.

2 Q -- if there are any? In your opinion,
3 will approval of this application be in the best
4 interests of conservation and prevention of waste and
5 the protection of correlative rights?

6 A Yes.

7 Q Now, you have prepared 12 exhibits for
8 presentation in this case?

9 A Yes.

10 Q One for each of the units?

11 A Yes.

12 Q And two that are nothing but the green
13 cards confirming that your notice was provided?

14 A Yes. Those -- they are referenced here
15 under Tab 4, but the actual green cards are in a
16 separate exhibit book.

17 Q Exhibits 1 through 10 are similar to the
18 one you have just presented for Canyon Largo?

19 A Yes.

20 Q But they are unit specific; is that
21 correct?

22 A Yes, they are.

23 Q Can you testify as to the accuracy of
24 these exhibits?

25 A Yes.

1 MR. CARR: May it please the examiner
2 -- examiners, at this time we move the admission into
3 evidence of ConocoPhillips Exhibits 1 through 12.

4 MS. AUBREY: No objection.

5 MR. CARR: We pass the witness.

6 MR. WARNELL: Exhibits 1 through 12
7 will be admitted.

8 (Exhibits 1 through 12 admitted.)

9 MR. WARNELL: Ms. Aubrey?

10 MS. AUBREY: Thank you.

11 EXAMINATION

12 BY MS. AUBREY:

13 Q Good morning, Mr. Creekmore.

14 A Good morning.

15 Q I want to ask you some questions about
16 your Exhibit 10, which I think you now have in front
17 of you. That is the exhibit book which deals with
18 29-6 Unit?

19 A Yes.

20 Q Did you prepare this book?

21 A Yes, I did.

22 Q Okay.

23 A Well, it was prepared under my
24 supervision.

25 Q Okay. Tell me about your examination

1 of -- tell me what documents you examined to
2 determine that Archie Westfall was a nonsignatory to
3 the 29-6 Unit agreement.

4 A I asked -- I found out about him
5 yesterday. I asked a person that coordinates units
6 what units he owned under, and he said 29-6. And
7 there is an indication in the file, a note that he
8 was successor -- did you ask me about Archie?

9 Q I asked you about Archie, but Robert
10 Westfall now owns the interest.

11 A That interest was nonsignatory.

12 Q Okay. And was that from the very
13 beginning? It never was in the unit as far as you
14 know, that interest?

15 A Yes. It was in the unit boundaries, but
16 it was not part of the unit.

17 Q Okay. And Mr. Archie Westfall owns a
18 royalty interest; is that right?

19 A Yes. That was my indication.

20 Q And his interest is in Sections 4, 5, and
21 9. Do you agree with that?

22 A I'm not sure about 5, but I just saw 4 and
23 9. We didn't do a detailed research.

24 Q Okay. Have you examined whether or not
25 the Westfall royalty interest is the same in the

1 Mesaverde and the Basin-Dakota?

2 A No, I did not.

3 Q Have you done any examination of those
4 proportionate interests?

5 A No.

6 Q So is it your testimony that for as long
7 as Conoco and Burlington have been paying the
8 Westfall family, that they have been paying them on a
9 drill block basis as opposed to a unit basis?

10 A That's what our files indicated.

11 Q And that is going on till today?

12 A Sorry?

13 Q That continues till today?

14 A I did a limited brief review, and I didn't
15 review the payments.

16 Q Are you aware of any other owners in
17 Sections 4, 5, or 9 of Township 29 that are not
18 participating in the unit?

19 A I didn't check anybody else out, no.

20 Q Now, you're not here to testify as to the
21 technical aspects of the gas composition analysis,
22 are you?

23 A No.

24 Q In your view, that was taken care of by
25 the meeting with the acting director; is that right?

1 A Yes. That was summarized by the order
2 that we provided under Tab 8.

3 Q So do you know -- are you able to tell
4 whether or not you, one, would obtain different
5 results using either the flow method or the
6 subtraction method versus the gas composition
7 analysis?

8 A No.

9 Q Now, why have Conoco limited this request
10 to just the Mesaverde and the Basin-Dakota?

11 A Because those were the only two formations
12 at the present time that we have adequate test
13 results that we could determine a differentiation
14 between the two formations that would be adequate to
15 use this gas composition analysis method.

16 Q So you don't have that information for the
17 Fruitland formation?

18 A I'm not aware of our engineers having
19 that, no.

20 Q Do you know whether or not there are any
21 present plans to drill additional wells in the area
22 in which Mr. Westfall has royalty interests?

23 A No, I do not.

24 Q Now, why is it that this method will be
25 applied only to production from -- let me ask this

1 again. Mr. Carr asked you a question about newly
2 commingled wells. Are you proposing to apply this
3 new method to existing wells that hadn't previously
4 been commingled, or only to new wells drilled?

5 A We plan on using this method going forward
6 where we have adequate information and distinction
7 between the Mesaverde and Dakota that this method can
8 be used to determine the composition of each of the
9 formations by this method.

10 Q So it wouldn't be just wells which are
11 drilled next week? It could be applied to wells
12 which are -- have been drilled, but which have not
13 been commingled; is that right?

14 A I don't think I understand the question.

15 Q Will you be applying this method in
16 existing wellbores?

17 A We plan on using this method on new
18 wellbores.

19 Q Only wellbores drilled after the date --
20 wells drilled after the date of the order in this
21 case?

22 A Yes.

23 Q So if you have an existing -- let's say an
24 existing Dakota well and the decision is made to
25 recomplete that well in Mesaverde, for instance, you

1 wouldn't then be applying this method?

2 A I'm not sure what they would do on a
3 recompletion.

4 Q Do you know if there is any existing data
5 that's available to royalty interest owners or
6 working interest owners that compares the accuracy --
7 that shows the accuracy of the new method when
8 compared to the existing tried and true methods that
9 have been in use for so many years?

10 A No, I do not.

11 Q Mr. Westfall's interests, our evidence
12 will show, in the Mesaverde is about 100th of his
13 interest in the Dakota. So do you agree that if
14 there is an error in the allocation between those
15 zones, it could adversely affect his interest?

16 A I'm not sure I understand what you mean.

17 Q Well, if Conoco allocates gas to the
18 Mesaverde that should be allocated to the Dakota, Mr.
19 Westfall gets less money; is that right?

20 A Well, I'm not sure if I could
21 hypothetically answer that because all we're doing is
22 allocating a fair and equitable share to each
23 formation based on what the formation should receive.

24 Q But that assumes that your method is fair
25 and equitable, right?

1 A Well, yes.

2 MS. AUBREY: I have no more
3 questions. I pass the witness.

4 MR. CARR: I have a couple if it's --

5 MR. WARNELL: Mr. Bruce, do you have
6 any?

7 MR. BRUCE: I don't have any
8 questions. Thank you.

9 FURTHER EXAMINATION

10 BY MR. CARR:

11 Q When you allocate production in commingled
12 wells, the goal is to do it accurately; is that
13 correct?

14 A Yes.

15 Q If there is an error, one party could be
16 harmed?

17 A Yes.

18 Q And the methods that have been used are
19 considered the best we can do under fair and
20 equitable?

21 A Yes.

22 Q And the new method you're proposing would
23 base the allocation on multiple samples instead of
24 one; isn't that right?

25 A Yes.

1 Q And your goal is to not only be fair and
2 equitable, but accurate?

3 A Yes.

4 MR. CARR: That's all I have.

5 MR. WARNELL: Mr. Bruce?

6 MR. BRUCE: Mr. Examiner, I do have
7 one question.

8 FURTHER EXAMINATION

9 BY MR. BRUCE:

10 Q Mr. Creekmore, do you know how long this
11 gas composition analysis method has been used by
12 ConocoPhillips or Burlington Resources?

13 A Out here, we just got it approved in
14 August, so we have -- I think our first well proposed
15 is coming up soon.

16 Q Okay. So all of the prior wells were done
17 under the method set forth in the prior order?

18 A And under the approved prior order.

19 MR. BRUCE: Thank you.

20 A And -- yes.

21 MR. WARNELL: Okay. Mr. Brooks?

22 MR. BROOKS: You said the director
23 issued a letter approving this method, and is this
24 one of the exhibits here?

25 A Yes, it is Exhibit 8. It is dated August

1 4, 2010, addressed to ConocoPhillips, care of me, and
2 signed by Mr. Fesmire.

3 MR. BROOKS: Okay. Thank you.
4 That's all I have.

5 MR. WARNELL: I believe,
6 Mr. Creekmore, you had mentioned that you had used
7 the gas composition analysis before or are presently
8 using it?

9 A We are proposing to use it now. I think
10 it is imminent the first well that they're going to
11 use it on, but they have tested it on other wells.

12 MR. WARNELL: But you have not gone
13 back and taken a look at some of the wells that have
14 been done with the subtraction method or the flow
15 method and compared what would happen if you changed
16 to this third method?

17 A Well, those -- many of those wells have
18 been commingled for years, and they were by an
19 approved method that was approved at that time. It's
20 my understanding that they still, in some of the
21 areas where they don't have the distinction between
22 the two, that they will still use the current method.
23 But going forward, yes, they have done analysis, but
24 I'm not sure if I am qualified to --

25 MR. WARNELL: But the gas -- you

1 testified that the gas composition analysis will only
2 be used on wells drilled -- new wells?

3 A Our plan is to use it prospectively, yes.

4 MR. WARNELL: And are we talking just
5 gas production in the Mesaverde, Dakota, or is there
6 some oil production?

7 A Well, there may be some liquids involved,
8 but this is gas production, yes. I'm not sure about
9 that. This is strictly on the gas composition.

10 MR. WARNELL: And I believe you
11 testified or do you know, is the gas composition
12 analysis, is that recognized by the industry, used by
13 the industry?

14 A Yes, it is.

15 MR. WARNELL: Is there anyone up in
16 the San Juan Basin using it today that you know of?

17 A Not that I'm aware of.

18 MR. WARNELL: I have no further
19 questions.

20 MR. CARR: That concludes our
21 presentation, the direct presentation in this case.
22 We would move the admission of ConocoPhillips
23 Exhibits 1 through 12.

24 MR. WARNELL: I believe those have
25 been admitted, Exhibits 1 through 12. Okay. Well,

1 let's keep going then. Ms. Aubrey, if you would like
2 to call your witness.

3 MS. AUBREY: Thank you.

4 ROBERT WESTFALL

5 After having been first duly sworn under oath,
6 was questioned and testified as follows:

7 EXAMINATION

8 BY MS. AUBREY:

9 Q Mr. Westfall, would you state your name
10 and address for the record, please?

11 A My name is Robert Westfall. I reside at
12 1329 Sigma Chi Road, Albuquerque, New Mexico.

13 Q Mr. Westfall, you have heard some previous
14 testimony from Mr. Creekmore about your mineral
15 interests in the area of the 29-6 Unit. Could you
16 explain to the examiner how you acquired your
17 interests?

18 A I inherited these from my father on his
19 death.

20 Q What was your father's name?

21 A Archie Westfall.

22 Q Do you know when he acquired the
23 interests?

24 A 1952.

25 Q And when did Mr. Westfall -- when did your

1 father die?

2 A He died in July 2004. These interests
3 were passed to me in early 2005.

4 Q And was that under an administration of
5 his estate of some sort?

6 A Yes.

7 Q Mr. Westfall, you have some exhibits in
8 front of you, Exhibits 1, 2 and 3. Can you identify
9 those, please?

10 A Yes. The first one is a copy of the
11 original mineral deeds to my father. The second one
12 is the mineral deed to me after he -- after his
13 death. And the third one is a statement or a
14 paystub, I'm not sure what the correct terminology
15 is, from ConocoPhillips.

16 Q And does that Exhibit Number 3 show what
17 ConocoPhillips believes to be your royalty interests
18 in these wells?

19 A Yes, I would assume so.

20 Q Okay. Do you see on the very first entry
21 on the kind of left-hand side of the exhibit a
22 .3344535 RI?

23 A Yes.

24 Q And do you believe that that shows what
25 your royalty interests in the 29-6 64M Dakota Well

1 is?

2 A Yes, I do believe so.

3 Q And then if you look over on the
4 right-hand side, do you see the last well entry on
5 the right-hand side of the first page of the exhibit,
6 a .00342815 royalty interest?

7 A Yes, I do.

8 Q And do you understand that that is your
9 interest according to ConocoPhillips in the Mesaverde
10 formation?

11 A Yes, I understand that.

12 Q Let me have you look at Exhibit Number 1.
13 Do you understand the first page of this exhibit, the
14 first two pages to refer to a conveyance to your
15 father Archie Westfall of 32 royalty acres?

16 A Yes, I believe I do.

17 Q And then the third page of the exhibit is
18 a different deed; is that correct?

19 A That's correct. There were two deeds.

20 Q And how many royalty acres does the second
21 deed convey?

22 A Fifty.

23 Q So that would give you a total of 82
24 royalty acres in this area?

25 A That's correct.

1 Q And do you understand that this is
2 portions of Sections 4, 5, and 9 that you own a
3 royalty interest in?

4 A Yes.

5 Q Tell me what you understand about whether
6 or not your father agreed to participate in the 30 --
7 I'm sorry, in the 29-6 Unit.

8 A My understanding from him when he was
9 living was that he never agreed to join a unit.

10 Q So was it your expectation that Conoco
11 should always have been paying either your father or
12 you on a drill block basis for your interests in
13 these wells?

14 A Yes.

15 Q Now, in connection with the administration
16 of your father's estate, Exhibit 2 shows that these
17 interests were conveyed to you in February of '05; is
18 that right?

19 A That's correct.

20 Q And you were the personal representative
21 of his estate?

22 A Yes, I was.

23 Q Can you tell the examiner why you are here
24 opposing the application of ConocoPhillips in these
25 cases?

1 A When I received the letter, it stated that
2 the request was to change the method of allocation
3 from its current method to some other method approved
4 but not specified in the letter, and I said, "I have
5 no idea how this will affect me, but it could affect
6 me adversely." And I thought I probably needed some
7 representation to determine just exactly how it would
8 affect me.

9 Q And were you provided with any technical
10 or nontechnical explanation of the differences in the
11 new methodology or what --

12 A No.

13 Q -- effect you could expect it to have on
14 the allocation between your two interests?

15 A No.

16 Q Do you have anything else you want to add,
17 Mr. Westfall, to your testimony?

18 A Not that I can think of.

19 MS. AUBREY: I pass the witness.

20 MR. WARNELL: Okay.

21 EXAMINATION

22 BY MR. CARR:

23 Q Mr. Westfall, when you became involved in
24 this case -- prior to today, had you seen the letter
25 from the OCD approving the gas composition analysis

1 method?

2 A No.

3 Q Do you know whether or not that was
4 requested from ConocoPhillips and provided? Do you
5 know?

6 A No, I don't know.

7 Q You have been paid by ConocoPhillips, have
8 you not?

9 A Yes.

10 Q And your concern here today is you want to
11 be certain that you're accurately paid for what you
12 own?

13 A Yes.

14 Q And you understand today that the
15 allocation will be not changed in any existing
16 method?

17 A Yes, that -- from listening to
18 Mr. Creekmore's testimony, yes.

19 Q Okay.

20 A I do understand that.

21 MR. CARR: That's all I have. Thank
22 you.

23 MR. WARNELL: Mr. Bruce?

24 EXAMINATION

25 BY MR. BRUCE:

1 Q Just one question, Mr. Westfall. There is
2 no -- in the deed that -- deeds that your father got,
3 there wasn't any division -- there wasn't any
4 separation between the Dakota and Mesaverde, was
5 there?

6 A Not to my knowledge. And I don't know if
7 I should add this, but all of the early indications
8 from paperwork I have going back to the '50s is that
9 only the Mesaverde was being drilled into and tapped
10 at that time.

11 MR. BRUCE: Thank you.

12 MR. WARNELL: Mr. Brooks?

13 MR. BROOKS: No questions.

14 MR. WARNELL: Mr. Westfall, you're
15 the one person out of 1,259 people that stepped
16 forward, and I'm kind of surprised at that because I
17 would have had similar concerns that you had
18 originally having received your letter from
19 ConocoPhillips. But we've sat here this morning now
20 for a little over an hour. You got to hear
21 Mr. Creekmore testify. What are your concerns now,
22 if any?

23 A I don't know that I know enough to be able
24 to answer that question, even though I have been
25 sitting here for an hour listening to all of this.

1 It is really hard for me to know -- I know that
2 Mr. Creekmore has testified that it's only on new
3 wells, and so they will probably not affect
4 anything -- any of the existing wells, but I also
5 don't know how much gas there is in the new wells
6 they are drilling and how that will -- how this
7 change in the new wells will affect me. And I don't
8 think there was any answer to that.

9 MR. WARNELL: I have no further
10 questions. Any closing comments?

11 MR. CARR: I have none.

12 MS. AUBREY: I would like to offer
13 Exhibits 1 through 3.

14 MR. CARR: No objection.

15 MR. WARNELL: Oh, I'm sorry. We
16 haven't admitted your exhibits. Exhibits 1 through 3
17 are admitted.

18 (Exhibits 1 through 3 admitted.)

19 MR. WARNELL: If there are no further
20 questions, then we will take under advisement Case
21 Number 11601 and the other ten cases -- or other nine
22 cases, there is a total of ten cases, as stated in
23 the beginning. And with that, let's take a 15-minute
24 break.

25 I do hereby certify that the foregoing is
a complete record of the proceedings in
the Examiner hearing of Case No. _____
heard by me on _____.

_____, Examiner

PAUL BACA PROFESSIONAL COURT REPORTERS

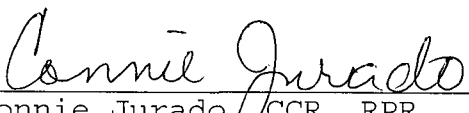
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REPORTER'S CERTIFICATE

I, CONNIE JURADO, do hereby certify that I reported the foregoing case in stenographic shorthand and transcribed, or had the same transcribed under my supervision and direction, the foregoing matter and that the same is a true and correct record of the proceedings had at the time and place.

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 whatsoever in the final disposition of this case in any court.

WITNESS MY HAND this 14th day of October, 2010.


Connie Jurado, CCR, RPR
New Mexico CCR No. 254
Expires: December 31, 2010