

1 BEFORE THE OIL AND GAS CONSERVATION COMMISSION
2 OF THE STATE OF COLORADO

3 REQUEST FOR AN ORDER TO) CAUSE NO. 1
4 DESIGNATE GAS DEVELOPMENT) DOCKET NO.
5 CORPORATION AS THE OPERATOR) 1003-GA-03
6 OF THE MARY AKIN NO. 2 WELL IN)
7 UNNAMED FIELD, MONTEZUMA)
8 COUNTY, COLORADO

9 VOLUME 4

10 PURSUANT TO NOTICE to all parties in
11 interest, the above-entitled matter came duly on
12 for hearing at the Colorado Oil and Gas Conservation
13 Commission, 1120 Lincoln Street, Suite 801, Denver,
14 Colorado, 80203, on March 25, 2010.

15 COMMISSIONERS:

16 CHAIRMAN JOSHUA EPEL
17 COMMISSIONER JAMES B. MARTIN
18 COMMISSIONER RICHARD D. ALWARD
19 COMMISSIONER MARK CUTRIGHT
20 COMMISSIONER TOM COMPTON
21 COMMISSIONER MICHAEL P. DOWLING
22 COMMISSIONER TRÉSI B. HOUP
23 COMMISSIONER DEANN CRAIG

24 ALSO PRESENT:

25 David Neslin, Director
Carol Harmon, Hearings Manager
Matt Lepore, Assistant Attorney General
Phillip D. Barber, Attorney for Gas Development
Corporation
Kristen Guerierro for the BLM
Tom Kimmell, Attorney for Black Resources

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1 CHAIRMAN EPEL: This is Cause No. 1,
2 Docket No. 1003--GA-03, an Unnamed Field in Montezuma
3 County. I have a disclosure to make. I worked with --
4 I shouldn't say, "worked," Jack Grynberg and I
5 participate on a not-profit organization called,
6 "APACT," together. We have known each other in a
7 professional capacity in that way. It will not impact
8 my decision-making, or influence me in any way on this
9 matter, but I felt it's only appropriate to disclose
10 it. I know Jack Grynberg. We have participated in
11 certain political events. Any other Commission
12 disclosures?

13 I know that we have got it set up to me,
14 but I am going to turn this over to our assistant
15 attorney general in a second. This is really a
16 jurisdictional issue between two governmental bodies,
17 the United States and the authority of the State of
18 Colorado, pursuant to a Memorandum of Understanding.
19 Would you like to summarize for us?

20 MR. LEPORE: Sure. The application in
21 front of you is an application by an operator to be
22 named the operator of a specific well. That specific
23 well is the only well in place on a Federal unit that
24 comprises about 410 acres. Pursuant to the Memorandum
25 of Understanding between BLM and the Oil and Gas

1 Conservation Commission, BLM submitted a protest to the
2 application. The protest is not a protest in the sense
3 of BLM becoming a party to this hearing, but they have
4 the right to protest under the memorandum.

5 Pursuant to the memorandum, that gives
6 the Commission the following choices: One is to accept
7 the recommendation of BLM, which is to deny this
8 application. The second choice is to relinquish
9 jurisdiction to the BLM. At the prehearing conference,
10 we recommended the first course of action, that is to
11 deny the application. Since the prehearing conference,
12 I have had additional conversations with the
13 solicitor's office of the Department of Interior about
14 the jurisdictional issues. Based on those
15 conversations, it is my recommendation to the
16 Commission that we relinquish jurisdiction at this time
17 to the BLM.

18 I have asked the solicitor's office to
19 come today and make a statement to the Commission,
20 pursuant to our public comment, Rule 510. So, they are
21 here as members of the public, essentially, but I have
22 asked them -- the situation on the ground, quite
23 frankly, with respect to this Federal unit and the
24 development of these resources is a quagmire, and it's
25 been a quagmire since the well was completed 23 years

1 ago. Something needs to happen here. I have tried to
2 impress that upon the solicitor's office and BLM, that
3 a solution needs to be reached.

4 So, I am going to turn it over to the
5 solicitor's office representatives, who are here to
6 make a brief statement, and then we can go from there.

7 CHAIRMAN EPEL: That, then, well, let the
8 parties, then, address the Commission, but I would like
9 to thank the solicitor's office for being here. You
10 know, I can't even say we're a co-equal branch with the
11 United States, and so the fact that you would appear is
12 greatly appreciated. So, if you would like to come to
13 the table and grab a microphone, I would appreciate it.

14 MS. GUERRIERO: Commissioner, my name a
15 is Kristen Guerriero. I am with the Department of
16 Interior, solicitor's office. This is Tyson Powell.
17 We represent the Bureau of Land Management. We're here
18 today, really, as a sign of good faith. And we realize
19 these issues come up from time to time, and we would
20 like to show our good faith to the Commission. And we
21 would really like to continue our good working
22 relationship.

23 We realized this is a difficult situation
24 at the time, and we have submitted that protest. And
25 essentially, really, what we would like to say is we're

1 requesting a protest, and, essentially, what we would
2 like to say, we request a protest -- our first choice
3 is denial, and we request that you relinquish
4 jurisdiction. We believe the BLM does have some
5 opportunity to resolve this matter, and we would like
6 that opportunity to move forward and resolve the matter
7 in our way.

8 CHAIRMAN EPEL: Mr. Powell, do you have
9 anything to add?

10 Again, we appreciate you being here. I
11 know there are a lot of tricky issues between the state
12 authority and the Federal government's authority. And
13 the fact that we all really have a excellent
14 relationship with Director Neslin and his staff, I
15 think it's a great way to see the cooperation between
16 the two governmental bodies. Thank you.

17 Then, Mr. Barber, would you like to make
18 a statement, and somebody from Black Resources?

19 MR. BARBER: Thank you. It is great to
20 have cooperation.

21 FROM THE AUDIENCE: As soon as you see
22 some, you let us know.

23 MR. BARBER: I just was saying, it is
24 great to have cooperation, and I certainly would
25 applaud cooperation between the state and the Feds, but

1 I really am here to ask for cooperation between the
2 state and the citizens of Colorado, based upon the
3 series of events that brings us here today. And I am
4 going to spend just a couple minutes -- I wouldn't call
5 it a quagmire. It's a -- I would say it's a jigsaw
6 puzzle, and the pieces all fit together, except for
7 one.

8 I will apologize in advance for the rough
9 nature -- this is my attempt at the PowerPoint, but,
10 no. What we're talking about is a fee lease. We'll
11 call it the "Akin lease." That lease covers a little
12 over 200 acres. It's down in Montezuma County. At one
13 point, it was a part of a Federal unit, which was a
14 unit that had like 30,000 acres to begin with. It was
15 contracted down over the years, and by the late 90s,
16 the unit was approximately 400 acres. So, it had --
17 the Akin lease was approximately half and the Federal
18 lease was approximately half.

19 And just for the time line, the Mary Akin
20 unit, which is the Federal unit that is implicated in
21 this proceeding, was created in 1983. In 1984, the
22 Mary Akin No. 2 well was drilled on fee property, so it
23 was drilled on Mr. Akin's property. It's not on a
24 Federal lease. It's on fee property. And the property
25 is owned by John Akin. That was originally -- the area

1 was originally under lease, where this well was drilled
2 on the Akin lands, to Arco. Mr. Black's company
3 subsequently bought the lease, I think, for about \$500
4 from Arco.

5 Overarching this whole proceeding today
6 is that that well, though capable of producing gas, has
7 never produced gas. It is not connected. Currently my
8 client, Gas Development, is prohibited from access or
9 from turning the well on or producing it, because it's
10 not an operator of record. Arco was originally the
11 operator of record, while the Federal unit covered this
12 property, and then Mr. Black's company became the
13 operator of record.

14 Fifteen -- 14 years after the well was
15 drilled, Mr. Akin was upset that there had been no
16 production, so, he gave a top lease to Gas Development
17 Company. And one of the stipulations in the top lease
18 was that Gas Development Company would have the right
19 to bring an action, to cancel the Federal lease to the
20 lease on Akin's property, which was a fee lease --
21 actually, I said it was Federal. It was a fee lease --
22 for lack of development, under one implied covenant in
23 Colorado. That happened -- that case was tried in
24 Montezuma County, believe it or not, in approximately
25 2000.

1 In the Montezuma County court, a jury
2 cancelled the Black lease, which meant that the GDC top
3 lease automatically went into effect.

4 Black appealed the case to the Colorado
5 Supreme Court -- or Colorado Court of Appeals.
6 Ultimately, the Colorado Court of Appeals affirmed the
7 termination of the Black lease on the Akin property.
8 So, instead of a unit that had two leases, there was
9 only one lease and it only covered half the unit, that
10 Federal lease.

11 There were further disputes between Black
12 and GDC. And in 2003, Mr. Black -- well, I don't have
13 it here, but I can represent it's one of the documents
14 in your packet. The Blacks signed an agreement where
15 he agreed never to come on the Akin property for any
16 purpose, okay? That was a contract stipulation to
17 settle part of this lawsuit, and that Mr. Black's
18 company entered into with GDC.

19 So, Black is prohibited from coming on
20 the property and operating the well, by virtue of that
21 stipulation. Back and forth, back and forth for a
22 couple of years. GDC is attempting to get operatorship
23 transferred to GDC. They were not able to do that.

24 So, in 2005, GDC filed a suit in state
25 court, for trespass. It was thought Mr. Black's

1 company had come on the property and violated the
2 stipulation. And Mr. Black removed the case to Federal
3 court. And I will tell you, if you spend anytime on
4 the pleadings, every argument you are going to hear
5 from the BLM, from Mr. Black, has been made to other
6 courts in this case. It was made to the Federal court,
7 but the Federal court should really not do anything
8 because this was a matter for the BLM to decide.

9 Federal Judge Krieger said no. This is a
10 fee lease in the State of Colorado. The Colorado
11 courts can sort this out, both on the operator issue
12 and whether the GDC lease is even any longer part of
13 this unit. In fact, that was one of the important
14 issues Black was still contending, the BLM was still
15 contending this private property was still part of the
16 unit. GDC said, no, it's not. So, Judge Krieger said,
17 state court, you can handle it.

18 It goes back to the state court, Denver
19 District Court, in 2006. And the state judge, Judge
20 Rivera, had to address the issue of whether this lease,
21 the GDC lease, was even part of a Federal unit any
22 more; that the Federal government -- did the Federal
23 government even have any authority over it.

24 Exhibit G, in your notebook, this is
25 Judge Rivera's ruling in 2007. It was a response, for

1 the nonlawyer, something called a "Motion for
2 Determination of Question of Law." And the question of
3 law specifically was, is the GDC lease subject to this
4 Federal unit any longer.

5 Judge Rivera ruled, in response to that
6 motion, in November of 2007 -- this is actually her
7 final judgement in the case. And I just think it bears
8 reading, what she held in both the November 30 order
9 and in the December 2007 order, which was after a
10 trial. We had a trial on this.

11 And Judge Rivera, in the Denver District
12 Court, said in its order of November 30, 2007. The
13 court made a legal determination that plaintiff, GDC,
14 is the sole owner of the GDC lease, which covers the
15 subject Akin property, and that GDC is also the sole
16 owner of the personal property/equipment which is
17 associated with the GDC lease. The Court further
18 determines that defendant's right of access to the 1982
19 lease to the Akin well and to the property covered
20 under the lease arose only in the 1982 lease, which has
21 been judicially terminated -- I would just insert a
22 sidebar, that was the Arco lease, which was judicially
23 terminated -- "thereby extinguishing any rights in
24 interest Defendant Black Resources may have held
25 thereunder."

1 And this becomes a key sentence. We had
2 an argument, does this unit agreement apply to this GDC
3 lease? Because Black was saying, of course, it does.
4 And we want the BLM to say that it does. Judge Krieger
5 said, well, the state court can decide that. And she
6 did. We looked at the unit agreement. We looked at
7 the unit operating agreement, and she held us flawless.

8 Pursuant to Section 18.9 of the unit
9 agreement, and Section 27 of the unit agreement, the
10 GDC lease is not part of the unit, because that
11 particular lease was never committed to the unit.

12 UNIDENTIFIED SPEAKER: Just for
13 background, is it the unit agreement or unit operating
14 agreement? Are you familiar with the fact --

15 MR. BARBER: Those are the operative
16 documents. The unit agreement creates the unit. The
17 unit operating agreement allows -- it's like a joint
18 operating agreement. It allows parties who are subject
19 to this unit agreement to jointly operate the wells.
20 So, our position -- well, one more thing.

21 This decision was appealed, by Black
22 Resources, to the Colorado Court of Appeals. Now, I
23 just pulled a copy of one of the pages from Black's
24 notice of appeal -- actually, it's their opening brief.
25 It's page 4. And Black is discussing, for the Court of

1 Appeals, what had happened in the trial court. Based
2 on -- he is talking first about this BLM action that
3 you have seen a copy of. Based on the pending
4 administrative proceeding commenced by plaintiff after
5 the remand by Federal court, Black Resources moved for
6 the, prior to the trial, to stay the proceedings for
7 failure to exhaust administrative remedies. In other
8 words, let the BLM make a decision here.

9 Black then goes on, the Denver court
10 denied this motion and instead made legal
11 determinations that the 1982 lease to defendant's
12 predecessor was terminated and was no longer part of
13 the Federal unit, and that plaintiff was the sole owner
14 of the personal property, i.e. the well. So, GDC owns
15 the lease. GDC owns the well. GDC is not part of the
16 Federal unit. Our position is that there's absolutely
17 no reason to defer to the BLM.

18 The Federal Court has already said the
19 state court can make this decision, and the state court
20 has made this decision. And the final point is, Black
21 did not appeal the determination by Judge Rivera that
22 this lease was not part of the Federal unit. So, that
23 ruling became final after Judge Rivera made the
24 decision.

25 We think giving this to the BLM is

1 absolutely against what the courts have told us to do.
2 And there was an issue -- finally, we asked the court,
3 oh, well, designate GDC the operator of this well.
4 We're not getting any cooperation. We're in a
5 stalemate. We have waste occurring out here. You
6 know, you tell Black to transfer operatorship to GDC.

7 And the court said, no. You have to
8 exhaust your administrative remedy. You first have to
9 go to the COGCC and ask them to make that
10 determination, to force Black to transfer the
11 operatorship. And that's why I am here.

12 CHAIRMAN EPEL: Any questions? Was BLM
13 party to this lawsuit?

14 MR. BARBER: No.

15 CHAIRMAN EPEL: Okay. Other questions by
16 Commissioners? Commissioner Cutright.

17 COMMISSIONER CUTRIGHT: When the courts
18 said that we need to -- you need to exhaust your
19 administrative remedies.

20 MR. BARBER: Administrative remedies.

21 COMMISSIONER CUTRIGHT: By asking us for
22 change of operator. Either way that we rule, would
23 that exhaust the administrative -- that the court
24 recommended? I mean, if we accept or deny it, would
25 that exhaust the administrative remedies that they

1 asked you to do?

2 MR. BARBER: It might just kick this over
3 to the BLM, is what I am concerned about. Is that if
4 you say, yes, you are the operator, that exhausts it.
5 If you say, no, you are not the operator, Black still
6 is, that probably would exhaust the remedy. If you say
7 no, you got to go to the BLM, I'm not sure what the
8 answer to that is. Since we're on the record, I
9 honestly don't know the answer. I am afraid it just
10 kicks us over to the BLM.

11 CHAIRMAN EPEL: Commissioner Houpt.

12 COMMISSIONER HOUP: Chair Epel, you
13 asked a question, and I would like to follow-up to that
14 question. I suppose we could ask the BLM if anyone can
15 become a party to a case. So, I'm just wondering why
16 they weren't a party to this. Anyone can become a
17 party to it. So, I'm just wondering why they weren't a
18 party to this.

19 CHAIRMAN EPEL: Well, actually, we'll ask
20 BLM.

21 MS. GUERRIERO: They were state court
22 issues and state line of trespass, and I don't remember
23 them, all the contract issues. And those issues -- at
24 the time, I wasn't involved, but I believe it came to
25 the BLM and we reviewed it and really it was just state

1 court issues. When they ruled on the unit, I mean the
2 Federal unit, the state court simply said we're not a
3 party to the Federal -- the Federal unit should not
4 have come into play at the state court. It should have
5 been the Federal court issue. So, essentially, it was
6 state court issues. At the time, it was still state
7 court issues.

8 MR. LEPORE: I would like to jump in and
9 clarify a little bit. Ms. Guerriero is correct. The
10 causes of action pled in the GDC action were all state
11 court causes of action, common law and state court
12 actions. There was no cause of action to declare the
13 GDC lease part of the Federal unit or not. To the
14 extent that issue came up in state court, it came up,
15 as Mr. Barber indicated, in a motion filed by GDC, for
16 a question -- a determination of a question of law.
17 And as long as I have the microphone, we're on the
18 subject, I am going to read what GDC asked the court to
19 determine.

20 GDC asked the court for a determination,
21 as a matter of law, that defendant William Black and
22 Black Resources have no right in the GDC lease or in
23 the Mary Akin No. 2 well, which was drilled and
24 completed in July of 1983. That's what the Court
25 determined as a matter of law.

1 Now, in the course of that determination,
2 it came up, this topic of whether the lease was or was
3 not still part of the Federal unit, whether GDC's lease
4 was. That issue was also litigated in front of BLM,
5 all of the way up to the IBLA. And there is an IBLA
6 decision on point that comes to the contrary conclusion
7 of what the state court did.

8 CHAIRMAN EPEL: Very succinct summary.

9 MR. BARBER: May I succinctly respond?

10 CHAIRMAN EPEL: Of course you may.
11 Please.

12 MR. BARBER: I beg to defer with you all.
13 There was always a claim in this case -- the state
14 court case went up to the Federal court and then came
15 back to the state court case. A change of -- so the
16 issue of who is the appropriate operator was always in
17 the case.

18 MR. LEPORE: There was a claim for change
19 of operator. It is on that claim, by the way, that the
20 court directed you to exhaust your administrative
21 remedies. The court did not rule on that issue because
22 you had not exhausted your administrative
23 recommendation.

24 CHAIRMAN EPEL: Mr. Kimmell.

25 MR. KIMMELL: Thank you. I find this a

1 very interesting legal issue, and I'll spend about a
2 minute or two just making sure you see both sides of
3 this. But, really, this case should not be based on
4 the Commission's analysis of what the applicable law
5 is. It's a confusing issue. You have both Federal and
6 state jurisdiction, which is, you know, which is either
7 concurrent or exclusive of each other. There are a lot
8 of issues, legally. What happens when you take fee
9 land and you make it part of a Federal unit? What
10 effect does that have on the leases that are committed
11 to the unit? And I am not going to waste your time on
12 that. I just want to really, for the reason that -- as
13 I think Mr. Lepore has correctly represented your role
14 here, I think, is to observe your Memorandum of
15 Understanding with the BLM and allow them, in the first
16 instance, to see if they can resolve this issue.

17 But just so you have a little background
18 here, we have a situation where we have two bodies that
19 have come to absolutely different conclusions of law.
20 The state court, as Mr. Barber correctly related, found
21 that the original lease that Arco had taken had failed
22 because the implied covenant of reasonable development
23 hadn't been met. The Federal courts never recognized
24 the implied covenant of reasonable development. It's a
25 state court covenant. And instead the BLM has its own

1 procedures to ensure that operators act diligently.
2 They can require drilling. They have obligation wells.
3 So they deal with it, not on the case of implied
4 covenant, but in their own way, in terms of diligent
5 development.

6 The state court took the position that
7 they never analyzed whether the implied covenant of
8 reasonable development would apply to a Federal unit.
9 They just simply said, under state law, the fee lands,
10 we have jurisdiction over it. The lease is gone.

11 When the issue came up to the BLM -- and,
12 indeed, Black Resources actually made a request to BLM
13 to terminate the unit, the BLM unit, decided against --
14 excuse me. I said it wrong. Thank you for clarifying.

15 GDC, Mr. Grynberg's company, filed an
16 action with the BLM. Well, first, there was a question
17 about parties. GDC had the opportunity to name the BLM
18 in the original suit and had they wanted to avoid this
19 whole controversy, they could have joined the Federal
20 government. They chose not to. And in none of these
21 state court proceedings have they ever named the BLM as
22 a party. Likewise, the Commission has never been named
23 as a party. So, clearly you are not bound by any of
24 these state court rulings either, since you are not a
25 party.

1 But, back to what the BLM decided. When
2 it -- when GDC brought an action requesting the BLM to
3 terminate this Federal unit, and to give recognition to
4 what the state court had done, the BLM had a different
5 analysis. Their analysis was essentially that the fee
6 owner had signed a ratification document, where he
7 committed his land to the Federal unit. It wasn't just
8 the working interest owner that had submitted the well.
9 The mineral owner, John Akin, had also ratified and
10 said, I agree to be bound by the Federal unit.

11 So, the BLM's interpretation is
12 essentially that it -- when Mr. Akin agreed to that, he
13 agreed that he would be subject to the terms and
14 conditions of the BLM, in terms of further operation of
15 this well, and on his property, and, therefore, he had
16 to go through the BLM in order to have anything happen
17 to that lease, or to the land. And IBLA expressly held
18 that, from their position, his land was still subject
19 to the Federal unit operating agreement by virtue of
20 his commitment of the land back in the 1980s. So, that
21 was their analysis.

22 So, we have two starkly different legal
23 conclusions, one reached by the BLM and one reached by
24 the state court. The Commission is not a party to
25 either of these proceedings, so you are not bound by

1 either. What should you do? Well, you are bound by
2 one document, which is your Memorandum of Understanding
3 with the BLM. That is a contract that you're a party
4 to. And I am not that familiar with it, but from what
5 I understand, essentially, what that says, that if
6 these two agencies, since there's a lot of Federal
7 lands involved in Colorado, these two agencies should
8 try to cooperate with each other, joint cooperation,
9 accommodate, respect, and here you have the BLM taking
10 the position that this Federal unit still applies.
11 This is the well in which the Federal unit is premised.

12 The Federal government has established
13 its own participating area, which is clearly different
14 from the spaced area that the Commission would
15 establish. And the BLM has its own procedures for
16 change of operator that includes polling the other
17 working interest owners that are participating in the
18 area, perhaps making an adjustment of costs between the
19 various owners, if anything is taken out of that unit.
20 And none of those procedures have yet been used by GDC
21 here.

22 So, I think Mr. Lepore advises you
23 correctly. The appropriate thing for the Commission to
24 do is not put itself in the middle of this legal
25 dispute, decide whether the IBLA is right or the state

1 court is right. You are not a party. Let BLM have it
2 and see what they come up with. So, thank you for your
3 consideration, and I think, therefore, you should
4 follow the recommendation and either deny the
5 application or relinquish jurisdiction to the BLM.

6 CHAIRMAN EPEL: Commissioner questions
7 for Mr. Kimmell? So, Commissioners --

8 MR. BARBER: Brief response?

9 CHAIRMAN EPEL: Mr. Barber.

10 MR. BARBER: I told you that what you
11 were going to hear has already been said, and it has
12 been said, exactly, this was said to the state court,
13 Judge Rivera, exactly. What Mr. Kimmell just said was
14 said to the Colorado Court of Appeals. Exhibit H is
15 the Colorado Court of Appeals' decision. I just direct
16 your attention to paragraph 5, which attacks the
17 jurisdiction of the Colorado state court to make the
18 decision that this lease was terminated and that it was
19 not part of a unit. The Colorado Court of Appeals said
20 the unit agreement granted exclusive jurisdiction to
21 the BLM for Federal leases only. And that's why this
22 case really is a different animal than what the BLM is
23 trying to -- and Mr. Kimmell are trying to have you
24 think it is.

25 This lease, the Black lease, has been

1 terminated on this land 10 years ago. Mr. Black has
2 agreed never to come on the property, seven years ago.
3 The Colorado courts have said, this GDC lease is not
4 part of a Federal unit. So, we're just going around in
5 a circle.

6 And what we were told to do is to come to
7 you and ask for the change of operator. And as I said,
8 that's why we're here. I think that the absolute worst
9 thing to do is to give this to the BLM, because, then,
10 we would have another body making a decision, and who
11 knows what that decision will be. And it will be
12 either with the Colorado state court -- well, it won't
13 be with the Colorado state court, because the Colorado
14 state court doesn't determine operatorship, but if the
15 BLM -- if you listen to Mr. Kimmell's request, still go
16 ahead and ask that this lease be deemed to be valid,
17 the Black lease that was terminated 10 years ago, or
18 that Mr. Black be allowed to be the operator of the
19 well, when he doesn't even have the right to come onto
20 the property, so, kicking it over to the BLM is not
21 going to prevent waste. It's just going to mean years
22 and years of contention between these parties, whereas
23 if you designate GDC as the operator, GDC will have the
24 right to go operate this well. And if the BLM thinks
25 it should get some money or something, then I guess the

1 BLM will step forward. As we speak here today, this
2 lease is not part of the Federal unit, so there is no
3 reason for the BLM to get involved.

4 CHAIRMAN EPEL: Mrs. Guerriero, do you
5 want to respond?

6 MS. GUERRIERO: I guess mostly I would
7 just like to say, we stated our position in our
8 protest. Our position is strongly this well is a part
9 of the Federal unit, as stated in our protest, and our
10 protest speaks for itself. IBLA also said that we
11 strongly believe it is part of the unit.

12 CHAIRMAN EPEL: Thank you.
13 Commissioners, we have two paths. Do I have a motion?
14 Commissioner Cutright.

15 COMMISSIONER CUTRIGHT: I am going to go
16 on a limb here, and I am going to move that we deny the
17 application and remand it back to the BLM and let the
18 parties decide on the lease.

19 COMMISSIONER HOUPPT: Second.

20 CHAIRMAN EPEL: For my own clarification,
21 that's to relinquish.

22 COMMISSIONER DOWLING: As Yogi Bear said,
23 when you come to the fork in the road, take it.

24 CHAIRMAN EPEL: You're relinquishing.

25 COMMISSIONER CUTRIGHT: We're

1 relinquishing back to the BLM.

2 CHAIRMAN EPEL: Motion to relinquish?
3 Second? Discussion. Commissioner Dowling.

4 COMMISSIONER DOWLING: Can I ask Mr.
5 Lepore to just -- we have now heard from both of the
6 parties. Could you share a little of your legal
7 expertise with us again? Thank you.

8 MR. LEPORE: I will do my very best. I'm
9 going to try to submit a situation on the ground and,
10 obviously, counsel for both parties are welcome to
11 respond.

12 CHAIRMAN EPEL: No, they are not. That's
13 it.

14 MR. LEPORE: Very succinctly, the state
15 courts have ruled that Black does not have the lease,
16 has no right to access the Akin well, the only well on
17 this unit. The Federal BLM sees Mr. Black as the unit
18 operator, the only unit operator, and, in that
19 capacity, the only person with the right to access the
20 well and produce from the well. You have an absolute
21 and complete standoff in that regard.

22 The other disputed legal issue, as you've
23 heard, is whether or not the GDC lease, the top lease,
24 that came into effect when Black's lease is terminated,
25 is or is not subject of the Federal unit. If it is,

1 and it were to be produced, then GDC would pay
2 royalties to the Federal mineral leaseholders, and so
3 forth, under that instant agreement. If it's not, he
4 would keep the proceeds for the Akin property.

5 I think it's clear that GDC believes it's
6 not subject to the Federal unit and won't pay those
7 proceeds to the Federal leaseholders. Obviously, that
8 concerns BLM. Now, I have to say, if that's the
9 outcome, if he is the named operator under state law
10 and goes forth and operates, and BLM perceives that to
11 be a violation of the unit agreement, they can do what
12 they can do, okay?

13 Now, another thing I want to point out,
14 that GDC did go to BLM and ask them to terminate the
15 Federal unit. And he went there on a legal theory
16 called, "Failure of Title." They rejected that effort.
17 They refused to terminate the Federal unit. Mr. Black
18 is still -- Black Resources is still the unit operator.
19 So, again, nothing is getting done.

20 As I pointed out before, IBLA
21 specifically ruled that GDC's lease is part of the
22 Federal unit. I'll leave it at that.

23 CHAIRMAN EPEL: Commissioner Craig.

24 COMMISSIONER CRAIG: I am not a lawyer.
25 I am an engineer. I want to get off dead center. If

1 we relinquish to the BLM, how is that going to get us
2 off of dead center? I am asking you that, because I
3 don't see, if we take that position, how it's going to
4 go ahead and move it one way or the other?

5 MR. LEPORE: It's an excellent question,
6 Commissioner Craig. It's also the first question I
7 asked the solicitor's office when I called them. In
8 part, that's why I asked them to be here today. They
9 do not want to get into the weeds on this today. They
10 have made that fairly clear to me, but they have
11 committed that they would work with the parties, and
12 with my input, and the Commission staff input, to try
13 to move this off dead center. There should be a meet.
14 Let's put it that way.

15 CHAIRMAN EPEL: Okay. I think what's
16 also important is the fact that BLM is here, being, you
17 know, the Federal government, and the fact they would
18 come here on this matter, before the Commission,
19 basically say, we want to take a shot at resolving
20 this. For me, it's very impressive for an agency that
21 big to come and get involved. So, I'm very heartened
22 that they are here. Commissioner Houpt.

23 COMMISSIONER HOUP: This was a very
24 interesting file to read, it really was. And at the
25 end of the day, if we didn't have an MOU with the BLM

1 that was entered into, and in good faith by all
2 parties, I would say we need to really make a
3 determination today, because the same things have been
4 said for a number of years.

5 But I really believe it's important for
6 us to honor the MOU and honor the relationship we have
7 with the BLM, and have confidence that this isn't going
8 to turn into to two or three more years of discussion,
9 sort of.

10 CHAIRMAN EPEL: Commissioner Cutright.

11 COMMISSIONER CUTRIGHT: I mean, to me, I
12 think the documentation provided is very clear that GDC
13 owns the well and the lease. What's not clear, and the
14 red herring, is that there's a Federal unit that we
15 can't, as a panel, we cannot rule on the -- whether
16 this Federal unit is still operative or not. We have
17 not been presented, I don't think, ample evidence to
18 intercede in that.

19 You know, as it stands, GDC owns the well
20 or owns 200 acres of the lease. Mr. Black is the
21 operator that the BLM recognizes. And I think we need
22 to turn it over to the BLM and let them sort this out.
23 This is beyond what we can do.

24 CHAIRMAN EPEL: Additional discussion?
25 We have a motion and second.

1 (Whereupon the vote was called.)

2 CHAIRMAN EPEL: Motion passes, six to
3 zero. Thank you very much.

4 Do we have anything else, Director
5 Neslin?

6 MR. NESLIN: Nothing else.

7 CHAIRMAN EPEL: We're adjourned.

8 (Whereupon these proceedings were
9 concluded on March 25, 2010.)

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CERTIFICATE

STATE OF COLORADO) ss
CITY AND COUNTY OF DENVER)

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