

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

IN THE MATTER OF	)	
GAS DEVELOPMENT CORPORATION	)	APPLICATION FOR CHANGE
	)	OF OPERATOR

**APPLICATION**

Pursuant to Rule 503 of this Commission, Applicant, Gas Development Corporation ("GDC"), files this Application for Change of Operator. The purpose of this application is to obtain an Order from this Commission designating GDC as the operator of record for the Mary Akin No. 2 Well, which is located in the SESW, Section 27, Township 38 North, Range 14 West, Montezuma County, Colorado.

**BACKGROUND**

1. This Application addresses a situation between Black Resources, Inc. ("Black") and GDC involving the operatorship of the Mary Akin No. 2 Well ("Akin Well"), which is located in Section 27, T38N, R14W, Montezuma County, Colorado. For reasons discussed below, this well has been shut in for many years. Upon information, Black is designated as the operator of the Akin Well on the Commission's records. Although GDC owns the well and the lease on which the well is located, Black has refused to sign the required Form 10 to change the operator. GDC has previously submitted verbal and written requests to the COGCC staff to designate GDC as the operator of the Akin Well. See Exhibit "A" hereto. GDC was advised to file an application for change of operator with the full COGCC under Rule 503.
2. Black was the successor lessee of a 1982 oil and gas lease that covered the Akin Well, which is located on the property that is owned by John Akin ("1982 Lease"). Black became the successor operator to ARCO and owned an interest in the Akin Well and 1982 Lease until the late 1990's. For the past ten years, GDC has been involved in a number of lawsuits with Black over the ownership of the Akin Well. Two decisions by the Colorado Court of Appeals have confirmed GDC's ownership. Yet, Black refuses to transfer operatorship to GDC, which owns the well and lease.
3. Although the Akin Well was capable of producing usable amounts of natural gas, neither Black nor its predecessors ever connected it to a pipeline or took steps to produce and market natural gas from it. Dissatisfied with ARCO and Black's failure to develop the property or market production from the Akin Well, Mr. Akin signed a top lease in 1998 with GDC ("GDC Lease") which was to take effect upon the invalidation, expiration or termination of the 1982 Lease.
4. On February 4, 1998 Akin and GDC filed a lawsuit in the District Court for Montezuma County, Colorado seeking a declaration that the 1982 Lease had terminated. *John E. Akin v. Black Resources, Inc.*, 98-CV-23 (the "1998 Lawsuit"). A jury ruled in favor of Akin and GDC; Black appealed. The Colorado Court of Appeals declined to set aside the verdict, but remanded the case to the trial court to determine whether Black should have been given additional time to obtain production from the Akin Well; *i.e.* a "conditional cancellation" of the 1982 Lease. See Exhibit "B" hereto. On remand, the trial court gave Black until May 31, 2002 to attempt to

extract gas from the Akin Well by connecting it to a pipeline for sales. Black failed to put the Well into production, and the 1982 Lease was cancelled by the Montezuma County District Court in 2002. See Exhibit "C" hereto.

5. While the 1998 Lawsuit was pending, Black and its representatives began harassing and threatening Akin, and trespassed on his and GDC's property rights. To stop this conduct, Akin and GDC commenced a second lawsuit in Montezuma County. *John E. Akin, et al. v. William D. Black, et al.*, 2000-CV-232 (the "2000 Lawsuit"). In January 2003, the parties settled the 2000 Lawsuit by means of a Stipulation and Black agreed that it "shall not enter upon the property . . . for any purpose." See Exhibit "D" hereto, ¶ 2.

6. When further disputes arose between GDC and Black about other trespasses on the GDC Lease, and when Black refused to transfer operatorship of the Akin Well to GDC, GDC filed suit in the Denver District Court on August 9, 2005. The issues included whether Black had any rights in the Akin Well, and whether Black was required to sign a change of operator form -- Form 10 -- to transfer operatorship to GDC. Black tried to remove the 2005 Lawsuit to the Colorado federal court on the grounds that the case "involve[d] a federal question and an area preempted by federal law."

7. On September 13, 2006, the Honorable Marcia S. Krieger, of the United States District Court for the District of Colorado, remanded the 2005 Lawsuit to Denver District Court. She ruled that the federal court lacked subject matter jurisdiction because the Mineral Leasing Act and other federal law did not preempt GDC's state law claims involving the rights of parties to leases covering federal exploratory mining units. Black did not appeal Judge Krieger's remand order.

8. At that point, Black moved to stay the Denver District Court proceeding, arguing that GDC was required to have its complaints resolved by the Bureau of Land Management ("BLM"). The Denver District Court denied the motion on December 21, 2006, ruling that:

These parties have litigated two cases in state court over this lease and the related gas well, and Defendants never argued in those cases that [GDC] was required to exhaust any administrative remedies with the Bureau of Land Management. [Black's] lease has been terminated by orders of the prior courts.

See Exhibit "E" hereto.

9. Prior to trial in Denver, GDC filed a *Motion for Determination of Question of Law* in which it asked the trial court to determine, as a matter of law, that Black had no rights in the Akin Well or the GDC Lease. During the argument of GDC's motion, Black again moved to stay the 2005 Lawsuit and have the dispute moved to the BLM, which the trial court again denied. See Exhibit "F" hereto, ¶ 1. In response to GDC's motion on ownership, the Denver District Court ruled that GDC was the sole owner of the GDC Lease which covers the Akin property, that Black's rights

in the prior lease had been judicially terminated, and that Black had no right in the 1998 GDC Lease or the Akin Well. *Id.*, ¶'s 9, 13, 17.<sup>1</sup>

10. The 2005 Lawsuit was tried to the Denver District Court December 3, 2007. In its December 18, 2007 Findings of Fact, Conclusions or Law and Order of Judgment (attached hereto as Exhibit "G"), the court incorporated its previous Order of November 30, 2007, and confirmed that Black owned no interest in the Akin Well, and that GDC's 1998 lease stood on its own and was not committed to any federal unit. The court, however, denied GDC's request for change of operator, and ruled that GDC would first have to exhaust its administrative remedy and ask the COGCC to require Black to sign documents which may be necessary to transfer the right to operate the Akin Well to GDC. *Id.*, ¶'s 23-28.

11. The Colorado Court of Appeals upheld the Denver District Court's ruling for purposes that are relevant here. It adopted the trial court's reasoning that GDC was not entitled to an order requiring Black to transfer operatorship because the issue "was not ripe for failure to exhaust [GDC's] administrative remedies" with the COGCC. See Exhibit "H" hereto, at pp. 17-22.

12. The Court of Appeals noted that §34-60-105(1), C.R.S. 2008 states: "[COGCC] has jurisdiction over all persons and property, public and private, necessary to enforce the provisions of [the Oil and Gas Conservation Act], and has the power to make and enforce rules, regulations, and orders pursuant to [the Act], and to do whatever may reasonably be necessary to carry out the provisions of [the Act]." As part of its obligations under the Oil and Gas Conservation Act, the COGCC has authority to regulate "[t]he drilling, producing and plugging of wells and all other operations for the production of oil or gas" on privately owned land in Colorado. §§34-60-106(2)(a), 34-60-120(1)(b), C.R.S. 2008. *Id.*

13. The Court of Appeals further ruled that a well "operator" is "any person who exercises the right to control the conduct of oil and gas operations," §34-60-103(6.8), C.R.S. 2008 and that the COGCC has the authority to determine whether a party meets the qualifications to be an operator. It found that before the COGCC will grant approval for operation of a well, it requires that a putative operator must: (1) file a change of operator form and (2) submit the form with the requisite filing and service fee. It concluded that the COGCC has jurisdiction over all persons who wish to operate an oil or gas well on Colorado lands, because the COGCC has authority to regulate "all operations for the production of oil or gas", and an "operator" is a person who "exercises the right to control the conduct of oil and gas operations". *Id.* Thus, the Court of Appeals determined that GDC was required to pursue its request for a change of operator with this Commission.

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<sup>1</sup> The property and Akin Well had been part of the Mary Akin federal exploratory unit until the prior 1982 lease was cancelled. The trial court determined that pursuant to Section 18.9 of the Mary Akin Unit Operating Agreement and Section 27 of the Mary Akin Unit Agreement, the GDC Lease is not part of the Mary Akin Unit, because "that particular lease was never committed to the Unit." Ex. F, ¶'s 15-17.

14. As noted, GDC first requested that Black be required to sign the necessary Form 10 in late 2007. The request was not acted on and, when GDC received the final ruling from the Colorado Court of Appeals in March 2009, it verbally renewed its request with staff. GDC was advised that it needed to file a formal application under the Series 500 rules, which it has now done herein.

15. The Colorado General Assembly has given the COGCC the power and duty to regulate oil and gas operations in this State in a manner that "protect[s] public health, safety and welfare." C.R.S. §34-60-106(2)(d). Since Black has no interest in the well and is prohibited from having any access to it, the public health, safety and welfare are not served by Black being the designated operator of the Akin Well. Black owns no interest in the Akin Well or the GDC Lease. It is prohibited by the Stipulation (Ex. D) from entering the GDC Lease or accessing the Akin Well "for any purpose". Simply stated, Black is incapable of performing the duties of operator for this well, and cannot protect the health, safety and public welfare.

### **RELIEF REQUESTED**

GDC is the sole owner of the Akin Well. Black has given up any right it may have had to enter on the well property and cannot operate the well. Because of this fact, Black cannot comply with the duties and obligations that the COGCC rules impose on an operator, and cannot respond to the myriad health and safety issues which an operator must address. GDC is the only party with rights in the Akin Well and should be designated as operator by this Commission, either by requiring Black to transfer operator rights and sign the requisite Form 10, or by an order of this Commission declaring GDC to be the operator of the Akin Well.

DATED this \_\_\_\_\_ day of October, 2009.

Respectfully submitted,

PHILLIP D. BARBER, P.C.

By: \_\_\_\_\_  
Phillip D. Barber (#9623)  
1675 Larimer Street, Ste. 620  
Denver, CO 80202  
Telephone: 303-894-0880

## VERIFICATION

I, Jack J. Grynberg, President of Gas Development Corporation, confirm that the facts stated in this Application are true and correct to the best of my understanding and belief.

\_\_\_\_\_  
Jack J. Grynberg

STATE OF COLORADO            )  
  )  
City and County of Denver    )       ss:

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of October, 2009, by Jack J. Grynberg, President of Gas Development Corporation.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

## **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing APPLICATION, has been mailed, first class postage prepaid, this \_\_\_\_\_ day of October, 2009, addressed to the following:

Black Resources, Inc.  
320 Mustang Trail  
Granbury, TX 76049

Mr. William Black  
320 Mustang Trail  
Granbury, TX 76049

Thomas J. Kimmell, Esq.  
Zarlengo & Kimmell, PC  
1775 Sherman Street, Ste. 1375  
Denver, CO 80203

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