

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 RICHARDSON PRODUCTION)
COMPANY FOR COMPULSORY POOLING, SAN JUAN)
COUNTY, NEW MEXICO)

CASE NO. 12,910

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: DAVID K. BROOKS, Hearing Examiner

September 19th, 2002

Santa Fe, New Mexico

02 OCT -3 AM 8:11
CLERK OF COURT

This matter came on for hearing before the New Mexico Oil Conservation Division, DAVID K. BROOKS, Hearing Examiner, on Thursday, September 19th, 2002, 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.

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September 19th, 2002
 Examiner Hearing
 CASE NO. 12,910

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* * *

A P P E A R A N C E S

FOR THE DIVISION:

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By: W. THOMAS KELLAHIN

FOR MARY FISCHER:

GARY L. HORNER
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* * *

ALSO PRESENT:

MICHAEL E. STOGNER
Hearing Examiner
New Mexico Oil Conservation Division
1220 South Saint Francis Drive
Santa Fe, NM 87505

MARY FISCHER
Land Owner

* * *

1 WHEREUPON, the following proceedings were had at
2 9:38 a.m.:

3 EXAMINER BROOKS: At this time I'll call Case
4 Number 12,910, Application of Richardson Production Company
5 for compulsory pooling, San Juan County, New Mexico.

6 This was continued from the October [sic] 22nd,
7 2002, Examiner Docket, so we had a hearing at that time,
8 and this is a continuation of that hearing.

9 Call for appearances.

10 MR. KELLAHIN: Mr. Examiner, I'm Tom Kellahin of
11 the Santa Fe law firm of Kellahin and Kellahin, appearing
12 on behalf of the Applicant.

13 MR. HORNER: And I'm Gary Horner, appearing on
14 behalf of Mary Fischer, who is the person who is to be
15 force pooled here.

16 EXAMINER BROOKS: Okay, there was extensive
17 testimony taken in this case at the hearing on August the
18 22nd. Does either party contemplate offering further
19 testimony today?

20 MR. KELLAHIN: I do not, sir.

21 MR. HORNER: I can offer additional testimony
22 with regard to the good faith issue of the negotiations.
23 That would be the purpose of the testimony.

24 My understanding is that Mr. Kellahin would just
25 as soon continue this and let you go deliberate, make your

1 decisions, probably from the perspective that there has
2 been the failure to reach an agreement, therefore Ms.
3 Fischer should be penalized.

4 And we certainly are of the opinion that we've
5 been trying to negotiate in good faith, that they have not,
6 and that any kind of penalty is completely inappropriate.
7 And to that end we are ready to offer evidence.

8 EXAMINER BROOKS: Okay, presuming you wish to
9 offer evidence, are you going to put your client on the
10 stand?

11 MR. HORNER: I don't really see a need for that,
12 but I may need to testify.

13 EXAMINER BROOKS: Okay. Well --

14 MR. KELLAHIN: Let me make a statement, Mr. --

15 EXAMINER BROOKS: Go ahead.

16 MR. KELLAHIN: -- Brooks.

17 At the conclusion of the hearing you asked the
18 parties to settle this on a voluntary basis. On August
19 26th, I wrote a letter to Mr. Horner setting forth
20 Richardson's offer to settle this on a voluntary basis.

21 On September 17th, I received a letter back from
22 him, rejecting the Richardson proposal. Mr. Horner's
23 letter is dated September 12th, and it took five days to
24 get to me. So that was on the 17th.

25 I've reviewed Mr. Horner's letter in which he

1 rejected the Richardson offer. He made a counterproposal
2 which had terms that were essentially what we talked about
3 a month ago and are not acceptable, but we're now at a
4 stalemate and I don't propose to sit here and argue any
5 more with you, or for you. We'd like the case taken under
6 advisement and to have you issue whatever order that you
7 think is appropriate.

8 EXAMINER BROOKS: Very good.

9 (Off the record)

10 EXAMINER BROOKS: Okay. You've already been
11 sworn in this case, so it won't be necessary to have you
12 re-sworn.

13 You, I take it, Mr. Kellahin, do not anticipate
14 presenting any testimony today?

15 MR. KELLAHIN: No, sir, I do not.

16 EXAMINER BROOKS: Very good. I'm sorry, what's
17 your name again?

18 MR. HORNER: Horner, H-o-r-n-e-r.

19 EXAMINER BROOKS: Mr. Horner, you may proceed.

20 MR. HORNER: Okay. May I testify from here?

21 EXAMINER BROOKS: Yeah, that will be acceptable.
22 Well, wait a minute, maybe it's better that you go over
23 there, because it's easier for the court reporter to hear
24 you.

25 MR. HORNER: Okay.

1 EXAMINER BROOKS: Have to remember that these
2 microphones are only for the recording system; they don't
3 provide any amplification.

4 You may proceed when ready.

5 MR. HORNER: Okay.

6 GARY L. HORNER,
7 the witness herein, having been previously duly sworn upon
8 his oath, testified as follows:

9 DIRECT TESTIMONY

10 BY MR. HORNER:

11 MR. HORNER: If I may, I have a document here
12 which is a letter from Mr. Kellahin to myself dated August
13 27th, 2002, that I have marked for identification as
14 Fischer's Exhibit G, and this is the offer that was
15 submitted to myself on behalf of Ms. Fischer.

16 And you will notice per this offer that -- and I
17 have not included a real thick proposed joint operating
18 agreement, just for simplicity.

19 But what they have offered here is, number one,
20 essentially no royalty interest. They are still insisting
21 that her interest be defined by a surface interest of 35.51
22 acres, as opposed to the 45 acres that is of record for her
23 surface area. They intend to put the difference in some
24 sort of escrow account until some point when something can
25 be worked out, and I don't even know that there's a problem

1 in that regard.

2 They have attached an AFE for approximately
3 \$200,000. In talking to Mr. George Coleman up there who
4 drills these type of wells, I understand that the cost of
5 these wells is only about \$100,000.

6 And we have -- It just goes on and on.

7 You may recall that the mineral interest estate
8 in this particular property belonging to Ms. Fischer was
9 divided in the 1950s when half of the minerals were sold to
10 a lady by the name of Mildred Wright, and she has since
11 died and her interests now have gone to a lady by the name
12 of Twila Goodding.

13 They are dealing with Twila Goodding and Dugan
14 production, who has the lease interest from Twila Goodding
15 on this same piece of property on the terms of 45.37 acres,
16 and they won't deal with Ms. Fischer in that regard.

17 You have not seen a pooling plan of any sort from
18 Richardson. We have not seen a pooling plan of any sort
19 from Mr. Richardson that would detail the different
20 interests in this property. If you saw one, you would see
21 that the Indian interest in this property is still based on
22 the 1881 boundaries, and there just is no basis at all for
23 trying to limit Ms. Fischer's interest except to
24 intentionally not be able to reach an agreement.

25 On September 12th, I wrote a letter to Mr.

1 Kellahin offering -- making a counterproposal, rejecting
2 his initial proposal for his August 27th proposal. We
3 thought it to be completely fair, based on 45.47 surface
4 acres, and that was mailed in last Thursday the 12th, and
5 why he didn't receive it till the 17th, I have no idea.
6 But it seemed to be entirely reasonable, when in fact the
7 area in the east half of the northeast quarter that is
8 bounded by the meander lines from the 1881 survey,
9 basically the area of the river, is about 22.88 acres. The
10 Navajos' interest goes to mid-channel, and in essence Ms.
11 Fischer's interest should go to mid-channel. The 45.47
12 acres is calculated only going to the meander line or to
13 the high-water line.

14 So there is approximately 11.44 acres that is
15 unaccounted for, even, because her surface rights are not
16 calculated to the center of the river, and, in fact, they
17 probably should be, especially in this regard, with regard
18 to mineral interests.

19 And therefore, we would ask that her interest be
20 calculated based on the 45.47 plus the 11.44, so that's
21 going to be about 57 acres, rather than 45.47. Now, in the
22 September 12th letter we did not ask for that, we asked
23 simply based on the 45.47 acres.

24 Now, I have marked for identification a document.
25 It's a letter dated November 30th, 1998, marked for

1 identification as Fischer's Exhibit H, which is a letter
2 from Richardson Production Company to Twila Goodding,
3 looking for a lease in the subject property in her
4 interest.

5 And you will notice in the caption in Section 14,
6 Lot 1, they actually have 100-percent mineral interest,
7 which isn't really appropriate. 45.47 gross acres, 45.47
8 net acres.

9 So in 1998 they were offering to Ms. Goodding a
10 deal based on the 45.47 acres, which at this point they
11 won't even consider offering to Ms. Fischer.

12 I thought it may have been a typo, but I recently
13 -- You will recall at the last hearing, there were several
14 documents that Mr. Kellahin took away to have copied. I
15 didn't receive them till this week. The postmark on the
16 tube here that the stuff came in is September 12th. There
17 is a letter in there, a cover letter with the documents
18 that he indicated August 27th, that he was mailing this
19 stuff. And he didn't send it to me until -- It wasn't
20 postmarked until September 12th.

21 MR. KELLAHIN: Mr. Brooks, I'll admit I had a
22 typo in the cover letter. The tube sheet on the tube
23 indicates the date I took it to the post office.

24 EXAMINER BROOKS: Okay. You may continue, Mr.
25 Horner.

1 MR. HORNER: Okay. But that is most of what I
2 wanted to present today. But what we would be asking for,
3 then, is consideration that Ms. Fischer has been trying to
4 reach an agreement with Richardson and that it has been
5 Richardson that is intentionally trying to not reach an
6 agreement, apparently from the perspective that they can
7 come in here and get whatever they want, plus penalties.

8 And it's entirely unfair and inappropriate, and
9 in that regard we would ask that whatever you come up with
10 not have any penalties assessed against Ms. Fischer, that
11 the acreage used to define her interest be the 45.47 acres
12 plus half of the area of the river along her property,
13 which would be 11.44 acres, is the half -- 22.88 is the
14 total area of the river there -- and that when you are
15 looking for just and reasonable solutions to this problem,
16 we would ask that, in fact, not only that she not be
17 charged any penalties, but that she not be charged at all.

18 If she can be charged 200 percent for failing to
19 reach an agreement, to me it would be entirely fair when
20 the problem on their end, a 100-percent penalty would leave
21 her paying no share of the cost of this well.

22 EXAMINER BROOKS: Mr. Horner, I, of course, will
23 take this under advisement and I will read your Exhibit G,
24 but could you just summarize for me what your proposal was
25 to Richardson?

1 MR. HORNER: Okay, the -- Okay. First off, we
2 set out that Richardson Production is in the business of
3 drilling the wells, and they're in the position to assess
4 the potential benefits and the risks of the well -- they
5 have previously drilled this well already, having evaluated
6 the risk -- that Mary Fischer owns the Lot 1 of Section 14
7 -- that she owns half of -- well, I didn't really specify
8 in here, but she owns half of the mineral interest in that
9 property, and that per this proposal Richardson would pay
10 to Ms. Fischer her proportionate share of the revenues from
11 the well based on that interest, based on the pooling of
12 the unit, based on those acreages, and that Ms. Fischer not
13 be required to contribute any funds up front to the cost of
14 drilling the well, that she be given -- her interest be
15 divided into two parts, a royalty interest of one-sixth and
16 a working interest, then, if five-sixths and that her
17 proportionate share of the cost to be taken out of her
18 working interest or the five-sixths, and that such cost not
19 to be charged against her royalty interest, and again that
20 her interest be based on the surface acreage of 45.47
21 acres, that there be no penalties of any kind whatsoever,
22 be they nonconsent or risk penalties, anything like that.

23 And then there was some language in there with
24 regard to liability. That she not be exposed to any form
25 of liability, that Richardson Production and David

1 Richardson individually would indemnify and save her
2 harmless with respect to any of these different potential
3 liabilities.

4 We understand that just in the last couple of
5 weeks a Richardson employee was badly burned somehow, and
6 exactly what happened nobody's saying. But any form of
7 liability like that.

8 This past summer, two kids were apparently
9 drinking beer, running around a well site, and backed over
10 it and broke it off and started a fire, and the two kids
11 were killed. And so we're asking that she not be exposed
12 to any sort of liability like that. She's not in a
13 position to make any decisions with regard to safety issues
14 or have any knowledge with regard to safety issues, not in
15 a position to make any decisions with regard to fencing or
16 procedures, and so it would be not fair that somehow she be
17 exposed to any sort of liability like that.

18 Also, I understand that Richardson Oil Company --
19 or Production Company, if at some point things aren't going
20 well, the well is played out, all they have to do is
21 release their lease and disappear into the woodwork. He's
22 covered with a couple levels of corporate protection, Ms.
23 Fischer is not. And so I'm concerned that he could simply
24 walk away at some point, leaving whatever kind of liability
25 issues left on the landowners or Ms. Fischer, and therefore

1 I was asking for some sort of language that would indemnify
2 and save her harmless from any kind of liability issues
3 like that.

4 Okay, in their proposal they were wanting to put
5 a certain portion of the money into some sort of an escrow
6 fund, and so I've asked that there be no such escrow funds,
7 contingency funds, any sort of reservation of any of the
8 moneys to her, and that once she is paid any money, that
9 she can look forward to having -- to being able to keep
10 that money and not be exposed to some sort of liability
11 that's going to come back on her and possibly cause her to
12 pay this money for something that she's already been paid
13 -- I'm sure the money isn't going to be great big -- and
14 then she will have spent it.

15 So I've asked that she be provided with a copy of
16 the unitization plans and that she be allowed to review
17 them and approve them as a condition precedent to this
18 agreement. As I said, those have not been shown to
19 anybody. I think once they are shown, it will be very
20 clear that what Richardson is asking for is entirely
21 unreasonable.

22 And since there seems to be a considerable
23 juggling of the numbers here, we have asked that she be
24 allowed access to the accounting books and records and
25 production records with regard to this well and that she be

1 provided a monthly statement of expenses and revenues and
2 meter readings associated with the subject well.

3 That's the essence of our proposal.

4 EXAMINER BROOKS: The basic business terms that
5 you were asking for, then, were that she be entitled to
6 participate on a heads-up basis, that is, with no penalty,
7 as to a five-sixths working interest and get a one-sixth
8 royalty interest free and clear and that she be paid on the
9 basis of the 45.47 acres?

10 MR. HORNER: That's correct.

11 EXAMINER BROOKS: Okay, I think I understand.
12 Thank you very much. I don't have any further questions.

13 Do you have any questions, Mr. Kellahin?

14 MR. KELLAHIN: I have no questions of Mr. Horner,
15 and we have objection to the introduction of the additional
16 documents.

17 EXAMINER BROOKS: Okay, I forgot that. Fischer's
18 Exhibits G and H will be admitted.

19 MR. HORNER: Okay, there was probably three of
20 them. Probably -- What was it, F through H?

21 EXAMINER BROOKS: I don't believe but two were
22 tendered.

23 MR. KELLAHIN: There's a 1998 letter, I think, to
24 someone.

25 MR. HORNER: Right, Richardson Production to

1 Twila Goodding.

2 MR. KELLAHIN: Yeah, that's November of 1998.

3 MR. HORNER: That's H.

4 MR. KELLAHIN: I have no objection to it.

5 EXAMINER BROOKS: Yeah, when I said G and H were
6 admitted, I don't believe there were -- I don't see but two
7 exhibits. If there's a third one that's --

8 MR. KELLAHIN: There's my letter and Mr. Horner's
9 letter.

10 EXAMINER BROOKS: Oh, I see what the problem is.
11 Mr. Horner's letter and Mr. Kellahin's letter were both
12 marked G. So if you'll re-mark one of those Exhibit G's.

13 MR. HORNER: Okay, my letter to Mr. Kellahin, if
14 we could mark that Exhibit H, and the 1998 letter from
15 Richardson to Twila Goodding, if we could mark that Exhibit
16 I.

17 EXAMINER BROOKS: Okay, you may step down.

18 Anything further, Mr. Kellahin?

19 MR. KELLAHIN: Yes, Mr. Brooks, I'd like to make
20 a closing summary. I believe I've just heard Mr. Horner's
21 summary.

22 EXAMINER BROOKS: Okay, you may proceed.

23 MR. KELLAHIN: I sent the letter to Mr. Horner
24 proposing that if he could provide me something in writing
25 that the BLM agreed with his survey conclusion, then we

1 would not have to escrow the difference that was
2 potentially disputed. I neither had the time nor the
3 desire this last month to try to figure that out. And I
4 thought, he's got all the documents and knowledge, let him
5 solve it and give me a letter, and that goes away.

6 We offered a proposal to Ms. Fischer independent
7 of that issue, which we thought was typical. And in
8 response Mr. Horner says, I've received your letter, I have
9 reviewed it with my client, your offer is hereby rejected.
10 He says, "It must be clear at this point that Ms. Fischer
11 has little interest in dealing with your client on this
12 matter."

13 We then go through the process of what they're
14 trying to obtain from us. The well has been drilled, we
15 expect you to reduce the risk-factor penalty to the
16 conventional cost plus 100 percent. The well is not
17 physically on her property, it's on the south side of the
18 river.

19 But in reviewing her proposal, she wants to be
20 carried, as you said, on a heads-up basis for whatever
21 costs are attributed to her share. We think that's highly
22 unusual and we don't think it's appropriate.

23 Mr. Horner asks about a plan for development. I
24 think he still continues to confuse the Statutory
25 Unitization Act with pooling. The documents that we filed

1 at the Division, accessible to him, shows what we're doing.
2 We think the well costs are reasonable, we've spent the
3 money, and we would like to pay her share to her under
4 terms that we think are fair, and I frankly don't know what
5 else to do.

6 We'd ask that you take the case under advisement
7 and issue us an order.

8 EXAMINER BROOKS: Okay, you recognize that there
9 is a title dispute here that does affect the extent of her
10 share, of course --

11 MR. KELLAHIN: Yes, sir, I understand.

12 EXAMINER BROOKS: -- to that extent, do you
13 propose to escrow the difference between the acreage that
14 she could claim under one interpretation and that you could
15 claim, or --

16 MR. KELLAHIN: Yes, sir, and that was the content
17 of my proposal to Mr. Horner, back on August 22nd, that
18 that disputed difference would be deposited in escrow, and
19 we could do it with a special master if that's required,
20 but...

21 EXAMINER BROOKS: Okay, so you would not have any
22 objection if the OCD were to order you to deposit that into
23 the escrow fund that's customarily set up in our compulsory
24 pooling orders until such time as the title dispute is
25 resolved, either by agreement or by final judgment?

1 MR. KELLAHIN: Yes, sir, that's fine.

2 EXAMINER BROOKS: Okay, thank you very much.

3 Anything further, Mr. Horner?

4 MR. HORNER: If I may, there is no title dispute.

5 There is no title dispute at all.

6 MR. KELLAHIN: He maintains that there is, we've
7 heard him for hours about this.

8 EXAMINER BROOKS: Were you through?

9 MR. HORNER: No. I mean, as we discussed last
10 time, the acreages and everything are based on the 1881
11 survey of the area, and that until a court of competent
12 jurisdiction comes up with something different, those
13 acreages and that survey stand.

14 The surveys that they have provided or that they
15 showed from the BLM made no attempt to change any surface
16 acreage for the subject lot, to change the boundary. There
17 was no attempt whatsoever. There is no dispute. The BLM
18 has never come to Ms. Fischer indicating that they have any
19 kind of dispute with Ms. Fischer. There is no dispute.

20 The dispute is being made up by Richardson. And
21 like I say, they even are dealing with Ms. Goodding on the
22 basis of the 45.47 acres, and Dugan Production who has the
23 lease. There just -- There is no dispute. They're simply
24 trying to come up with some sort of leverage against Ms.
25 Fischer, some sort of bad-faith negotiations. There is no

1 dispute.

2 EXAMINER BROOKS: Okay. Anything further, Mr.
3 Kellahin?

4 MR. KELLAHIN: All we'd like Mr. Horner to do is
5 get a letter from the BLM saying that they agree with his
6 interpretation, and then we're done on that issue.

7 EXAMINER BROOKS: Okay. Well, if there's nothing
8 further, then Case Number 12,910 will be taken under
9 advisement.

10 (Thereupon, these proceedings were concluded at
11 10:08 a.m.)

12 * * *

13
14
15 I do hereby certify that the foregoing is
16 a complete record of the proceedings in
the Examiner hearing of Case No. 12910
heard by me on Sep 19, 2002.

17 David K. Bunker Examiner
18 Oil Conservation Division
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22
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24
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 Division 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 September 20th, 2002.



STEVEN T. BRENNER
CCR No. 7

My commission expires: October 14, 2002