

STATE OF NEW MEXICO
COUNTY OF SAN JUAN
ELEVENTH JUDICIAL DISTRICT

W. WATSON LA FORCE, et al.,

Plaintiffs,

v.

EL PASO NATURAL GAS COMPANY,
a corporation and MERIDIAN
OIL INC., a corporation,

Defendants.

BEFORE EXAMINER CATANACH

OIL CONSERVATION DIVISION

EXHIBIT NO. F

CASE NO. 11808 + 11809

No. CV 92-645-1

**ANSWER OF DEFENDANTS EL PASO NATURAL GAS
COMPANY AND MERIDIAN OIL INC. TO AMENDED COMPLAINT**

ANSWER

In answer to the specific allegations of the Plaintiffs' Amended Complaint ("Complaint"), the Defendants state as follows:

1. Defendants admit the allegations of paragraphs 1 and 2 of the Complaint.
2. With reference to the allegations of paragraphs 3 and 4 of the Complaint, the Defendants state that they are without sufficient knowledge or information to form a belief as to such allegations and, therefore, deny the same.
3. Defendants admit the first three and the last sentences of paragraph 5 of the Complaint. In answer to the fourth sentence of paragraph 5, Defendants incorporate their answer to paragraphs 19 and 20 of the Complaint, and otherwise deny the remaining allegations of paragraph 5.
4. Defendants admit the allegations of the first two sentences of paragraph 6 of the Complaint, but deny the allegations

of the third sentence of paragraph 6 of the Complaint. In answer to the last sentence of paragraph 6, Defendants admit that some of the gas subject to GLA-66 is transported from the wells to the liquids processing plant by a field transportation system in the San Juan Basin owned and operated by El Paso, but otherwise deny the allegations of such sentence.

5. Defendants deny the allegations of paragraph 7 of the Complaint.

7. In answer to paragraph 8 of the Complaint, Defendants admit that for some periods of time, El Paso primarily obtained gas supplies in the southwest United States and delivered them via its natural gas pipeline system to California and to Texas, Nevada, Arizona, and New Mexico, but otherwise deny the allegations of the first sentence of paragraph 8. Defendants admit the second, third, and fourth sentences of paragraph 8 of the Complaint. Defendants deny the allegations of the last sentence of paragraph 8 because GLA-66 speaks for itself and must be read in its entirety.

8. In answer to paragraph 9 of the Complaint, Defendants admit that GLA-66 is one of many agreements pertaining to leasehold interests in the San Juan Basin of New Mexico entered into by El Paso in the early 1950's, admit that GLA-66 was executed on March 31, 1953 between El Paso and Lucerne Corporation, the then lessee of a certain United States Oil and Gas Lease, state that

GLA-66 speaks for itself and must be read in its entirety, and otherwise deny the remaining allegations of paragraph 9.

9. In answer to the allegations of paragraphs 10, 11, and 12, Defendants state that although such paragraphs appear accurately to paraphrase certain portions of GLA-66, the conveyance described in paragraph 11, the Unit Agreement, and the Unit Operating Agreement, such agreements and conveyance speak for themselves and must be read in their entirety and, therefore, Defendants deny the allegations of such paragraphs.

10. Defendants admit the allegations of the first sentence of paragraph 13 of the Complaint. Defendants deny the remaining allegations of paragraph 13 because the Contract speaks for itself and must be read in its entirety.

11. In answer to the allegations of paragraph 14 of the Complaint, Defendants admit that Attachment "D" to the Complaint portrays, in general terms, the lands covered by GLA-66 and the boundaries of the San Juan Unit 32-9, but lack sufficient knowledge with respect to the accuracy or source of the information attempted to be portrayed on Attachment "D" and therefore deny the remaining allegations of paragraph 14 of the Complaint.

12. In answer to paragraph 15 of the Complaint Defendants state that such paragraph appears to accurately paraphrase portions of GLA-66, but state that GLA-66 speaks for itself and must be read in its entirety and, to the extent such

allegations vary from the language or intent of GLA-66, they are denied.

13. Defendants admit the allegations of paragraph 16 of the Complaint, except for the allegation that the Sun Oil arbitrators based their award on the then wellhead value of the gas, which is denied.

14. Defendants deny the allegations of paragraph 17 of the Complaint.

15. In answer to paragraph 18 of the Complaint, Defendants admit only that some Plaintiffs and other royalty owners entered into the 1974 Settlement Agreement, and deny the remaining allegations of paragraph 18.

16. In answer to paragraph 19 of the Complaint, Defendants admit that on July 16, 1986, El Paso executed a conveyance transferring its rights and duties under various agreements, including GLA-66, and the 1974 Settlement Agreement, to its affiliate, El Paso Production Company. Defendants deny the remaining allegations of paragraph 19.

17. In answer to paragraph 20 of the Complaint, Defendants, being uncertain as to what Plaintiffs mean by the phrase "at times relevant to this action," state that as of and since October 16, 1986, El Paso Production Company has exercised the responsibility for administering the rights and duties with respect to operation of the properties through Meridian Oil Inc.; that effective November 1, 1989, Meridian was elected operator of

San Juan Unit 32-9; and otherwise deny the allegations of paragraph 20 of the Complaint.

18. Defendants deny the allegations contained in paragraph 21 of the Complaint and state that the use of the term "plaintiffs" is erroneous in this context.

19. Defendants admit the first sentence of paragraph 22, except to the extent that the term "plaintiffs" is erroneous in context, and to that extent, the first sentence is denied. Defendants admit the remainder of paragraph 22, except to the extent that the excerpt from the 1986 Settlement Agreement contains a minor discrepancy in punctuation, and they further state that the 1986 Settlement Agreement speaks for itself and must be read in its entirety.

20. Defendants admit that paragraph 23 accurately quotes from some versions of the "1986 Amendment" except to the extent the excerpt contains a minor discrepancy in punctuation, and they further state that the "1986 Amendment" executed by each party speaks for itself and must be read in its entirety. Defendants further admit that the word "net" was deleted in some of the 1986 Amendments and that it appears in the version attached as Exhibit F., but deny the remaining allegations in the last two sentences of paragraph 23.

21. Defendants deny the allegations contained in paragraph 24 of the Complaint.

22. Defendants deny the allegations contained in paragraph 25 of the Complaint.

23. Defendants deny the allegations contained in paragraph 26 of the Complaint.

24. Defendants deny the allegations contained in paragraph 27 of the Complaint.

25. Defendants deny the allegations contained in paragraph 28 of the Complaint.

FIRST CLAIM FOR RELIEF
BREACH OF CONTRACT--PAYMENT OF ROYALTY

26. In answer to paragraph 29 of the Complaint, Defendants incorporate their answers to paragraphs 1 through 28 of the Complaint.

27. Defendants deny the allegations of the first sentence of paragraph 30 because GLA-66 and the 1986 Settlement Agreement and Amendment speak for themselves and must be read together and in their entirety. Defendants further deny the second sentence of paragraph 20.

28. Defendants deny the allegations of paragraph 31 of the Complaint.

29. Defendants deny the allegations of paragraph 32 of the Complaint.

30. Defendants deny the allegations of paragraph 33 of the Complaint.

**SECOND CLAIM FOR RELIEF
BREACH OF CONTRACT--FAILURE TO DEVELOP
AND FAILURE TO PROTECT THE LEASEHOLD**

31. In answer to paragraph 34 of the Complaint, Defendants incorporate their answers to paragraphs 1 through 28 of the Complaint.

32. In answer to the allegations of paragraph 35 of the Complaint, Defendants incorporate their answer to paragraphs 19 and 20 of the Complaint and otherwise deny the allegations of paragraph 35, and further state that the agreements referred to speak for themselves and must be read in their entirety.

33. Defendants admit the allegations of the first sentence of paragraph 36 of the Complaint, but deny all remaining allegations of such paragraph.

34. Defendants deny the allegations of paragraphs 37 and 38 of the Complaint, and state that Section 29 of the Internal Revenue Code of 1986 speaks for itself and must be read in its entirety and construed in accordance with applicable principles and regulations.

35. In answer to paragraph 39 of the Complaint, Defendants admit the last sentence, state that the letters referred to speak for themselves and must be read in their entirety, and other than stating that paragraph 39 appears to paraphrase accurately certain portions of those letters, deny the allegations of paragraph 39.

36. Defendants deny the allegations of paragraphs 40, 41 and 42 of the Complaint.

37. Defendants deny the allegations of the first sentence of paragraph 43 of the Complaint because the March 12, 1990 letter speaks for itself and must be read in its entirety. Defendants deny the remaining allegations of such paragraph.

38. Defendants deny the allegations of paragraph 44 of the Complaint.

**THIRD CLAIM FOR RELIEF
BREACH OF IMPLIED COVENANT
OF GOOD FAITH AND FAIR DEALING**

39. In answer to paragraph 45 of the Complaint, Defendants incorporate their answers to paragraphs 1 through 28 of the Complaint.

40. Defendants deny the allegations of paragraphs 46, 47, 48 and 49 of the Complaint.

**FOURTH CLAIM FOR RELIEF
BREACH OF EXPRESS COVENANT**

41. In answer to paragraph 50 of the Complaint, Defendants incorporate their answers to paragraphs 1 through 28 of the Complaint.

42. Defendants deny the allegations of paragraphs 51 and 52 of the Complaint and affirmatively state that while the referenced letter is accurately quoted, it was not sent to every Plaintiff.

43. Defendants deny the allegations of paragraphs 53, 54 and 55 of the Complaint.

44. Defendants deny each and every other allegation of Plaintiff's Complaint not hereinabove specifically admitted.

FIRST DEFENSE

As their first defense, Defendants state that Plaintiffs' claims are completely or partly barred due to a failure to state a claim for which relief can be granted.

SECOND DEFENSE

As a further, separate, and alternative defense, Defendants state that Plaintiffs' claims are completely or partly barred by the applicable statutes of limitation.

THIRD DEFENSE

As a further, separate, and alternative defense, the Defendants state that Plaintiffs' claims are completely or partly barred due to an accord and satisfaction.

FOURTH DEFENSE

As a further, separate, and alternative defense, the Defendants state that Plaintiffs' claims are completely or partly barred due to a compromise and settlement.

FIFTH DEFENSE

As a further, separate, and alternative defense, the Defendants state that Plaintiffs' claims are completely or partly barred due to payment and release.

SIXTH DEFENSE

As a further, separate, and alternative defense, the Defendants state that Plaintiffs are estopped from claiming that Defendants have breached any of the provisions of GLA-66, as amended, or the 1986 Settlement Agreement.

SEVENTH DEFENSE

As a further, separate, and alternative defense, the Defendants state that Plaintiffs have waived any claim against them for breach of any of the provisions of GLA-66, as amended, or the 1986 Settlement Agreement.

EIGHTH DEFENSE

As a further, separate, and alternative defense, Defendants state that Plaintiffs' Second Claim for Relief is barred by release, accord and satisfaction, payment and discharge, waiver and estoppel by reason of Plaintiffs' agreement with Defendants, for valuable consideration received by Plaintiffs, to settle the claims contained in Plaintiffs' Second Claim for Relief, which agreement was entered into in late 1992 and early 1993. A written memorialization of such Settlement Agreement is now in the process of being executed.

NINTH DEFENSE

As a further, separate, and alternative defense, the Defendants state that Plaintiffs expressly released Defendants from any and all obligation to further develop wells on the GLA-66

acreage when they voluntarily entered into the 1986 Settlement Agreement.

TENTH DEFENSE

As a further, separate, and alternative defense, the Defendants state that even if Plaintiffs had not expressly released Defendants from any and all development obligations, Defendants would have no obligation to develop new GLA-66 wells, either inside or outside the San Juan 32-9 Unit, because a reasonably prudent oil and gas operator would not do so, in view of the cost of such development, including the cost of the overriding royalties, and the lack of any return on investment.

ELEVENTH DEFENSE

As a further, separate, and alternative defense, the Defendants state that Plaintiffs have waived, or are estopped from raising, claims relating to any obligations to develop, or prevent drainage from, the GLA-66 acreage.

TWELFTH DEFENSE

As a further, separate, and alternative defense, the Defendants state that if they ever had a duty to protect against drainage from the GLA-66 acreage, Plaintiffs expressly or impliedly released Defendants from any such obligation when they voluntarily entered into the 1986 Settlement Agreement, which, among other things, expressly released Defendants from any and all further development obligations.

THIRTEENTH DEFENSE

As a further, separate, and alternative defense, the Defendants state that even if they owe development obligations to Plaintiffs on GLA-66 acreage, they have not breached any such duty to develop lands lying inside the San Juan 32-9 Unit area because Defendants have acted in accordance with the development plan for the Unit area which was submitted to and approved by applicable state and federal agencies.

FOURTEENTH DEFENSE

As a further, separate, and alternative defense, the Defendants state that Plaintiffs would not be entitled to tax credits pursuant to 28 U.S.C. § 29 for wells drilled in the Fruitland Formation because such tax credits are available only to taxpayers who sell qualified fuels to a third person where production of the qualified fuels is attributable to the taxpayer.

FIFTEENTH DEFENSE

As a further, separate, and alternative defense, the Defendants state that no Fruitland Formation wells or other wells on GLA-66 acreage can be drilled or operated by Defendants at a profit, and Defendants have the right to re-assign Plaintiffs' portion of the GLA-66 properties to Plaintiffs, without any further obligations or liabilities.

SIXTEENTH DEFENSE

As a further, separate, and alternative defense, the Defendants state that Defendants have a right to surrender

Plaintiffs' portion of the Lease and Operating Agreement to the United States, without any further obligation or liability to Plaintiffs.

SEVENTEENTH DEFENSE

As a further, separate, and alternative defense, the Defendants state that Plaintiffs have failed to mitigate their alleged damages resulting from Defendants' not drilling wells into the Fruitland Formation by insisting upon an unreasonable and excessive overriding royalty which makes drilling and development of such wells unprofitable.

EIGHTEENTH DEFENSE

As a further, separate, and alternative defense, the Defendants state that Plaintiffs in 1986 were as knowledgeable and/or were in as good a position as Defendants to speculate as to the development potential of any Fruitland Formation wells on GLA-66 acreage, thereby negating the possibility of any fraud or fraudulent inducement.

NINETEENTH DEFENSE

As a further, separate, and alternative defense, the Defendants state that Plaintiffs have waived, or are estopped from raising, any issue of express covenant or damages allegedly resulting therefrom.

TWENTIETH DEFENSE

As a further, separate, and alternative defense, the Defendants state that Plaintiffs' claim for breach of express covenant is barred by the doctrine of merger.

TWENTY-FIRST DEFENSE

As a further, separate, and alternative defense, the Defendants state that Plaintiffs' claims are barred by the express language of the 1986 Amendment providing for an overriding royalty measured by proceeds from sale and delivery at the well and are further barred by the express language of division orders providing that the settlement price for determining overriding royalty payments shall be a wellhead price.

TWENTY-SECOND DEFENSE

As a further, separate, and alternative defense, the Defendants state that the Plaintiffs' claims are barred by the parol evidence rule.

TWENTY-THIRD DEFENSE

As a further, separate, and alternative defense, the Defendants state that this action should be dismissed for failure to join an indispensable party, to-wit, El Paso Production Company, owner of the oil and gas interests conveyed by Plaintiffs' predecessors to El Paso Natural Gas Company pursuant to GLA-66, and one of the contracting parties to the 1986 Settlement Agreement, a copy of which is attached as Exhibit "F" to the Complaint. In the absence of El Paso Production Company, complete relief cannot be

accorded among those already parties, and by virtue of its ownership of the properties involved, El Paso Production Company has or may claim an interest relating to the subject of the action such that disposition of the action in its absence may as a practical matter impair or impede the ability of El Paso Production Company to protect that interest, or leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations.

TWENTY-FOURTH DEFENSE

As a further, separate, and alternative defense, the Defendants state that Plaintiffs' claims for punitive damages are barred as unconstitutional under the New Mexico and United States Constitutions because, *inter alia*, such damages and the manner in which they are determined under New Mexico law violates the due process clause of the Fourteenth Amendment of the United States Constitution and Article II, Section 18, of the New Mexico Constitution.

TWENTY-FIFTH DEFENSE

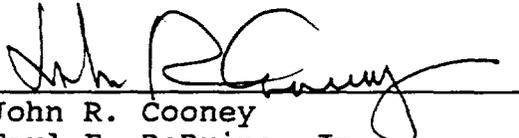
As a further, separate, and alternative defense, the Defendants state that Plaintiffs' claims are barred by their bad faith and unclean hands in that suit was brought without any prior demand for payment by attorneys and persons without authority to act on behalf of the plaintiffs named in the complaint, in contravention of the public policy of the state of New Mexico, and should be dismissed.

WHEREFORE, Defendants pray that the Plaintiffs' Complaint be dismissed with prejudice, that judgment be rendered in favor of the Defendants, that they recover their costs herein expended, and for such other and further relief as to the Court may seem just and proper.

Of Counsel:

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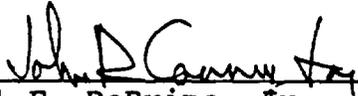
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WE HEREBY CERTIFY that a true and correct copy of the foregoing pleading was mailed to all counsel of record this 13th day of November, 1995.

MODRALL, SPERLING, ROEHL,
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By 
Earl E. DeBrine, Jr.

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