

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

IN THE MATTER OF THE HEARING CALLED BY)
THE OIL CONSERVATION COMMISSION FOR THE)
PURPOSE OF CONSIDERING:)
APPLICATION OF POGO PRODUCING COMPANY)
FOR COMPULSORY POOLING, LEA COUNTY,)
NEW MEXICO)

CASE NO. 12,568

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSION HEARING

BEFORE: LORI WROTENBERY, CHAIRMAN
JAMI BAILEY, COMMISSIONER
ROBERT LEE, COMMISSIONER

March 30th, 2001

Santa Fe, New Mexico

This matter came on for hearing before the Oil Conservation Commission, LORI WROTENBERY, Chairman, on Friday, March 30th, 2001, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South Saint Francis Drive, Room 102, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

* * *

STEVEN T. BRENNER, CCR
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OIL CONSERVATION DIV

I N D E X

March 30th, 2001
Commission Hearing
CASE NO. 12,568

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Applicant's	Identified	Admitted
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A P P E A R A N C E S

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By: WILLIAM F. CARR

* * *

1 WHEREUPON, the following proceedings were had at
2 11:14 a.m.:

3 CHAIRMAN WROTENBERY: The next case is Case
4 12,568, this is the Application of Pogo Producing Company
5 for compulsory pooling, Lea County, New Mexico. This case
6 is being heard *de novo* upon the Application of Pogo
7 Producing Company.

8 And today what we're going to do is hear argument
9 on a motion that has been filed to dismiss the Application.
10 This motion was filed by EOG Resources, Inc. And let's
11 call for appearances.

12 MR. BRUCE: Madame Chair, my name is Jim Bruce,
13 I'm from Santa Fe, I'm representing Pogo Producing Company.

14 MR. CARR: May it please the Examiner, my name is
15 William F. Carr with the law firm Holland and Hart, L.L.P.
16 We represent EOG Resources, Inc.

17 And as to the order of presentation, I have no
18 preference.

19 CHAIRMAN WROTENBERY: Although you are the --

20 MR. CARR: I am the --

21 CHAIRMAN WROTENBERY: -- proponent of the --

22 MR. CARR: -- party. I can go forward first if
23 you would like for me to do that. Then I'd have an
24 opportunity to respond.

25 CHAIRMAN WROTENBERY: Please do. And if you

1 don't mind, take it slow and easy with us today.

2 (Off the record)

3 CHAIRMAN WROTENBERY: Okay, Mr. Carr?

4 MR. CARR: May it please the Commission, today
5 you're going to hear a great deal about a dispute between
6 EOG Resources, Inc., and Pogo Producing Company.

7 At the core, I will tell you now, there is one
8 very simple question that you have to answer, and that
9 question is whether or not the Application of Pogo seeking
10 an order pooling the east half of Section 23, Township 22
11 South, Range 32 East, whether or not that Application
12 should be dismissed, or should it be set for hearing?

13 Not only is the question very simple, the answer
14 to that question is dictated by statute and by rule. And
15 if you follow the statutes and the rules, the Application
16 must be dismissed by you, as it was by the Division.

17 Pogo finds itself on the wrong side of statute,
18 on the wrong side of the rules. And so to prevail they
19 have to do something more. And based on the pleadings that
20 have been filed, it is my belief that they will attack EOG
21 and its conduct as we review how the parties went about
22 trying to develop the acreage, and they're going to also
23 attack the Oil Conservation Division's hearing process.

24 And so it means that in addressing this situation
25 with you here today, going slow and easy, there are really

1 two things that I have to do.

2 I have to review for you the background of this
3 dispute and, I think, explain to you what the concern is,
4 from EOG's side, certainly, anticipating what Pogo may say,
5 both as it relates to what Enron/EOG has done and also how
6 the OCD has handled the matter.

7 And then I am going to give you sort of a nuts-
8 and-bolts overview of the statutes and rules and show you
9 how when you follow those the question before you is very
10 simple to answer.

11 Now, I have put together some materials, and
12 we'll go through them as I go through the presentation, but
13 I think initially I'd like to just tell you what we're
14 talking about.

15 If you could turn to the plat behind Tab 1 in the
16 material, if you'll look down in the lower left-hand corner
17 you'll see Section 23, and on that I have shaded most of
18 the section in yellow. The area shaded in yellow is the
19 acreage which is leased to or operated by EOG. The white
20 tract, being the west half of the southeast quarter, is the
21 Pogo tract.

22 And where we stand today is that EOG has drilled
23 a well, the well is located in the southwest of the
24 northeast. They have dedicated to that well a north-half
25 unit. The north-half unit consists of one federal lease.

1 The spacing unit is a standard spacing unit. The well is
2 drilled at a standard location, and the well was drilled
3 pursuant to an APD approved in November by the BLM. The
4 well was -- the drilling of the well commenced on January
5 the 9th.

6 So that's what we're talking about.

7 You also need to know that Pogo has proposed the
8 development of this section with standup units. They would
9 prefer a unit comprised of the east half of this section.
10 The one thing that both parties have agreed on is that the
11 well should be drilled on acreage that is owned by EOG.

12 And why is there this interest in the property?
13 The reason is very simple. EOG drilled and has completed a
14 very successful Morrow well in offsetting Section 24.

15 If we look at the history of the effort to
16 develop the acreage, I think you'll see that EOG has always
17 been up front about its plans to develop the acreage with
18 laydown units.

19 If we go to the letter behind Tab 2, you'll find
20 the letter sent by EOG to Pogo concerning the development
21 of this section back in September of the year 2000. The
22 first sentence reads: EOG Resources, Inc., proposes the
23 drilling of the captioned well and the creation of a
24 working interest unit covering all of Section 23, Township
25 22 South, Range 32 East, Lea County, New Mexico. The south

1 half of the section will be dedicated as the proration unit
2 for the well.

3 Now, the reason this is important, this letter,
4 is that EOG's first effort was to form a working interest
5 unit comprised of the entire section. They made it clear
6 they proposed a development with laydown units, and the
7 well they initially proposed was a well in the south half,
8 in a south-half unit.

9 The letter goes on, and we don't have to read all
10 of these letters. We can go slow without reading every
11 word. But they did go on to say that they requested an
12 early response because they needed time to obtain an
13 approved APD and a -- there was time required in locating
14 and scheduling a rig.

15 Pogo indicated it was not interested in this
16 proposal, and EOG proceeded with its plans to develop this
17 section with laydown units.

18 The letter behind Tab 3, dated October 24th, is
19 simply the second letter from EOG, again looking at a
20 south-half unit, and they sent a revised joint operating
21 agreement, again asking Pogo to participate in a well on a
22 south-half unit.

23 Keep in mind that if you have a south-half unit,
24 you also have a north-unit, and you'd be developing the
25 entire section with laydown units.

1 The next tab, Tab 4, has behind it a proposal
2 from Pogo dated November the 2nd, a little over a month
3 after the first proposal. And here Pogo says they believe
4 there should be an east-half unit with the well on the
5 Enron acreage in the northeast quarter of the section.

6 So agreement was reached between the parties, and
7 EOG on November the 7th filed an application to pool the
8 south half of the section. The case was set for hearing on
9 December the 7th.

10 The next letter, I think, is of particular
11 importance in this matter. It is a letter -- and it's
12 behind Tab 5 -- from EOG to Pogo, dated November the 16th
13 of last year. This letter, in the second paragraph,
14 advises Pogo that "EOG has filed with the BLM an
15 Application for Permit to Drill" for the captioned well,
16 that is, a well in the south half of the section.

17 The second sentence in the second paragraph
18 provides, "EOG has also filed an APD being 1660" feet from
19 the north line and 1980 feet from the east line "of Section
20 23 and being within a proration unit in the" north half of
21 Section 3 [sic].

22 EOG told Pogo November the 16th that it intended
23 to develop the north half with a well in the northeast
24 quarter. It went on in the next paragraph to tell them
25 that it believed that laydown units were the appropriate

1 way to develop this acreage.

2 The following day, the day after that letter, on
3 November the 17th, the Bureau of Land Management approved
4 an APD for a well on the north-half unit. It is a 100-
5 percent federal land unit. EOG has 100 percent of the
6 working interest, one federal lease, and it approves a well
7 on a standard spacing unit under OCD rules at an orthodox
8 well location.

9 On December the 19th, Pogo filed its application
10 to pool the east half of this section. And on December the
11 26th, which is a letter behind Tab 7, Pogo through its
12 attorney, Mr. Bruce, wrote me concerned that we were going
13 to go forward with a well on the north half and asked for
14 assurances that we would not do that. We have a rig ready,
15 we were building the location.

16 And on December 28th, I responded and advised Mr.
17 Bruce -- and it's on page 2 -- that "EOG has proceeded with
18 its plans for the development of its Morrow reserves
19 underlying Section 23 in accordance with its letter to Pogo
20 dated November 16, 2000. EOG's Application for Permit to
21 Drill has been approved by the Bureau of Land Management
22 covering a standard 320-acre N/2 spacing unit which is
23 comprised of 100% federal lands under one federal lease..."
24 And I enclosed a copy. I stated, "EOG will drill this
25 well. Accordingly, the NE/4 of Section 23 may not be

1 dedicated to an E/2 spacing unit in Section 23."

2 We told them we were proceeding with our plans to
3 develop the north half, that we have an approved APD and
4 that we intended to go forward with the drilling. And we
5 did commence the well on January the 9th and thereafter
6 filed a motion to dismiss the pooling application for the
7 east half. That motion was granted by the Division.

8 When you look at the facts -- and I believe it is
9 apparent, then, from September of last year, EOG advised
10 Pogo they would develop the acreage for laydown units, that
11 every action taken after that date was consistent with the
12 September letter and that the BLM approved a north-half
13 unit on September the 17th, and we had advised Pogo we were
14 seeking that the day before. We told them in November we
15 intended to drill, and we confirmed that to them in writing
16 on December the 28th.

17 But what did Pogo do? Well, as we later learned,
18 Pogo went to the Bureau of Land Management. And they tell
19 us, and told us in January in response to our motion to
20 dismiss, that they had talked with the BLM, and they
21 reported to us in January that the BLM said on January the
22 2nd that it would defer to the Division as to the proper
23 well units -- that is, standup or laydown -- in developing
24 the Morrow formation under Section 23.

25 I don't know if Pogo pursued that with the BLM

1 and attempted to get any action to rescind the APD. I
2 don't know if they told you, the OCD or the Oil
3 Conservation Commission about it. I do not believe they
4 told Enron. But I do know that the BLM took no action to
5 alter or in any way rescind the APD.

6 We believe that from the very beginning in
7 September, our plans have always been on the table where
8 everyone knew or should have known what we were doing. On
9 January the 2nd when they met with the BLM, they knew we
10 were planning to drill because we had told them we were.
11 We told them we were in September, we told them again
12 December the 28th. And although they may have thought
13 something else was going on, there was never one written
14 communication at any level from EOG inconsistent with what
15 we did or said in September.

16 And it puts a question on the table: Why did
17 Pogo just wait? Why didn't they pursue the matter at that
18 time with the OCD or BLM? We do not believe they did. But
19 if they did, the BLM did not alter the permit, and we
20 proceeded with an approved APD on a standard spacing unit
21 to drill a well at a standard location.

22 And from that moment forward, the equities in
23 that well and property were fixed. We paid for it all, we
24 took all the risk.

25 And they are now trying to come back and somehow

1 get you to alter or change the acreage dedicated to the
2 well and the equities in that property.

3 Once we found out that they had been to the BLM,
4 we also contacted the BLM, and we asked that they confirm
5 what had been reported to us by Pogo.

6 We got in response to that a letter which is the
7 last document in this packet. And what this is is a
8 summary from Mr. Bray, acting assistant field manager,
9 which defines what the rules are governing matters of this
10 nature by the BLM.

11 If you'll look -- and it's indented -- they cite
12 the Code of Federal Regulations, and then they summarize
13 that below. And the summary, I think, is more important
14 than the rule itself.

15 It says, and I'd like to read it: "As stated in
16 the regulation the objective of communitization is to
17 provide for the development of separate tracts which cannot
18 be independently developed or operated in conformity with
19 well spacing patterns established in the area. As a
20 general guideline communitization will not..." -- that's
21 their emphasis -- "...will not be authorized when a single
22 federal lease or unleased federal acreage can be fully
23 developed and still conform to an optional (North-South or
24 East-West spacing) pattern established by State order."

25 And then it goes on, and this is even more

1 important: "In certain instances the Bureau of Land
2 Management will approve a communitization even though the
3 lease can be independently developed in conforms [sic] with
4 state established spacing if adequate engineering or
5 geological data is presented to indicate that communitizing
6 two or more leases or unleased Federal acreage will result
7 in more efficient drainage of an area."

8 So what we have here is a summary from the BLM,
9 how they review any issue brought to them, I submit, in
10 terms of how to space Section 23.

11 But the important thing is that Pogo went to
12 them, talked to them, and no action was taken by the BLM
13 that in any way altered the approval we had to go forward
14 consistent with what we had been saying we were going to do
15 since September of last year.

16 Now, that's our view of the facts.

17 I want to talk with you a little bit about why
18 dismissal of their Application is appropriate, and I think
19 often in trying to -- Unfortunately now, you're stuck with
20 the lawyers, you have no technical people to help you. But
21 I think in terms of analyzing a question like this that has
22 legal issues involved, it's often important to go right
23 back to the beginning.

24 And when you look at the Oil Conservation
25 Commission you need to start at the beginning, and that is

1 with a Supreme Court decision in the 1950s, *Conoco vs. OCC*.
2 And in that the New Mexico Supreme Court found that the Oil
3 Conservation Commission -- you -- that the Oil Conservation
4 Commission is a creature of statute, and its powers are
5 expressly defined and limited.

6 In this case, Pogo sought an order pooling the
7 east half of Section 23, and they brought that Application
8 under the Oil and Gas Act. It's an action seeking an order
9 pooling certain lands. And compulsory pooling involves a
10 taking of someone's interest and combining it with someone
11 else for the drilling of a well. It's a taking. And as
12 such, for you to do that, you have to exercise the police
13 power of the state.

14 Now, you are not just turned loose to do what you
15 will or what you want with that. There are guidelines set
16 forth in statute. They're very definite preconditions to
17 the exercise of the pooling authority. And there are four
18 of them.

19 You have to have more than one interest owner in
20 a spacing unit. You would have that in Pogo's east half.

21 You have to have a party who has a right to
22 drill, proposes to drill and has been unable to reach
23 voluntary agreement with the other interest owners for the
24 development of the land.

25 We don't have agreement, condition four is met.

1 They propose to drill, condition three is met.

2 There are more than one interest owner in the
3 spacing unit, condition one is met.

4 But the next question and the place they fail is
5 whether or not they have the right to drill on an east-half
6 unit, and that condition cannot be met. The east half is
7 not available because the northeast quarter is already
8 dedicated to a well. It can't be pooled twice, it can't be
9 dedicated to two properties.

10 And so they simply cannot meet the conditions of
11 statute, and for that reason it was dismissed below, that
12 is the reason it must be -- in the technical, legal sense,
13 it must be dismissed now.

14 You're going to hear from Mr. Bruce, and he's
15 going to talk about the precedence for this kind of action
16 Well, I'm going to submit to you, there really is no
17 precedent that I can find for you hearing a case where
18 someone is trying to pool acreage already dedicated to
19 another well, trying to pool acreage on which a well has
20 already been drilled and completed in the subject
21 formation.

22 He's going to say, Many, many times you are
23 called on and have heard cases where people are disputing
24 whether you should have a laydown spacing unit or a standup
25 spacing unit, and we have a lot more of those cases before

1 you change the rules and, in effect, allow a well on every
2 160-acre unit.

3 But the truth of the matter is, you didn't ever
4 have a case where you were looking at a laydown unit and a
5 standup unit when one of those already had a well on it,
6 where somebody was trying to pool into their proposal
7 acreage already dedicated to another well.

8 You have precedent for this kind of action. I
9 learned it the hard way ten or fifteen years ago. I had a
10 case for a company called Terra Resources who wanted to
11 pool the north half of the section. We were pooling
12 Charlie Read, Read and Stevens. Mr. Read had the east
13 half, it was under one federal lease.

14 And I arrived with witnesses at the hearing, to
15 be advised by my good friend Mr. Kellahin that they had an
16 approved APD for an east-half unit, it was one federal
17 lease, they were drilling the well, and my application was
18 dismissed.

19 If you look in the last year, we've had cases
20 where BTA had an approved spacing unit for the south half
21 of the section. Southwest Energy and Santa Fe wanted to
22 drill an east-half standup. We had an APD, and I thought
23 that was going to trump everything, but it did not. We had
24 to go to hearing.

25 But after the hearing and after the order was

1 entered, BTA drilled its well and moved to dismiss. And
2 because it had drilled a well on a standard unit under an
3 APD, the application for the standup unit in the east half
4 was dismissed.

5 Same principle here: You can't pool into your
6 well acreage which I have dedicated to mine, a well which I
7 have already drilled.

8 There is another case, and it's referenced in the
9 memorandum which I filed, and it's combined Cases 12,393
10 and 12,423, Order Number R-11,413. That is again a case
11 where there were competing pooling applications. Santa Fe
12 Energy wanted the north half, Southwest Energy wanted the
13 west half. The BLM approved Santa Fe's north half, the OCD
14 dismissed Southwestern's west-half application.

15 There is precedent for what has been done. There
16 is precedent for what the Division has done. I submit to
17 you there is no precedent for what Mr. Bruce is going to be
18 asking you to do.

19 You know, if I look -- and I'm trying to cover
20 things, and I'm a little bit sparring with what I believe
21 is going to be said next, because although I may get to
22 speak again, I want you to know going in how we view
23 certain of the issues which I think you're going to hear
24 about.

25 I suspect you're going to hear that, you know,

1 that you've done something wrong, the Division did
2 something wrong, that correlative rights are being impaired
3 because they believe, in fact, that they have 25 percent of
4 the reserves in laydown units, they're only going to get an
5 eighth of the production under the section.

6 When you hear about the correlative-rights
7 argument, I want you to remember that the correlative-
8 rights argument, as it relates to this section, are tied
9 directly to the geological interpretation of the Morrow
10 formation under this section.

11 And if you bring six geologists in this room, I
12 submit there will be six interpretations. Some may be
13 close, none will be the same. And not to cast stones at
14 geologists, it is a valuable tool.

15 But when you're developing the Morrow formation,
16 there is only one time you really know what you've got and
17 that's when you drill the well.

18 Based on the best geological interpretation
19 available, EOG went out and drilled a well in the northeast
20 quarter of this section, the well we're talking about, and
21 the principal zone of interest was not present. We found
22 another zone and were able to bail this out.

23 At the present time we have another dispute going
24 with Pogo that's going to be heard within the next month.
25 It's in the offsetting section to the north and east, and

1 based on their geological interpretation of the area they
2 drilled a straight hole. They did not make a well. They
3 went and kicked off and drilled a lateral, and that one was
4 wet, and now they're trying again.

5 In our opinion, you cannot with the engineering
6 and geological data available on the Morrow formation,
7 being the complicated reservoir that it is, confirm that
8 one orientation is superior necessarily to the other. And
9 we submit to you that that is perhaps why Pogo didn't take
10 this to the BLM.

11 We think we have developed our property as a
12 prudent operator would develop the property. We have been
13 proposing a south-half unit to Pogo since September. We
14 have competing pooling cases before the Division right now
15 to develop the south half, and we think what we have done
16 at all times has been straightforward, in good faith and
17 certainly made known to Pogo as we have gone through this
18 exercise.

19 Pogo asked the OCD to take actions which we
20 submit are contrary to the Oil and Gas Act and are
21 certainly contrary to federal regulation, actions that if
22 you decide to pursue, start looking at whether or not
23 you're going to set aside the BLM APD, which is in effect
24 what you're being asked to do, they are asking you to do
25 things which we think run right square into federal

1 regulation.

2 They asked the Division to do this. The Division
3 refused their invitation. We hope the Commission will do
4 likewise, and we ask you to affirm the dismissal of this
5 pooling order.

6 CHAIRMAN WROTENBERY: Thank you, Mr. Carr.

7 MR. BRUCE: I don't have quite as much paperwork,
8 and I am grateful that Mr. Carr didn't cite too many of my
9 own cases against me.

10 MR. CARR: I do think he represents Southwest
11 Energy.

12 MR. BRUCE: To the members of the Commission,
13 I've handed you a plat, and I'll go into this a little bit
14 first before I get into my argument. And this is a portion
15 of the same plat that Mr. Carr introduced under his Tab 1,
16 and I've highlighted a few things. I won't go through
17 everything at once.

18 But again, in Section 23 what's highlighted in
19 black is Pogo's proposed east-half unit. The black cross
20 over in the southeast of the northeast is Pogo's initial
21 well proposal.

22 What EOG proposed, if you look in the northwest
23 of the southeast, the yellow dot, that is the well that EOG
24 proposed for a south-half unit. That well has not been
25 drilled yet.

1 Slightly to the east of that is a green dot.
2 That is a well that Pogo has proposed to EOG for a
3 subsequent well in this section.

4 And then highlighted in pink is the north-half
5 unit that EOG drilled with its Red Tank "23" Federal 1 N
6 well, the one that's highlighted in pink.

7 That's just to set up what we're here about
8 today.

9 This matter started when EOG proposed the well in
10 the northwest of the southeast of Section 23, the well
11 marked in yellow. That well was for a south-half unit, and
12 the pooling hearing was set for December 7th. Pogo
13 proposed the east-half unit outlined in black with its well
14 marked with the black X.

15 EOG also permitted the well highlighted in pink,
16 and that well was commenced -- I'm not sure of the exact
17 date, but the site work was commenced in late December. It
18 has been drilled and completed.

19 As Mr. Carr said, because of the commencement of
20 that well, EOG moved for the dismissal of Pogo's pooling
21 case on the east half of Section 23, which motion was
22 granted by the Division, without a hearing on the merits.
23 That's why we're here today.

24 And Mr. Carr will get a chance to rebut me, but
25 indeed he's correct, I am going to cite correlative rights

1 and a few other issues. As is often mentioned in these
2 hearings, under the Oil and Gas Act it's the duty of the
3 Division and the Commission to prevent waste and to protect
4 correlative rights.

5 Pogo contends that this duty is not met when
6 there is no hearing on the technical evidence in a case
7 like this. We believe that you have to hear the
8 engineering, the geology and the land evidence. And as a
9 result, the Division's order should be reversed and the
10 parties should come to hearing and present evidence.

11 It's EOG's contention that first the BLM had
12 approved its APD for a north-half unit and, second, since
13 the well was spudded, too bad. Therefore, there's no need
14 to hear Pogo's pooling case on the east half of Section 23.
15 The Division agreed with that.

16 Now, not many of these cases reached the
17 Commission, but certainly before the Division there are
18 disputes just like this. Sometimes federal land is
19 involved, sometimes fee land is involved, sometimes state
20 land is involved or a mixture of all three. But parties
21 often disagree over who should operate a well, over where
22 the well should be located and what the proper orientation
23 should be for the well unit.

24 If the Commission upholds the Division's order in
25 this case, then in the future, anytime there is a dispute

1 over those matters, then the first party to start drilling
2 a well wins. And that will trump all of the Division's
3 obligations to protect correlative rights, to review the
4 technical evidence and to make a decision based on that
5 evidence.

6 The geology will go out the window, the good
7 faith efforts to pool will go out the window, the issue of
8 who should operate the well, who has a greater interest in
9 the well, those will never be determined by the Division,
10 because the first party to start drilling wins. End of
11 story.

12 Frankly, if the Commission upholds the decision
13 of the Division, then in the future I'm going to inform my
14 clients that when there are disputed proposals and a party
15 has the right to go ahead and drill a well -- And I don't
16 dispute that EOG had the right to commence this well
17 because it's on its property.

18 But anytime in the future when this occurs I'm
19 going to tell my client, Go out and drill a well, because
20 you'll get to operate it, you'll get your well unit, and
21 you'll get your location. And that is clearly, regardless
22 of the merits of the geology and engineering involved in a
23 particular case.

24 Furthermore, if that is the Commission ruling
25 today, I will expect the Division and the Commission to

1 uphold the rights of my client if they go out and drill
2 first, because the precedent has been set.

3 Now, I don't think that's correct, I don't think
4 that's the way it should happen, but if the Commission
5 upholds the ruling of the Division, then you have
6 established a precedent.

7 Now, what should happen, I believe, is set forth
8 in Commission Order Number R-10,731-B, which I cited in the
9 memo I submitted way back in January. In that order the
10 Commission spelled out the matters to be decided by the
11 Division or the Commission in competing pooling cases.
12 Those matters include geology, good faith negotiations,
13 risk factors and prudent operations.

14 But by letting the Division's ruling in this case
15 stand, the Commission is ignoring not only its statutory
16 obligations but its own policies. Pogo's position is that
17 the technical evidence should be reviewed to determine well
18 location and other matters.

19 Now, Mr. Carr cites the BLM regulation, and that
20 regulation states what it states.

21 However, there's a couple of items. In, I guess
22 it's under Tab 9 of Mr. Carr's handout, the March 14th
23 letter from the BLM, it cites the regulation, 43 CFR
24 3105.2-3.

25 Right below that Mr. Bray states that, "As a

1 general guideline communitization will not be authorized
2 when a single Federal lease...can be fully developed", et
3 cetera.

4 Then he goes on to state, "In certain instances
5 the Bureau of Land Management will approve a
6 communitization agreement even though..." one federal
7 "...lease can be independently developed."

8 My contention is that the final paragraph of this
9 letter does not support Mr. Carr's assertion.

10 In Exhibit 2 attached to my handout there's an
11 affidavit by Terry Gant who's a landman at Pogo. He and
12 Gary Huce, a geologist, met with Mr. Simetz [sic] and Mr.
13 Bray of the BLM in Roswell on January 2nd. The BLM
14 personnel stated that in this case, the one before you
15 today, they would defer to the Division as to the proper
16 well units in developing the Morrow.

17 So what Pogo was in was a -- Mr. Carr is blaming
18 Pogo for delay in not seeking otherwise, but Pogo thought
19 it would be entitled, it would be going forward to a
20 pooling hearing in December or January and proceeded
21 accordingly. It believed that the Division had the
22 authority -- and in this case the BLM said the Division did
23 have the authority to determine standups. However, it's in
24 a Catch-22. The BLM says it will defer to the OCD, but the
25 OCD won't make a decision. It just dismisses the case

1 without hearing the evidence.

2 Where the BLM is willing to defer to the
3 Division's decision, I think the Division should hear the
4 evidence and make that decision. I don't think that's a
5 complicated position.

6 Now, one thing about -- If I can refer you back
7 to the little handout I gave you on the plat, why is this
8 so important?

9 If you look in Section 24, there's an EOG well
10 which I've highlighted in yellow. It's in the northeast of
11 the northwest quarter. I've put a red mark around it.
12 That well was completed by EOG last fall, I'm not sure of
13 the exact date. That well has been producing at a rate of
14 35 million cubic feet of gas per day since it was
15 completed. I think it was completed at about 40 million a
16 day, it declined somewhat. Recently, EOG has perforated
17 the tubing and is flowing up the backside to keep its rate
18 up at about 35 million a day.

19 Now, why was Pogo interested in going forward in
20 this case? Well, because it believed it had the better
21 locations and it needed those locations to protect its
22 correlative rights when you have a 35-million-a-day well
23 offsetting you.

24 The other items on this map, the green marks are
25 Pogo wells or Pogo's proposed wells. The yellow marks are

1 EOG's wells -- the yellow or pink are EOG's wells or EOG's
2 proposed wells.

3 Pogo simply wants to get wells drilled at the
4 best possible -- And I know I'm probably bending into
5 testimony here, but it's -- the reason -- I want to
6 emphasize the reason why it thinks the Commission or the
7 Division should hear these matters.

8 Pogo is simply trying to get some wells
9 developed, drilled, to develop its acreage. And when a
10 case is dismissed and it doesn't have the right to put on
11 the evidence, it feels like its correlative rights -- it
12 believes its correlative rights are being adversely
13 affected, and it believes that when the Commission does not
14 -- or the Division does not hear these cases, how can it
15 make a determination on those correlative rights issues
16 without hearing the technical evidence?

17 Now, EOG blames Pogo for delay in, I guess,
18 dealing with the BLM in other matters. It has been trying
19 to get these wells drilled.

20 First of all on its east-half hearing, it could
21 have set a hearing for December on its east-half matter,
22 but Pogo was informed by EOG that it didn't have witnesses
23 available for the -- that EOG did not have witnesses
24 available for the December 21st hearing, so it agreed, no
25 fight, it agreed not to go forward and seek a hearing on

1 December 21st. So as a result, that hearing was scheduled
2 for January -- I forget the date, 11th.

3 In the meantime, EOG goes forward and starts
4 drilling its well. Now, we think there's some basic
5 unfairness there, and we're all big boys and girls in this
6 business and we know that things don't always go our way.
7 But nonetheless, to use a delay in the hearing process to
8 go spud a well and then to say you lose because we've
9 spudded the well before the hearing, we don't believe
10 that's proper.

11 As far as EOG's assertion that they've taken all
12 the risk and that they drilled their well and that
13 therefore we shouldn't be allowed into it, I have just two
14 things to state about that. First of all, EOG knew we were
15 filing a pooling hearing. They didn't have to go ahead and
16 drill that well. Their wound, if there is any wound, is
17 self-inflicted.

18 Furthermore, the hearing that we had set that we
19 hoped to go forward with on January 11th, certainly there
20 would have been an order issued before that well had ever
21 reached total depth. When the matter was dismissed, I
22 immediately filed a request for hearing *de novo*, which for
23 various reasons wasn't set until today. What I'm saying
24 is, Pogo was not responsible for the delay, and we don't
25 think that should be used as a reason to affirm the

1 Division's order.

2 As Mr. Carr said, the Commission is a creature of
3 statute. As I said, one of those statutes requires the
4 Commission to protect correlative rights. My question is
5 simply this: How can that obligation be met without taking
6 evidence on a case like this

7 As far as Mr. Carr's statement that the northeast
8 is no longer available for a well unit because they drilled
9 the well, that still gets back to my first issue. If you
10 allow someone to go drill and trump the pooling statutes,
11 then you'll never reach the issue of correlative rights,
12 because whoever drills first wins.

13 If the Commission allows EOG to succeed in its
14 attempt to short-circuit the pooling proceedings by
15 commencing a well before a hearing, the important
16 provisions of the pooling statutes will be negated. Pogo
17 asks that you reverse the decision of the Division and hear
18 the technical evidence in this matter. Otherwise we
19 believe the Commission is abdicating its statutory
20 obligations.

21 Thank you.

22 CHAIRMAN WROTENBERY: Thank you, Mr. Bruce.

23 Mr. Carr, did you want to respond?

24 MR. CARR: I'd like to. I mean, I'm troubled by
25 this notion that Mr. Bruce can sit here and say, He who

1 drills first wins. Wins what?

2 When you own a spacing unit, if you have 100
3 percent of it, when your technical data tells you there is
4 recoverable production or reserves under that acreage, when
5 you have an approved APD from the BLM, it's 100-percent one
6 federal lease, you're proposing a well on a standard unit
7 under the rules of the state regulatory agency, your well
8 is at a standard location, for five months you've been
9 telling the other interest owners in the section you're
10 going to drill, you have confirmed to them in writing -- in
11 this case November the 16th and December the 28th -- you're
12 going to drill December the 9th, and no one tampers with
13 your permit and you drill, if that's who drills first wins,
14 then I will tell you, that's the way it is.

15 When you have a right to drill, when you propose
16 to drill and you go out because you own it all and you
17 drill in accordance with the rules, yes, if that's winning,
18 that's winning. I would submit to you, that's prudent
19 operations developing reserves which you own.

20 And then we come in and we try and confuse what
21 we're talking about. Mr. Bruce said, Well, look at Order
22 R-10,731-B where you have competing pooling applications.
23 There's one flaw in that, we don't have competing pooling
24 applications, we didn't pool the north half. We had it, we
25 owned it, and we drilled it under the rules. That is an

1 inapplicable order. It doesn't relate to what is before
2 you.

3 He says, Look at the BLM regulations. The BLM
4 regulations say, yes, in certain circumstances even if one
5 person has it all, we may authorize the unitization, but it
6 goes on and it says if there is sufficient engineering or
7 perhaps geological data to support that decision. I didn't
8 hear Mr. Bruce say that Pogo ever presented that kind of
9 information to the BLM. Why did they wait?

10 They said, Well, we talked to them and the BLM
11 said it would defer to the OCD on this. Did the BLM do
12 anything? Well, you know if they contacted you. I know
13 they did not contact us.

14 They decided that that gave them some sort of a
15 protection. They were in a private meeting, we weren't
16 there, you weren't there. They talked to the BLM, they
17 didn't tell any of us about it, and yet somehow they
18 thought we'd know.

19 And this private meeting in which we didn't
20 participate would override the letters we had been writing
21 them for five months, telling them what we were going to
22 do. On this they ask you to take an action which runs
23 right square into the jurisdiction of the BLM and overturns
24 their decision.

25 Pogo says it pursued this because they thought

1 they had better locations, that's why they were concerned.
2 But their locations were on EOG acreage. You might note
3 that.

4 They say, Well, we're concerned, we think, yes,
5 our correlative rights are not being protected because we
6 don't get a hearing when our neighbor develops his own
7 acreage under the rules, an acreage in which we have no
8 interest.

9 But you know, when you talk about correlative
10 rights, one of the problems everyone always has is, they
11 never read the definition. The term is defined by statute.
12 Correlative rights are the opportunities afforded to each
13 interest owner in a pool to produce without waste their
14 fair share of the recoverable reserves in the pool.

15 And the recoverable reserves, their share, is
16 defined by statute also. It says, Substantially in the
17 proportion that the quantity of recoverable oil or gas or
18 both under the property, their property, bears to the total
19 recoverable oil or gas in the pool. Their correlative
20 rights cannot be impaired.

21 We have applications pending to drill on their
22 property to get what is under their property, not what's
23 under ours. Their correlative rights are not being
24 impaired.

25 They forget what the definition is, they ask you

1 to override a BLM decision, they say we have competing
2 pooling applications when we do not. And then they pretend
3 like because we develop our acreage, we're somehow beating
4 them, and we are not.

5 We ask that the order to dismiss be affirmed.

6 MR. BRUCE: I would just like to say one thing,
7 and then Mr. Carr can rebut me, but there were competing
8 pooling applications, south half versus an east half.

9 MR. CARR: Not on the acreage we developed.

10 CHAIRMAN WROTENBERY: Thank you. We might just
11 wait just a second till...

12 Thank you very much. We would at this point --
13 We might just take a break, yeah. We may go into closed
14 session a little while after -- Oh, she's back here.

15 What I'd like to do at this point is go into
16 closed session so that we can deliberate for a few moments
17 on the motion we just heard and the argument on that
18 motion.

19 I'll entertain a motion to close this session.

20 COMMISSIONER BAILEY: I so move.

21 COMMISSIONER LEE: Second.

22 CHAIRMAN WROTENBERY: All in favor say "aye".

23 COMMISSIONER BAILEY: Aye.

24 COMMISSIONER LEE: Aye.

25 CHAIRMAN WROTENBERY: Thank you, we're off the

1 record.

2 (Off the record at 12:10 p.m.)

3 (The following proceedings had at 12:25 p.m.)

4 CHAIRMAN WROTENBERY: Okay, let's go back on the
5 record, and I'll entertain a motion that we go back into
6 open session.

7 COMMISSIONER BAILEY: I so move.

8 COMMISSIONER LEE: Second.

9 CHAIRMAN WROTENBERY: All in favor say "aye".

10 COMMISSIONER BAILEY: Aye.

11 COMMISSIONER LEE: Aye.

12 CHAIRMAN WROTENBERY: Aye. And just for record
13 purposes, let me note that the only matter that we
14 discussed while we were in closed session was Case 12,568,
15 the Application of Pogo Producing Company for compulsory
16 pooling in Lea County, New Mexico, and specifically the
17 motion that we're considering today, which was filed by EOG
18 Resources, Inc., to dismiss this Application.

19 And sorry you waited, gentlemen, for so long, but
20 what we've decided to do is take this matter under
21 advisement and we'll rule on it at the April 27th
22 Commission meeting.

23 (Thereupon, these proceedings were concluded at
24 12:26 p.m.)

25 * * *

CERTIFICATE OF REPORTER

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

I, Steven T. Brenner, Certified Court Reporter and Notary Public, HEREBY CERTIFY that the foregoing transcript of proceedings before the Oil Conservation Commission was reported by me; that I transcribed my notes; and that the foregoing is a true and accurate record of the proceedings.

I FURTHER CERTIFY that I am not a relative or employee of any of the parties or attorneys involved in this matter and that I have no personal interest in the final disposition of this matter.

WITNESS MY HAND AND SEAL April 7th, 2001.



STEVEN T. BRENNER
CCR No. 7

My commission expires: October 14, 2002

STEVEN T. BRENNER, CCR
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