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PLEASE REPLY TO SANTA FE

July 26, 2002

HAND-DELIVERED

Mr. Michael Stogner
New Mexico Oil Conservation Division
1220 South St. Francis
Santa Fe, New Mexico 87505

Re: NMOCD Case No. 12888; Application of the Fruitland Coalbed Methane Committee

Dear Mr. Stogner:

Enclosed for filing is an original and two copies of Phillips Petroleum Company's Response to Burlington's Motion to Compel.

Thank you for your assistance.

Very truly yours,

MILLER, STRATVERT & TORGERSON, P.A.

J. Scott Hall

J. Scott Hall

JSH/glb
Enclosures

02 JUL 26 2002
01:10:46
J. Scott Hall

BEFORE THE
OIL CONSERVATION DIVISION

NEW MEXICO DEPARTMENT OF ENERGY, MINERALS AND NATURAL RESOURCES

**IN THE MATTER OF THE APPLICATION OF THE
FRUITLAND COALBED METHANE STUDY COMMITTEE
TO AMEND RULES 4 AND 7 OF THE SPECIAL POOL
RULES AND REGULATIONS FOR THE BASIN-FRUITLAND
COAL GAS POOL AND FOR THE TERMINATION OF THE
CEDAR HILLS FRUITLAND BASAL COAL GAS POOL AND
THE CONCOMITANT EXPANSION OF THE BASIN-FRUITLAND
COAL GAS POOL, RIO ARRIBA, SAN JUAN, MCKINLEY AND
SANDOVAL COUNTIES, NEW MEXICO.**

CASE NO. 12888

**PHILIPS PETROLEUM COMPANY'S RESPONSE
TO
BURLINGTON'S MOTION TO COMPEL**

Burlington's Motion To Compel represents that it seeks the disclosure of certain data which it requested during the July 10th Examiner hearing relating to the drainage area calculations for wells that were the subject, in part, of Phillips's expert petroleum engineer's testimony. At the hearing, Burlington's counsel indicated that the well location, pressure and drainage calculation data would be used to check the Phillips engineer's calculations. During the hearing, and since, Phillips has provided most of the data requested (and more) and is working toward supplying a number of drainage area calculations.¹

However, in its Motion, Burlington also embarks on an entirely new quest for additional data that was not requested at the hearing.

Burlington now seeks the additional production of data relating to:

- (a) *The geographic location of the 81 Coal Sample Wells shown on Phillips Exhibit No. 7;***

¹ BP recently provided its drainage calculations on July 23rd.

- (b) *The isotherm data (Langmuir Volume and Langmuir Pressure) for each of the 81 Coal Sample Wells (Phillips Exhibit No. 7);*
- (c) *Material Balance Calculations for all 85 wells shown on Phillips Exhibit No. 10; and*
- (d) *“[A]ll facts and data”, otherwise unspecified, underlying the expert witness’s opinion.*

These additional materials and Burlington’s open-ended demand for “all facts and data” go far beyond what it requested at the hearing and what Phillips was directed to provide. Burlington threatens that if the Division doesn’t give it what it wants, it will file a motion to “reopen” the hearing and move to strike our witness’s testimony. Moreover, Burlington’s recountal of the facts is incorrect. A more accurate recitation of the pertinent factual background follows:

Factual Summary:

1. The Fruitland Coalbed Methane Committee deliberations have focused on infill drilling within the Basin-Fruitland Coal Gas Pool since 1999. Among others, representatives from Burlington, BP-Amoco and Phillips have been active participants on the Committee.
2. For a number of years now, Burlington has promoted definitional boundaries for the High Productivity Area within the pool, which it has variously referred to as “the Fairway” or the “Over-pressured Area”. (See, *inter alia*, NMOCD Case No. 12296; Application of Burlington Resources Oil and Gas Company To Amend Rule 7 of the Special Rules and Regulations for the Basin-Fruitland Coal Gas Pool; Order No. R-8768-B.)²

² Finding Para. 15 of Order No. R-8768-B provides: “Burlington provided technical evidence demonstrating that: ... (c) nearly all of the acreage in the over-pressured area has been developed and adequately drained. The area drained by individual wells in the over-pressured area of the pool is approximately 320 acres; ... (h) the under-pressured area is not fully developed and is the area of primary concern for future development under the proposed setback changes. The area drained by individual wells in the under-pressured area of the pool is approximately 160 acres.”

3. Initially, the Committee examined the propriety of infill development across the entirety of the pool. Within the last two years, the Committee reached a consensus on the establishment of a boundary outlining the High-Productivity and Low-Productivity Areas within the pool. Burlington, BP and Phillips all agreed. (See Committee Exhibits 5 and 7, [Exhibits 1 and 2 attached].)

4. In the Low-Productivity Area, it was the consensus of the Committee that infill drilling should proceed.

5. In the High-Productivity Area, it was the Committee's consensus that additional study was needed before unlimited infill development could proceed throughout the entirety of that area and that infill drilling rules for the Fairway would be the subject of a separate application at a later time.

6. At no time during the Committee's deliberations did Burlington disclose its plans for a 150-well infill drilling program within the pool.

7. Mr. Kellahin attended one of more of the Committee's meetings.

8. The Committee's Application in this case was filed on June 14, 2002. The Application was drafted and filed by Mr. Kellahin. The Application set forth two alternative requests: (1) to increase the well density throughout the entire pool to allow for a maximum of 2 wells per 320 acre gas proration and spacing unit; and (2) "In the alternative", the adoption of the increased density rules for the Low Productivity Area, and for special administrative procedures for infill drilling in the High Productivity Area.

9. At approximately the same time the Committee's Application was being drafted, Burlington changed its position. Burlington disavowed the Committee consensus and began to promote unbridled infill development throughout the entirety of the pool without regard to the

High-Productivity Area boundary it had previously promoted in this and other proceedings. (*See* Case No. 12651; Application of Burlington Resources for Approval of a Pilot Project; Order No. R-11639, Finding Paragraphs 9 [a],[b], and [c]. *See, also*, Case No. 12296; Order No. R-8768-B.)

10. Throughout the Committee's deliberations to the present, Phillips's position has remained unchanged: It has adopted the Committee's position that (1) A boundary defining the High-Productivity Area should be established, (2) infill development should proceed in the Low-Productivity Area, and (3) additional study and different procedures are warranted for the High-Productivity Area.

11. In late June of 2002, Phillips Petroleum Company retained new counsel to represent it in this proceeding.

12. Prior to the hearing on the Application, there had been no indication to the Division that Burlington was changing its position.

13. Burlington filed no Pre-Hearing Statement before the hearing (or at least it was not provided to Phillips).

14. Phillips's Pre-Hearing Statement was filed on July 5, 2002 and was faxed to Burlington's counsel that same day. Phillips's position was clearly set forth in its Pre-Hearing Statement.

15. On July 2, 2002, before the hearing, Phillips provided its initial set of exhibits to the Committee (and Burlington). Included in those exhibits was Exhibit No. 10 showing an average drainage radius of 389 acres (Distribution of Calculated Drainage Areas In High Productivity Area – 85 Wells). The exhibit was the focus of Burlington's July 10th hearing request for certain underlying data.

16. During the course of the July 9th and 10th hearing in Farmington, Burlington's position was ambiguous and confusing. Burlington purported to support the Committee position, but at the same time, eschewed the creation of special rules or procedures for the High-Productivity Area of the pool, claiming that no correlative rights issues existed there and citing to Amoco's proposal for similar rules in the recent Blanco-Mesaverde pool rules case. In the end, it was clear that Burlington advocated unbridled infill drilling throughout the pool. Correspondingly, Burlington aggressively attacked Phillips's position in support of maintaining the High Productivity Area rules and its witness's testimony thereon.

17. At the hearing on July 10th, the direct examination of Phillips's petroleum engineering witness, Steve Jones, was completed. The exhibits created by Mr. Jones, Phillips Exhibits 1 through 18, were offered and accepted into evidence without objection from Burlington's counsel.

18. During cross-examination of Mr. Jones, Burlington's counsel asked for certain data utilized by Mr. Jones in the compilation of Phillips Exhibit 10. Exhibit 10 demonstrates the distribution of calculated drainage areas for 85 wells in the High Productivity Area for drainage areas of <160, 160-320, 320-480, 480-640, 640-820 and 820-980 acres. Mr. Kellahin specifically asked for the following:

- (1) *A map or other evidence showing the geographic distribution of well locations;*
- (2) *The pressure data for 85 wells; and*
- (3) *Drainage area calculations for the approximately 25 wells shown on Exhibit 10 with drainage areas between 160 to 320 acres.*

19. The stated purpose of the request was not for Mr. Kellahin to pursue cross-examination, but for Burlington's engineer to take the data and later "duplicate" the drainage calculations and reach his own conclusions. (See Transcript Excerpt, Exhibit 3.)

20. Mr. Kellahin asserted that he was entitled to demand the data under the provisions of Rule 11-705 of the New Mexico Rules of Evidence.

21. We objected to the Burlington request, noting that it was untimely following the introduction of the Exhibit without objection. We further objected to Mr. Kellahin's mischaracterization of Rule 11-705, noting that it could not serve as the basis for an open-ended request in view of the stated purpose for which the data were sought. We further cautioned that allowing post-hearing discovery would delay the closure of the record.³

22. Throughout the course of the hearing, Burlington requested, and the Examiner directed, Phillips to provide three specific types of data to Burlington:

- (1) A map or other evidence showing the geographic distribution of well locations;*
- (2) The pressure data for the 85 wells; and*
- (3) Drainage area calculations for the approximately 25 wells with drainage areas between 160 to 320 acres.*

23. Phillips agreed on the record to provide the three types of data requested.

24. Burlington did not request any additional data during the course of the hearing.

25. Burlington specifically did not request any data, including Langmuir Volume data, on the **81 coal sample wells** that were the subject of Phillips Exhibit 7.

26. On July 10, 2002, during the hearing, Burlington's counsel was provided with a disk containing the requested pressure data for the 85 wells. In addition, even though it had not requested it, Burlington was provided with the net pay information for each of the 85 wells.

³ Mr. Kellahin's strange representation that we indicated we had never heard of Rule 705 and doubted its existence is simply wrong.

27. On July 11, 2002, it was discovered that the disk provided the day before did not contain the well identification information. Accordingly, that information was retrieved and faxed directly to Burlington's counsel at 2:07 p.m., that same day. (See Exhibit 4, attached.⁴)

28. On July 12, 2002, we learned that Burlington was seeking additional data: *Langmuir Volume, Langmuir Pressure, Average Coal Density and Cumulative Gas Production data on the 85 wells*. Burlington also attempted to obtain Phillips's *Material Balance "Spreadsheets"*. (See Exhibit 4, attached.)

29. Burlington's July 12, 2002 post-hearing request for additional data made no mention of data relating to the **81 coal samples** referenced in Phillips Exhibit 7. (See Exhibit 4, attached.)

30. On July 12, 2002, we addressed Burlington's request for additional data directly to its counsel. (See faxed Correspondence dated July 12, 2002, Exhibit ____.) Burlington's counsel was advised that the values for Langmuir Volume and Average Coal Density were provided through testimony at the hearing. It was further noted that Langmuir Pressure had not been requested, but that value (325 psi) was provided anyway.

31. In our July 12th correspondence, we advised that we would not provide information that exceeded Burlington's original request or that exceeded the stated purpose for which the data was sought during the hearing. Burlington's counsel was also invited to contact the undersigned to discuss any aspect of the matter. No call was received.

32. On July 16, 2002, Burlington filed its Motion To Compel.

33. In its July 16th Motion, Burlington demanded for the first time additional data that had not been requested before. This new demand for additional data includes:

⁴ Many of the wells identified are Burlington-operated wells.

- (a) The geographic location of the 81 Coal Sample Wells shown on Phillips Exhibit No. 7;*
- (b) The isotherm data (Langmuir Volume and Langmuir Pressure) for each of the 81 Coal Sample Wells (Phillips Exhibit No. 7);*
- (c) Material Balance Calculations for all of the 85 wells shown on Phillips Exhibit No. 10, (not just the 25 wells shown to be draining between 160-320 acres); and*
- (d) "All facts and data" underlying the expert witness's [unspecified] opinion. (Presumably, any opinion expressed in connection with Phillips Exhibits 1 through 18.)*

POINTS AND AUTHORITIES

Throughout this proceeding, Burlington has attempted to represent that its and the Coalbed Methane Committee's position are one and the same. In fact, Burlington has mischaracterized its position. It is more accurate to say that Burlington is, in substance, opposed to (1) the creation of a High-Productivity Area boundary within the pool, and (2) the establishment of administrative procedures that would oblige it to provide notice of an APD to anyone other than itself where it is the operator of a spacing unit adjacent to a proposed infill well, or where the well is proposed within a federal unit it operates. The testimony at the hearing established that the original Committee consensus favored maintaining the High-Productivity Area boundary and special notice rules. The hearing testimony also made clear that Burlington perceived such a position as adverse to its own, and it accordingly pursued aggressive cross-examination of the Phillips witness.

Burlington has similarly misstated the facts, which it claims support its Motion to Compel and its open-ended discovery. Burlington mis-represents that all the data sought via its Motion was (1) requested at the hearing, and (2) was legitimate cross-examination under Rule 11-705. Burlington is wrong on both counts. At the hearing, Burlington sought only pressure

data for the wells reflected in Phillips Exhibit 10, well location information, and drainage area calculations for those 25 wells that are draining between 160 and 320 acres. The stated purpose of the request was for Burlington's engineers to take the raw data and then check the Phillips calculations so Burlington could draw its own conclusions. The stated purpose for which Burlington requested the data is outside the scope and purpose of legitimate cross-examination contemplated by Rule 11-705.

Rule 11-705 provides that an expert may be required to disclose the underlying facts or data supporting his conclusions **on cross-examination**. Rule 11-705 N.M.R.Evid. 2002. The testimony is clear that the information was not sought as part of cross-examination of Mr. Jones (Phillip's expert) to be used at the hearing to query Jones himself about the basis of his conclusions, but was instead intended to allow Burlington to provide the data to Burlington's own experts, to "test the integrity of [this] conclusion." Hearing Transcript, pp. 17, ln. 3-7.

Phillips argued at the hearing that Burlington had admitted the Exhibit without objecting to its admission into evidence (and without voir dire of the witness concerning the basis for the Exhibit). Phillips also argued that Rule 11-705 was inapplicable because the data sought was not for the purpose of cross-examination, but for the preparation of rebuttal testimony. Rule 11-705 pertains to cross-examination, not general pre-hearing discovery. See, e.g. Rule 1-026 NMRA 2002.

Exhibit 10 was provided to Burlington a week prior to the hearing. No request was made by Burlington to Phillips prior to the hearing regarding data underlying the Exhibit. It is clear that Rule 11-705 (if it applies in this instance) is to "place the full burden of exploration of the facts and assumptions underlying the testimony of an expert witness squarely on the shoulders of opposing counsel's cross-examination." Smith v. Ford Motor Co., 626 F.2d 784, 793-4 (10th Cor.

1980). To offset this burden, counsel must avail himself of discovery afforded under Rule 26. Id. Thus, while raising its "right" to cross-examine Jones under Rule 11-705 about underlying data at the hearing, Burlington had already failed to seek pre-hearing discovery allowed under Rule 1-026 and Rule 1211 of the Division's rules. Now, Burlington seeks to wedge open continued discovery claiming Rule 11-705 cross-examination continues onwards. In doing so, Burlington eviscerates the scheme carefully crafted in the Rules: Rule 1-026 covers pre-trial discovery of expert testimony; Rule 11-705 provides cross-examination on the basis of such discovery. Rule 11-705 provides no basis for relief in this instance.

The additional data sought in the Motion To Compel, the geographic location of the 81 Coal Sample Wells; The isotherm data for each of the 81 Coal Sample Wells; the Material Balance Calculations for all of the 85 wells on Exhibit No. 10, (not just the 25 wells shown to be draining between 160-320 acres); and "All [the] facts and data" underlying the expert witness's [unspecified] opinion, were not requested by Burlington's counsel at the hearing, either expressly or implicitly. Moreover, the evidentiary basis for Burlington's assertion that it is entitled to these additional data is *nil*. Having failed to seek it either prior to or during the hearing, Burlington cannot now seek to cure its errors and omissions after the fact. To allow Burlington to do so is nothing other than post-hearing discovery which neither the Division's rules nor New Mexico's judicial rules permit.

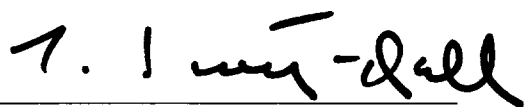
Conclusion:

The basis for Burlington's Motion to Compel is mis-founded. Phillips has delivered the data Burlington requested at the hearing and that the Examiner directed be provided. Yet, that has not been enough to satisfy Burlington; It wants more.

Burlington has improperly invoked the processes of the Division to obtain data that (1) exceeds its original request, and (2) exceeds the purpose for which it was requested. Rather than engaging in "cross-examination of an expert", or utilizing underlying data to "check calculations", Burlington is instead engaging in inappropriate post-hearing discovery. Burlington's reliance on Rule 11-705 is both inapposite and improper.

The Division should deny Burlington's motion outright and further order that Burlington immediately cease its improper efforts to obtain additional post-hearing data or information.

MILLER, STRATVERT & TORGERSON, P.A.

By: 
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Post Office Box 1986
Santa Fe, New Mexico 87504
(505) 989-9614

Attorneys for Phillips Petroleum Company

Certificate of Mailing

I hereby certify that a true and correct copy of the foregoing was sent to counsel of record by facsimile transmission on the 25 day of July, 2002, as follows:

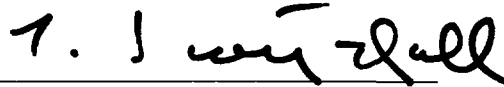
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A handwritten signature in black ink, appearing to read "J. Scott Hall", written over a horizontal line.

J. Scott Hall

BASIN FRUITLAND COALBED METHANE COMMITTEE

- January 11th, 2001 Organizational meeting of pilot study group led by Ralph Hawks at offices of BR Farmington. Discussed separation of low and high rate areas.
- January 18th, 2001 Line map presented by BR along with plan for separate layer pilot test wells.
- April 12th, 2001 Presentation of reservoir simulations by: John Mansoori, BP-Bohannon Canyon. Vu Dinh, BP-Carracas Canyon Unit. Robin Tracy, XTO-T28N,R11W area. BR presented plan for 5 well pilot in low rate area.

BASIN FRUITLAND AND COALBED METHANE COMMITTEE

March 14th, 2002

Committee approved including the Cedar Hill Fruitland Basal Coal Pool in the Basin Fruitland Coal Pool. Application subcommittee (ASC) formed.

April 11th, 2002

ASC met and set line to define Fairway as continuous area above 2MMCF/D production. Inside the Fairway are some areas w/<2MMCF/D production.

May 7th, 2002

ASC meeting general agreement reached on application.

May 30th, 2002

Application presented to full committee.

June 18th, 2002

Public meeting announcing the infill application.

1 MR. HALL: We will do that, we understand
2 Burlington and BP will reciprocate.

3 EXAMINER STOGNER: Continue with your
4 questioning.

5 MR. KELLAHIN: All right, sir.

6 Q. (By Mr. Kellahin) Mr. Jones, when we look at the
7 drainage calculation, did you make a separate drainage
8 calculation for each of the 85 wells?

9 A. Yes, we did.

10 Q. And when you have summed those results, you have
11 arranged them in the categories that you have on this
12 display within these groupings?

13 A. Correct.

14 Q. All right. When we look at the wells in the
15 second column on the right, that's the range of 160 to 320,
16 and within that population of wells it looks to be about 27
17 or 28 wells?

18 A. Yes.

19 Q. Somewhere right in there? Do you have a table
20 with you that will show us each individual drainage-area
21 calculation for each of those 25 wells?

22 A. I don't have one with me, but I'd be glad to give
23 it to you.

24 MR. KELLAHIN: All right, sir, we would
25 appreciate having that supplied, Mr. Stogner.

1 EXAMINER STOGNER: How many other requests are
2 you going to be making?

3 MR. KELLAHIN: Well, I want to be able to
4 duplicate his drainage calculation, because they've chosen
5 not to give us samples of how to do that, and I want to
6 test the integrity of this conclusion. I assume this
7 hearing won't stop here necessarily, Mr. Stogner.

8 MR. HALL: Mr. Examiner, let me make a point that
9 when these -- Phillips' exhibits were tendered for
10 admission into evidence, we received no objection from Mr.
11 Kellahin.

12 It's the nature of expert testimony that an
13 expert may rely on outside underlying data. It's not
14 necessary for him to provide all of that underlying data at
15 the hearing. I would argue to you that because these
16 exhibits came in without objection, it's really an untimely
17 request now to try and seek the underlying data.

18 EXAMINER STOGNER: Mr. Hall has a point, Mr.
19 Kellahin.

20 MR. KELLAHIN: I don't have any objections to the
21 document, but I am entitled under Rule 705 of the Rules of
22 Evidence in New Mexico to cross-examine this expert on his
23 conclusions. He's made a conclusion with this display, and
24 I'm entitled to test how he got there. And it frustrates
25 my ability to cross-examine him if he doesn't have the

1 supporting documents here to talk about. I'm entitled to
2 that --

3 MR. HALL: I disagree with the characterization
4 of the Rule. If there is any such entitlement, it was
5 waived.

6 EXAMINER STOGNER: Okay, we've already agreed to
7 a supplemental map and some pressure data. What more are
8 you going to ask for?

9 MR. KELLAHIN: What I'm looking for is, I want
10 the individual work sheets that show the drainage
11 calculation for each of these wells in this display. I
12 want to be able to look at the drainage calculation. I
13 want to see what factors he used and whether they were
14 correct.

15 MR. HALL: In other words, Mr. Examiner, he wants
16 to do discovery after the fact. I just think that's really
17 improper under the Division's rules.

18 MR. KELLAHIN: We don't have discovery in New
19 Mexico in this hearing.

20 EXAMINER STOGNER: The fact that the Applicant in
21 this case is the Committee, assuming the Committee is
22 working together to some degree, and I'm going to --
23 hopefully --

24 MR. HALL: We will provide --

25 EXAMINER STOGNER: -- all this information was

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July 11, 2002

W. Thomas Kellahin, Esq.
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Santa Fe, New Mexico 87504-2265

Re: NMOCD Case No. 12888; Basin-Fruitland Coal Gas Pool Rulemaking

Dear Tom:

Enclosed is a print-out of the identifiers for the 85 wells in the Phillips High-Productivity Area study. This information was not included on the disk I gave you at the hearing yesterday.

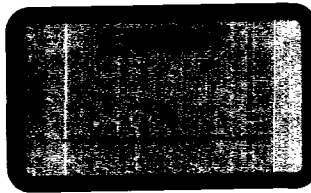
Very truly yours,

MILLER, STRATVERT & TORGERSON, P.A.

J. Scott Hall

J. Scott Hall

JSH/glb
Enclosures
cc: Steve Jones (w/o enclos.)



— Forwarded by Steve E Jones/PPCO on 07/12/2002 06:57 AM —

"Clarkson Chris" <CClarkson@br-inc.com>

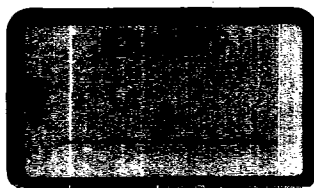
07/11/2002 05:29 PM ✓

To: Steve E Jones/PPCO@Phillips
cc: "McGovern Mike" <MMcGovern@br-inc.com>
Subject: Missing data

Steve,

Thank you for providing the pressure, thickness and well location data associated with the drainage calculations for the 85 "High Productivity Wells". However, further information is needed to review your material balance/drainage calculations. These include: VL (Langmuir Volume), PL (Langmuir Pressure), coal density, and cumulative gas production at each measured (bhp) pressure date. These are needed to faithfully reproduce your calculations. It would be easiest if you simply supplied the spreadsheets on which the material balance/drainage area calculations were made, so that data does not need to be sent separately. Thank you for your cooperation,

Chris Clarkson
Ph: (505) 326-9729



MILLER, STRATVERT & TORGERSON, P.A.
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* NEW MEXICO BOARD OF SPECIALIZATION RECOGNIZED SPECIALIST IN NATURAL RESOURCES - OIL & GAS LAW
** NEW MEXICO BOARD OF SPECIALIZATION RECOGNIZED SPECIALIST IN REAL ESTATE LAW

PLEASE REPLY TO SANTA FE

July 12, 2002

VIA FACSIMILE

W. Thomas Kellahin, Esq.
Kellahin & Kellahin
Post Office Box 2265
Santa Fe, New Mexico 87504-2265

Re: NMOCD Case No. 12888; Basin-Fruitland Coal Gas Pool Rulemaking

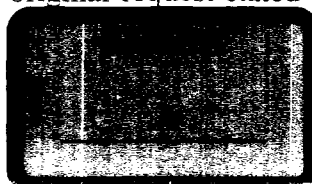
Dear Tom:

On July 10, 2002, during the course of the hearing in the above matter, you requested the well identification, pressure data and net pay information for each of the 85 wells in the Phillips High Productivity Well Study area and that information was provided to you on disk later that same day. The stated purpose of the request was to enable Burlington to review the drainage and material balance evidence discussed by Phillips's engineer, Steve Jones. Since then, Burlington has asked Phillips to provide additional information, including Langmuir Volume, Langmuir Pressure, Average Coal Density, and Cumulative Gas Production as of the time each of the bottom hole pressure points on the 85 wells. In addition, I understand that Burlington is also asking Phillips to provide its Material Balance Spreadsheets on each of the wells.

With respect to Langmuir Volume, as was discussed during the testimony, the value used was 500 scf/ton. The value used for Average Coal Density was also discussed. It was 1.5gm/cc.

Langmuir Pressure was not requested on July 10th, but we agree that its request is in accord with the stated purpose for which the other information was sought by Burlington. The Langmuir Pressure value used was 325 psi.

While Phillips wishes to remain cooperative, it is apparent that the request to provide the other data exceeds the purpose of the original request stated on July 10th. The Cumulative Gas



W. Thomas Kellahin, Esq.

July 12, 2002

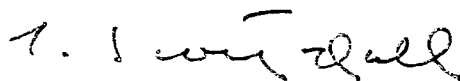
Page 2

Production data are independently available to Burlington. Moreover, the Material Balance Spreadsheets are Phillips's work-product which Burlington does not need to conduct its review of the conclusions to which the Phillips expert witness testified. It is my view that the request for the additional data exceeds what Mr. Stogner allowed and is lapsing over into inappropriate post-hearing discovery. Correspondingly, these additional data will not be provided.

Should you have any questions regarding this matter, please do not hesitate to contact me.

Very truly yours,

MILLER, STRATVERT & TORGERSON, P.A.

A handwritten signature in black ink, appearing to read "J. Scott Hall", written in a cursive style.

J. Scott Hall

JSH/glb

cc: Steve Jones

KELLAHIN AND KELLAHIN

ATTORNEYS AT LAW

EL PATIO BUILDING

117 NORTH GUADALUPE

POST OFFICE BOX 2265

SANTA FE, NEW MEXICO 87504-2265

W. THOMAS KELLAHIN*

*NEW MEXICO BOARD OF LEGAL SPECIALIZATION
RECOGNIZED SPECIALIST IN THE AREA OF
NATURAL RESOURCES-OIL AND GAS LAW

JASON KELLAHIN (RETIRED 1991)

TELEPHONE (505) 982-4285
TELEFAX (505) 982-2047

July 16, 2002

HAND DELIVERED


Mr. Michael E. Stogner
Hearing Examiner
1220 South Saint Francis Drive
Santa Fe, New Mexico 87505

Re: Motion to compel compliance with Examiner Order
NMOCD Case 12888
Application of Fruitland Coalbed Methane
Study Committee to amend rules for the
Basin-Fruitland Coal Gas

Dear Mr. Stogner:

On behalf of Burlington Resources Oil & Gas Company LP, the enclosed Motion seeks an order compelling Phillips Petroleum Company to comply with your decision made during the hearing of the referenced case held on July 9, 10, 2002.

Very truly yours,



W. Thomas Kellahin

cc: David Brooks, Esq.
Attorney for the Division
J. Scott Hall, Esq.
Attorney for Phillips Petroleum Company
William F. Carr, Esq.
Attorney for BP Amoco
Burlington Resources
Attn: Chris Clarkson
Alan Alexander
Mr. Steve Hayden,
Committee Chairman
James Bruce, Esq.
Attorney for Cross Timbers
John A. Dean, Esq.
Attorney for Dugan Production Corporation

RECEIVED
JUL 16 19 17 2002

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

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

**APPLICATION OF FRUITLAND COALBED
METHANE STUDY COMMITTEE FOR A POOL
ABOLISHMENT AND EXPANSION AND TO
AMEND RULE 4 AND 7 OF THE SPECIAL
RULES AND REGULATIONS FOR THE BASIN-
FRUITLAND COAL GAS POOL FOR PURPOSES
OF AMENDED WELL DENSITY REQUIREMENTS
FOR COALBED METHANE WELLS, SAN JUAN,
RIO ARriba, McKINLEY AND SANDOVAL COUNTIES,
NEW MEXICO**

CASE NO. 12888

**MOTION OF COMPEL
PHILLIPS PETROLEUM COMPANY
TO COMPLY WITH THE DISCLOSURE REQUIREMENTS OF
RULE 705 OF THE NEW MEXICO RULES OF EVIDENCE**

Comes now Burlington Resources Oil & Gas LP ("Burlington"), in accordance with Rule 705 of the New Mexico Rules of Evidence, and moves that the New Mexico Oil Conservation Division ("Division") enter an order compelling Phillips Petroleum Company ("Phillips") to comply with the Examiner's decision on July 10, 2002 requiring the disclosure of facts and data underling its expert witness' opinion, and in support states:

FACTUAL SUMMARY:

(1) This case involves the Fruitland Coalbed Methane Gas Study Committee ("Committee") recommendations to the New Mexico Oil Conservation Division for an order approving increase well density ("160 acre infill wells") for coalbed methane wells for the entire pool, subject to notification to offsetting operators to a proposed infill well in the Fairway of the Basin-Fruitland Coal Gas Pool.

(2) There are approximately 3,160 wells currently producing from Basin Fruitland Coal Gas Pool, including some 2,704 wells in the "Low Productivity Area" and some 456 wells in the "High Productivity Area" ("Fairway") of the pool.

(3) The Committee spent almost 2 years on its study and concluded that well density ("infill wells") should be increased in both the Fairway and the Low Productivity Area. Phillips supported infill wells in both areas.

(4) The two day hearing of this case was held in Farmington, New Mexico before Division Examiner Michael E. Stogner.

(5) Burlington appeared in support of the Committee's recommendation.

(6) Phillips opposed the adoption of increased well density in the High Productivity Area ("Fairway") of the pool without the adoption of its special administrative procedure requiring notice to offsetting operators.

(7) Late in the afternoon of the first day of the hearing. Phillips disclosed for the first time that its proposed special administrative notice procedure was extraordinarily different from that of the Committee's.

(8) On July 11, 2002, during the second day of the hearing of this case, Phillips presented Mr. Steve Jones, as a expert witness in the field of petroleum engineering.

(9) Mr. Jones expressed the opinion that of the 456 coalbed Methane wells in the Fairway, he had studied the drainage areas for 85 of those wells and by using material balance equations, had determined the drainage areas for 82 wells to be in excess of 160 acres.

(10) Mr. Jones, was a participating member of the Committee and represented Phillips. During several meetings, Mr. Jones was asked to disclose his data and calculations of drainage area but never did so. **See Testimony of Bill Hawkins in Case 12888, July 10, 2002.**

(11) At the hearing, Mr. Jones showed:

(a) a table on which he had grouped the 85 wells into a histogram with 6 bins according to his opinion of their ranges of drainage areas but did not disclose the actual acreage he calculated for any single well; and **See Enclosure "A" Phillips Exhibit 10.**

(b) a table on which he had averaged the Langmuir Volumes for 81 coal samples and had grouped them into a histogram with 7 bins and reached the opinion that he could use an average of 500 scf/ton in his material balance calculation **See Enclosure "B" Phillips Exhibit 7.**

(12) During my cross examination of Mr. Jones, I began to ask him for all underling facts and data to support his opinion concerning the drainage areas for the 85 wells he had studied.

(13) Mr. Jones failed to disclosure the geographic location of the wells from which the 81 well coal samples were collected and failed to disclose how he arrived at the average Langmuir Volumes for each well.

(14) I asked Mr. Jones, to show (i) a map locating each of the 85 wells in the Fairway; (ii) disclose the drainage area for each well and (iii) the individual drainage calculations (including all parameters) and he said he did not have them with him.

(15) I then begin to asked him about his drainage calculations.

(16) After I had obtained a few facts, Mr. Scott Hall, on behalf of Phillips, objected and argued that I was attempting discovery and should not be allow to proceed.

(17) I responded that I was not engaged in discovery, but entitled to cross-examine this witness about the facts and data he used to support his opinions.

(18) Examiner Stogner asked me how long my examination would take, and I said the rest of the day but that I could stop if Phillips would provide a map locating each of the 85 wells and Mr. Jones' 85 material balance calculations disclosing the data supporting how he had determine the area to be drained by each well.

(19) I then advised the Examiner and the Division Attorney, that in accordance with Rule 705 of the New Mexico Rules of Evidence, I was entitled to these facts and data. **See Enclosure "C"**

(20) In response, Mr. Hall said he had never hear of such a thing and doubts that such a rule existed.

(21) Mr. Stogner then granted my request and in response to his question, I said that I could file a written response within 7 days of receiving the data.

(22) On Wednesday afternoon, Mr. Hall handed me a computer disk which I assumed contained all of the requested data including the map showing the location of the 85 well, individual drainage areas per well and the calculations including assumptions. **See Enclosures "D " for sample.**

(23) On Friday, Burlington advised me that the disk only contained the raw pressure data and thickness, but no map of the wells, no P/Z plots and none of the other data.

(24) On Thursday, Burlington contacted Mr. Jones to try and get the missing data. **See Exhibit "E"**.

(25) Later, that afternoon, Mr. Hall faxed to me the list of the names for the 85 wells but did not disclose the well locations.

(26) On Sunday I received a letter from Mr. Hall refusing to provide what he characterized as Burlington's attempt to obtain Phillips "Material Balance Spreadsheet" and all of the data which supported that work. **See Enclosure "F"**.

ARGUMENT:

Phillips, dissatisfied with its contractual obligations in the Federal Exploratory Units, asks the Division to adopt a regulatory roadblock to prevent or limit infill wells in the Fairway.

Phillips waited until late in the afternoon of the first day of the hearing, to surprise the parties by presenting a dramatically different administrative procedure in the Fairway which would allow any working interest owner in any of the federal exploratory units to force a contested hearing concerning whether the dispute infill well is drilled.

Having failed to provide its material balance calculations to the Committee, Phillips waited until the end of the first day of the hearing to spring its opinions that its study of 85 wells in the Fairway demonstrated the need to adopt their newly proposed rule and then tried to withhold the calculations to support this opinion. Despite the Examiner's order, Phillips continues to refuse to disclose its calculations.

Burlington should not be forced to guess how Mr. Jones reached his opinion and what assumptions he made. Rule 705 of the New Mexico Rules of Evidence does exist and it states the following:

"The expert may testify in terms of opinion or inference and give his reasons therefore without prior disclosure of the underlying facts and data, unless the judge requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination."

First, Mr. Jones lumps together 81 well coal samples for the average distribution of the Langmuir Volumes and failed to disclose the actual Langmuir Volumes for each well and the source of that data. **Phillips Exhibit 7**

Then, Mr. Jones lumps 85 wells into 6 columns but failed to show what he calculated as the drainage areas for each well and now refuses to disclose the calculation for how he obtained a drainage area per well. For example, column two of Phillips' Exhibit 10 contains 28 wells averaging

between 160 and 320 acres of drainage but does not disclose the drainage for any single well. Mr. Jones admitted that he had prepared engineering calculation ("Material Balance Equation") for each well in order to express an expert opinion of the drainage area for the 85 wells but now refused to provide his calculations. It is impossible to determine if Mr. Jones' conclusion are correct unless we can see his material balance calculations and Langmuir Volumes per well which he relied upon for his opinion.

Enclosure "C" illustrate what Burlington has attempted to obtain from the cross-examination of Mr. Jones. He had to have done something like this for each well in order to have reached an opinion concerning drainage for each well. Burlington wants to review Mr. Jones' calculations to see if it in fact accurately supports his opinions.

In addition, Burlington does not know where Mr. Jones' isotherm samples were collected, nor does it know how the Mr. Jones arrived at his average. It order to check Mr. Jones' material Balance Calculations, Burlington needs Mr. Jones' isotherm data (VL and PL) corresponding to the 81 samples shown on Phillips' Exhibit 7 as well as the geographic location of the wells from which the samples were collected.

Mr. Hall, for Phillips, now seeks to prevent Burlington from reviewing Mr. Jones calculations.

CONCLUSION:

Unless Mr. Jones discloses how he calculated each of the 85 drainage areas, then it is impossible to look behind his conclusion shown on Phillips' Exhibits 7 and 10. Without Mr. Jones' Material Balance Spreadsheet, and the parameters he used for each of the 85 wells in his table, Burlington will have been denied the cross-examination to which it was entitled. The Division should not tolerant such gamesmanship.

If the Division allows Phillips to avoid disclosing its calculations, then Burlington must consider filing a motion to reopen this case and ask the Division to strike the testimony of Mr. Jones.

Wherefore, Burlington Resources Oil & Gas LP ("Burlington"), in accordance with Rule 705 of the New Mexico Rules of Evidence, moves that the Division enter an order compelling Phillips Petroleum Company ("Phillips") to comply with the Examiner's decision on July 10, 2002 requiring the disclosure of the Material Balance calculations including the sources of the Langmuir Volume and all facts and data underling its expert witness's opinion.

KELLAHIN AND KELLAHIN

A handwritten signature in black ink, appearing to read 'W. Thomas Kellahin', written over a horizontal line.

By: _____

W. Thomas Kellahin

Attorney for Applicant

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing pleading was mailed or transmitting by facsimile to opposing counsel this 16th day of July 2002 as follows:

David Brooks, Esq.
Oil Conservation Division
1220 South Saint Francis Drive
Santa Fe, New Mexico 87505
Attorney for the Division

J. Scott Hall, Esq.
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Facsimile 505-989-9614
Attorneys for Phillips Petroleum Company

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Attorneys for BP Amoco

James Bruce, Esq.
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Attorney for Cross Timbers

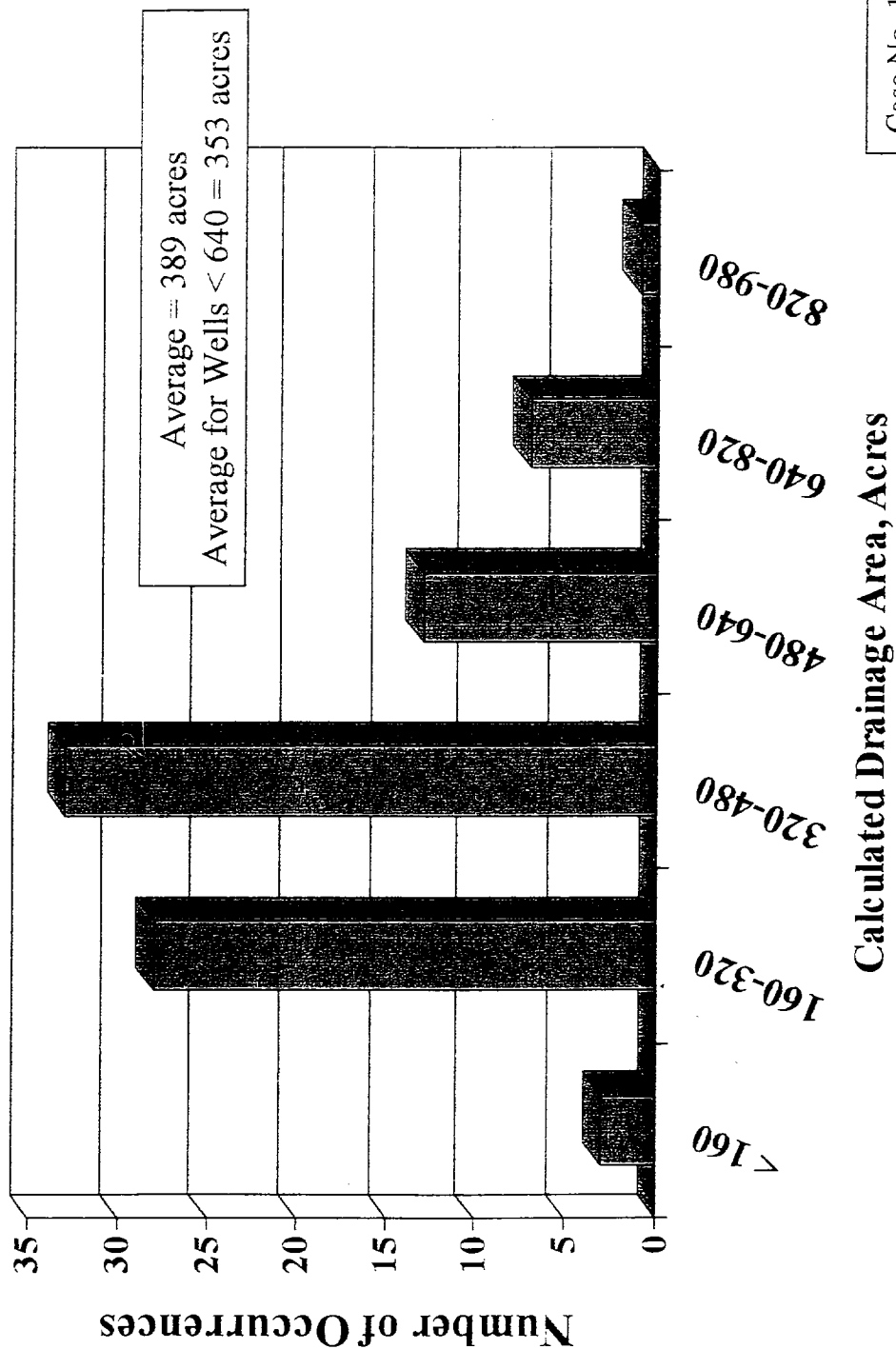
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Oil Conservation Division
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Aztec, NM 87410



W. Thomas Kellahin

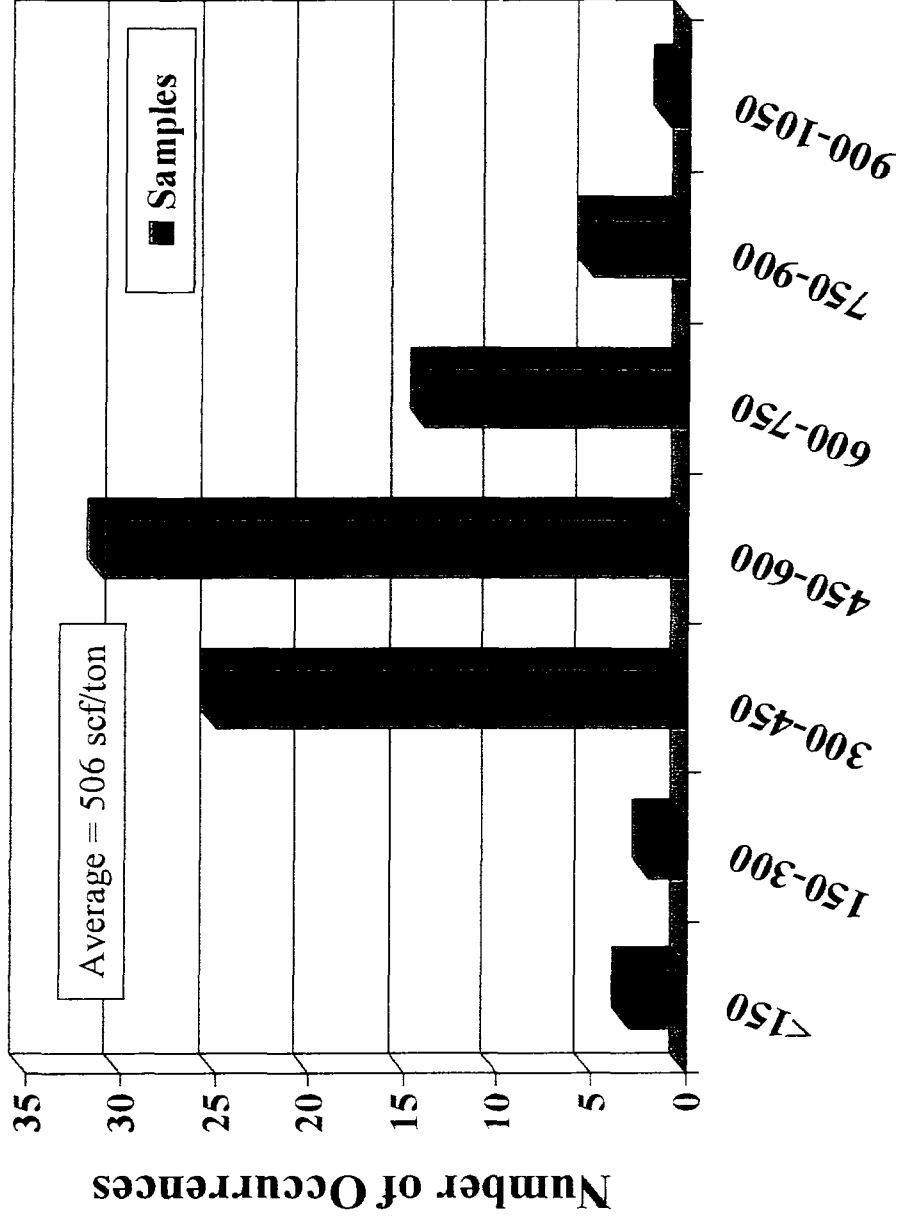
Distribution of Calculated Drainage Areas In High Productivity Area (85 Wells)



Case No. 12888
Phillips Ex. No. 10
July 9, 10 2002

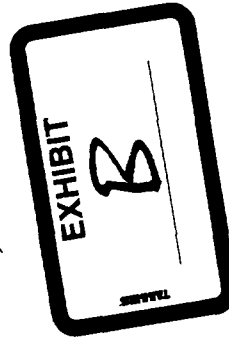


Distribution of Langmuir Volume for 81 Coal Samples



As Received Langmuir Volume, scf/ton

Case No. 12888
Phillips Ex. No. 7
July 9, 10 2002



Court cannot prevent defendant from calling expert because of nonexperts' testimony. — The trial court cannot properly prevent a defendant from calling experts in support of the defense on the basis that nonexperts have testified about the same issue. *State v. Elliott*, 96 N.M. 798, 635 P.2d 1001 (Ct. App. 1981).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 31 Am. Jur. 2d Expert and Opinion Evidence §§ 2, 4, 22, 23, 146, 148.

Admissibility of opinion evidence as to the cause of an accident or occurrence, 38 A.L.R.2d 13.

Safety of condition, place, or appliance as proper

subject of expert or opinion evidence in tort actions, 62 A.L.R.2d 1426.

Admissibility of opinion evidence as to cause of death, disease, or injury, 66 A.L.R.2d 1082.

Necessity of expert testimony to show malpractice of architect, 3 A.L.R.4th 1023.

Necessity and admissibility, in federal trial, of expert or opinion testimony regarding use or reliability of hypnotically refreshed recollections, 50 A.L.R. Fed. 602.

23 C.J.S. Criminal Law § 858; 32 C.J.S. Evidence §§ 438, 444, 446.

Rule 705. Disclosure of facts or data underlying expert opinion.

The expert may testify in terms of opinion or inference and give his reasons therefor without prior disclosure of the underlying facts or data, unless the judge requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination.

Compiler's notes. — This rule is similar to Rule 705 of the Federal Rules of Evidence.

Outside opinions inadmissible when expert does not rely thereon. — In personal injury case, where plaintiff, in cross-examination of defendant's doctors, got admitted in evidence the medical opinions of two absent doctors, there was no evidence that defendant's doctors had relied on the opinions, and the argument that the opinions were admissible because they could bring out that defendant's doctors had rejected the opinions was without merit and was considered a back door ruse to introduce inadmissible testimony. *Wilson v. Leonard Tire Co.*, 90 N.M. 74, 559 P.2d 1201 (Ct. App. 1976), cert. denied, 90 N.M. 9, 558 P.2d 621 (1977).

Experts must satisfactorily explain steps followed in reaching conclusion; without such an explanation the opinion is not competent evidence. *Four Hills Country Club v. Bernalillo County Property Tax Protest Bd.*, 94 N.M. 709, 616 P.2d 422 (Ct. App. 1979).

An expert is not incompetent and impermissibly speculative as lacking a factual basis where the expert gives a satisfactory explanation as to how he arrived at his opinion. *Harrison v. ICX, Illinois-California Express, Inc.*, 98 N.M. 247, 647 P.2d 880 (Ct. App. 1982).

Expert's failures of consideration destroys weight of opinions. — An expert appraiser's blanket acceptance of hearsay information and his failure to consider influencing facts in so-called "comparable sales" all but destroys any weight that might be given to his opinions. *Four Hills Country Club v. Bernalillo County Property Tax Protest Bd.*, 94 N.M. 709, 616 P.2d 422 (Ct. App. 1979).

Could ask experts whether they used collateral

offenses in evaluation. — Prior to enactment of rules of evidence, it was not error to allow prosecution to ask experts who administered certain deception tests (polygraph, hypnosis, sodium amytol) whether they had been informed of certain collateral offenses committed by defendant and how they had evaluated such information in reaching their conclusions concerning defendant's guilt or innocence. *State v. Turner*, 81 N.M. 571, 469 P.2d 720 (Ct. App. 1970).

Law reviews. — For article, "The Admissibility of Scientific Evidence Under the New Mexico and Federal Rules of Evidence," see 6 N.M.L. Rev. 187 (1976).

For article, "Evidence," see 12 N.M.L. Rev. 379 (1982).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 31 Am. Jur. 2d Expert and Opinion Evidence §§ 47, 48, 80, 112.

Presumption and burden of proof of accuracy of scientific and mechanical instruments for measuring speed, temperature, time, and the like, 21 A.L.R.2d 1200.

Modern status of rules regarding use of hypothetical questions in eliciting opinion of expert witness, 56 A.L.R.3d 300.

Necessity of expert testimony to show malpractice of architect, 3 A.L.R.4th 1023.

Products liability: admissibility of expert or opinion evidence that product is or is not defective, dangerous, or unreasonably dangerous, 4 A.L.R.4th 651.

Necessity and admissibility, in federal trial, of expert or opinion testimony regarding use or reliability of hypnotically refreshed recollections, 50 A.L.R. Fed. 602.

23 C.J.S. Criminal Law § 885; 32 C.J.S. Evidence §§ 546, 552.

Rule 706. Court-appointed experts.

(a) **Appointment.** The judge may on his own motion or on the motion of any party enter an order to show cause why expert witnesses should not be appointed, and may request the parties to submit nominations. The judge may appoint one or more expert witnesses of his own selection to give evidence in the action except that, if the parties agree as to the experts to be appointed, he shall appoint only those designated in the agreement. An expert witness shall not be appointed by the judge unless he consents to act. A witness so appointed shall be informed of his duties by the judge in writing, a copy of which shall be filed with the clerk,



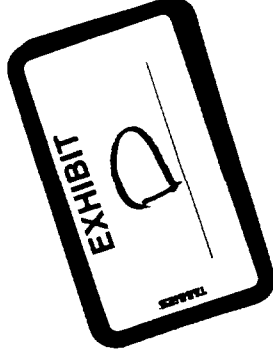
Drainage Area Calculations

- Drainage area calculations require a material balance equation specifically designed for coal gas reservoirs
- A simple form of a coal gas material balance equation was derived by Jensen and Smith* (see full reference provided below):

$$1) \quad \frac{P}{P + P_L} = \frac{-1}{V_L A h \rho_c} * G_p + \frac{P_i}{P_i + P_L}$$

where:

A = drainage area
 G_p = cumulative gas production
 h = coal thickness (contributing to flow)
 P = reservoir pressure
 P_i = initial reservoir pressure
 P_L = Langmuir pressure constant
 V_L = Langmuir volume constant
 ρ_c = coal bulk density



Drainage Area Calculations (Cont'd)

- In order to apply equation 1) for drainage area calculations, the left hand side of the equation ($P/P_L + P_L$) is plotted on a graph (Cartesian coordinates) vs. cumulative gas production
- The slope of the resulting straight line relationship is then determined and equated to the term $-1/(V_L A h \rho_c)$ in equation 1)
- The drainage area, A , is then solved for
- The calculation of drainage area thus requires the following parameters for its calculation:

- 1) G_p = cumulative gas production, corresponding in time with each measured reservoir pressure point
- 2) h = coal thickness (contributing to flow)
- 3) P = reservoir pressure, periodically measured during producing well life
- 4) P_L = Langmuir pressure constant
- 5) V_L = Langmuir volume constant
- 6) ρ_c = coal bulk density

References

- * Jensen, D. and Smith, L.K.: “ A Practical Approach to Coalbed Methane Reserve Prediction Using A Modified Material Balance Technique,” paper 9765 presented at the 1997 International Coalbed Methane Symposium held in Tuscaloosa, AL, May 14-16.

Tom Kellahin

From: "Clarkson Chris" <CClarkson@br-inc.com>
To: <t.kellahin@worldnet.att.net>
Sent: Sunday, July 14, 2002 11:11 AM
Subject: FW: Missing data

Tom,

Here is the e-mail that I sent to Phillips on Thursday of last week,

Chris

> -----Original Message-----

> From: Clarkson Chris

> Sent: Thursday, July 11, 2002 5:30 PM

> To: 'sejones@ppco.com'

> Cc: McGovern Mike

> Subject: Missing data

>

> Steve,

>

> Thank you for providing the pressure, thickness and well location data associated with the drainage calculations for the 85 "High

> Productivity Wells". However, further information is needed to review your material balance/drainage calculations. These include: VL

> (Langmuir Volume), PL (Langmuir Pressure), coal density, and cumulative gas production at each measured (bhp) pressure date. These are

> needed to faithfully reproduce your calculations. It would be easiest if you simply supplied the spreadsheets on which the material

> balance/drainage area calculations were made, so that data does not need to be sent separately. Thank you for your cooperation,

>

> Chris Clarkson

> Ph: (505) 326-9729



7/15/02

MILLER, STRATVERT & TORGERSON, P.A.
LAW OFFICES

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PLEASE REPLY TO SANTA FE

July 12, 2002

VIA FACSIMILE

W. Thomas Kellahin, Esq.
Kellahin & Kellahin
Post Office Box 2265
Santa Fe, New Mexico 87504-2265

Re: NMOCD Case No. 12888; Basin-Fruitland Coal Gas Pool Rulemaking

Dear Tom:

On July 10, 2002, during the course of the hearing in the above matter, you requested the well identification, pressure data and net pay information for each of the 85 wells in the Phillips High Productivity Well Study area and that information was provided to you on disk later that same day. The stated purpose of the request was to enable Burlington to review the drainage and material balance evidence discussed by Phillips's engineer, Steve Jones. Since then, Burlington has asked Phillips to provide additional information, including Langmuir Volume, Langmuir Pressure, Average Coal Density, and Cumulative Gas Production as of the time each of the bottom hole pressure points on the 85 wells. In addition, I understand that Burlington is also asking Phillips to provide its Material Balance Spreadsheets on each of the wells.

With respect to Langmuir Volume, as was discussed during the testimony, the value used was 500 scf/ton. The value used for Average Coal Density was also discussed. It was 1.5gm/cc.

Langmuir Pressure was not requested on July 10th, but we agree that its request is in accord with the stated purpose for which the other information was sought by Burlington. The Langmuir Pressure value used was 325 psi.

While Phillips wishes to remain cooperative, it is apparent that the request to provide the other data exceeds the purpose of the original request stated on July 10th. The Cumulative Gas



W. Thomas Kellahin, Esq.

July 12, 2002

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Production data are independently available to Burlington. Moreover, the Material Balance Spreadsheets are Phillips's work-product which Burlington does not need to conduct its review of the conclusions to which the Phillips expert witness testified. It is my view that the request for the additional data exceeds what Mr. Stogner allowed and is lapsing over into inappropriate post-hearing discovery. Correspondingly, these additional data will not be provided.

Should you have any questions regarding this matter, please do not hesitate to contact me.

Very truly yours,

MILLER, STRATVERT & TORGERSON, P.A.

A handwritten signature in black ink, appearing to read "J. Scott Hall". The signature is fluid and cursive, with a large initial "J" and a stylized "S" and "H".

J. Scott Hall

JSH/glb

cc: Steve Jones