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Jack J. Grynberg; Celeste C. Grynberg and L and R Exploration Venture v. Quest Pipeline Company, a Utah Corporation, Questar Gas Managment Company, a Utah corporation and Questar energy Trading Company, a Utah corporation : Brief of Appellant

Utah Supreme Court

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Susie Inskeep Hindley; Holland & Hart; Donald I. Schultz; Holland & Hart; Terri T. McIntosh; Questar Corporation; Attorneys for Appellees.
Brent V. Manning; Alan C. Bradshaw; Manning Curtis Bradshaw & Bednar; Attorneys for Appellants.

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IN THE UTAH SUPREME COURT

JACK J. GRYNBERG; CELESTE C. GRYNBERG and L & R EXPLORATION VENTURE, Plaintiffs/Appellants, v. QUESTAR PIPELINE COMPANY, a Utah Corporation, QUESTAR GAS MANAGEMENT COMPANY, a Utah corporation and QUESTAR ENERGY TRADING COMPANY, a Utah corporation, Defendants/Appellees.	Case No. 20010731-SC Third District No. 990909729

ADDENDUM TO BRIEF OF APPELLANT, JACK J. GRYNBERG, CELESTE C. GRYNBERG AND L & R EXPLORATION VENTURE

On appeal from the final judgment of the Third Judicial District Court for Salt Lake County, Honorable Timothy R. Hanson, District Judge

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FILED

NOV - 9 2001

CLERK SUPREME COURT
UTAH

IN THE UTAH SUPREME COURT

JACK J. GRYNBERG; CELESTE C. GRYNBERG and L & R EXPLORATION VENTURE, Plaintiffs/Appellants, v. QUESTAR PIPELINE COMPANY, a Utah Corporation, QUESTAR GAS MANAGEMENT COMPANY, a Utah corporation and QUESTAR ENERGY TRADING COMPANY, a Utah corporation, Defendants/Appellees.	)	Case No. 20010731-SC Third District No. 990909729

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FILED DISTRICT COURT
Third Judicial District

MAR - 8 2001

SALT LAKE COUNTY
By Evelyn Thompson
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

JACK J. GRYNBERG; CELESTE C. GRYNBERG and L & R EXPLORATION VENTURE,	:	MEMORANDUM DECISION
	:	CASE NO. 990909729
Plaintiffs,	:	
vs.	:	
QUESTAR PIPELINE COMPANY, a Utah corporation; QUESTAR GAS MANAGEMENT COMPANY, a Utah corporation, and QUESTAR ENERGY TRADING COMPANY, a Utah corporation,	:	
	:	
	:	
	:	
Defendants.		

This case came before the Court for hearing on December 18, 2000, in connection with the defendants' Motion to Dismiss First Amended Complaint. Following oral argument, the Court took the matter under advisement. On January 12, 2001, plaintiffs filed a Supplementation of Record, the consideration of which postponed the Court's determination of the pending Motion to Dismiss. In a related Minute Entry decision, entered contemporaneously with this Memorandum Decision, the Court has addressed the procedural and substantive basis for the Supplementation, as well as the Motion to

Strike that Supplementation, filed by defendant Questar on January 24, 2001. Since having taken the Motion to Dismiss under advisement, the Court has had an opportunity to consider or reconsider the law, all relevant pleadings, facts and the oral argument in this case. The Court notes that it has also considered the extraneous materials submitted by the parties. Therefore, the Court treats the defendants' Motion to Dismiss as a motion for summary judgment.[1] Utah R.Civ.P. 12(b). Being otherwise fully advised, the Court enters the following Memorandum Decision.

FACTUAL BACKGROUND

Payment for the plaintiffs' natural gas was based on the measured volume of gas multiplied by the heating content (BTU) and multiplied by the price per MMBTU. The plaintiffs complain that the defendants' methodology of measuring the BTU content was incorrect and therefore resulted in a diminished value (and payment) for the natural gas being produced by the plaintiffs.

---

[1] The Court notes that in their response to the defendants' Motion, the plaintiffs contend that this Court should not grant summary judgment before they have had an opportunity to conduct discovery. The plaintiffs also contend that the Court should treat them separately for purposes of this Motion.

The Court denies the plaintiffs' request to conduct discovery because they have not demonstrated how additional discovery would be of assistance, particularly where the core issues are centered around the statute of limitations and the legal principles of the economic loss doctrine. The Court also declines to treat the plaintiffs as separate parties because the defendants have pointed the Court to persuasive evidence that Mr. Grynberg has, in the past, admitted that he represents the other two plaintiffs and has conducted himself accordingly.

Questar sued the plaintiffs for declaratory judgment in the United States District Court for the District of Wyoming (Questar Pipeline Co. v. Grynberg, et. al., 201 F.3d 1277 (10th Cir. 2000)). Questar sought declaratory judgment as to the price that it was to pay the plaintiffs under the parties' gas purchase agreements, which were entered into when gas prices were still regulated. The jury returned a verdict for the plaintiffs on all of its counterclaims (except one that had been previously dismissed by the trial court). Questar then sought a JNOV. The trial court granted the JNOV and substantially reduced the jury's determination of the price to be paid after de-regulation. The trial court also entered judgment in favor of Questar on all of the plaintiffs' counterclaims. The Tenth Circuit Court of Appeals reversed this decision in large part.

The plaintiffs contend that on the eve of trial in the initial Wyoming case, the trial court agreed to allow them to bring their BTU claims in a separate proceeding. The trial court orally announced that it would dismiss the BTU claims without prejudice on February 28, 1994. However, the court did not enter a written order to that effect until October 1, 1998.

LEGAL ANALYSIS

The defendants' first argument is that the plaintiffs' contract claims are barred by the statute of limitations. The

plaintiffs retort that the running of the statute of limitations has been suspended because of Questar's fraudulent concealment that the BTU was being incorrectly measured.

The Court concludes that there are no genuine issues of material facts concerning the plaintiffs' allegations of fraudulent concealment because it is clear from the record before the Court that Mr. Grynberg was aware of discrepancies in the BTU measurement as early as 1987 (see Letter from Grynberg to Berquist, dated November 4, 1987) and had undertaken independent sampling, including the hiring of two engineers to review and analyze the BTU adjustments on certain wells. (See Expert Witness Designations, dated December 7, 1988 and Mr. Grynberg's Deposition in an unrelated case on May 10, 1988). Of all the documents evidencing Mr. Grynberg's awareness of his potential BTU claims, the most persuasive to the Court was Mr. Grynberg's 1994 Affidavit stating that after receiving a reported measurement "which was 20 points higher on each well, than the previous measurement . . .[he] personally got involved in checking the BTU measurements from 1974 through the present . . . [finding] what appeared to be large discrepancies in reported BTU measurements on the settlement statements which Questar provided . .." (Grynberg Affidavit, dated February 25, 1995, at para. 2). These portions of the Affidavit, as well as other paragraphs alluded to by defense counsel during

the hearing, provide undisputed evidence that Mr. Grynberg was fully aware of his potential BTU claims and that this awareness arose in part from reviewing reports and other data provided to him by Questar. When viewing all of this evidence in its totality, there is simply no basis for this Court to find fraudulent concealment.

The plaintiffs' alternative argument is that under the savings clause found in Utah Code Ann. §78-12-40, any action that has been dismissed without prejudice may be refiled within one year. Section 78-12-40 specifically provides:

> If any action is commenced within due time and a judgment thereon for the plaintiff is reversed, or if the plaintiff fails in such action or upon a cause of action otherwise than upon the merits, and the time limited either by law or contract for commencing the same shall have expired, the plaintiff, or if he dies and the cause of action survives, his representatives, **may commence a new action within one year after the reversal or failure.**

Id. (emphasis added). Since the plaintiffs refiled their BTU claims within one year after the October 1, 1998, dismissal order, they contend that these claims are timely filed.

The defendants are urging the Court to instead apply the six-month savings statute found in the UCC, §70A-2-725(3), since this action involves a contract for sale of goods. Section 70A-2-725(3) specifically provides:

> (3) Where an action commenced within the time limited by Subsection (1) is so terminated as to leave available a remedy by another action for the same breach such other action may be commenced after the expiration of the time limited and **within six months after the termination of the first action unless the** termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute . . .

Id. (emphasis added). The plaintiffs maintain that the six-month UCC savings clause is inapplicable because it applies only where an entire original action was terminated, while the one-year savings clause applies in cases such as this where there has only been a partial prior dismissal. The defendants, on the other hand, cite Perry v. Pioneer Wholesale Supply Co., 681 P.2d 214, 216 (Utah 1984), for the proposition that "when two statutory provisions appear to conflict, the more specific provision will govern over the more general provision."

Although Perry does not directly deal with the savings provision of §70A-2-725(3), the holding in that case that the more specific Uniform Commercial Code limitations period trumps the more general statute of limitations is clearly applicable to this case. Specifically, by an extension of the logic underlying the Perry case, the six-month savings provision of §70A-2-725(3) would apply over the plaintiffs' claims that the defendants breached an Article 2 sale of goods contract, over the more general one-year savings

provision found in §78-12-40. This conclusion is buttressed by the decision in Portwood v. Ford Motor Co., 701 N.E.2d 1102 (Ill. 1998), where the court held that the six-month UCC savings provision does in fact prevail over a general one-year savings provision.

The only remaining issue is whether the six-month savings provision commences from October 1, 1998, the date that the final dismissal was entered or on March 17, 2000, when the Wyoming court entered Judgment Following Remand to District Court After Appeal[2,3]. The Court determines that since the six-month savings provision focuses on the time that an action is terminated, which in this case occurred officially on October 1, 1998, this date is determinative of whether the plaintiffs' contractual claims are timely. Furthermore, since the plaintiffs' Complaint in this

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[2] The Court notes that although the plaintiffs focused on the March 17th date during the hearing, the Judgment Following Remand did not even pertain to the BTU claims, which had been dismissed (by oral ruling) prior to the Tenth Circuit appeal.

[3] According to plaintiffs' counsel, other dates may also be applicable for determining the running of the statute of limitations. Specifically, during oral argument, the plaintiffs' counsel alluded to payments being received by the plaintiffs from Questar which were an acknowledgment of "incorrect BTU adjustments." Counsel elaborated on this argument in the Supplementation of the Record, filed on January 12, 2001. In the Supplementation, counsel reiterated that such an acknowledgment would begin the running of the relevant statute of limitations anew. Since the Court addressed the substance of the Supplementation in a related Minute Entry decision, the issue of whether there are additional dates which may be determinative of timeliness is not discussed herein.

matter was filed on September 29, 1999, more than six months after the October 1, 1998, final dismissal, the plaintiffs' contractual claims are time-barred as a matter of law.[4]

The Court next considers the plaintiffs' tort claims. The Court determines that these claims do in fact arise only from the duties defined by and performance undertaken pursuant to the parties' 1974 contract, which, as the Court has already alluded, is governed by the UCC.[5] Therefore, the economic loss rule dictates that the parties' contract would provide the sole remedy available to the plaintiffs. In addition, the Court determines that the cases cited by the plaintiffs concerning parallel tort claims are

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[4] During oral argument, the plaintiffs expanded on their relation back theory. However, the Court's determination that the plaintiffs failed to refile within the six month savings period is fatal to their contractual claims, irrespective of this theory. However, their application of this theory also fails on substantive grounds. Specifically, after reviewing the excerpts of the Transcript of Trial Proceedings, dated March 1, 1994, the Court concludes that this theory is simply unavailable to the plaintiffs because the plaintiffs' current BTU claims had never been plead. In fact, while the plaintiffs did raise an issue concerning BTU content, which was limited in scope, the Wyoming court specifically found that a claim based upon BTU content over a lengthy period of time (such as the one asserted by the plaintiffs herein) was "not one that had ever made the pleadings."

[5] During oral argument, plaintiffs' counsel asserted that the defendants owed both contractual duties and outside duties imposed on common carriers. Although the issue of whether the defendants qualify as "common carriers" was not really addressed by either side during the hearing, the defendants cited persuasive case law in their memoranda that natural gas pipelines cannot be considered common carriers. Williams Natural Gas Co., 73 FERC ¶61,285 (1995). While the plaintiffs countered with a number of cases, they are inapplicable because they involve buses and ships, rather than a gas pipeline.

inapplicable because of the dissimilarity in the contracts involved.[6] Therefore, the Court concludes that economic loss doctrine bars the plaintiffs' tort claims.

The Court recognizes that fraud is a possible exception to the economic loss rule. However, as discussed above, the defendants have provided definitive evidence that the plaintiffs were aware of a possible fraud claim in 1995, but failed to plead (in a private capacity)[7] or give actual notice that a fraud claim existed until the present action was filed and after the time for filing such a claim had already passed. The same can be said of the plaintiffs' negligent misrepresentation claim and fraudulent concealment claims. These claims are therefore dismissed as a matter of law.

Finally, the defendants have moved to dismiss all of the plaintiffs' claims arising after the termination of the long-term contracts in July, 1994. While it appears that the foregoing analysis results in a dismissal of all of these claims (i.e. based

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[6] As pointed out by the defendants at the hearing, the cases cited by the plaintiffs do not involve UCC contracts. Furthermore, unlike the independent duties involved in the cases cited by the plaintiffs, it is the **contractual duties** of sampling, testing and reporting the BTU content of the gas which is the source of the plaintiffs' current claims.

[7] The defendants pointed out during oral argument that Mr. Grynberg did allege strikingly similar practices to those underlying the plaintiffs' current fraud claims while "standing in the hat of the federal government," (see FCA Complaint, dated April 17, 1995), these allegations were not made in his private capacity until the present action was filed. In addition, it appears that since the FCA Complaint was sealed, the defendants were not put on notice of these allegations.

on either statute of limitation grounds or the economic loss doctrine), the Court also concludes that dismissal is warranted on the grounds set forth in the defendants' moving papers. In this regard, the Court is particularly persuaded that the plaintiffs have failed to establish a viable claim for common carrier liability (see also fn. 5) or that there existed a fiduciary relationship between the parties both during the contractual period and after.

To conclude, the Court grants the defendants' Motion to Dismiss in the entirety, which the Court has treated as a motion for summary judgment, on the basis that there are no genuine issues of material facts and the defendants are entitled to summary judgment as a matter of law. Counsel for the defendants is to prepare an Order consistent with this Memorandum Decision and submit the same to the Court for review and signature.

Dated this 8 day of March, 2001.

TIMOTHY R. HANSON
DISTRICT COURT JUDGE

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Memorandum Decision, to the following, this 8 day of March, 2001:

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Evelyn Thompson

Tab B

Third Judicial District

AUG - 6 2001

SALT LAKE COUNTY

By _____ Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

JACK J. GRYNBERG, CELESTE C. GRYNBERG, and L & R EXPLORATION VENTURE, Plaintiffs, v. QUESTAR PIPELINE COMPANY, a Utah corporation; QUESTAR GAS MANAGEMENT COMPANY, a Utah corporation; and QUESTAR ENERGY TRADING COMPANY, a Utah corporation, Defendants.	**ORDER GRANTING SUMMARY JUDGMENT FOR DEFENDANTS** Case No. 990909729 Judge Timothy R. Hanson

This matter came before the Court on Defendants' Motion to Dismiss First Amended Complaint filed July 6, 2000. Plaintiffs Jack J. Grynberg, Celeste C. Grynberg, and L & R Exploration Venture (collectively, "Plaintiffs") filed a Memorandum in Opposition to Defendants' Motion to Dismiss on August 8, 2000. On August 31, 2000, Defendants filed a Reply to Plaintiffs' Memorandum in Opposition to Defendants' Motion to Dismiss First Amended Complaint. Defendants' motion came before the Court for hearing on December 18, 2000.

On January 21, 2001, Plaintiffs filed a Supplementation of Record. Three days later, Defendants filed a Motion to Strike Plaintiffs' proposed supplementation. The Court considered Plaintiffs' Supplementation of Record, which postponed the Court's determination of Defendants' Motion to Dismiss. On March 8, 2001, the Court issued a

Memorandum Decision concerning Defendants' Motion. The Court has reviewed the parties' briefs, affidavits, and exhibits, and heard oral argument on December 18, 2000. Now being fully advised in the premises, the Court

HEREBY FINDS AND ORDERS AS FOLLOWS:

1. The Court considered extraneous materials submitted by the parties and therefore treats Defendants' Motion to Dismiss as a motion for Summary Judgment. Utah R. Civ. P. 12(b); 56.

2. The Court's March 8, 2001 Memorandum Decision and the findings and conclusions set forth therein are incorporated by reference as if set forth fully in this Order.

3. The Court denies Plaintiffs' request to postpone ruling on Defendants' motion until Plaintiffs have had an opportunity to conduct discovery. The Court finds, for the reasons set forth in the Memorandum Decision, that Plaintiffs have failed to demonstrate how additional discovery would be of any assistance to their response to Defendants' motion.

4. Defendants are hereby granted summary judgment on the merits of each of Plaintiffs' claims, and each of these claims are dismissed with prejudice, as follows:

Claims Relating to Time Periods Prior to July 1994: Contract Claims

5. Plaintiffs' First Amended Complaint included a claim for "Breach of Contract" (First Amended Complaint at ¶ 78) and a claim for a "Declaratory Judgment" (First Amended Complaint ¶¶ 79-81), which rest upon four gas purchase agreements, three of which were long-term agreements between Questar Pipeline Company and Plaintiffs in

effect from 1974 to July 1994. The United States District Court for the District of Wyoming, in granting partial summary judgment on the termination dates of contracts 245, 246 and 249 found that these contracts terminated on July 1, 1994. Order Granting Defendant's Motion for Partial Summary Judgment at 7, signed December 11, 1998, attached as Exhibit 7 to Defendants' Brief in Support of Motion to Dismiss First Amended Complaint (". . . it is therefore **ORDERED** that Contracts Nos. 245, 246 and 249 expired on July 1, 1994"; emphasis in original). This interlocutory order is non-final and not yet appealable because no final judgment has been entered in the case before the United States District Court for the District of Wyoming. Based on the December 11, 1998 ruling, Plaintiffs' contract claims are barred by the four-year U.C.C. statute of limitations. Utah Code Ann. § 70A-2-725. Defendants are therefore entitled to summary judgment dismissing all of Plaintiffs' breach of contract claims.

6. There are no genuine issues of material fact concerning Plaintiffs' allegations of fraudulent concealment by Defendants sufficient to toll the U.C.C. limitations period. Defendants have shown by unrefuted evidence that Plaintiffs were on notice of the claimed misconduct by no later than early 1995, more than four years before Plaintiffs filed suit.

7. As a matter of law, the one-year general savings clause found in Utah Code Ann. § 78-12-40 does not apply to this case. The more specific six-month savings statute found in the U.C.C. for actions involving contracts for the sale of goods, Utah Code Ann. § 70A-2-725(3), applies to this case. *Perry v. Pioneer Wholesale Co.,* 681 P.2d 214 (Utah 1984).

8. A prior action between Plaintiffs and Defendants before the United States District Court for the District of Wyoming involving related claims terminated as to the related prior allegations on October 1, 1998, with no appeal of relevant claims. *Questar Pipeline Co. v. Grynberg et al.,* 201 F.3d 1277 (10th Cir. 2000). Plaintiffs' claims in this matter were filed on September 29, 1999, more than six months after October 1, 1998, outside the six-month savings period, and are therefore time-barred and subject to dismissal with prejudice as a matter of law, even if one were to assume the same claims had been pleaded in the prior action.

9. The relation back theory is unavailable to Plaintiffs because the Plaintiffs' current BTU claims had never been pled. While the Plaintiffs did raise an issue concerning BTU content, which was limited in scope, the Wyoming court specifically found (Transcript of Trial Proceedings, dated March 1, 1994, at 13) that a claim based upon BTU content over a lengthy period of time (such as the one asserted by the Plaintiffs herein) was "not one that had ever made the pleadings." *Id.*

Claims Relating to Time Periods Prior to July 1994: Tort Claims

10. Plaintiffs' tort claims in the First Amended Complaint included "Negligent or Intentional Misrepresentation" (¶ 82), "Fraud" (¶ 83), "Conversion" (¶ 85), "Res Ipsa Loquitur and Negligence" (¶ 86), "Breach of Fiduciary Duty" (¶ 87), and "Equity (Injunction, Accounting, Quantum Meruit, and Unjust Enrichment)" (¶ 88).

11. None of these six tort claims exists independently from Plaintiffs' contract claims. The parties' U.C.C. contracts fully cover the alleged duties associated with gas sampling and heating content. The parties agreed to embrace contractual remedies with

respect to alleged conduct by the Defendants. The economic loss doctrine bars each of Plaintiffs' tort claims.

12. Fraud, misrepresentation, and concealment are possible exceptions to the economic loss doctrine. However, Plaintiffs' fraud, misrepresentation, and concealment claims are also barred. Plaintiffs had actual notice of their fraud or misrepresentation claims by early 1995, but allowed the three-year statute of limitations to run.

13. Defendants have demonstrated multiple inquiry notice opportunities which would have lead a reasonable plaintiff to discover the claims earlier and render any alleged acts of concealment irrelevant. *Snow v. Rudd,* 998 P.2d 262 (Utah 2000). These opportunities were particularly evident in four documents presented by Defendants: (i) Mr. Grynberg's affidavit filed in the District of Wyoming in February 1994, which shows that when he acted as a diligent commercial seller of goods, he was able to discover the alleged mismeasurement independently of Defendants based upon facts Defendants provided to him and his own inquiry opportunities. Defendants' Exhibit ("App. Ex.") 23; (ii) The letter from John R. Landreth of Hunt Oil Company to Mr. Grynberg dated July 21, 1993, in which Mr. Landreth wrote: "Enclosed you will find copies of the latest Questar BTU measurement reports together with copies of *our April, 1993 independent sample analysis*." App. Ex. 33 (emphasis added); (iii) The Plaintiffs' own Expert Designation in the earlier suit in the District of Wyoming, dated August 17, 1993, in which the Plaintiffs stated their expert would testify that for periods covered by the long-term contracts "the gross heating value was to be determined by Questar at least quarterly and that based on his review of Questar's reports of Btu tests, Questar failed to conduct the Btu tests as required by the contract."

App. Ex. 19, p.4; and (iv) Mr. Grynberg's response to Questar Pipeline Company's Interrogatory #41 in the federal litigation in Wyoming, dated September 6, 1993, in which Mr. Grynberg admitted: "documents showing the dates of btu tests are documents produced by Questar to the Defendants. These documents show the dates Questar conducted the btu measurements." App. Ex. 14, pp. 40-41. There can be no "relation back" of fraud or misrepresentation tort claims to the prior litigation because no such claims were plead in that litigation.

Claims Relating to Time Periods Prior to July 1994: Common Carrier Liability

14. Plaintiffs' fifth cause of action for alleged "Common Carrier Liability" (¶ 84) is dismissed with prejudice as a matter of law because common carrier liability is not applicable to natural gas pipelines.

Claims Relating to Time Periods After July 1994

15. Plaintiffs' claims that relate to time periods after July 1994 (following the termination of the long-term contracts at issue in this case) are barred in part by the statute of limitations, in their entirety by the economic loss doctrine, by the lack of any applicable common carrier liability, by the absence of facts to support any contended fiduciary relationship, and by the absence of facts to support any contended third-party beneficiary status. No sound contractual or tort duty exists upon which Plaintiffs can base their claims for time periods after the long-term contracts between the parties expired.

16. Plaintiffs failed to submit facts to support third-party contractual beneficiary status. Specifically, Plaintiffs have failed to offer evidence that parties to post-July 1994 contracts entered into between the operator of Plaintiffs' wells and Defendants, at the time of the formation of those contracts, intended to benefit Plaintiffs as required under

applicable Wyoming law. *Hoiness-La Bar Ins. v. Julien Const. Co.,* 743 P.2d 1262 (Wyo. 1987). The form contract language Plaintiffs proffer shows instead the parties' intent to negative third-party reliance, the Plaintiffs' operator agreeing to be responsible for and to indemnify Defendants from any claims by other interest owners in the wells.

17. No evidence exists to support recognition of any fiduciary relationship between or among the parties. Plaintiffs are sophisticated commercial sellers of goods and the parties have a history of sophisticated commercial negotiations and litigation, not one of dependence by Plaintiffs upon Defendants.

18. The Court recognizes that Defendants continued to purchase Plaintiffs' gas until the end of 1994. However, Plaintiffs' conversion claim should be dismissed on the additional ground that after 1994 Defendants only transported gas owned by parties other than Plaintiffs. Before that, any conversion claims are barred by the statute of limitations or the economic loss doctrine.

19. All claims related to gas delivered under Contract 219, which terminated in early 1992, should be dismissed for the following additional reasons:

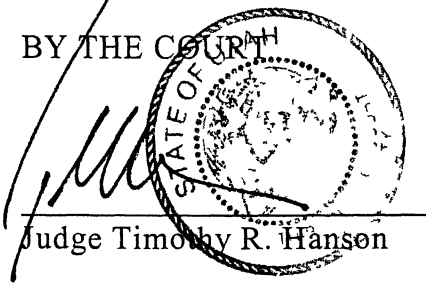
a. Both Utah and Colorado statutes of limitations applicable to that contract have run so as to bar any such claims; and

b. The parties previously entered into a binding settlement and release of all claims under Contract 219 and Plaintiffs have failed to raise a genuine issue of material fact regarding enforceability of that release or of concealment.

Defendants' Motion to Dismiss First Amended Complaint is **GRANTED** and this action is dismissed in its entirety with prejudice.

DATED this 6th day of August, 2001.

BY THE COURT:



Judge Timothy R. Hanson

Tab C

1061

M. F. S.
ORIGINAL

GAS PURCHASE AGREEMENT

BETWEEN

JUSTIN S. COLIN

MORGAN A. GUNST, JR.

WILLIAM BILLINGS

JAMES R. LOEWENBERG

PHILIP BERNSTEIN, JR.

JACK J. GRYNBERG

"SELLER"

AND

MOUNTAIN FUEL SUPPLY COMPANY

"BUYER"

SUGAR LOAF

MOFFAT COUNTY, COLORADO

DATED MARCH 1, 1971

Grynberg v. Questar
CA No. 97CV0477
Grynberg 12/8/97
Deposition
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GAS PURCHASE AGREEMENT

THIS AGREEMENT, made and entered into this 1st day of March, 1971, by and between JUSTIN S. COLIN, 44 Wall Street, New York, New York 10005, MORGAN A. GUNST, Jr., 290 Richmond Road, Hillsborough, California 94010, JACK J. GRYNBERG, 750 Petroleum Club Building, Denver, Colorado 80202, and WILLIAM BILLINGS, JAMES R. LOEWENBERG and PHILIP BERNSTEIN, Jr., all of 120 So. LaSalle Street, Chicago, Illinois 60603, hereinafter collectively referred to as "Seller," and MOUNTAIN FUEL SUPPLY COMPANY, 180 East First South Street, Salt Lake City, Utah 84111, a corporation organized and existing under and by virtue of the laws of the State of Utah, hereinafter referred to as "Buyer."

W I T N E S S E T H:

WHEREAS, Seller owns or controls, and desires to sell and Buyer desires to purchase Seller's share of gas underlying the lands and leaseholds (subject lands) described in Appendix "A" attached hereto and incorporated herein by reference.

NOW, THEREFORE, in consideration of the premises and mutual agreements herein contained, Seller and Buyer agree as follows:

ARTICLE I
Definitions

The following definitions shall apply to the below-quoted words whenever used herein:

1-1. "Gas" or 'natural gas" shall mean all merchantable combustible gas or vapors which conform to or are conformable by Seller to the quality specifications herein contained, including but not limited to natural gas, casinghead gas, and plant residue gas remaining after processing of natural or casinghead gas.

1-2. The term "well" or "gas well' shall mean a well delivering gas into the gas gathering system.

1-3. A "day" shall begin at 12:00 o'clock noon on each calendar day; and a "month" or "year" shall begin at 12:00 o'clock noon on the first calendar day of such month or year and end at 12:00 o'clock noon on the first calendar day of the month or year following such period. Time shall be Mountain Standard (or Daylight) Time.

1-4. "Cubic foot" shall mean one (1) cubic foot of gas at a temperature of sixty (60) degrees Fahrenheit and at a pressure of fifteen and twenty-five thousandths (15.025) pounds per square inch absolute.

1-5. The term "Mcf" shall mean one thousand (1,000) cubic feet.

1-6. "Subject gas reserves" shall mean initial recoverable gas reserves within subject lands. Recoverable gas reserves shall include only gas reserves upon or underlying the subject lands open to production in a completed well or wells connected to Buyer's pipeline, and shall be estimated by sound geological and petroleum engineering principles to underlie the lands surrounding such wells; provided such reserves:

(a) shall be calculated at a terminal stabilized surface pressure of one hundred (100) psig.

(b) shall not be calculated to underlie more lands around any given well than the lesser of

(i) the number of acres embraced within a valid spacing order applicable to such well, or

(ii) The drainage area accepted by the U.S.G.S. in their approval of the Federal unit participating area,

and in no event, more than six hundred and forty (640) acres per well.

(c) shall, if Buyer so requires with respect to each well producing gas from subject lands after two (2) or more calendar years, be determined by the decline curve method.

I-7. "Psig" expresses pressure in pounds per square inch gauge.

I-8. "Psia" expresses pressure in pounds per square inch absolute.

I-9. "Btu" shall mean British thermal units.

I-10. "Inert substances" shall mean noncombustible substances contained in the gas, including but not limited to helium, carbon dioxide, and nitrogen.

I-11. "Average daily rate" shall mean the annual volume of gas specified in the applicable quantity provision of this Contract divided by three hundred sixty-five (365).

I-12. "Atmospheric pressure" shall mean the average absolute atmospheric (barometric) pressure, and for measurement purposes shall be assumed to be eleven and four-tenths (11.4) pounds per square inch, irrespective of the actual elevation or location of the point or points of delivery above sea level.

ARTICLE II
Agreement to Sell and Reservations

II-1 Seller hereby agrees to sell to Buyer all gas owned or controlled by Seller, produced from or allocated to Seller's interest in subject gas reserves, except the gas required by Seller for:

(a) Drilling, developing and operating wells on Seller's leases on or near subject lands, or within the boundaries of any unit plan of operation to which any of the subject lands may be committed.

(b) Delivery to Seller's lessors in any amount required to meet Seller's present obligations under the provisions of Seller's leases covering the subject lands.

(c) Use as fuel or shrinkage in processing plants for the extraction of non-hydrocarbons or liquefiable hydrocarbons, or for treating gas to remove hydrogen sulfide or other impurities, or use as a fuel in compressor plants.

II-2. Subject to other provisions of this Contract, the control, management, and operation of Seller's

lands and leases and the wells located thereon shall be and remain the exclusive right of Seller including without limitation the drilling of new wells and the repair of old wells, to plug and abandon wells and to surrender non-productive and non-participating leases owned or controlled by Seller and dedicated hereto.

ARTICLE III
Delivery Point, Pressure and Compression

III-1. The delivery point for gas produced from the lands subject hereto shall be a central delivery point located in the SW¼ SE¼ of Section 3, Township 11 North, Range 101 West, 6th P.M., Moffat County, Colorado, and/or at such other point or points as may be mutually agreeable by the parties hereto. Title to and ownership of gas shall pass to and absolutely vest in Buyer at such point or points.

III-2. Seller shall be obligated to deliver and Buyer shall be obligated to accept delivery of gas hereunder at such pressure as may be necessary to enable Buyer to effect receipt of gas delivered hereunder into its transmission facilities at the intersection thereof with facilities delivering gas from Seller hereunder; provided that Buyer shall not be obligated to reduce the pressure of its transmission facilities to less than eight hundred (800) pounds per square inch gauge to effect receipt of gas delivered hereunder nor shall Seller be obligated to maintain a delivery pressure at said point of more than eight hundred (800) pounds per square inch gauge.

III-3. Should any of Seller's wells be incapable of delivering gas at such pressure as set forth in this Contract, Seller or Buyer may compress the gas so that it may be delivered to Buyer. If neither party elects to compress the gas, said well or wells will be released from this Contract.

ARTICLE IV
Rate of Delivery and Regulation of Flow

IV-1. Subject to the provisions of Paragraph IV-2, Buyer will receive deliveries of gas from subject lands in not less than the following amounts:

(a) From the commencement of deliveries until January 1, 1974, Buyer shall take fifty percent (50%) of the amount of gas that Seller is able to deliver on a sustained basis with a maximum annual quantity not exceeding seven hundred and thirty (730) million cubic feet for any well. If during this period, Seller is unable to deliver gas to Buyer at a rate of two hundred (200%) percent of the average daily rate, Buyer's obligation shall be reduced to fifty percent (50%) of the volume Seller is able to furnish on a sustained basis.

(b) Commencing January 1, 1974, and for the remainder of the term thereof, three hundred and sixty-five (365) million cubic feet of gas per calendar year for each ten (10) billion cubic feet of subject gas reserves, determined in accordance with Article XI hereof. During this period if Seller is unable to deliver gas to Buyer at a rate of one hundred and fifty percent (150%) of the average daily rate, Buyer's obligation shall be reduced to sixty-six and two-thirds percent (66-2/3%) of the amount Seller can deliver on a sustained basis.

IV-2. Buyer shall have the right to regulate the flow of gas insofar as the fluctuating market demand is concerned, but such regulation shall be subject to control by the Seller insofar as the ability of any well or wells to produce without damage to the reservoir is concerned. In order to allow Buyer the maximum flexibility in meeting market requirements, Buyer shall have the right at any and all times to take and Seller shall be obligated to deliver quantities of gas from any and all gas wells covered hereby up to one hundred percent (100%) of the ability of such well or wells to legally produce without damage to any individual well or the reservoir.

IV-3. If at any time during the term of this Agreement Seller does not deliver to Buyer the contract quantity of gas as set forth when requested so to do by Buyer, Buyer's obligation to take such quantity shall be reduced by an amount equal to the quantity of gas which was requested by Buyer and not delivered by Seller.

IV-4. Whenever the quantity of gas capable of being delivered from all acreage committed hereunder is or becomes so low that it is not economically feasible to sell or purchase such gas, either party may elect to discontinue selling or buying such gas by giving the other party one hundred and eighty (180) days written notice. The word "capable" as it appears above, is understood to include any legal limitations placed upon the well's production as well as any physical limitation.

ARTICLE V
Price

V-1. Buyer shall pay Seller for all gas delivered hereunder at the purchase meter, or meters, as the case may be, in accordance with the following schedule:

(a) From the commencement of deliveries until the expiration of five (5) full calendar years thereafter, twenty-one cents (21¢) per Mcf.

(b) During the five (5) year period following the period provided under subsection (a) of this Article V, twenty-two cents (22¢) per Mcf.

(c) During the five (5) year period following the period provided under subsection (b) of this Article V, twenty-three cents (23¢) per Mcf.

(d) During the five (5) year period following the period provided under subsection (c) of this Article V, and extending to the termination of this Contract, twenty-four cents (24¢) per Mcf.

(If at any time and from time to time during the term hereof, the Federal Power Commission or any other governmental agency whether state or Federal having competent jurisdiction, or a court of competent jurisdiction if appeal is taken from such regulatory body, fixes or determines a price for gas which would be applicable to gas being sold hereunder which is higher than that which is presently being paid under this contract, then Buyer shall immediately commence to pay Seller the price thus fixed or determined; provided, however, the price to be paid by Buyer to Seller shall at no time during the contract period hereof be less than the price set out in Article V.)

V-2. In the event the heating value per cubic foot of any gas covered by this Contract shall be less than 985 Btu, then Buyer may reject such gas or elect to continue to accept delivery of said gas, in which event an adjustment shall be made in the total amount which Buyer would otherwise pay for such gas if the said heating value were 985 Btu. Such adjusted price shall be determined by multiplying the said amount so otherwise payable by a fraction, the numerator of which is the actual heating value per cubic foot of gas, and the denominator of which is 985. Provided, that on notice from Buyer, the rate at which such gas below 985 Btu is received from any well or wells may be reduced without penalty and without invoking the "take-or-pay" obligations of Buyer as set forth in Article VII-2 hereof if, in Buyer's sole judgment, such reduction is required in order that such gas may be used in Buyer's system, in which event gas from such well or wells will be excluded from calculations of subject gas reserves and Buyer will, upon the written request of all owners selling gas from such well to Buyer, release any well or wells producing such gas and reserves attributable thereto from this Contract.

V-3. Seller shall bear and pay or cause to be paid all taxes assessed upon or in respect to the gas up to the delivery thereof to Buyer, and Buyer shall bear and pay all taxes assessed upon or in respect to such gas after delivery. Any increase in sales, occupation, production, or severance taxes (but not income, excess profits, capital stock, ad valorem or any other taxes) made effective and payable after the year hereof which would otherwise be payable by Seller upon or in respect to gas delivered hereunder, shall, so long as such increase is effective, be borne by the parties equally, the Buyer paying Seller an amount sufficient to reimburse Seller for three-fourths (3/4) such increase in tax.

ARTICLE VI
Title

VI-1. Seller hereby warrants the title to all gas delivered by Seller to Buyer from the subject lands, that Seller has full right and authority to sell same, and that such gas is free from all liens and adverse claims. Seller agrees to defend its title to and to indemnify, protect and save Buyer harmless from all suits, actions, debts, damages, costs, losses, and expenses arising directly or indirectly from or with respect to gas delivered hereunder. In the event of any adverse claim of any character whatsoever being asserted with respect to any of such gas, Buyer may retain the purchase price, without interest, of gas delivered or to be delivered hereunder up to the amount of such claim as security for the performance of Seller's obligations with respect to such claim,

until such claim has been finally determined or until Seller shall have furnished adequate bond with corporate surety, or such other security acceptable to Buyer, conditioned upon the full indemnification protection of Buyer with respect to such claim. Upon the assertion of any adverse claim with respect to gas for which Buyer has paid Seller, Buyer may, in the absence of adequate bond from Seller, or such other security acceptable to Buyer, retain from payments otherwise due or to become due to Seller upon gas covered hereunder not affected by such claim in sufficient amounts to secure and indemnify Buyer against such past payments to Seller; provided, that in the event the adverse claim should be finally adjudicated or otherwise settled in favor of the adverse claimant, in favor of the Seller, or partially in favor of both, Buyer shall apply such retained payments to the satisfaction of such adverse claim in accordance with such adjudication or other settlement without interest.

ARTICLE VII
Billing, Payment for Gas Not Taken, Make-up

VII-1. On or before the twentieth (20th) day of each calendar month, Buyer shall render to Seller a statement showing the amount of gas received by Buyer during the preceding calendar month, and payment shall be made therefor by Buyer within ten (10) days after the rendering of any such statement; provided, however, that to allow Buyer to utilize machine accounting, payment for gas purchased hereunder need not be made prior to the twenty-seventh (27th) day of any month, regardless of when billing is rendered and notwithstanding the foregoing ten (10) day proviso. Any errors in such statement or payment shall be promptly reported to Buyer, and Buyer shall make proper adjustment thereof within thirty (30) days after final determination of the correct volume or value involved. Upon written request, Buyer shall furnish Seller copies of measurement charts applicable to any monthly statements, which charts shall be returned to Buyer within thirty (30) days thereafter. Seller shall have access at all reasonable times to such of Buyer's records and books as pertain to volumes of gas received by Buyer.

VII-2. Should Buyer fail to receive gas from Seller in the amounts specified in the appropriate Rate of Delivery provision of this Contract and such failure not be attributable to Seller's failure to deliver same when required by Buyer, then Buyer shall, nevertheless, pay Seller therefor as though such gas were received, such payment to be made on or before sixty (60) days following the end of the calendar year of such deficiency. Buyer shall thereafter have the right during the succeeding five (5) calendar years to receive without additional cost, in addition to the minimum quantities of gas, if any, which Buyer is then obligated to take or pay for, the quantity of gas previously paid for but not taken.

VII-3. After deliveries have commenced, if Buyer pays Seller for gas not taken and subsequently Seller is not physically or legally capable of delivering the quantities of make-up gas in addition to the current contract quantities as provided for herein, the Seller will immediately refund to Buyer all

monies paid by Buyer for gas not taken.

ARTICLE VIII
Commencement of Deliveries--Term

VIII-1. Buyer shall have the right to transport gas delivered hereunder in either interstate or intrastate commerce, or both, and deliveries shall not commence until each of the parties hereto has received such authority from appropriate regulatory bodies to perform obligations of that party hereunder. If satisfactory authority is obtained and accepted, each party shall diligently construct necessary facilities with due regard to weather and other factors affecting the same. Either party hereto may cancel and terminate this Contract if the other party has not completed construction within the time initially fixed by regulatory authority (if any) or within six (6) months after issuance of the requisite authority, whichever period is shorter.

The parties hereto shall, from time to time, determine whether any obligations under this Contract require either party to obtain from any governmental body authority of any kind to perform its obligations hereunder, and shall, where necessary, diligently seek such requisite authority. Either party may cancel or terminate this Contract if requisite authority is denied or has not been received on or before July 1, 1971, or if such authority is received and is thereafter not accepted, terminated, or revoked.

VIII-2. This Contract shall be effective from the date hereof and shall continue in full force and effect for a period of twenty (20) years from and after the first (1st) day of January of the year next succeeding the year in which deliveries commence, and from year to year thereafter, unless and until cancelled by either party at the end of said twenty (20) year period or any anniversary thereof by not less than three hundred sixty-five (365) days' written notice to the other party.

ARTICLE IX
Right to Unitize

IX-1. Seller shall have the right to form or to participate in the formation of any unit which may include any of the subject lands; provided, however, that this Contract shall continue to apply to Seller's interest in gas upon or within any of the subject lands included in any unit so formed.

ARTICLE X
Quality

X-1. Gas delivered hereunder shall conform to the following specifications and Buyer may refuse to accept and pay for any gas which does not so conform:

(a) Odors and Solids. The gas shall be commercially free from objectionable odors, solid matter, dust, gums, and gum-forming constituents which might interfere with its merchantability or cause injury to or interference with proper operation of the lines, regulators, meters, or other facilities through which it flows.

(b) Oxygen. The gas shall not at any time have an oxygen content in excess of two-tenths (2/10) of one (1%) percent by volume, and Seller shall make every reasonable effort to keep the gas free from oxygen.

(c) Inert Substances. The gas shall not at any time contain inert substances in excess of three percent (3%) by volume.

(d) Liquids. The gas shall be merchantably free of crude oil, water, and hydrocarbons in liquid form, and Seller shall separate such substances from the gas so that they will not enter Buyer's facilities. The gas shall not contain more than four (4) pounds of water vapor per one (1) million cubic feet of gas measured at a pressure base of fourteen and seventy-three hundredths (14.73) pounds per square inch absolute and at a temperature of sixty (60) degrees Fahrenheit. All oil and liquid hydrocarbons separated from the gas by Seller prior to delivery to Buyer, shall remain the property of Seller. Seller shall have the right to receive the gas in the field, and remove non-hydrocarbons and liquefiable hydrocarbons, and retain the products resulting therefrom. At all times any and all liquids or liquefiable hydrocarbons recovered by Buyer after delivery of gas hereunder to Buyer shall be and remain the exclusive property of Buyer.

(e) Hydrogen Sulfide. The gas shall not contain more than one-quarter (¼) grain of hydrogen sulfide per one hundred (100) cubic feet.

(f) Total Sulfur. The gas shall not contain more than twenty (20) grains of total sulfur (hydrogen sulfide and mercaptan sulfur) per one hundred (100) cubic feet, of which not more than two-tenths (2/10) grains shall be mercaptan sulfur.

(g) Heating Value. The gas shall have a heating value per cubic foot of not less than nine hundred eighty-five (985) British thermal units, the term "heating value per cubic foot" meaning the number of Btu produced by the combustion at a constant pressure, of the amount of gas free from water vapor which would occupy a volume of one (1) cubic foot at a temperature of sixty (60) degrees Fahrenheit, and under a pressure equivalent to that of thirty (30) inches of mercury at thirty-two (32) degrees Fahrenheit under the standard gravitational force (the acceleration of 980.665 cm. per second per second) with air of the same temperature and pressure as the gas, when the products of combustion are cooled to the initial temperature of gas and air, and when the water formed by combustion is condensed to the liquid state.

ARTICLE XI
Reserve Determination

XI-1. Subject gas reserves shall be determined by the parties hereto as soon as practicable after the

date hereof and prior to the commencement of delivery and may be redetermined thereafter in any year if a request for such redetermination is made by either party in writing to the other at least thirty (30) days prior to the first (1st) day of March of such year. All redeterminations made on or before the first (1st) day of March as herein provided shall be effective as of the first (1st) day of January of the year such redetermination is made. Annual amounts of delivery after the first two (2) calendar years of deliveries will be based on the most current redeterminations, except for redetermination, made after March 1 of any given year in which event annual amounts of delivery shall be based on the next previous redetermination.

XI-2. Should Seller and Buyer be unable at any time to agree upon the quantity of subject gas reserves, they shall together endeavor to agree upon and select a person or firm of recognized ability in the field of reserve estimation, and failing therein, Buyer shall name one such person or firm and Seller shall name one such person or firm and the two persons or firms so named shall select a third person or firm. The three persons or firms so agreed upon or selected shall study the reserves in accordance herewith and make appropriate findings which the parties agree to accept in the absence of fraud, arbitrary conduct or capriciousness. Payment for the services performed by such persons or firms shall be borne jointly by Buyer and Seller (50%-50%).

ARTICLE XII
Meters and Gas Measurement

XII-1. The volume of gas shall be measured by an orifice meter at the point of delivery. Orifice meters shall be installed and operated by Buyer and volumes shall be computed as prescribed in Gas Measurement Report No. 3, dated April, 1955, of the American Gas Association, as amended prior hereto. The correction factor for Reynolds Number (Fr) and expansion factor (Y) shall be assumed to be unity (1.0). Buyer may use 24-hour, 7-day, or 8-day orifice meter charts.

XII-2. The temperature of the gas flowing through the meter or meters shall be determined by the Buyer by the use of a continuous recording thermometer of standard manufacture installed by Buyer and acceptable to the Seller, and so installed that it may properly record the temperature of the gas flowing through such meter or meters. The arithmetical average of the twenty-four (24) hour record, or of so much of the twenty-four (24) hours as gas has been passing, if gas has not been passing during the entire period, from the recording thermometer shall be deemed to be the gas temperature for the day and shall be used to make the proper corrections in volume computations.

XII-3. Specific gravity shall be determined quarterly by taking samples at the delivery point and determining the specific gravity thereof by the use of a gravity balance, or other mutually agreeable method.

XII-4. The gross heating value shall be determined by the Buyer as it deems necessary, or upon written request of Seller if the Btu is less than nine hundred eighty-five (985) on the last test.

XII-5. Tests to determine accuracy of Buyer's measuring equipment shall be made quarterly by Buyer, and Seller shall have notice of and an opportunity to witness such tests. Such test may be made at any other reasonable time at the written request of Seller. If, upon any special test requested by Seller, the measuring equipment is found to be no more than two percent (2%) erroneous in the aggregate, the entire cost of such test shall be paid by Seller, and previous readings of such equipment shall be considered correct in computing deliveries of gas hereunder, but such equipment shall be adjusted at once to read accurately. If, upon any test, the measuring equipment shall be found to be inaccurate in the aggregate by an amount exceeding two percent (2%) at a reading corresponding to the average rate of flow for the period since the last preceding test, then any previous readings of such equipment shall be corrected to zero error for any period which is known definitely or agreed upon. In case the period is not known definitely or agreed upon, such correction shall be for a period extending back one-half (½) of the time elapsed since the date of the last test. After any test, the meters will be corrected to read accurately. Buyer will pay the costs of regular tests. In addition, Buyer will pay the cost of all special tests in which the measuring equipment is found to be more than two percent (2%) erroneous in the aggregate.

XII-6. In the event any measuring equipment is out of service or registering inaccurately, the volume of gas delivered hereunder shall be estimated --

(a) by using the registration of any check measuring equipment if installed and accurately registering, in the absence of such equipment,

(b) by correcting the error if the percentage of error is ascertainable by calibration test or mathematical calculation, or, if neither method is feasible,

(c) by estimating the quantity of delivery by deliveries during a period under similar conditions when the measuring equipment was registering accurately.

XII-7. Seller shall have the right to be represented at and to participate in all tests of gas delivered hereunder or of any equipment used in measuring or determining the nature or quality of such gas and to inspect at any time during business hours, any and all equipment used for the measurement or determination of the nature or quality of gas delivered hereunder, but the reading, calibrating, and adjustment thereof, and the changing of charts, shall be done by Buyer only.

ARTICLE XIII
Force Majeure

XIII-1. If, as a result of Force Majeure, either party is unable to carry out, wholly or partially, its obligations under this Agreement, such party shall give to the other party prompt written or telegraphic notice thereof with reasonably full particulars; thereupon the obligations of the party giving the notice, so far as they are affected by the Force Majeure, shall be suspended during the

continuance of the Force Majeure but not longer. The affected party shall diligently restore conditions brought about by the Force Majeure as quickly as possible. The requirement that performance of all obligations hereunder be fully restored with all reasonable dispatch shall not require either party to settle a strike against its will.

XIII-2. The term "Force Majeure" as employed in this Article, shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockades, public riots, lightning, fires, storms, floods, explosions, breakage or accident to machinery or lines of pipe or materials, inability to obtain a right-of-way or materials, or any other causes, whether of the kind herein enumerated or otherwise, which are not reasonably within the control of the party claiming the suspension. It is understood and agreed that a substantial portion of Buyer's market for gas purchased hereunder consists of large industrial customers, and that the phrase "strikes, lockouts, or other industrial disturbances" includes strikes, lockouts or other industrial disturbances at or affecting such large industrial customers or any of them; and that Buyer's obligations to take gas from Seller hereunder are subject to reduction without penalty or "take or pay" obligations during any period of time Buyer's sales to any of such large industrial customers are reduced or curtailed by reason of strikes, lockouts or other industrial disturbances at or affecting any such customer.

ARTICLE XIV
Right-of-Way

XIV-1 Seller grants to Buyer, so far as Seller has the right to do so, right-of-way on the acreage covered by this Contract for Buyer's pipelines and such other facilities as may be necessary with full right of ingress and egress to and from said facilities, and with further right to do thereon such acts necessary or convenient for the carrying out of the terms of this Contract.

XIV-2. All equipment placed on the subject lands by Buyer shall be and remain its property and be subject to removal by it at any time.

ARTICLE XV
Successors and Assigns

XV-1. This Contract shall be binding upon the successors and assigns of the parties hereto but may not be assigned in total unless and until written notice of, and a true copy of such assignment is furnished to and receipted by the other party hereto. No assignment will be valid and binding which endeavors to relieve assigning party of any obligations to make payments hereunder accrued prior to the date of assignment or in which assignee does not affirmatively agree in writing to assume all obligations of assignor hereunder, including but not limited to the obligations to deliver gas paid for but not delivered prior to the effective date of the assignment.

XV-2. Notwithstanding the foregoing, either Buyer or Seller, or both, may assign its right, title and interest in, to and by virtue of this Contract, including any and all extensions, renewals, amendments and supplements thereto, to a trustee or trustees, individual or corporate, as security for bonds, notes or other obligations or securities, without such trustee or trustees assuming or becoming in any respect obligated to perform any of the obligations of the assignor, and, if any such trustee be a corporation, without first being required by the parties hereto to qualify to do business in the state wherein are located the subject lands.

ARTICLE XVI
Miscellaneous

XVI-1. It is expressly agreed that this Contract and the respective obligations of the Seller and Buyer hereunder are subject to present and future valid laws, orders, rules and regulations of duly constituted governmental authorities having jurisdiction.

XVI-2. Nothing herein shall be construed as affecting any of the relations between the United States and its lessees, or any state and its lessees, particularly in the matter of gas waste, taking royalty in kind, and the method of computing royalties due as based on a minimum price and in accordance with the terms and provisions of any applicable oil and gas operating regulations.

XVI-3. Neither Seller nor Buyer shall be nor be considered as being the agent, servant, or employee of the other party or be held responsible or liable for damages for the acts or conduct of the other.

XVI-4. Notices to be given hereunder shall be deemed fully given and served when and if deposited in the United States mail, postage prepaid by first-class, registered or certified mail to JACK J. GRYNBERG, 750 Petroleum Club Building, Denver, Colorado 80202, as agent for other Sellers, or Buyer at P. O. Box 11368, Salt Lake City, Utah 84111, or at such other address as either party shall respectively designate in writing. Statements of payments shall be addressed to Seller, at the address shown on page one of this Contract unless otherwise designated in writing by Seller.

Routine communications, including monthly statements and payments, shall be considered as duly delivered when deposited in the United States mails by either registered or certified mail, or ordinary first-class mail, postage prepaid, to the appropriate address specified in this Article. Notice of tests may be made by telephone.

XVI-5. Seller shall, from time to time, at Buyer's request, make available to Buyer such geological, engineering and production data as may be available to Seller and may be desired by Buyer for a study of the gas reserves covered hereby and the deliverability therefrom and which will enable Buyer to make and maintain currently its own reserve and deliverability studies. Seller shall determine stabilized shut-in pressures annually in cooperation with Buyer's representatives.

XVI-6. No waiver by either party of any one or more defaults or breaches by the other in the performance of any provisions of this Contract shall operate or be construed as a waiver of any future default(s) or breach(es) whether of a like or different character.

XVI-7. The topical headings used herein are inserted for convenience only, and shall not be construed as having any substantive significance or meaning whatsoever or as indicating that all of the provisions of this Agreement relating to any particular topic are to be found in any particular article.

XVI-8. Attached hereto and made a part hereof is a Certificate of Equal Opportunity Clause and Non-segregated Facilities.

IN WITNESS WHEREOF, this Agreement is executed by the parties hereto the day and year first above written.

WITNESS:

SELLER

Justin S. Colin

Morgan V. Gunst, Jr.

William Billings

James R. Loewenberg

Phillip Bernstein, Jr.

Jack D. Grynberg

ATTEST:

Assistant Secretary

BUYER
MOUNTAIN FUEL SUPPLY COMPANY

By

Vice President

Mtn. Fuel Supply Copy
Approved:
Land
Legal
Acct.
Unit
Tran:

Form 1150 A
6/69

SUPPLEMENT
TO GAS PURCHASE AGREEMENT
DATED MARCH 1, 1971
BETWEEN MOUNTAIN FUEL SUPPLY COMPANY
AND
JUSTIN S. COLIN, MORGAN A. GUNST, JR., WILLIAM BILLINGS
JAMES R. LOEWENBERG, PHILIP BERNSTEIN, JR., JACK J. GRYNBERG
HEREINAFTER REFERRED TO AS "CONTRACTOR"

Unless exempted by Federal Law, regulation, or order, the following terms and conditions shall apply during the performance of this contract.

EQUAL OPPORTUNITY CLAUSE

A. During the performance of this contract, the CONTRACTOR agrees as follows:

(1) The CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The CONTRACTOR will take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff, or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The CONTRACTOR will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the CONTRACTOR'S commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The CONTRACTOR will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The CONTRACTOR will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the CONTRACTOR'S noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations, or orders, this Agreement may be cancelled, terminated or suspended in whole or in part; and the CONTRACTOR may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor or as otherwise provided by law.

(7) The CONTRACTOR will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The CONTRACTOR will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the CONTRACTOR becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.

B. If required to do so by Federal Law, regulation, or order, CONTRACTOR agrees that he shall:

(1) File with the Office of Federal Contract Compliance, or agency designated by it, a

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complete and accurate report on Standard Form 100 (EEO-1) within 30 days after the signing of this Agreement (unless such a report has been filed within the last 12 months), and continue to file such reports annually, on or before March 31st;

(2) Develop and maintain a written affirmative action compliance program for each of its establishments in accordance with the regulations of the Secretary of Labor promulgated under Executive Order 11246, as amended.

CERTIFICATE OF NONSEGREGATED FACILITIES

CONTRACTOR certifies that he does not and will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not and will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. CONTRACTOR understands that the phrase "segregated facilities" includes facilities which are in fact segregated on a basis of race, color, creed or national origin, because of habit, local custom, or otherwise. CONTRACTOR understands and agrees that maintaining or providing segregated facilities for his employees or permitting his employees to perform their services at any locations, under his control, where segregated facilities are maintained is a violation of the Equal Opportunity Clause required by Executive Order No. 11246 of September 24, 1965, and the regulations of the Secretary of Labor set out in 41 CFR, Chapter 60. CONTRACTOR further agrees that (except where it has obtained identical certifications from subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity Clause; that it will retain such certifications in its files, and that it will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES: A Certification of Nonsegregated Facilities as required by the May 9, 1967, order on Elimination of Segregated Facilities, by the Secretary of Labor (32 F.R. 7439, May 19, 1967) and as required by the regulations of the Secretary of Labor set out in 41 CFR, Chapter 60, and as they may be amended, must be submitted prior to the award of a subcontract exceeding $10,000 which is not exempt from the provisions of the Equal Opportunity Clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e. quarterly, semi-annually, or annually.)

APPENDIX "A"

SUGAR LOAF

MOFFAT COUNTY, COLORADO

Attached to and made a part of the Gas Purchase Agreement dated March 1, 1971, between JUSTIN S. COLIN, MORGAN A. GUNST, JR., WILLIAM BILLINGS, JAMES R. LOEWENBERG, PHILIP BERNSTEIN,JR., and JACK J. GRYNBERG, as "Seller" and MOUNTAIN FUEL SUPPLY COMPANY as "Buyer."

Township 11 North, Range 101 West, 6th P.M., Moffat County, Colorado

Section 3 - SE¼

Tab D

AMENDATORY GAS PURCHASE AGREEMENT

BETWEEN

TERRA RESOURCES, INC.
JACK GRYNBERG
and
CELESTE C. GRYNBERG
Collectively Referred to As

"SELLER"

and

MOUNTAIN FUEL SUPPLY COMPANY

"BUYER"

NITCHIE GULCH AREA

SWEETWATER COUNTY, WYOMING

DATED APRIL 4, 1974

Grynberg v. Questar
CA No. 97CV0477

Venglar Deposition
10/21/97
Exhibit No 175

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AMENDATORY GAS PURCHASE AGREEMENT

This amendatory gas purchase agreement made and entered into this 4th day of April, 1974, by and between TERRA RESOURCES, INC., a Delaware corporation, P. O. Box 2329, Tulsa, Oklahoma 74101, JACK GRYNBERG and CELESTE C. GRYNBERG, 1050 17th Street, Suite 1950, Denver, Colorado 80202, hereinafter collectively referred to as "Seller", and MOUNTAIN FUEL SUPPLY COMPANY, a Utah corporation, P. O. Box 11368, Salt Lake City, Utah 84139, hereinafter referred to as "Buyer",

WITNESSETH:

WHEREAS, under date of December 13, 1965, Amax Petroleum Corporation, predecessor in interest to Terra Resources, Inc., Jack Grynberg and Celeste C. Grynberg, and Mountain Fuel Supply Company, entered into a Gas Purchase Agreement; and

WHEREAS, Seller owns or controls oil and gas upon and within the lands in the Nitchie Gulch Area of Sweetwater County, Wyoming (which lands are described in Appendix "A" attached to said Gas Purchase Agreement of December 13, 1965, and which are hereinafter referred to as "subject lands"); and

WHEREAS, Seller (together with other owners of communitized lands and leases in Section 12, Township 23 North, Range 104 West) desire to attempt to establish gas production in the Dakota formation at such time that the well work will not endanger the Frontier producing interval; and

WHEREAS, the rates provided for in the aforesaid contract of December 13, 1965, are insufficient to provide relief for the excessive costs of the projected operations; and

WHEREAS, among other considerations and commitments made hereunder, it is the intention of the parties to provide for a rate for wells drilled and producing prior to April 1, 1974, on subject lands and a different rate for wells drilled and completed or recompleted after April 1, 1974.

NOW, THEREFORE, in consideration of the premises and mutual agreements herein contained, the parties hereto agree as follows:

ARTICLE I

Definitions

The following definitions shall apply to the below-quoted words whenever used herein:

I-1. "Gas" or "natural gas" shall mean all merchantable combustible gas or vapors which conform to or are conformable by Seller to the quality specifications herein contained, including but not limited to natural gas, casinghead gas, and plant residue gas remaining after processing of natural or casinghead gas.

I-2. The term "well" or "gas well" shall mean a well delivering gas into the gas gathering system.

I-3. A "day" shall begin at 12:00 o'clock noon on each calendar day; and a "month" shall begin at 12:00 o'clock noon on the first calendar day of such month and end at 12:00 o'clock noon on the first day of the month following such period; and a "year" shall be a fiscal

year which will begin at 12:00 o'clock noon on July 1 and end at 12:00 o'clock noon on the following July 1. Time shall be Mountain Standard (or Daylight) time.

I-4. "Cubic foot" shall mean one (1) cubic foot of gas at a temperature of sixty degrees (60°) Fahrenheit and at a pressure of fifteen and twenty-five thousandths (15.025) pounds per square inch absolute.

I-5. The term "Mcf" shall mean one thousand (1,000) cubic feet.

I-6. "Psig" expresses pressure in pounds per square inch gauge.

I-7. "Psia" expresses pressure in pounds per square inch absolute.

I-8. "Btu" shall mean British thermal units.

I-9. "Inert substances" shall mean noncombustible substances contained in the gas, including but not limited to, nelium, carbon dioxide and nitrogen.

I-10. "Average daily rate" shall mean the annual volume of gas specified in the applicable quantity provision of this agreement divided by three hundred sixty-five (365).

I-11. "Atmospheric pressure" shall mean the average absolute atmospheric (barometric) pressure, and for measurement purposes shall be assumed to be eleven and no-tenths (11.0) pounds per square inch, irrespective of the actual elevation or location of the point or points of delivery above sea level.

ARTICLE II

Agreement to Sell and Reservations

II-1. Seller hereby agrees to sell to Buyer all gas owned or controlled by Seller, produced from or allocated to Seller's interest in subject lands, except that there is expressly reserved to Seller the gas required by Seller for:

(a) Drilling, developing and operating wells on Seller's leases on or near subject lands, or within the boundaries of any unit plan of operation to which any of the subject lands may be committed.

(b) Delivery to Seller's lessors in any amount required to meet Seller's present obligations under the provisions of Seller's leases covering the subject lands.

(c) Use as fuel or shrinkage in processing plants for the extraction of non-hydrocarbons or liquefiable hydrocarbons, or for treating gas to remove hydrogen sulfide or other impurities, or use as a fuel in compressor plants.

(d) Use in repressuring, recycling or pressure maintenance of the formation underlying the subject lands from which such gas was originally produced. However, when the gas is ultimately produced for sale it shall be subject to this agreement.

II-2. Subject to other provisions of this agreement, the control, management and operation of Seller's lands and leases and the wells located thereon shall be and remain the exclusive right of Seller, including without limitation, Seller's rights to drill new wells, to repair old wells, to plug and abandon wells and to surrender non-productive and non-participating leases

owned or controlled by Seller and dedicated hereto.

ARTICLE III

Term

III-1. This agreement shall be effective from the date hereof and shall continue in full force and effect for a period of twenty (20) years from and after July 1, 1974 and from year to year thereafter, unless and until cancelled by either party on three hundred sixty-five (365) days advance written notice, which notice may not be given prior to the 20th calendar year of deliveries hereunder.

ARTICLE IV

Commencement of Deliveries -- Authority

IV-1. It is expressly agreed that this agreement and the respective obligations of the Seller and Buyer hereunder are subject to present and future valid laws, orders, rules and regulations of duly constituted governmental authorities having jurisdiction.

IV-2. The parties hereto shall from time to time determine whether any obligations under this agreement require either party to obtain from any governmental body authority of any kind for it to perform its obligations hereunder, and shall, where necessary, diligently seek such requisite authority.

IV-3. Buyer shall have the right to transport gas delivered hereunder in either interstate or intrastate commerce, or both, and deliveries hereunder shall commence when the parties hereto have received requisite authority from appropriate regulatory bodies.

IV-4. This agreement shall be subject to the condition that nothing herein shall be construed as affecting any of the relations between the United States and its lessees, or the State of Wyoming and its lessees, particularly in the matter of gas waste, taking royalty in kind and the method of computing royalties due as based on a minimum price and in accordance with the terms and provisions of the oil and gas operating regulations applicable to the lands covered hereunder.

ARTICLE V

Rate of Delivery and Regulation of Flow

V-1. Subject to the provisions of Article V-3, Buyer will receive deliveries of gas from subject lands in not less than the following amounts:

(a) One hundred percent (100%) of casinghead gas.

(b) From the commencement of deliveries until July 1, 1976, Buyer is obligated to receive deliveries of gas from subject lands in an amount equal to seventy-five percent (75%) of the average daily tests, multiplied by three hundred sixty-five (365), determined as set forth in Article V-2 hereof. If Seller is unable to deliver gas to Buyer at a rate of one hundred thirty-three and one-third percent (133-1/3%) of the average daily rate, Buyer's obligation shall be reduced to seventy-five percent (75%) of the amount Seller can deliver on a sustained basis.

(c) From July 1, 1976 and for the remainder of the term hereof, Buyer is obligated

to receive deliveries of gas from subject lands in an amount equal to eighty percent (80%) of the average daily tests multiplied by three hundred sixty-five (365), determined as set forth in Article V-2 hereof. If Seller is unable to deliver gas to Buyer at a rate of one hundred twenty-five percent (125%) of the average daily rate, Buyer's obligation shall be reduced to eighty percent (80%) of the amount Seller can deliver on a sustained basis.

V-2. Seller's ability to deliver on a sustained basis shall be determined by a mutually conducted seven-day test of the field, which shall be made annually during the last two weeks of December of each year. Such annual determination shall govern the rights and obligations of the parties for the current fiscal year. In the event there is a major increase or decrease in the deliverability of the field, either party hereto may, by giving fifteen (15) days written notice, call for a new test to redetermine contract obligation for the balance of the fiscal year and until either the next regular scheduled test or the next special test. Increase or decrease in deliverability of the field which exceeds ten percent (10%) shall constitute a major increase or decrease. Tests shall be conducted to determine Seller's ability to deliver as follows:

(a) Pressures at the point of delivery shall average eight hundred (800) psig (as near as practicable) during each day of test and shall not be permitted to be less than seven hundred seventy-five (775) psig, nor more than eight hundred twenty-five (825) psig during any such day.,

(b) Seller's ability to deliver shall be determined by dividing total deliveries in Mcf during such test by seven (7). The Buyer's obligation to take or pay for gas hereunder will then be at a rate of seventy-five percent (75%) of deliverability until July 1, 1976 and eighty percent (80%) of deliverability thereafter, which seventy-five percent (75%) or eighty percent (80%) shall be deemed to be the contract quantity. If a substitute test is made the annual take will be adjusted for the number of days remaining from the last day of the test until the end of the fiscal year.

(c) Should any well or wells be unable to be produced during the test period for temporary reasons such as mechanical failure or reworks, the test results shall be adjusted accordingly.

V-3. Buyer shall have the right to regulate the flow of gas insofar as the fluctuating market demand is concerned, but such regulation shall be subject to control by the Seller insofar as the ability of any well or wells to produce without damage to the well or reservoir is concerned. In order to allow Buyer the maximum flexibility in meeting market requirements, Buyer shall have the right at any and all times to take and Seller shall be obligated to deliver quantities of gas from any and all gas wells covered hereby up to one hundred percent (100%) of such well or wells to legally produce without damage to any individual well or the reservoir.

V-4. If at any time during the term of this agreement Seller does not deliver to Buyer the contract quantity of gas as set forth, when requested so to do by Buyer, Buyer's obligation to take such quantity shall be reduced during the period and by the amount of the deficiency.

V-5. Whenever the quantity of gas capable of being delivered from all acreage committed hereunder is or becomes so low that it is not economically feasible to purchase or sell such gas, Buyer or Seller may elect to discontinue buying or selling such gas by giving the other party one hundred eighty (180) days written notice. The word "capable" as it appears above, is understood to include any legal limitations placed upon the wells' production as well as any physical limitation.

ARTICLE VI

Price

VI-1. Buyer shall pay Seller for all gas delivered hereunder at the purchase meter or meters, as the case may be, in accordance with the following schedule:

(a) For all horizons in wells presently connected to Buyer's system, effective July 1, 1974, the price shall be Twenty Four and Forty-Eight Hundredths Cents (24.48¢) per Mcf.

(b) For all new wells drilled or recompletions in new horizons in existing wells the price shall be Forty Cents (40¢) per Mcf; however this price as well as that set forth in (a) above, shall be adjusted to reflect the effective date and price as set out in an order in the forthcoming proceedings in FPC Docket No. P-389B.

(c) During each subsequent one (1) year period following the period set forth in Section (a) the price will increase by One Cent (1¢) per Mcf.

NOTWITHSTANDING anything herein to the contrary, it is agreed that if the Federal Power Commission, or any successor governmental authority having jurisdiction in the premises, shall prescribe or approve a price or prices, however determined, applicable to the gas being sold hereunder which, when adjusted for quality and Btu content, is higher than the price otherwise applicable hereunder, then the price for gas sold hereunder shall be increased to equal such higher price effective upon the effective date prescribed by such governmental authority.

VI-2. The prices provided for herein are based upon gas having a gross heating value of one thousand (1,000) Btu per cubic foot as defined in Article VIII-1(g). If the average gross heating value of gas supplied from any well committed hereunder during any month shall be less than one thousand (1,000) Btu per cubic foot, then the price payable for gas delivered from said well during such month shall be proportionately reduced by multiplying the price by a factor, the denominator of which shall be one thousand (1,000) and the numerator of which shall be the average gross heating value of gas delivered therefrom during the billing month. If the average gross heating value of gas supplied fror any well committed hereunder during any month shall be

more than one thousand (1,000) Btu per cubic foot, then the price payable for gas delivered from said well during such month shall be proportionately increased by multiplying the price by a factor, the denominator of which shall be one thousand (1,000) and the numerator of which shall be the average gross heating value of gas delivered therefrom during the billing month. In the event the heating value per cubic foot of any gas covered by this agreement shall be less than nine hundred fifty (950) Btu, then Buyer may reject such gas or elect to continue to accept delivery of said gas; provided, that on notice from Buyer, the rate at which such gas below nine hundred fifty (950) Btu is received from any well or wells may be reduced without penalty and without invoking the "take-or-pay" obligations of Buyer as set forth in Article VII-2 hereof, if in Buyer's sole judgment, such reduction is required in order that such gas may be used in Buyer's system, in which event gas from such well or wells will be excluded from calculations of delivery obligations and Buyer will, upon the written request of all owners selling gas from such well to Buyer, release any well or wells producing such gas from this agreement.

VI-3. If, during the term of this agreement as the result of a change in the rules, regulations or policies under existing law, any new law, judicial decision or otherwise, the prices at which producers may sell natural gas for resale in interstate commerce are no longer subject to federal governmental regulation, then the price for natural gas thereafter to be sold under said agreement shall be renegotiated upon either party's request, but not more often than every three (3) years, to the higher of the price provided in this agreement or the average price of the two (2) highest prices under contracts involving parties other than Seller or its affiliates whose terms are for three (3) years or longer adjusted to like quality and comparable terms and conditions as established by contracts made subsequent to the above mentioned legal change by Buyer or other purchasers covering the purchase of gas produced in Carbon, Uinta, Lincoln, Sublette and Sweetwater Counties, Wyoming.

VI-4. Seller shall bear and pay or cause to be paid all taxes assessed upon or in respect to the gas up to the delivery thereof to Buyer, and Buyer shall bear and pay all taxes assessed upon or in respect to such gas after delivery. Any increase in sales, occupation, production, or severance taxes (but not income, excess profits, capital stock, ad valorem or any other taxes) made effective and payable after the year hereof which would otherwise be payable by Seller upon or in respect to gas delivered hereunder, shall, so long as such increase is effective, be borne by the parties on the basis of three-fourths (3/4) of said increase to the Buyer and one-fourth (1/4) of said increase to the Seller with the Buyer paying Seller an amount sufficient to reimburse Seller for three-fourths (3/4) of such increase in the amount of the tax.

ARTICLE VII

Delivery Point and Pressure

VII-1. The delivery point for gas deliverable hereunder shall be at the discharge side of the separators and denydrators installed by Seller at the wellhead and/or at such other point or points as may be mutually designated in writing by the parties hereto. Any gas used by Buyer to

dehydrate the gas delivered hereunder shall be furnished by Seller and shall be taken on Seller's side of the sale meter. Title to and ownership of such gas shall pass to and absolutely vest in Buyer at the prescribed point or points of delivery.

VII-2. Seller shall be obligated to deliver and Buyer shall be obligated to accept deliveries of gas hereunder at such pressure as may be necessary to enable Buyer to effect receipt of gas delivered hereunder into its facilities without compression by Buyer against the pressure then existing in such facilities at the intersection thereof with facilities delivering gas from Seller hereunder; provided, that Buyer shall have no obligation to reduce the mainline pressure below eight hundred pounds (800) psig in order to effect receipt therein of gas delivered hereunder. Should any of Seller's wells be incapable of delivering gas at the pressure required herein, Seller shall compress the gas therefrom to effect delivery into Buyer's facilities.

ARTICLE VIII

Quality

VIII-1. Gas delivered hereunder shall conform to the following specifications and Buyer may refuse to accept and pay for any gas which does not so conform:

(a) Odors and Solids. The gas shall be commercially free from objectionable odors, solid matter, dust, gums, and gum-forming constituents which might interfere with its merchantability or cause injury to or interference with proper operation of the lines, regulators, meters or other facilities through which it flows.

(b) Oxygen. The gas shall not at any time have an oxygen content in excess of two-tenths (2/10) of one percent (1%) by volume, and Seller shall make every reasonable effort to keep the gas free from oxygen.

(c) Inert Substances. The gas shall not at any time contain inert substances in excess of three percent (3%) by volume.

(d) Liquids. The gas shall be merchantably free of crude oil, water and hydrocarbons in liquid form, and Seller shall separate such substances from the gas so that they will not enter Buyer's facilities. The gas shall not contain more than six (6) pounds of water vapor per million cubic feet of gas measured at a pressure base of fourteen and seventy-three hundredths (14.73) pounds per square inch and at a temperature of sixty degrees (60°) Fahrenheit. All oil and liquid hydrocarbons separated from the gas by Seller prior to delivery to Buyer shall remain the property of Seller. Seller shall have the right to receive the gas in the field, and remove non-hydrocarbons and liquefiable hydrocarbons and retain the products resulting therefrom. At all times any and all liquids or liquefiable hydrocarbons recovered by Buyer after delivery of gas hereunder to Buyer shall be and remain the exclusive property of Buyer.

(e) Hydrogen Sulfide. The gas shall not contain more than one-half (1/2) grain of hydrogen sulfide per one hundred (100) cubic feet.

(f) Total Sulfur. The gas shall not contain more than twenty (20) grains of total sulfur (hydrogen sulfide and mercaptan sulfur) per one hundred (100) cubic feet,

of which not more than two-tenths (2/10) grains shall be mercaptan sulfur.

(g) Heating Value. The term "heating value per cubic foot" shall mean the number of Btu produced by the combustion at a constant pressure, of the amount of gas free from water vapor which would occupy a volume of one (1) cubic foot at a temperature of sixty degrees (60°) Fahrenheit, and under a pressure equivalent to that of thirty (30) inches of mercury at thirty-two degrees (32°) Fahrenheit under the standard gravitational force (the acceleration of 980.665 cm. per second per second) with air of the same temperature and pressure as the gas, when the products of combustion are cooled to the initial temperature of gas and air, and when the water formed by combustion is condensed to the liquid state.

ARTICLE IX

Meters and Gas Measurement

IX-1. The volume of gas shall be measured by an orifice meter at the point of delivery. Orifice meters shall be installed and operated by Buyer and volumes shall be computed as prescribed in Gas Measurement Report No. 3 of the American Gas Association dated September 1969, as amended prior hereto. The correction factor for Reynolds Number (F_r), Expansion Factor (y), Orifice Thermal Expansion Factor (F_a), Manometer Factor (F_m) and Gravitational Correction Factor (F_l) may be assumed to be Unity (1.0). Buyer may use 24-hour, 7-day, or 8-day orifice meter charts. The orifice meters used shall be flange tap type.

IX-2. The temperature of the gas flowing through the meter or meters shall be determined by the Buyer by the use of a continuous recording thermometer of standard manufacture installed by Buyer and acceptable to Seller, and so installed that it may properly record the temperature of the gas flowing through such meter or meters. The arithmetical average of the twenty-four (24) hour record, or of so much of the twenty-four (24) hours as gas has been passing, if gas has not been passing during the entire period, from the recording thermometer shall be deemed to be the gas temperature for the day and shall be used to make the proper corrections in volume computations.

IX-3. Specific gravity shall be determined quarterly by taking samples at the delivery point and determining the specific gravity thereof by the use of a gravity balance, or other mutually agreeable method.

IX-4. The gross heating value shall be determined by the Buyer as needed but at least quarterly, or upon request of Seller.

IX-5. Tests to determine accuracy of Buyer's measuring equipment shall be made quarterly by Buyer, and Seller shall have notice of and an opportunity to witness such tests. Such test may be made at any other reasonable time at the written request of Seller. If, upon any special test requested by Seller, the measuring equipment is found to be no more than two percent (2%) erroneous in the aggregate, the entire cost of such test shall be paid by Seller, and previous readings of such equipment shall be considered correct in computing deliveries of gas hereunder, but such equipment shall be adjusted at once to read accurately. If, upon any test, the measur-

ing equipment shall be found to be inaccurate in the aggregate by an amount exceeding two percent (2%) at a reading corresponding to the average rate of flow for the period since the last preceding test, then any previous readings of such equipment shall be corrected to zero error for any period which is known definitely or agreed upon. In case the period is not known definitely or agreed upon, such correction shall be for a period extending back one-half (1/2) of the time elapsed since the date of the last test. After any test, the meters will be corrected to read accurately. Buyer will pay the costs of regular tests. In addition, Buyer will pay the cost of all special tests in which the measuring equipment is found to be more than two percent (2%) erroneous in the aggregate.

Seller has the right to install check meters, provided however, that such check meters installed by Seller shall be tested and operated in the same manner as Buyer's meters and provided that such check meters shall be installed so that they will not affect Buyer's meters.

IX-6. In the event any measuring equipment is out of service or registering inaccurately, the volume of gas delivered hereunder shall be estimated

(a) by using the registration of any check measuring equipment, if installed and accurately registering; in the absence of such equipment,

(b) by correcting the error if the percentage of error is ascertainable by calibration test or mathematical calculation; or, if neither method is feasible,

(c) by estimating the quantity of delivery by deliveries during a period under similar conditions when the measuring equipment was registering accurately.

IX-7. Seller shall have the right to be represented at and to participate in all tests of gas delivered hereunder or of any equipment used in measuring or determining the nature or quality of such gas and to inspect at any time during business hours, any and all equipment used for the measurement or determination of the nature or quality of gas delivered hereunder, but the reading, calibrating, and adjustment thereof, and the changing of charts, shall be done by Buyer only.

IX-8. All measuring and testing equipment referred to in this Article IX except check measuring or other equipment owned by Seller, shall be provided, installed, operated and maintained at Buyer's expense.

ARTICLE X

Title

X-1. Seller hereby warrants the title to all gas delivered to Buyer under this agreement, that Seller has full right and authority to sell same, and that such gas is free from all liens and adverse claims. Seller agrees to defend its title to and to indemnify, protect and save Buyer harmless from all suits, actions, debts, damages, costs, losses and expenses arising directly or indirectly from or with respect to gas delivered hereunder. In the event of any adverse claim of any character whatsoever being asserted in respect to any of said gas, Buyer may retain, as security for the performance of Seller's obligations with respect to such claim, the purchase price of gas delivered or to be delivered hereunder up to the amount of such claim,

without any interest charge, until such claim has been finally determined or until Seller shall have furnished adequate bond with corporate surety or such other security acceptable to Buyer, conditioned upon the full protection of Buyer with respect to such claim. Upon the assertion of any such adverse claim with respect to gas for which Buyer has paid Seller, Buyer may in the absence of adequate bond from Seller, or such other security acceptable to Buyer, retain from payments otherwise due or to become due to Seller upon gas not affected by such claim in sufficient amounts to secure and indemnify Buyer against such payments to Seller; provided that in the event the adverse claim should be finally adjudicated or otherwise settled in favor of the adverse claimant, Buyer shall apply such retained payments to the satisfaction of such adverse claim, but should the assertion of such claim be finally adjudicated or otherwise settled in favor of Seller, then Buyer shall promptly pay to Seller, without interest, the full amount of payments retained with respect to all gas the title to which has been so finally adjudicated or settled in Seller's favor.

ARTICLE XI

Force Majeure

XI-1. If, as a result of Force Majeure, either party is unable to carry out, wholly or partially, its obligations under this agreement, such party shall give to the other party prompt written notice or telegraphic notice thereof with reasonably full particulars; thereupon the obligations of the party giving the notice, so far as they are affected by the Force Majeure, shall be suspended during the continuance of the Force Majeure but not longer. The affected party shall diligently rectify conditions brought about by the Force Majeure as quickly as possible. The requirement that performance of all obligations hereunder be fully restored with all reasonable dispatch shall not require either party to settle a strike against its will.

XI-2. The term "Force Majeure" as employed in this article, shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockades, public riots, lightning, fires, storms, floods, explosions, breakage or accident to machinery or lines of pipe or materials, inability to obtain a right of way or materials, or any other causes, whether of the kind herein enumerated or otherwise, which are not reasonably within the control of the party claiming the suspension. It is understood and agreed that a substantial portion of Buyer's market for gas purchased hereunder consists of large industrial customers, and that the phrase "strikes, lockouts, or other industrial disturbances", includes strikes, lockouts or other industrial disturbances at or affecting such large industrial customers or any of them; and that Buyer's obligations to take gas from Seller hereunder are subject to reduction without penalty or "take-or-pay" obligations during any period of time Buyer's sales to any of such large industrial customers are reduced or curtailed by reason of strikes, lockouts or other industrial disturbances at or affecting any such customer.

ARTICLE XII

Right of Way

XII-1. Seller grants to Buyer, so far as Seller has the right to do so, right of way on

the acreage covered by this Agreement for Buyer's pipelines and other facilities as may be necessary with full right of ingress and egress to and from said facilities, and with further right to do thereon acts necessary or convenient for the carrying out of the terms of this agreement.

XII-2. All equipment placed upon the subject lands by Buyer shall be and remain its property and be subject to removal by it within a reasonable period of time after it is no longer used by Buyer.

ARTICLE XIII

Successors and Assigns

XIII-1. This agreement shall be binding upon the successors and assigns of the parties hereto, provided, however, that no assignment of this agreement by either party shall be binding upon the other party unless and until written notice of and a true copy of such assignment is furnished to and receipted by the other party hereto. No assignment will be valid and binding which endeavors to relieve assigning party of any obligations to make payments hereunder accrued prior to the date of assignment or in which assignee does not affirmatively agree in writing to assume all obligations of assignor hereunder, including but not limited to the obligations to deliver gas paid for but not delivered prior to the effective date of the assignment.

XIII-2. Notwithstanding the foregoing, either Buyer or Seller, or both, may assign its right, title and interest in, to and by virtue of this agreement, including any and all extensions, amendments and supplements thereto, to a trustee or trustees, individual or corporate, as security for bonds, notes or other obligations or securities, without such trustee or trustees assuming or becoming in any respect obligated to perform any of the obligations of the assignor and if any such trustee be a corporation, without first being required by the parties hereto to qualify to do business in the state wherein are located the subject lands.

ARTICLE XIV

Notices

XIV-1. Notices to be given hereunder shall be deemed fully given and served when and if deposited in the United States mail, postage prepaid, and registered or certified, addressed to Seller's representative, Terra Resources, Inc., P. O. Box 2329, Tulsa, Oklahoma 74101, or to Buyer, Mountain Fuel Supply Company, P. O. Box 11368, Salt Lake City, Utah 84139, or at such other address as either party shall respectively hereafter designate in writing. Statements and payments shall be addressed to Seller at the above address.

XIV-2. Routine communications, including monthly statements and payments, shall be considered as fully delivered when posted by either registered or certified mail, or ordinary, first-class mail, postage prepaid, to the appropriate address specified in this article. Notice of tests may be made by telephone.

ARTICLE XV

Billing, Payment for Gas Not Taken, Make-up

XV-1. On or before the 20th day of each calendar month, Buyer shall render to Seller a

statement showing the amount of gas received by Buyer during the preceding calendar month, and payment shall be made therefor by Buyer within ten (10) days after the rendering of any such statement; provided, however, that to allow Buyer to utilize machine accounting, payment for gas purchased hereunder need not be made prior to the 27th day of any month, regardless of when statement is rendered and notwithstanding the foregoing ten (10) day proviso. Any errors in such statement or payment shall be promptly reported to Buyer, and Buyer shall make proper adjustment thereof within thirty (30) days after final determination of the correct volume or values involved. Upon written request, Buyer shall furnish Seller copies of measurement charts applicable to any monthly statements, which charts shall be returned to Buyer within thirty (30) days thereafter. Seller shall have access at all reasonable times to such of Buyer's records and books as pertain to volumes of gas received by Buyer.

XV-2. Should Buyer fail to receive gas from Seller in the amounts specified in the appropriate Rate of Delivery provision of this agreement and such failure not be attributable to Seller's failure to deliver same when required by Buyer, then Buyer shall, nevertheless, pay Seller therefor as though such gas were received, such payment to be made on or before sixty (60) days following the end of the calendar year of such deficiency. Buyer shall thereafter have the right during the succeeding five (5) calendar years to receive, in addition to the minimum quantities of gas, if any, which Buyer is then obligated to take or pay for, the quantity of gas previously paid for but not taken, provided, however, Buyer shall pay Seller for said quantity of gas previously paid for but not taken a price per Mcf equal to the difference between the price in effect when said gas was actually taken and the price in effect when the gas was paid for but not taken.

XV-3. After deliveries have commenced, if Buyer pays Seller for gas not taken and subsequently Seller is not physically or legally capable of delivering the quantities of make-up gas in addition to the current contract quantities as provided for herein, the Seller will immediately refund to Buyer all monies paid by Buyer for gas that Buyer requested and Seller was unable to deliver. However, if gas covered hereby has been subjected to drainage by other producers, Seller shall not be required to refund to Buyer such monies paid by Buyer for gas not taken.

ARTICLE XVI

Miscellaneous

XVI-1. It is expressly agreed that this agreement and the respective obligations of the Seller and Buyer hereunder are subject to present and future valid laws, orders, rules and regulations of duly constituted governmental authorities having jurisdiction.

XVI-2. Nothing herein shall be construed as affecting any of the relations between the United States and its lessees, or any state and its lessees, particularly in the matter of gas waste, taking royalty in kind, and the method of computing royalties due as based on a minimum price and in accordance with the terms and conditions of any applicable oil and gas operating regulations.

XVI-3. Neither Seller nor Buyer shall be nor be considered as being the agent, servant, or employee of the other party or be held responsible or liable for damages for the acts or conduct of the other.

XVI-4. Seller shall, from time to time, at Buyer's request, make available to Buyer such geological, engineering and production data as may be available to Seller, provided such data is not considered confidential by Seller, which will enable Buyer to make and maintain current its own reserve and deliverability studies. Seller shall determine stabilized shut-in pressures annually in cooperation with Buyer's representative.

XVI-5. No waiver by either party of any one or more defaults or breaches by the other in the performance of any provisions of this agreement shall operate or be construed as a waiver of any future default(s) or breach(es), whether of a like or different character.

XVI-6. The topical headings used herein are inserted for convenience only, and shall not be construed as having any substantive significance or meaning whatsoever or as indicating that all of the provisions of this agreement relating to any particular topic are to be found in any particular article.

The parties hereto recognize that a portion of the lands described in Appendix "A" has been previously committed to a Gas Purchase Agreement dated December 13, 1965, as amended, by and between predecessor in interest to Seller and Buyer and that upon necessary approvals, it is intended that this agreement, when approved by the proper governmental authorities, shall cancel and supersede that agreement dated December 13, 1965, as amended, between the parties and their predecessors hereto.

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the day and year first above written.

ATTEST:

D. E. Ewing, Secretary

WITNESS:

SELLER:

TERRA RESOURCES, INC.

By Jack van Wyke
Jack van Wyke, President

Jack Grynberg

Celeste C. Grynberg

BUYER:

MOUNTAIN FUEL SUPPLY COMPANY

ATTEST:

Assistant Secretary

By
Executive Vice President

Mt. Fuel Supply Co.
Approved:
Land
Legal
Acct.
Unit
Trans

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APPENDIX "A"

ATTACHED TO AND MADE A PART OF THE AMENDATORY GAS PURCHASE AGREEMENT DATED APRIL 4, 1974, between TERRA RESOURCES, INC., JACK GRYNBERG AND CELESTE C. GRYNBERG, SELLER, AND MOUNTAIN FUEL SUPPLY COMPANY, BUYER:

NITCHIE GULCH AREA

Township 23 North, Range 104 West, 6th P.M., Sweetwater County, Wyoming

Section 12: All

Tab E

M. F. S.
ORIGINAL

AMENDATORY GAS PURCHASE AGREEMENT

BETWEEN

TERRA RESOURCES, INC.

"SELLER"

and

MOUNTAIN FUEL SUPPLY COMPANY

"BUYER"

NITCHIE GULCH AREA

SWEETWATER COUNTY, WYOMING

DATED APRIL 4, 1974

Grynberg v. Questar
CA No. 97CV0477

Venglar Deposition
10/21/97
Exhibit No. 184

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AMENDATORY GAS PURCHASE AGREEMENT

This amendatory gas purchase agreement made and entered into this 4th day of April, 1974, by and between TERRA RESOURCES, INC., a Delaware corporation, P. O. Box 2329, Tulsa, Oklahoma 74101, hereinafter referred to as "Seller", and MOUNTAIN FUEL SUPPLY COMPANY, a Utah corporation, P. O. Box 11368, Salt Lake City, Utah 84139, hereinafter referred to as "Buyer",

WITNESSETH:

WHEREAS, under date of August 12, 1963, American Metal Climax, Inc., predecessor in interest to Terra Resources, Inc., and Mountain Fuel Supply Company, entered into a Gas Purchase Agreement; and

WHEREAS, Seller owns or controls oil and gas upon and within lands in the Nitchie Gulch Area of Sweetwater County, Wyoming, which lands are described on Appendix "A" attached hereto and made a part hereof and which are hereinafter referred to as "subject lands"; and

WHEREAS, Seller (together with other owners of lands and leases in the general area) is presently undertaking extensive remedial and development work on the subject lands; and

WHEREAS, the rates provided for in the aforesaid contract of August 12, 1963 are insufficient to provide relief for the excessive costs of the current and projected operations; and

WHEREAS, certain of the subject lands have been previously committed to the aforementioned contract between Buyer and Seller; and

WHEREAS, certain of the subject lands have not been previously dedicated by Seller to a gas sale or purchase agreement; and

WHEREAS, among other considerations and commitments made hereunder, it is the intention of the parties to provide for a rate for wells drilled and producing prior to April 1, 1974, on subject lands and a different rate for wells drilled and completed or recompleted after April 1, 1974:

NOW, THEREFORE, in consideration of the premises and mutual agreements herein contained, the parties hereto agree as follows:

ARTICLE I

Definitions

The following definitions shall apply to the below-quoted words whenever used herein:

I-1. "Gas" or "natural gas" shall mean all merchantable combustible gas or vapors which conform to or are conformable by Seller to the quality specifications herein contained, including but not limited to natural gas, casinghead gas, and plant residue gas remaining after processing of natural or casinghead gas.

I-2. The term "well" or "gas well" shall mean a well delivering gas into the gas gathering system.

I-3. A "day" shall begin at 12:00 o'clock noon on each calendar day; and a "month" shall begin at 12:00 o'clock noon on the first calendar day of such month and end at 12:00 o'clock noon on the first day of the month following such period; and a "year" shall be a fiscal

year which will begin at 12:00 o'clock noon on July 1 and end at 12:00 o'clock noon on the following July 1. Time shall be Mountain Standard (or Daylight) time.

I-4. "Cubic foot" shall mean one (1) cubic foot of gas at a temperature of sixty degrees (60°) Fahrenheit and at a pressure of fifteen and twenty-five thousandths (15.025) pounds per square inch absolute.

I-5. The term "Mcf" shall mean one thousand (1,000) cubic feet.

I-6. "Psig" expresses pressure in pounds per square inch gauge.

I-7. "Psia" expresses pressure in pounds per square inch absolute.

I-8. "Btu" shall mean British thermal units.

I-9. "Inert substances" shall mean noncombustible substances contained in the gas, including but not limited to, helium, carbon dioxide and nitrogen.

I-10. "Average daily rate" shall mean the annual volume of gas specified in the applicable quantity provision of this contract divided by three hundred sixty-five (365).

I-11. "Atmospheric pressure" shall mean the average absolute atmospheric (barometric) pressure, and for measurement purposes shall be assumed to be eleven and no-tenths (11.0) pounds per square inch, irrespective of the actual elevation or location of the point or points of delivery above sea level.

ARTICLE II

Agreement to Sell and Reservations

II-1. Seller hereby agrees to sell to Buyer all gas owned or controlled by Seller, produced from or allocated to Seller's interest in subject lands, except that there is expressly reserved to Seller the gas required by Seller for:

(a) Drilling, developing and operating wells on Seller's leases on or near subject lands, or within the boundaries of any unit plan of operation to which any of the subject lands may be committed.

(b) Delivery to Seller's lessors in any amount required to meet Seller's present obligations under the provisions of Seller's leases covering the subject lands.

(c) Use as fuel or shrinkage in processing plants for the extraction of non-hydrocarbons or liquefiable hydrocarbons, or for treating gas to remove hydrogen sulfide or other impurities, or use as a fuel in compressor plants.

(d) Use in repressuring, recycling or pressure maintenance of the formation underlying the subject lands from which such gas was originally produced. However, when the gas is ultimately produced for sale it shall be subject to this contract.

II-2. Subject to other provisions of this contract, the control, management and operation of Seller's lands and leases and the wells located thereon shall be and remain the exclusive right of Seller, including without limitation, Seller's rights to drill new wells, to repair old wells, to plug and abandon wells and to surrender non-productive and non-participating leases

owned or controlled by Seller and dedicated hereto.

ARTICLE III

Term

III-1. This agreement shall be effective from the date hereof and shall continue in full force and effect for a period of twenty (20) years from and after July 1, 1974 and from year to year thereafter, unless and until cancelled by either party on three hundred sixty-five (365) days advance written notice, which notice may not be given prior to the 20th calendar year of deliveries hereunder.

ARTICLE IV

Commencement of Deliveries -- Authority

IV-1. It is expressly agreed that this agreement and the respective obligations of the Seller and Buyer hereunder are subject to present and future valid laws, orders, rules and regulations of duly constituted governmental authorities having jurisdiction.

IV-2. The parties hereto shall from time to time determine whether any obligations under this agreement require either party to obtain from any governmental body authority of any kind for it to perform its obligations hereunder, and shall, where necessary, diligently seek such requisite authority.

IV-3. Buyer shall have the right to transport gas delivered hereunder in either interstate or intrastate commerce, or both, and deliveries hereunder shall commence when the parties hereto have received requisite authority from appropriate regulatory bodies.

IV-4. This agreement shall be subject to the condition that nothing herein shall be construed as affecting any of the relations between the United States and its lessees, or the State of Wyoming and its lessees, particularly in the matter of gas waste, taking royalty in kind and the method of computing royalties due as based on a minimum price and in accordance with the terms and provisions of the oil and gas operating regulations applicable to the lands covered hereunder.

ARTICLE V

Rate of Delivery and Regulation of Flow

V-1. Subject to the provisions of Article V-3, Buyer will receive deliveries of gas from subject lands in not less than the following amounts:

(a) One hundred percent (100%) of casinghead gas.

(b) From the commencement of deliveries until July 1, 1976, Buyer is obligated to receive deliveries of gas from subject lands in an amount equal to seventy-five percent (75%) of the average daily tests, multiplied by three hundred sixty-five (365), determined as set forth in Article V-2 hereof. If Seller is unable to deliver gas to Buyer at a rate of one hundred thirty-three and one-third percent (133-1/3%) of the average daily rate, Buyer's obligation shall be reduced to seventy-five percent (75%) of the amount Seller can deliver on a sustained basis.

(c) From July 1, 1976 and for the remainder of the term hereof, Buyer is obligated

to receive deliveries of gas from subject lands in an amount equal to eighty percent (80%) of the average daily tests multiplied by three hundred sixty-five (365), determined as set forth in Article V-2 hereof. If Seller is unable to deliver gas to Buyer at a rate of one hundred twenty-five percent (125%) of the average daily rate, Buyer's obligation shall be reduced to eighty percent (80%) of the amount Seller can deliver on a sustained basis.

V-2. Seller's ability to deliver on a sustained basis shall be determined by a mutually conducted seven-day test of the field, which shall be made annually during the last two weeks of December of each year. Such annual determination shall govern the rights and obligations of the parties for the current fiscal year. In the event there is a major increase or decrease in the deliverability of the field, either party hereto may, by giving fifteen (15) days written notice, call for a new test to redetermine contract obligation for the balance of the fiscal year and until either the next regular scheduled test or the next special test. Increase or decrease in deliverability of the field which exceeds ten percent (10%) shall constitute a major increase or decrease. Tests shall be conducted to determine Seller's ability to deliver as follows:

(a) Pressures at the point of delivery shall average eight hundred (800) psig (as near as practicable) during each day of test and shall not be permitted to be less than seven hundred seventy-five (775) psig, nor more than eight hundred twenty-five (825) psig during any such day.

(b) Seller's ability to deliver shall be determined by dividing total deliveries in Mcf during such test by seven (7). The Buyer's obligation to take or pay for gas hereunder will then be at a rate of seventy-five percent (75%) of deliverability until July 1, 1976 and eighty percent (80%) of deliverability thereafter, which seventy-five percent (75%) or eighty percent (80%) shall be deemed to be the contract quantity. If a substitute test is made the annual take will be adjusted for the number of days remaining from the last day of the test until the end of the fiscal year.

(c) Should any well or wells be unable to be produced during the test period for temporary reasons such as mechanical failure or reworks, the test results shall be adjusted accordingly.

V-3. Buyer shall have the right to regulate the flow of gas insofar as the fluctuating market demand is concerned, but such regulation shall be subject to control by the Seller insofar as the ability of any well or wells to produce without damage to the well or reservoir is concerned. In order to allow Buyer the maximum flexibility in meeting market requirements, Buyer shall have the right at any and all times to take and Seller shall be obligated to deliver quantities of gas from any and all gas wells covered hereby up to one hundred percent (100%) of such well or wells to legally produce without damage to any individual well or the reservoir.

V-4. If at any time during the term of this agreement Seller does not deliver to Buyer the contract quantity of gas as set forth, when requested so to do by Buyer, Buyer's obligation to take such quantity shall be reduced during the period and by the amount of the deficiency.

V-5. Whenever the quantity of gas capable of being delivered from all acreage committed hereunder is or becomes so low that it is not economically feasible to purchase or sell such gas, Buyer or Seller may elect to discontinue buying or selling such gas by giving the other party one hundred eighty (180) days written notice. The word "capable" as it appears above, is understood to include any legal limitations placed upon the wells' production as well as any physical limitation.

ARTICLE VI

Price

VI-1. Buyer shall pay Seller for all gas delivered hereunder at the purchase meter or meters, as the case may be, in accordance with the following schedule:

(a) For all horizons in wells presently connected to Buyer's system, effective July 1, 1974, the price shall be Twenty Four and Forty-Eight Hundredths Cents (24.48¢) per Mcf.

(b) For all new wells drilled or recompletions in new horizons in existing wells the price shall be Forty Cents (40¢) per Mcf; however this price as well as that set forth in (a) above, shall be adjusted to reflect the effective date and price as set out in an order in the forthcoming proceedings in FPC Docket No. P-389B.

(c) During each subsequent one (1) year period following the period set forth in Section (a) the price will increase by One Cent (1¢) per Mcf.

NOTWITHSTANDING anything herein to the contrary, it is agreed that if the Federal Power Commission, or any successor governmental authority having jurisdiction in the premises, shall prescribe or approve a price or prices, however determined, applicable to the gas being sold hereunder which, when adjusted for quality and Btu content, is higher than the price otherwise applicable hereunder, then the price for gas sold hereunder shall be increased to equal such higher price effective upon the effective date prescribed by such governmental authority.

VI-2. The prices provided for herein are based upon gas having a gross heating value of one thousand (1,000) Btu per cubic foot as defined in Article VIII-1(h). If the average gross heating value of gas supplied from any well committed hereunder during any month shall be less than one thousand (1,000) Btu per cubic foot, then the price payable for gas delivered from said well during such month shall be proportionately reduced by multiplying the price by a factor, the denominator of which shall be one thousand (1,000) and the numerator of which shall be the average gross heating value of gas delivered therefrom during the billing month. If the average gross heating value of gas supplied from any well committed hereunder during any month shall be

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more than one thousand (1,000) Btu per cubic foot, then the price payable for gas delivered from said well during such month shall be proportionately increased by multiplying the price by a factor, the denominator of which shall be one thousand (1,000) and the numerator of which shall be the average gross heating value of gas delivered therefrom during the billing month. In the event the heating value per cubic foot of any gas covered by this contract shall be less than nine hundred fifty (950) Btu, then Buyer may reject such gas or elect to continue to accept delivery of said gas; provided, that on notice from Buyer, the rate at which such gas below nine hundred fifty (950) Btu is received from any well or wells may be reduced without penalty and without invoking the "take-or-pay" obligations of Buyer as set forth in Article VII-2 hereof, if in Buyer's sole judgment, such reduction is required in order that such gas may be used in Buyer's system, in which event gas from such well or wells will be excluded from calculations of delivery obligations and Buyer will, upon the written request of all owners selling gas from such well to Buyer, release any well or wells producing such gas from this contract.

VI-3. If, during the term of this agreement as the result of a change in the rules, regulations or policies under existing law, any new law, judicial decision or otherwise, the prices at which producers may sell natural gas for resale in interstate commerce are no longer subject to federal governmental regulation, then the price for natural gas thereafter to be sold under said agreement shall be renegotiated upon either party's request, but not more often than every three (3) years, to the higher of the price provided in this contract or the average price of the two (2) highest prices under contracts involving parties other than Seller or its affiliates whose terms are for three (3) years or longer adjusted to like quality and comparable terms and conditions as established by contracts made subsequent to the above mentioned legal change by Buyer or other purchasers covering the purchase of gas produced in Carbon, Uinta, Lincoln, Sublette and Sweetwater Counties, Wyoming.

VI-4. Seller shall bear and pay or cause to be paid all taxes assessed upon or in respect to the gas up to the delivery thereof to Buyer, and Buyer shall bear and pay all taxes assessed upon or in respect to such gas after delivery. Any increase in sales, occupation, production or severance taxes (but not income, excess profits, capital stock, ad valorem or any other taxes) made effective and payable after July 1, 1974 which would otherwise be payable by Seller upon or in respect to gas delivered hereunder, shall, so long as such increase is effective, be borne by Buyer with Buyer reimbursing to Seller the full amount of such increase in the taxes.

ARTICLE VII

Delivery Point and Pressure

VII-1. The delivery point for gas deliverable hereunder shall be at the discharge side of the separators and dehydrators installed by Buyer at the wellhead and/or at such other point or points as may be mutually designated in writing by the parties hereto. Any gas used by Buyer to

dehydrate the gas delivered hereunder shall be furnished by Seller and shall be taken on Seller's side of the sale meter. Title to and ownership of such gas shall pass to and absolutely vest in Buyer at the prescribed point or points of delivery.

VII-2. Seller shall be obligated to deliver and Buyer shall be obligated to accept delivery of gas hereunder at such pressure as may be necessary to enable Buyer to effect receipt of gas delivered hereunder into its facilities without compression by Buyer against the pressure then existing in such facilities at the intersection thereof with facilities delivering gas from Seller hereunder; provided, that Buyer shall have no obligation to reduce the mainline pressure below eight hundred pounds (800) psig in order to effect receipt therein of gas delivered hereunder. Should any of Seller's wells be incapable of delivering gas at the pressure required herein, Seller shall compress the gas therefrom to effect delivery into Buyer's facilities.

ARTICLE VIII

Quality

VIII-1. Gas delivered hereunder shall conform to the following specifications and Buyer may refuse to accept and pay for any gas which does not so conform:

(a) Odors and Solids. The gas shall be commercially free from objectionable odors, solid matter, dust, gums, and gum-forming constituents which might interfere with its merchantability or cause injury to or interference with proper operation of the lines, regulators, meters or other facilities through which it flows.

(b) Oxygen. The gas shall not at any time have an oxygen content in excess of two-tenths (2/10) of one percent (1%) by volume, and Seller shall make every reasonable effort to keep the gas free from oxygen.

(c) Inert Substances. The gas shall not at any time contain inert substances in excess of three percent (3%) by volume.

(d) Temperature. The gas shall not exceed a temperature of one hundred twenty degrees (120°) Fahrenheit at the point of delivery.

(e) Liquids. The gas shall be merchantably free of crude oil, water and hydrocarbons in liquid form, and Seller shall separate such substances from the gas so that they will not enter Buyer's facilities. All oil and liquid hydrocarbons separated from the gas by Seller prior to delivery to Buyer shall remain the property of Seller. Seller shall have the right to receive the gas in the field, and remove non-hydrocarbons and liquefiable hydrocarbons, and retain the products resulting therefrom. At all times any and all liquids or liquefiable hydrocarbons recovered by Buyer after delivery of gas hereunder to Buyer shall be and remain the exclusive property of Buyer.

(f) Hydrogen Sulfide. The gas shall not contain more than one-half (1/2) grain of hydrogen sulfide per one hundred (100) cubic feet.

(g) Total Sulfur. The gas shall not contain more than twenty (20) grains of total sulfur (hydrogen sulfide and mercaptan sulfur) per one hundred (100) cubic feet,

of which not more than two-tenths (2/10) grains shall be mercaptan sulfur.

(h) Heating Value. The term "heating value per cubic foot" shall mean the number of Btu produced by the combustion at a constant pressure, of the amount of gas free from water vapor which would occupy a volume of one (1) cubic foot at a temperature of sixty degrees (60°) Fahrenheit, and under a pressure equivalent to that of thirty (30) inches of mercury at thirty-two degrees (32°) Fahrenheit under the standard gravitational force (the acceleration of 980.665 cm. per second per second) with air of the same temperature and pressure as the gas, when the products of combustion are cooled to the initial temperature of gas and air, and when the water formed by combustion is condensed to the liquid state.

ARTICLE IX

Meters and Gas Measurement

IX-1. The volume of gas shall be measured by an orifice meter at the point of delivery. Orifice meters shall be installed and operated by Buyer and volumes shall be computed as prescribed in Gas Measurement Report No. 3, dated April 1955, of the American Gas Association as amended prior hereto. The correction factor for Reynolds Number (F_r), Expansion Factor (y), Orifice thermal Expansion Factor (F_a), Manometer Factor (F_m) and Gravitational Correction Factor (F_l) may be assumed to be Unity (1.0). Buyer may use 24-hour, 7-day, or 8-day orifice meter charts. The orifice meters used shall be flange tap type.

IX-2. The temperature of the gas flowing through the meter or meters shall be determined by the Buyer by the use of a continuous recording thermometer of standard manufacture installed by Buyer and acceptable to Seller, and so installed that it may properly record the temperature of the gas flowing through such meter or meters. The arithmetical average of the twenty-four (24) hour record, or of so much of the twenty-four (24) hours as gas has been passing, if gas has not been passing during the entire period, from the recording thermometer shall be deemed to be the gas temperature for the day and shall be used to make the proper corrections in volume computations.

IX-3. Specific gravity shall be determined quarterly by taking samples at the delivery point and determining the specific gravity thereof by the use of a gravity balance, or other mutually agreeable method.

IX-4. The gross heating value shall be determined by the Buyer as needed but at least quarterly, or upon request of Seller.

IX-5. Tests to determine accuracy of Buyer's measuring equipment shall be made quarterly by Buyer, and Seller shall have notice of and an opportunity to witness such tests. Such test may be made at any other reasonable time at the written request of Seller. If, upon any special test requested by Seller, the measuring equipment is found to be no more than two percent (2%) erroneous in the aggregate, the entire cost of such test shall be paid by Seller, and previous readings of such equipment shall be considered correct in computing deliveries of gas hereunder, but such equipment shall be adjusted at once to read accurately. If, upon any test, the measur-

ing equipment shall be found to be inaccurate in the aggregate by an amount exceeding two percent (2%) at a reading corresponding to the average rate of flow for the period since the last preceding test, then any previous readings of such equipment shall be corrected to zero error for any period which is known definitely or agreed upon. In case the period is not known definitely or agreed upon, such correction shall be for a period extending back one-half (1/2) of the time elapsed since the date of the last test. After any test, the meters will be corrected to read accurately. Buyer will pay the costs of regular tests. In addition, Buyer will pay the cost of all special tests in which the measuring equipment is found to be more than two percent (2%) erroneous in the aggregate.

Seller has the right to install check meters, provided however, that such check meters installed by Seller shall be tested and operated in the same manner as Buyer's meters and provided that such check meters shall be installed so that they will not affect Buyer's meters.

IX-6. In the event any measuring equipment is out of service or registering inaccurately, the volume of gas delivered hereunder shall be estimated

(a) by using the registration of any check measuring equipment, if installed and accurately registering; in the absence of such equipment,

(b) by correcting the error if the percentage of error is acertainable by calibration test or mathematical calculation; or, if neither method is feasible,

(c) by estimating the quantity of delivery by deliveries during a period under similar conditions when the measuring equipment was registering accurately.

IX-7. Seller shall have the right to be represented at and to participate in all tests of gas delivered hereunder or of any equipment used in measuring or determining the nature or quality of such gas and to inspect at any time during business hours, any and all equipment used for the measurement or determination of the nature or quality of gas delivered hereunder, but the reading, calibrating, and adjustment thereof, and the changing of charts, shall be done by Buyer only.

IX-8. All measuring and testing equipment referred to in this Article IX except check measuring or other equipment owned by Seller, shall be provided, installed, operated and maintained at Buyer's expense.

ARTICLE X

Title

X-1. Seller hereby warrants the title to all gas delivered to Buyer under this agreement, that Seller has full right and authority to sell same, and that such gas is free from all liens and adverse claims. Seller agrees to defend its title to and to indemnify, protect and save Buyer harmless from all suits, actions, debts, damages, costs, losses and expenses arising directly or indirectly from or with respect to gas delivered hereunder. In the event of any adverse claim of any character whatsoever being asserted in respect to any of said gas, Buyer may retain, as security for the performance of Seller's obligations with respect to such claim, the purchase price of gas delivered or to be delivered hereunder up to the amount of such claim,

without any interest charge, until such claim has been finally determined or until Seller shall have furnished adequate bond with corporate surety or such other security acceptable to Buyer, conditioned upon the full protection of Buyer with respect to such claim. Upon the assertion of any such adverse claim with respect to gas for which Buyer has paid Seller, Buyer may in the absence of adequate bond from Seller, or such other security acceptable to Buyer, retain from payments otherwise due or to become due to Seller upon gas not affected by such claim in sufficient amounts to secure and indemnify Buyer against such payments to Seller; provided that in the event the adverse claim should be finally adjudicated or otherwise settled in favor of the adverse claimant, Buyer shall apply such retained payments to the satisfaction of such adverse claim, but should the assertion of such claim be finally adjudicated or otherwise settled in favor of Seller, then Buyer shall promptly pay to Seller, without interest, the full amount of payments retained with respect to all gas the title to which has been so finally adjudicated or settled in Seller's favor.

ARTICLE XI

Force Majeure

XI-1. If, as a result of Force Majeure, either party is unable to carry out, wholly or partially, its obligations under this agreement, such party shall give to the other party prompt written notice or telegraphic notice thereof with reasonably full particulars; thereupon the obligations of the party giving the notice, so far as they are affected by the Force Majeure, shall be suspended during the continuance of the Force Majeure but not longer. The affected party shall diligently rectify conditions brought about by the Force Majeure as quickly as possible. The requirement that performance of all obligations hereunder be fully restored with all reasonable dispatch shall not require either party to settle a strike against its will.

XI-2. The term "Force Majeure" as employed in this article, shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockades, public riots, lightning, fires, storms, floods, explosions, breakage or accident to machinery or lines of pipe or materials, inability to obtain a right of way or materials, or any other causes, whether of the kind herein enumerated or otherwise, which are not reasonably within the control of the party claiming the suspension. It is understood and agreed that a substantial portion of Buyer's market for gas purchased hereunder consists of large industrial customers, and that the phrase "strikes, lockouts, or other industrial disturbances", includes strikes, lockouts or other industrial disturbances at or affecting such large industrial customers or any of them; and that Buyer's obligations to take gas from Seller hereunder are subject to reduction without penalty or "take-or-pay" obligations during any period of time Buyer's sales to any of such large industrial customers are reduced or curtailed by reason of strikes, lockouts or other industrial disturbances at or affecting any such customer.

ARTICLE XII

Right of Way

XII-1. Seller grants to Buyer, so far as Seller has the right to do so, right of way on

the acreage covered by this agreement for Buyer's pipelines and such other facilities as may be necessary with full right of ingress and egress to and from said facilities, and with further right to do thereon such acts necessary or convenient for the carrying out of the terms of this contract.

XII-2. All equipment placed on the subject lands by Buyer shall be and remain its property and be subject to removal by it within a reasonable period of time after it is no longer used by Buyer.

ARTICLE XIII

Successors and Assigns

XIII-1. This agreement shall be binding upon the successors and assigns of the parties hereto, provided however that no assignment of this agreement by either party shall be binding upon the other party unless and until written notice and a true copy of such assignment is furnished to and receipted by the other party hereto. No assignment will be valid and binding which endeavors to relieve assigning party of any obligations to make payments hereunder accrued prior to the date of assignment or in which assignee does not affirmatively agree in writing to assume all obligations of assignor hereunder, including but not limited, to the obligations to deliver gas paid for but not delivered prior to the effective date of the assignment.

XIII-2. Notwithstanding the foregoing, either Buyer or Seller, or both, may assign its right, title and interest in, to and by virtue of this agreement, including any and all extensions, amendments and supplements thereto, to a trustee or trustees, individual or corporate, as security for bonds, notes or other obligations or securities, without such trustee or trustees assuming or becoming in any respect obligated to perform any of the obligations of the assignor and if any such trustee be a corporation, without first being required by the parties hereto to qualify to do business in the state wherein are located the subject lands.

ARTICLE XIV

Notices

XIV-1. Notices to be given hereunder shall be deemed fully given and served when and if deposited in the United States mail, postage prepaid, and registered or certified, addressed to Seller, Terra Resources, Inc., P. O. Box 2329, Tulsa, Oklahoma 74101, or to Buyer, Mountain Fuel Supply Company, P. O. Box 11368, Salt Lake City, Utah 84139, or at such other address as either party shall respectively hereafter designate in writing. Statements and payments shall be addressed to Seller at the above address.

Routine communications, including monthly statements and payments, shall be considered as fully delivered when posted by either registered or certified mail, or ordinary first-class mail, postage prepaid, to the appropriate address specified in this article. Notice of tests may be made by telephone.

ARTICLE XV

Billing Payment for Gas Not Taken, Make-up

XV-1. On or before the 20th day of each calendar month, Buyer shall render to Seller a

statement showing the amount of gas received by Buyer during the preceding calendar month, and payment shall be made therefor by Buyer within ten (10) days after the rendering of any such statement; provided, however, that to allow Buyer to utilize machine accounting, payment for gas purchased hereunder need not be made prior to the 27th day of any month, regardless of when statement is rendered and notwithstanding the foregoing ten (10) day proviso. Any errors in such statement or payment shall be promptly reported to Buyer, and Buyer shall make proper adjustment thereof within thirty (30) days after final determination of the correct volume or values involved. Upon written request, Buyer shall furnish Seller copies of measurement charts applicable to any monthly statements, which charts shall be returned to Buyer within thirty (30) days thereafter. Seller shall have access at all reasonable times to such of Buyer's records and books as pertain to volumes of gas received by Buyer.

XV-2. Should Buyer fail to receive gas from Seller in the amounts specified in the appropriate Rate of Delivery provision of this contract and such failure not be attributable to Seller's failure to deliver same when required by Buyer, then Buyer shall, nevertheless, pay Seller therefor as though such gas were received, such payment to be made on or before sixty (60) days following the end of the calendar year of such deficiency. Buyer shall thereafter have the right during the succeeding five (5) calendar years to receive, in addition to the minimum quantities of gas, if any, which Buyer is then obligated to take or pay for, the quantity of gas previously paid for but not taken, provided, however, Buyer shall pay Seller for said quantity of gas previously paid for but not taken a price per Mcf equal to the difference between the price in effect when said gas was actually taken and the price in effect when the gas was paid for but not taken.

XV-3. After deliveries have commenced, if Buyer pays Seller for gas not taken and subsequently Seller is not physically or legally capable of delivering the quantities of make-up gas in addition to the current contract quantities as provided for herein, the Seller will immediately refund to Buyer all monies paid by Buyer for gas that Buyer requested and Seller was unable to deliver. However, if gas covered hereby has been subjected to drainage by other producers, Seller shall not be required to refund to Buyer such monies paid by Buyer for gas not taken.

ARTICLE XVI

Miscellaneous

XVI-1. It is expressly agreed that this agreement and the respective obligations of the Seller and Buyer hereunder are subject to present and future valid laws, orders, rules and regulations of duly constituted governmental authorities having jurisdiction.

XVI-2. Nothing herein shall be construed as affecting any of the relations between the United States and its lessees, or any state and its lessees, particularly in the matter of gas waste, taking royalty in kind, and the method of computing royalties due as based on a minimum price and in accordance with the terms and conditions of any applicable oil and gas operating regulations.

XVI-3. Neither Seller nor Buyer shall be nor be considered as being the agent, servant, or employee of the other party or be held responsible or liable for damages for the acts or conduct of the other.

XVI-4. Seller shall, from time to time, at Buyer's request, make available to Buyer such geological, engineering and production data as may be available to Seller, provided such data is not considered confidential by Seller, which will enable Buyer to make and maintain current its own reserve and deliverability studies. Seller shall determine stabilized shut-in pressures annually in cooperation with Buyer's representative.

XVI-5. No waiver by either party of any one or more defaults or breaches by the other in the performance of any provisions of this agreement shall operate or be construed as a waiver of any future default(s) or breach(es), whether of a like or different character.

XVI-6. The topical headings used herein are inserted for convenience only, and shall not be construed as having any substantive significance or meaning whatsoever or as indicating that all of the provisions of this agreement relating to any particular topic are to be found in any particular article.

The parties hereto recognize that a portion of the lands described in Appendix "A" has been previously committed to a Gas Purchase Agreement dated August 12, 1963, as amended, by and between predecessor in interest to Seller and Buyer and that upon necessary approvals, it is intended that this agreement, when approved by the proper governmental authorities, shall cancel and supersede that agreement dated August 12, 1963, as amended, between the parties and their predecessors hereto.

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the day and year first above written.

SELLER:

ATTEST:

TERRA RESOURCES, INC.

By

BUYER:

ATTEST:

MOUNTAIN FUEL SUPPLY COMPANY

By

Assistant Secretary

Executive Vice President

Mt. Fuel Supply Co.
Approved:
Land
Legal
Acct.
Unit
Trans

APPENDIX "A"

ATTACHED TO AND MADE A PART OF THE AMENDATORY GAS PURCHASE AGREEMENT DATED APRIL 4, 1974, BETWEEN TERRA RESOURCES, INC. and MOUNTAIN FUEL SUPPLY COMPANY:

NITCHIE GULCH AREA

Township 23 North, Range 103 West, 6th P.M., Sweetwater County, Wyoming

Section 7: All

Section 8: All

Section 9: All

Section 15: W½

Section 16: All

Section 17: All

Section 18: All

Section 19: All

Section 20: All

Section 21: All

Section 22: W½

Section 27: NW¼

Section 28: N½

Section 29: N½

Section 30: N½

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RATIFICATION TO AMENDATORY
GAS PURCHASE AGREEMENT

THIS AGREEMENT, made and entered into this 17th day of June, 1974, by and between MOUNTAIN FUEL SUPPLY COMPANY, a Utah corporation, and CELESTE GRYNBERG, an interest owner in the Nitchie Gulch Unit in Sweetwater County, Wyoming,

W I T N E S S E T H :

WHEREAS, by Agreement dated April 4, 1974, Terra Resources, Inc., Unit Operator, and Mountain Fuel Supply Company entered into an Amendatory Agreement which changed the terms and conditions of the Nitchie Gulch Unit Gas Purchase Agreement as it related to the two above parties; and

WHEREAS, the undersigned is also a party to the Nitchie Gulch Unit and has by previous instruments committed their share of natural gas to Mountain Fuel Supply Company; and

WHEREAS, the parties hereto are willing to accept the same terms and conditions contained in said Amendatory Agreement dated April 4, 1974.

NOW THEREFORE, in consideration of the mutual agreements contained herein, the undersigned accepts the terms of the April 4, 1974 Amendatory Gas Purchase Agreement executed by Terra Resources, Inc. and Mountain Fuel Supply Company and this Ratification shall be effective as to the undersigned's interest in any lands and leases or interests therein presently held, or which may arise under existing option agreements, or other interests in the unitized substances covering any lands within the unit area in which the undersigned may be found to have an oil or gas interest.

This Ratification, when accepted by Mountain Fuel Supply Company, shall be binding upon the undersigned and its successors in interest and shall be considered as a covenant running with the lands and leases.

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the day and year first above written.

NITCHIE GULCH UNIT INTEREST OWNER:

ATTEST or WITNESS:

Celeste Grynberg

CELESTE GRYNBERG

AGREED AND ACCEPTED this 17th day of June, 1974.

MOUNTAIN FUEL SUPPLY COMPANY

ATTEST:

Assistant Secretary

By

Executive Vice President

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RATIFICATION TO AMENDATORY
GAS PURCHASE AGREEMENT

THIS AGREEMENT, made and entered into this 17th day of June, 1974, by and between MOUNTAIN FUEL SUPPLY COMPANY, a Utah corporation, and JACK GRYNBERG, an interest owner in the Nitchie Gulch Unit in Sweetwater County, Wyoming,

W I T N E S S E T H :

WHEREAS, by Agreement dated April 4, 1974, Terra Resources, Inc., Unit Operator, and Mountain Fuel Supply Company entered into an Amendatory Agreement which changed the terms and conditions of the Nitchie Gulch Unit Gas Purchase Agreement as it related to the two above parties; and

WHEREAS, the undersigned is also a party to the Nitchie Gulch Unit and has by previous instruments committed their share of natural gas to Mountain Fuel Supply Company; and

WHEREAS, the parties hereto are willing to accept the same terms and conditions contained in said Amendatory Agreement dated April 4, 1974.

NOW THEREFORE, in consideration of the mutual agreements contained herein, the undersigned accepts the terms of the April 4, 1974 Amendatory Gas Purchase Agreement executed by Terra Resources, Inc. and Mountain Fuel Supply Company and this Ratification shall be effective as to the undersigned's interest in any lands and leases or interests therein presently held, or which may arise under existing option agreements, or other interests in the unitized substances covering any lands within the unit area in which the undersigned may be found to have an oil or gas interest.

This Ratification, when accepted by Mountain Fuel Supply Company, shall be binding upon the undersigned and its successors in interest and shall be considered as a covenant running with the lands and leases.

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the day and year first above written.

NITCHIE GULCH UNIT INTEREST OWNER:

ATTEST or WITNESS:

JACK GRYNBERG

AGREED AND ACCEPTED this 17th day of June, 1974.

MOUNTAIN FUEL SUPPLY COMPANY

ATTEST:

By

Assistant Secretary

Executive Vice President

Tab F

ORIGINAL

AMENDATORY GAS PURCHASE AGREEMENT

BETWEEN

W. C. McBRIDE, INC.

and

JACK GRYNBERG

as "SELLER"

AND

MOUNTAIN FUEL SUPPLY COMPANY

"BUYER"

NITCHIE GULCH AREA

SWEETWATER COUNTY, WYOMING

DATED JUNE 22, 1974

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AMENDATORY GAS PURCHASE AGREEMENT

This amendatory gas purchase agreement made and entered into this 22nd day of June, 1974, by and between W. C. McBRIDE, INC., 25 North Brentwood Blvd., St. Louis, Missouri 63105, and JACK GRYNBERG, 1950 Prudential Plaza Tower, Denver, Colorado 80202, hereinafter collectively referred to as "Seller", and MOUNTAIN FUEL SUPPLY COMPANY, a Utah corporation, P. O. Box 11368, Salt Lake City, Utah 84139, hereinafter referred to as "Buyer",

WITNESSETH:

WHEREAS, under date of December 13, 1965, W. C. McBride, Inc. and Jack Grynberg and Mountain Fuel Supply Company entered into a Gas Purchase Agreement; and

WHEREAS, Seller owns or controls oil and gas upon and within lands in the Nitchie Gulch Area of Sweetwater County, Wyoming, which lands are described on Appendix "A" attached hereto and made a part hereof and which are hereinafter referred to as "subject lands"; and

WHEREAS, Seller (together with other owners of lands and leases in the general area) is presently undertaking extensive remedial and development work on the subject lands; and

WHEREAS, the rates provided for in the aforesaid contract of December 13, 1965, are insufficient to provide relief for the excessive costs of the current and projected operations; and

WHEREAS, among other considerations and commitments made hereunder, it is the intention of the parties to provide for a rate for wells drilled and producing prior to April 1, 1974, on the subject lands and a different rate for wells drilled and completed or recompleted after April 1, 1974;

NOW, THEREFORE, in consideration of the premises and mutual agreements herein contained, the parties hereto agree as follows:

ARTICLE I

Definitions

The following definitions shall apply to the below-quoted words whenever used herein:

I-1. "Gas" or "natural gas" shall mean all merchantable combustible gas or vapors which conform to or are conformable by Seller to the quality specifications herein contained, including but not limited to natural gas, casinghead gas, and plant residue gas remaining after processing of natural or casinghead gas.

I-2. The term "well" or "gas well" shall mean a well delivering gas into the gas gathering system.

I-3. A "day" shall begin at 12:00 o'clock noon on each calendar day; and a "month" shall begin at 12:00 o'clock noon on the first calendar day of such month and end at 12:00 o'clock noon on the first day of the month following such period; and a "year" shall be a fiscal

year which will begin at 12:00 o'clock noon on July 1 and end at 12:00 o'clock noon on the following July 1. Time shall be Mountain Standard (or Daylight) time.

I-4. "Cubic foot" shall mean one (1) cubic foot of gas at a temperature of sixty degrees (60°) Fahrenheit and at a pressure of fifteen and twenty-five thousandths (15.025) pounds per square inch absolute.

I-5. The term "Mcf" shall mean one thousand (1,000) cubic feet.

I-6. "Psig" expresses pressure in pounds per square inch gauge.

I-7. "Psia" expresses pressure in pounds per square inch absolute.

I-8. "Btu" shall mean British thermal units.

I-9. "Inert substances" shall mean noncombustible substances contained in the gas, including but not limited to, helium, carbon dioxide and nitrogen.

I-10. "Average daily rate" shall mean the annual volume of gas specified in the applicable quantity provision of this contract divided by three hundred sixty-five (365).

I-11. "Atmospheric pressure" shall mean the average absolute atmospheric (barometric) pressure, and for measurement purposes shall be assumed to be eleven and no-tenths (11.0) pounds per square inch, irrespective of the actual elevation or location of the point or points of delivery above sea level.

ARTICLE II

Agreement to Sell and Reservations

II-1. Seller hereby agrees to sell to Buyer all gas owned or controlled by Seller, produced from or allocated to Seller's interest in subject lands, except that there is expressly reserved to Seller the gas required by Seller for:

(a) Drilling, developing and operating wells on Seller's leases on or near subject lands, or within the boundaries of any unit plan of operation to which any of the subject lands may be committed.

(b) Delivery to Seller's lessors in any amount required to meet Seller's present obligations under the provisions of Seller's leases covering the subject lands.

(c) Use as fuel or shrinkage in processing plants for the extraction of non-hydrocarbons or liquefiable hydrocarbons, or for treating gas to remove hydrogen sulfide or other impurities, or use as a fuel in compressor plants.

(d) Use in repressuring, recycling or pressure maintenance of the formation underlying the subject lands from which such gas was originally produced. However, when the gas is ultimately produced for sale it shall be subject to this contract.

II-2. Subject to other provisions of this contract, the control, management and operation of Seller's lands and leases and the wells located thereon shall be and remain the exclusive right of Seller, including without limitation, Seller's rights to drill new wells, to repair old wells, to plug and abandon wells and to surrender non-productive and non-participating leases

controlled by Seller and dedicated hereto.

ARTICLE III

Term

III-1. This agreement shall be effective from the date hereof and shall continue in full force and effect for a period of twenty (20) years from and after July 1, 1974 and from year to year thereafter, unless and until cancelled by either party on three hundred sixty-five (365) days advance written notice, which notice may not be given prior to the 20th calendar year of deliveries hereunder.

ARTICLE IV

Commencement of Deliveries -- Authority

IV-1. It is expressly agreed that this agreement and the respective obligations of the Seller and Buyer hereunder are subject to present and future valid laws, orders, rules and regulations of duly constituted governmental authorities having jurisdiction.

IV-2. The parties hereto shall from time to time determine whether any obligations under this agreement require either party to obtain from any governmental body authority of any kind for it to perform its obligations hereunder, and shall, where necessary, diligently seek such requisite authority.

IV-3. Buyer shall have the right to transport gas delivered hereunder in either interstate or intrastate commerce, or both, and deliveries hereunder shall commence when the parties hereto have received requisite authority from appropriate regulatory bodies.

IV-4. This agreement shall be subject to the condition that nothing herein shall be construed as affecting any of the relations between the United States and its lessees, or the State of Wyoming and its lessees, particularly in the matter of gas waste, taking royalty in kind and the method of computing royalties due as based on a minimum price and in accordance with the terms and provisions of the oil and gas operating regulations applicable to the lands covered hereunder.

ARTICLE V

Rate of Delivery and Regulation of Flow

V-1. Subject to the provisions of Article V-3, Buyer will receive deliveries of gas from subject lands in not less than the following amounts:

(a) One hundred percent (100%) of casinghead gas.

(b) From the commencement of deliveries until July 1, 1976, Buyer is obligated to receive deliveries of gas from subject lands in an amount equal to seventy-five percent (75%) of the average daily tests, multiplied by three hundred sixty-five (365), determined as set forth in Article V-2 hereof. If Seller is unable to deliver gas to Buyer at a rate of one hundred thirty-three and one-third percent (133-1/3%) of the average daily rate, Buyer's obligation shall be reduced to seventy-five percent (75%) of the amount Seller can deliver on a sustained basis.

(c) From July 1, 1976 and for the remainder of the term hereof, Buyer is obligated

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to receive deliveries of gas from subject lands in an amount equal to eighty percent (80%) of the average daily tests multiplied by three hundred sixty-five (365), determined as set forth in Article V-2 hereof. If Seller is unable to deliver gas to Buyer at a rate of one hundred twenty-five percent (125%) of the average daily rate, Buyer's obligation shall be reduced to eighty percent (80%) of the amount Seller can deliver on a sustained basis.

V-2. Seller's ability to deliver on a sustained basis shall be determined by a mutually conducted seven-day test of the field, which shall be made annually during the last two weeks of December of each year. Such annual determination shall govern the rights and obligations of the parties for the current fiscal year. In the event there is a major increase or decrease in the deliverability of the field, either party hereto may, by giving fifteen (15) days written notice, call for a new test to redetermine contract obligation for the balance of the fiscal year and until either the next regular scheduled test or the next special test. Increase or decrease in deliverability of the field which exceeds ten percent (10%) shall constitute a major increase or decrease. Tests shall be conducted to determine Seller's ability to deliver as follows:

(a) Pressures at the point of delivery shall average eight hundred (800) psig (as near as practicable) during each day of test and shall not be permitted to be less than seven hundred seventy-five (775) psig, nor more than eight hundred twenty-five (825) psig during any such day.

(b) Seller's ability to deliver shall be determined by dividing total deliveries in Mcf during such test by seven (7). The Buyer's obligation to take or pay for gas hereunder will then be at a rate of seventy-five percent (75%) of deliverability until July 1, 1976 and eighty percent (80%) of deliverability thereafter, which seventy-five percent (75%) or eighty percent (80%) shall be deemed to be the contract quantity. If a substitute test is made the annual take will be adjusted for the number of days remaining from the last day of the test until the end of the fiscal year.

(c) Should any well or wells be unable to be produced during the test period for temporary reasons such as mechanical failure or reworks, the test results shall be adjusted accordingly.

V-3. Buyer shall have the right to regulate the flow of gas insofar as the fluctuating market demand is concerned, but such regulation shall be subject to control by the Seller insofar as the ability of any well or wells to produce without damage to the well or reservoir is concerned. In order to allow Buyer the maximum flexibility in meeting market requirements, Buyer shall have the right at any and all times to take and Seller shall be obligated to deliver quantities of gas from any and all gas wells covered hereby up to one hundred percent (100%) of such well or wells to legally produce without damage to any individual well or the reservoir.

V-4. If at any time during the term of this agreement Seller does not deliver to Buyer the contract quantity of gas as set forth, when requested so to do by Buyer, Buyer's obligation to take such quantity shall be reduced during the period and by the amount of the deficiency.

V-5. Whenever the quantity of gas capable of being delivered from all acreage committed hereunder is or becomes so low that it is not economically feasible to purchase or sell such gas, Buyer or Seller may elect to discontinue buying or selling such gas by giving the other party one hundred eighty (180) days written notice. The word "capable" as it appears above, is understood to include any legal limitations placed upon the wells' production as well as any physical limitation.

ARTICLE VI

Price

VI-1. Buyer shall pay Seller for all gas delivered hereunder at the purchase meter or meters, as the case may be, in accordance with the following schedule:

(a) For all horizons in wells presently connected to Buyer's system, effective July 1, 1974, the price shall be Twenty Four and Forty-Eight Hundredths Cents (24.48¢) per Mcf.

(b) For all new wells drilled or recompletions in new horizons in existing wells the price shall be Forty Cents (40¢) per Mcf; however this price as well as that set forth in (a) above, shall be adjusted to reflect the effective date and price as set out in an order in the forthcoming proceedings in FPC Docket No. R-389B.

(c) During each subsequent one (1) year period following the period set forth in Section (a) the price will increase by One Cent (1¢) per Mcf.

NOTWITHSTANDING anything herein to the contrary, it is agreed that if the Federal Power Commission, or any successor governmental authority having jurisdiction in the premises, shall prescribe or approve a price or prices, however determined, applicable to the gas being sold hereunder which, when adjusted for quality and Btu content, is higher than the price otherwise applicable hereunder, then the price for gas sold hereunder shall be increased to equal such higher price effective upon the effective date prescribed by such governmental authority.

VI-2. The prices provided for herein are based upon gas having a gross heating value of one thousand (1,000) Btu per cubic foot as defined in Article VIII-1(h). If the average gross heating value of gas supplied from any well committed hereunder during any month shall be less than one thousand (1,000) Btu per cubic foot, then the price payable for gas delivered from said well during such month shall be proportionately reduced by multiplying the price by a factor, the denominator of which shall be one thousand (1,000) and the numerator of which shall be the average gross heating value of gas delivered therefrom during the billing month. If the average gross heating value of gas supplied from any well committed hereunder during any month shall be

more than one thousand (1,000) Btu per cubic foot, then the price payable for gas delivered from said well during such month shall be proportionately increased by multiplying the price by a factor, the denominator of which shall be one thousand (1,000) and the numerator of which shall be the average gross heating value of gas delivered therefrom during the billing month. In the event the heating value per cubic foot of any gas covered by this contract shall be less than nine hundred fifty (950) Btu, then Buyer may reject such gas or elect to continue to accept delivery of said gas; provided, that on notice from Buyer, the rate at which such gas below nine hundred fifty (950) Btu is received from any well or wells may be reduced without penalty and without invoking the "take-or-pay" obligations of Buyer as set forth in Article VII-2 hereof, if in Buyer's sole judgment, such reduction is required in order that such gas may be used in Buyer's system, in which event gas from such well or wells will be excluded from calculations of delivery obligations and Buyer will, upon the written request of all owners selling gas from such well to Buyer, release any well or wells producing such gas from this contract.

VI-3. If, during the term of this agreement as the result of a change in the rules, regulations or policies under existing law, any new law, judicial decision or otherwise, the prices at which producers may sell natural gas for resale in interstate commerce are no longer subject to federal governmental regulation, then the price for natural gas thereafter to be sold under said agreement shall be renegotiated upon either party's request, but not more often than every three (3) years, to the higher of the price provided in this contract or the average price of the two (2) highest prices under contracts involving parties other than Seller or its affiliates whose terms are for three (3) years or longer adjusted to like quality and comparable terms and conditions as established by contracts made subsequent to the above mentioned legal change by Buyer or other purchasers covering the purchase of gas produced in Carbon, Uinta, Lincoln, Sublette and Sweetwater Counties, Wyoming.

VI-4. Seller shall bear and pay or cause to be paid all taxes assessed upon or in respect to the gas up to the delivery thereof to Buyer, and Buyer shall bear and pay all taxes assessed upon or in respect to such gas after delivery. Any increase in sales, occupation, production or severance taxes (but not income, excess profits, capital stock, ad valorem or any other taxes) made effective and payable after July 1, 1974 which would otherwise be payable by Seller upon or in respect to gas delivered hereunder, shall, so long as such increase is effective, be borne by Buyer with Buyer reimbursing to Seller the full amount of such increase in the taxes.

ARTICLE VII

Delivery Point and Pressure

VII-1. The delivery point for gas deliverable hereunder shall be at the discharge side of the separators and dehydrators installed by Seller at the wellhead and/or at such other point or points as may be mutually designated in writing by the parties hereto. Any gas used by Buyer to

dehydrate the gas delivered hereunder shall be furnished by Seller and shall be taken on Seller's side of the sale meter. Title to and ownership of such gas shall pass to and absolutely vest in Buyer at the prescribed point or points of delivery.

VII-2. Seller shall be obligated to deliver and Buyer shall be obligated to accept deliveries of gas hereunder at such pressure as may be necessary to enable Buyer to effect receipt of gas delivered hereunder into its facilities without compression by Buyer against the pressure then existing in such facilities at the intersection thereof with facilities delivering gas from Seller hereunder; provided, that Buyer shall have no obligation to reduce the mainline pressure below eight hundred pounds (800) psig in order to effect receipt therein of gas delivered hereunder. Should any of Seller's wells be incapable of delivering gas at the pressure required herein, Seller shall compress the gas therefrom to effect delivery into Buyer's facilities.

ARTICLE VIII

Quality

VIII-1. Gas delivered hereunder shall conform to the following specifications and Buyer may refuse to accept and pay for any gas which does not so conform:

(a) Odors and Solids. The gas shall be commercially free from objectionable odors, solid matter, dust, gums, and gum-forming constituents which might interfere with its merchantability or cause injury to or interference with proper operation of the lines, regulators, meters or other facilities through which it flows.

(b) Oxygen. The gas shall not at any time have an oxygen content in excess of two-tenths (2/10) of one percent (1%) by volume, and Seller shall make every reasonable effort to keep the gas free from oxygen.

(c) Inert Substances. The gas shall not at any time contain inert substances in excess of three percent (3%) by volume.

(d) Temperature. The gas shall not exceed a temperature of one hundred twenty degrees (120°) Fahrenheit at the point of delivery.

(e) Liquids. The gas shall be merchantably free of crude oil, water and hydrocarbons in liquid form, and Seller shall separate such substances from the gas so that they will not enter Buyer's facilities. All oil and liquid hydrocarbons separated from the gas by Seller prior to delivery to Buyer shall remain the property of Seller. Seller shall have the right to receive the gas in the field, and remove non-hydrocarbons and liquefiable hydrocarbons, and retain the products resulting therefrom. At all times any and all liquids or liquefiable hydrocarbons recovered by Buyer after delivery of gas hereunder to Buyer shall be and remain the exclusive property of Buyer.

(f) Hydrogen Sulfide. The gas shall not contain more than one-half (1/2) grain of hydrogen sulfide per one hundred (100) cubic feet.

(g) Total Sulfur. The gas shall not contain more than twenty (20) grains of total sulfur (hydrogen sulfide and mercaptan sulfur) per one hundred (100) cubic feet,

of which not more than two-tenths (2/10) grains shall be mercaptan sulfur.

(h) Heating Value. The term "heating value per cubic foot" shall mean the number of Btu produced by the combustion at a constant pressure, of the amount of gas free from water vapor which would occupy a volume of one (1) cubic foot at a temperature of sixty degrees (60^{o}) Fahrenheit, and under a pressure equivalent to that of thirty (30) inches of mercury at thirty-two degrees (32^{o}) Fahrenheit under the standard gravitational force (the acceleration of 980.665 cm. per second per second) with air of the same temperature and pressure as the gas, when the products of combustion are cooled to the initial temperature of gas and air, and when the water formed by combustion is condensed to the liquid state.

ARTICLE IX

Meters and Gas Measurement

IX-1. The volume of gas shall be measured by an orifice meter at the point of delivery. Orifice meters shall be installed and operated by Buyer and volumes shall be computed as prescribed in Gas Measurement Committee Report No. 3 of the American Gas Association dated September 1969, as amended prior hereto. The correction factor for Reynolds Number (F_r), Expansion Factor (y), Orifice Thermal Expansion Factor (F_a), Manometer Factor (F_m) and Gravitational Correction Factor (F_l) may be assumed to be Unity (1.0). Buyer may use 24-hour, 7-day or 8-day orifice meter charts. The orifice meters used shall be flange tap type.

IX-2. The temperature of the gas flowing through the meter or meters shall be determined by the Buyer by the use of a continuous recording thermometer of standard manufacture installed by Buyer and acceptable to Seller, and so installed that it may properly record the temperature of the gas flowing through such meter or meters. The arithmetical average of the twenty-four (24) hour record, or of so much of the twenty-four (24) hours as gas has been passing, if gas has not been passing during the entire period, from the recording thermometer shall be deemed to be the gas temperature for the day and shall be used to make the proper corrections in volume computations.

IX-3. Specific gravity shall be determined quarterly by taking samples at the delivery point and determining the specific gravity thereof by the use of a gravity balance, or other mutually agreeable method.

IX-4. The gross heating value shall be determined by the Buyer as needed but at least quarterly, or upon request of Seller.

IX-5. Tests to determine accuracy of Buyer's measuring equipment shall be made quarterly by Buyer, and Seller shall have notice of and an opportunity to witness such tests. Such test may be made at any other reasonable time at the written request of Seller. If, upon any special test requested by Seller, the measuring equipment is found to be no more than two percent (2%) erroneous in the aggregate, the entire cost of such test shall be paid by Seller, and previous readings of such equipment shall be considered correct in computing deliveries of gas hereunder, but such equipment shall be adjusted at once to read accurately. If, upon any test, the measure-

ing equipment shall be found to be inaccurate in the aggregate by an amount exceeding two percent (2%) at a reading corresponding to the average rate of flow for the period since the last preceding test, then any previous readings of such equipment shall be corrected to zero error for any period which is known definitely or agreed upon. In case the period is not known definitely or agreed upon, such correction shall be for a period extending back one-half (1/2) of the time elapsed since the date of the last test. After any test, the meters will be corrected to read accurately. Buyer will pay the costs of regular tests. In addition, Buyer will pay the cost of all special tests in which the measuring equipment is found to be more than two percent (2%) erroneous in the aggregate.

Seller has the right to install check meters, provided however, that such check meters installed by Seller shall be tested and operated in the same manner as Buyer's meters and provided that such check meters shall be installed so that they will not affect Buyer's meters.

IX-6. In the event any measuring equipment is out of service or registering inaccurately, the volume of gas delivered hereunder shall be estimated

(a) by using the registration of any check measuring equipment, if installed and accurately registering; in the absence of such equipment,

(b) by correcting the error if the percentage of error is acertainable by calibration test or mathematical calculation; or, if neither method is feasible,

(c) by estimating the quantity of delivery by deliveries during a period under similar conditions when the measuring equipment was registering accurately.

IX-7. Seller shall have the right to be represented at and to participate in all tests of gas delivered hereunder or of any equipment used in measuring or determining the nature or quality of such gas and to inspect at any time during business hours, any and all equipment used for the measurement or determination of the nature or quality of gas delivered hereunder, but the reading, calibrating, and adjustment thereof, and the changing of charts, shall be done by Buyer only.

IX-8. All measuring and testing equipment referred to in this Article IX except check measuring or other equipment owned by Seller, shall be provided, installed, operated and maintained at Buyer's expense.

ARTICLE X

Title

X-1. Seller hereby warrants the title to all gas delivered to Buyer under this agreement, that Seller has full right and authority to sell same, and that such gas is free from all liens and adverse claims. Seller agrees to defend its title to and to indemnify, protect and save Buyer harmless from all suits, actions, debts, damages, costs, losses and expenses arising directly or indirectly from or with respect to gas delivered hereunder. In the event of any adverse claim of any character whatsoever being asserted in respect to any of said gas, Buyer may retain, as security for the performance of Seller's obligations with respect to such claim, the purchase price of gas delivered or to be delivered hereunder up to the amount of such claim,

without any interest charge, until such claim has been finally determined or until Seller shall have furnished adequate bond with corporate surety or such other security acceptable to Buyer, conditioned upon the full protection of Buyer with respect to such claim. Upon the assertion of any such adverse claim with respect to gas for which Buyer has paid Seller, Buyer may in the absence of adequate bond from Seller, or such other security acceptable to Buyer, retain from payments otherwise due or to become due to Seller upon gas not affected by such claim in sufficient amounts to secure and indemnify Buyer against such payments to Seller; provided that in the event the adverse claim should be finally adjudicated or otherwise settled in favor of the adverse claimant, Buyer shall apply such retained payments to the satisfaction of such adverse claim, but should the assertion of such claim be finally adjudicated or otherwise settled in favor of Seller, then Buyer shall promptly pay to Seller, without interest, the full amount of payments retained with respect to all gas the title to which has been so finally adjudicated or settled in Seller's favor.

ARTICLE XI

Force Majeure

XI-1. If, as a result of Force Majeure, either party is unable to carry out, wholly or partially, its obligations under this agreement, such party shall give to the other party prompt written notice or telegraphic notice thereof with reasonably full particulars; thereupon the obligations of the party giving the notice, so far as they are affected by the Force Majeure, shall be suspended during the continuance of the Force Majeure but not longer. The affected party shall diligently rectify conditions brought about by the Force Majeure as quickly as possible. The requirement that performance of all obligations hereunder be fully restored with all reasonable dispatch shall not require either party to settle a strike against its will.

XI-2. The term "Force Majeure" as employed in this article, shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockades, public riots, lightning, fires, storms, floods, explosions, breakage or accident to machinery or lines of pipe or materials, inability to obtain a right of way or materials, or any other causes, whether of the kind herein enumerated or otherwise, which are not reasonably within the control of the party claiming the suspension. It is understood and agreed that a substantial portion of Buyer's market for gas purchased hereunder consists of large industrial customers, and that the phrase "strikes, lockouts, or other industrial disturbances", includes strikes, lockouts or other industrial disturbances at or affecting such large industrial customers or any of them; and that Buyer's obligations to take gas from Seller hereunder are subject to reduction without penalty or "take-or-pay" obligations during any period of time Buyer's sales to any of such large industrial customers are reduced or curtailed by reason of strikes, lockouts or other industrial disturbances at or affecting any such customer.

ARTICLE XII

Right of Way

XII-1. Seller grants to Buyer, so far as Seller has the right to do so, right of way on

the acreage covered by this agreement for Buyer's pipelines and such other facilities as may be necessary with full right of ingress and egress to and from said facilities, and with further right to do thereon acts necessary or convenient for the carrying out of the terms of this contract.

XII-2. All equipment placed upon the subject lands by Buyer shall be and remain its property and be subject to removal by it within a reasonable period of time after it is no longer used by Buyer.

ARTICLE XIII

Successors and Assigns

XIII-1. This agreement shall be binding upon the successors and assigns of the parties hereto, provided, however, that no assignment of this agreement by either party shall be binding upon the other party unless and until written notice and a true copy of such assignment is furnished to and receipted by the other party hereto. No assignment will be valid and binding which endeavors to relieve assigning party of any obligations to make payments hereunder accrued prior to the date of assignment or in which assignee does not affirmatively agree in writing to assume all obligations of assignor hereunder, including but not limited to the obligations to deliver gas paid for but not delivered prior to the effective date of the assignment.

XIII-2. Notwithstanding the foregoing, either Buyer or Seller, or both, may assign its right, title and interest in, to and by virtue of this agreement, including any and all extensions, amendments and supplements thereto, to a trustee or trustees, individual or corporate, as security for bonds, notes or other obligations or securities, without such trustee or trustees assuming or becoming in any respect obligated to perform any of the obligations of the assignor and if any such trustee be a corporation, without first being required by the parties hereto to qualify to do business in the state wherein are located the subject lands.

ARTICLE XIV

Notices

XIV-1. Notices to be given hereunder shall be deemed fully given and served when and if deposited in the United States mail, postage prepaid, and registered or certified, addressed to Seller, W. C. McBride, Inc., 25 North Brentwood Blvd., St. Louis, Missouri 63105, or to Buyer, Mountain Fuel Supply Company, P. O. Box 11368, Salt Lake City, Utah 84139, or at such other address as either party shall respectively hereafter designate in writing. Statements and payments shall be addressed to Seller at the above address.

Routine communications, including monthly statements and payments, shall be considered as fully delivered when posted by either registered or certified mail, or ordinary, first-class mail, postage prepaid, to the appropriate address specified in this article. Notice of tests may be made by telephone.

ARTICLE XV

Billing, Payment for Gas Not Taken, Make-up

XV-1. On or before the 20th day of each calendar month, Buyer shall render to Seller a

statement showing the amount of gas received by Buyer during the preceding calendar month, and payment shall be made therefor by Buyer within ten (10) days after the rendering of any such statement; provided, however, that to allow Buyer to utilize machine accounting, payment for gas purchased hereunder need not be made prior to the 27th day of any month, regardless of when statement is rendered and notwithstanding the foregoing ten (10) day proviso. Any errors in such statement or payment shall be promptly reported to Buyer, and Buyer shall make proper adjustment thereof within thirty (30) days after final determination of the correct volume or values involved. Upon written request, Buyer shall furnish Seller copies of measurement charts applicable to any monthly statements, which charts shall be returned to Buyer within thirty (30) days thereafter. Seller shall have access at all reasonable times to such of Buyer's records and books as pertain to volumes of gas received by Buyer.

XV-2. Should Buyer fail to receive gas from Seller in the amounts specified in the appropriate Rate of Delivery provision of this contract and such failure not be attributable to Seller's failure to deliver same when required by Buyer, then Buyer shall, nevertheless, pay Seller therefor as though such gas were received, such payment to be made on or before sixty (60) days following the end of the calendar year of such deficiency. Buyer shall thereafter have the right during the succeeding five (5) calendar years to receive, in addition to the minimum quantities of gas, if any, which Buyer is then obligated to take or pay for, the quantity of gas previously paid for but not taken, provided, however, Buyer shall pay Seller for said quantity of gas previously paid for but not taken a price per Mcf equal to the difference between the price in effect when said gas was actually taken and the price in effect when the gas was paid for but not taken.

XV-3. After deliveries have commenced, if Buyer pays Seller for gas not taken and subsequently Seller is not physically or legally capable of delivering the quantities of make-up gas in addition to the current contract quantities as provided for herein, the Seller will immediately refund to Buyer all monies paid by Buyer for gas that Buyer requested and Seller was unable to deliver. However, if gas covered hereby has been subjected to drainage by other producers, Seller shall not be required to refund to Buyer such monies paid by Buyer for gas not taken.

ARTICLE XVI

Miscellaneous

XVI-1. It is expressly agreed that this agreement and the respective obligations of the Seller and Buyer hereunder are subject to present and future valid laws, orders, rules and regulations of duly constituted governmental authorities having jurisdiction.

XVI-2. Nothing herein shall be construed as affecting any of the relations between the United States and its lessees, or any state and its lessees, particularly in the matter of gas waste, taking royalty in kind, and the method of computing royalties due as based on a minimum price and in accordance with the terms and conditions of any applicable oil and gas operating regulations.

XVI-3. Neither Seller nor Buyer shall be nor be considered as being the agent, servant, or employee of the other party or be held responsible or liable for damages for the acts or conduct of the other.

XVI-4. Seller shall, from time to time, at Buyer's request, make available to Buyer such geological, engineering and production data as may be available to Seller, provided such data is not considered confidential by Seller, which will enable Buyer to make and maintain current its own reserve and deliverability studies. Seller shall determine stabilized shut-in pressures annually in cooperation with Buyer's representative.

XVI-5. No waiver by either party of any one or more defaults or breaches by the other in the performance of any provisions of this agreement shall operate or be construed as a waiver of any future default(s) or breach(es), whether of a like or different character.

XVI-6. The topical headings used herein are inserted for convenience only, and shall not be construed as having any substantive significance or meaning whatsoever or as indicating that all of the provisions of this agreement relating to any particular topic are to be found in any particular article.

The parties agree that upon the necessary governmental approvals that this agreement shall cancel and supersede that Agreement dated December 13, 1965 between the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the day and year first above written.

ATTEST:

JAMES C. ROAN, SR., ASSIST. SECRETARY

SELLER:

W. C. McBRIDE, INC.

By

R. J. CONNORS, EXECUTIVE VICE PRESIDENT

APPROVED BY:
LAND
LEGAL
ACCT
UNIT
TRANS

Jack Grynberg

BUYER:

ATTEST:

Assistant Secretary

MOUNTAIN FUEL SUPPLY COMPANY

By

Executive Vice President

Mt. Fuel Supply Co.
Approved:
Land
Legal MK
Acct.
Unit
Trans

1511

EXHIBIT "A"

ATTACHED TO AND MADE A PART OF THE AMENDATORY GAS PURCHASE AGREEMENT DATED JUNE 22, 1974 BETWEEN W. C. McBRIDE, INC. and JACK GRYNBERG AS SELLER, AND MOUNTAIN FUEL SUPPLY COMPANY, BUYER:

NITCHIE GULCH AREA, SWEETWATER COUNTY, WYOMING

Township 23 North, Range 103 West, 6th P.M.

Section 5: All
Section 6: All

Township 23 North, Range 104 West, 6th P.M.

Section 1: All

Township 24 North, Range 103 West, 6th P.M.

Section 31: All
Section 32: All

Tab G

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THIRD JUDICIAL DISTRICT
SALT LAKE COUNTY
BY
DEPUTY CLERK

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Attorneys for Plaintiffs

THIRD JUDICIAL DISTRICT COURT, SALT LAKE COUNTY, STATE OF UTAH

JACK J. GRYNBERG; CELESTE C. GRYNBERG and L & R EXPLORATION VENTURE, Plaintiffs, v. QUESTAR PIPELINE COMPANY, a Utah corporation; QUESTAR GAS MANAGEMENT COMPANY, a Utah corporation and QUESTAR ENERGY TRADING COMPANY, a Utah corporation, Defendants.	FIRST AMENDED COMPLAINT AND JURY TRIAL DEMAND Case No. 990909729 Judge Timothy R. Hanson

Pursuant to Utah R. Civ. P. 15(a), Jack J. Grynberg, Celeste C. Grynberg and L&R Exploration Venture, Plaintiffs, file this their First Amended Complaint and Jury Trial Demand against Defendants Questar Pipeline Company ("Questar Pipeline"), Questar Gas Management

Company ("Questar Gathering") and Questar Energy Trading Company ("Questar Trading"), as follows:

I. PARTIES

1. Plaintiffs Jack J. Grynberg and Celeste C. Grynberg are individuals residing in Denver, Colorado.

2. Plaintiff L&R Exploration Venture is a joint venture of which Jack J. Grynberg is a joint venturer and managing partner.

3. Defendant Questar Pipeline is a Utah corporation that may be served with process through its registered agent, Connie C. Holbrook, 180 East 100 South, P.O. Box 345360, Salt Lake City, Utah 84145.

4. Defendant Questar Gathering is a Utah corporation that may be served with process through its registered agent, Connie C. Holbrook, 180 East 100 South, P.O. Box 45433, Salt Lake City, Utah 84145.

5. Defendant Questar Trading is a Utah corporation that may be served with process through its registered agent, Connie C. Holbrook, 180 East 100 South, P.O. Box 45433, Salt Lake City, Utah 84145.

6. Defendants are successors to Mountain Fuel Supply Company ("Mountain Fuel") and are responsible for its obligations.

II. JURISDICTION AND VENUE

7. The amount in controversy in this case is in excess of the minimum jurisdictional amount for this Court.

8. Venue is proper because Defendants' principal places of business are located in this county.

III. FACTS

9. Plaintiffs and Defendant Questar Pipeline and/or its predecessors are and have been at all times relevant to this Complaint, parties to four (4) contracts for the purchase and sale of natural gas, identified as Gas Purchase Agreements 245, 246 and 249 from lands and leases located within the state of Wyoming (the "Contracts") and Gas Purchase Agreement 219 located in the state of Colorado (the "219 Contract"). Plaintiffs have also been selling gas to Defendants, their predecessors or affiliates and Defendants have been measuring the volume, analyzing the heating content, gathering the gas and transporting gas production owned by Plaintiffs under Defendants' direct contracts with Plaintiffs and under contracts with Hunt Oil Company (the "Hunt Contracts"). Hunt Oil Company ("Hunt") is the operator of the wells that produce gas sold pursuant to the Contracts and is authorized by virtue of the operating agreement to sell Plaintiffs' gas production for Plaintiffs' benefit.

10. Questar Gas Management Company is a gathering affiliate of Questar Pipeline and at some time during the parties dealings assumed operation and control of the Questar Pipeline gas gathering system that gathers gas produced by wells in which Plaintiffs have a significant interest.

11. Defendants' gathering system is the exclusive method by which Plaintiffs' gas production can be economically gathered and transported to an interstate pipeline or otherwise transported to a market. The gas gathering from the Nitchie Gulch Gas Field is exclusively tied

into Questar Pipeline's transportation system. As part of the gathering process Defendants Questar Pipeline and Questar Gathering measure the volume and analyze the heating content of the gas entering Defendants' gathering line system. Payment from Defendants, or from any other purchaser, is based on the measured volume of gas, expressed in MCFs multiplied by the price and multiplied by the heating content, expressed in BTU's of the gas. Errors, whether innocent or deliberate, in the volumetric measurement and in the BTU value analysis of the gas can significantly effect the ultimate price paid to the owner of the gas.

12. In addition to its ownership and total control of the gathering system and its role as a purchaser of gas production and/or transportation as described in this complaint, Questar Pipeline at all relevant times has owned the only pipeline leading from the gathering system to consumer pipeline markets. All of the gas from Plaintiffs' wells, not lost or used in transportation, is measured, analyzed and transported by Questar Pipeline.

13. Questar Trading is an affiliate of Questar Pipeline and Questar Gathering. At some time after Questar Pipeline purported to terminate the Contracts, Questar Trading purchased the gas produced from Plaintiffs' wells that are the subject of the Contracts. Questar contracted with Hunt to purchase the same knowing of Plaintiffs' interests in the gas and proceeds of the gas. Questar Trading knew or should have known of the mismeasurement and wrongful analysis of the heating content of the gas in which its affiliates were engaged. During the period of time Questar Trading bought Plaintiffs' gas production it was the beneficiary of the mismeasurement and wrongful analysis schemes in which its affiliates engaged and have been unjustly enriched as a result of those schemes.

A. Questar Pipeline and Plaintiffs' Prior Litigation and Questar Pipeline's Underpayments.

14. Questar Pipeline sued Plaintiffs for declaratory judgment in the United States District Court for the District of Wyoming in an action titled Questar Pipeline Company v. Grynberg, et al., Civil No. 92-CV-265J (hereinafter "Questar II"). Plaintiffs, counterclaimed, alleging among other things that Questar Pipeline had breached the contracts because it underreported the volume of gas, paid the wrong price and in an amended complaint based on recent discoveries alleged that Questar mismeasured the heating content of the gas expressed in BTUs.

15. Before trial the court announced that it would bifurcate the BTU issue from the trial then scheduled for February 1994. When the court finally issued an order regarding the BTU issue it dismissed the claims without prejudice.

16. The jury in Questar II returned a verdict in Plaintiffs' favor, finding among other things breaches of contract and tortious interference with contract. It also awarded punitive damages against Questar Pipeline. After a partial judgment notwithstanding the verdict and an appeal to the Tenth Circuit, the jury verdict was substantially reinstated and on March 17, 2000, the trial court entered Judgment Following Remand to District Court After Appeal, a copy of which is attached hereto as Exhibit A. The final judgment determined the price to be paid under the Contracts, determined the amount owing for gas Questar Pipeline was obligated to take but which it had not either taken or paid under Contracts 245, 246 and 249. The Court also

dismissed some of Plaintiffs' claims against Questar Pipeline including the claim that it had stolen volumes of gas from Plaintiffs through gas meter bypasses.

17. As a result of the decision in the Tenth Circuit on March 16, 2000, Questar Pipeline delivered to Plaintiffs' counsel its check in the amount of $5,146,071.56. The delivery of the check on the account was "without any restrictions, limitations or reservation of rights" and Questar acknowledged that Mr. Grynberg claimed he was owed additional amounts but nonetheless requested that "Mr. Grynberg accept the enclosed check for the amounts everyone agrees upon while we continue to try to resolve differences on other amounts." See Exhibit B attached hereto.

18. The March 16, 2000 Questar Pipeline payment was based upon volumes of gas and price as determined by the court. There has been no court determination of the BTU adjustment factor to be applied to the delivered gas volumes and the parties have not agreed on the BTU adjustment factor.

19. Under the Contracts, Questar Pipeline is to pay Plaintiffs for the volume of gas delivered at determinable prices adjusted by the heating content expressed in BTU of the delivered gas.

20. At least since 1993 when Plaintiffs filed their First Amended Complaint in Questar II, Questar Pipeline knew that Grynberg disputed Defendants' analysis and calculation of the heating content expressed in BTUs of the gas it took or was obligated to take from Plaintiffs. Paragraph XV-1 of each of the Contracts requires Questar Pipeline monthly to provide Plaintiffs with a "statement showing the amount of gas received [by Questar Pipeline] during the

proceeding calendar month," and pay Grynberg therefor within ten days after rendering the statement. Any errors in the statement or payment are to be promptly reported to Questar Pipeline and Questar Pipeline is obligated to "make proper adjustment thereof within thirty days after final determination of the correct volume or values involved." As reflected in the March 17, 2000 Order, the correct volumes and price have now been determined by the Tenth Circuit Court of Appeals but the correct BTU content of the gas has not been determined.

21. Questar Pipeline attempted to terminate its obligation to Plaintiffs under the Contracts. The effective date of that termination, if any, is presently the subject of litigation between the parties in the United States District Court for the District of Wyoming ("Questar III"). Although Questar Pipeline obtained a partial summary judgment in its favor, no final judgment has been entered in that case. In Questar III Plaintiffs contend that Questar Pipeline's attempts to terminate the Contracts were not successful and Questar Pipeline is obligated to take or pay for the gas produced from the wells under the terms of the Contracts to this date. The question of the termination of the Contracts will be determined in Questar III or in an appeal of Questar III.

22. After Questar Pipeline purported to terminate the Contracts Defendants entered into contracts with Hunt by which Hunt contracted with Questar Pipeline and/or its affiliates to gather, measure, analyze, purchase and transport the gas produced from the lands covered by the Contracts. Upon information and belief these contracts extended at least through November 1997.

23. Either by the Contracts, the Hunt Contracts or otherwise, Defendants undertook to gather, measure, analyze the heating content and transport the gas owned by Plaintiffs or for which Plaintiffs would be paid based upon volume measurements and analysis of the heating content expressed in BTUs performed by Defendants.

24. Defendants' standard Gas Gathering Agreements obligate the operator to warrant that it "owns or otherwise controls supplies of gas that it wishes to have gathered." The operator also promises Defendants "to make settlement for all royalties due and payments owed to Shipper's mineral and royalty owners" based on the measurements determined as specified in the Gas Gathering Agreement. Based upon information and belief, the Hunt Contracts contain provisions of similar effect.

25. Plaintiffs as mineral and royalty owners are intended beneficiaries of the Hunt Contracts including any gas gathering or transportation agreements between Hunt and Defendants.

26. Defendants at all times knew or should have known that Hunt would pay Plaintiffs based upon the volume in MCF measurements together with the heating content expressed in BTUs they supplied to Hunt.

27. As a common carrier and operator of public facilities, each Defendant has heightened duties of care to those such as Plaintiffs who rely on their services.

28. As set forth in paragraphs 30 through 61, Defendants knowingly, deliberately and maliciously or negligently wrongfully analyzed and mismeasured the heating content of Plaintiffs' gas to Plaintiffs' damage.

29. Defendants knew or should have known that Plaintiffs would rely on the professed skill and ability of Defendants in analyzing and measuring the heating content of the gas properly and honestly, and in accurately reporting the same to Plaintiffs and to Hunt. In fact, Defendants consistently mismeasured and wrongfully analyzed the heating content expressed in BTUs of the gas to the damage of Plaintiffs and for the benefit of themselves and/or their affiliates as gatherers, purchasers and/or transporters of the gas.

30. Questar Pipeline and/or Questar Gathering at all relevant times have been purchasing, gathering, measuring, analyzing the heating content or transporting natural gas from the lands and wells that are subject to the Contracts and the Hunt Contracts. In connection with their pipeline or gathering systems Defendants measured the volume and analyzed the heating content in BTUs of the natural gas production from the wells delivering gas under the Contracts and the Hunt Contracts. During such time Defendants have been improperly and incorrectly determining the heating content expressed in BTUs of the natural gas production from such wells as follows:

B. Defendants Intentionally Analyze Natural Gas Differently at the Point of Intake and at the Point of Later Delivery.

31. The composition of each particular molecule of natural gas does not ordinarily change from one point in a gas line to another; therefore, its true heating content should remain the same at any point along its path. However, by using different techniques, procedures and/or assumptions in the heating content analysis processes, one can significantly (and inaccurately) alter the results of the natural gas' analyzed BTU value.

32. Not only have Defendants been in control of the heating content analysis process expressed in BTUs at the point of purchase or input into a gas gathering line and/or gas pipeline (where working interest and royalty measurements are taken), but Defendants have also (directly or through subsidiaries or affiliates) regularly controlled the procedures for analyzing the heating content of natural gas at any later point--often at a distant location from the point of intake--where Defendants (or their affiliates) have resold or otherwise conveyed that gas.

33. There are significant economic motivations for Defendants to understate the BTU value of natural gas analyzed at the point of purchase or input, where working interest and royalty determinations are made. Prior to the implementation date set forth in Federal Energy Regulatory Commission Order No. 636, II FERC Stats. & Regs. Preambles 30,909 (April 8, 1992), Defendants and/or their affiliates could, and did, (a) purchase a given quantity of natural gas and assign it a certain BTU value at the point of purchase, (b) resell that same or equivalent quantity of gas at a higher assigned BTU value at a point further down the gas line, and (c) thereby profit significantly even though the composition for the gas remained the same from the points of purchase through resale. Ever since the implementation date of Order 636, *i.e.*, once Defendants became solely gatherers and/or carriers of gas with no direct proprietary or mercantile interest in its sales price, Defendants have nevertheless continued the same undervaluing practices to avoid the cost associated with the proper analysis and the tacit admission of prior wrongdoing and to benefit their affiliates.

34. A spot check analysis of the filings with the Federal Energy Regulatory Commission ("FERC") indicates that at various times since 1989 Defendant Questar Pipeline

has reported that it sold more gas than it purchased. Questar Pipeline reported that it actually gained gas on the way from the well to the final destination, a physical impossibility since gas is inevitably lost between the well and the destination by leakage, use by the pipeline company to power the pipeline compressors and from shrinkage. These reports are false, and illustrate that natural gas is consistently and knowingly undermeasured and undervalued at the wellhead.

35. The process of analyzing the heating content of natural gas is highly technical. It requires special equipment, trained personnel to operate it without manipulation, and proper laboratory conditions to obtain accurate results. Without knowledge, and in reasonable reliance on the Defendants, Plaintiffs were defrauded by Defendants who unjustly enriched themselves or their affiliates by knowingly underreporting, at the point of purchase or input into a gathering line and/or pipeline, the heating content of natural gas produced.

C. Measurement Techniques Distorting BTU Heating Content.

1. Strategic Placement of Flow Disturbing Elements to Obtain Unrepresentatively Low BTU Gas Samples.

36. The heating content of natural gas is determined from a sample which, according to industry standards such as ASTM 5503-94 5, must be "representative" of the gas stream as a whole. Natural gas produced normally ranges from the lightest hydrocarbon such as methane (CH_4), to heavier weight hydrocarbons such as butane (C_4H_{10}), hexane (C_6H_{14}), octane (C_8H_{18}),

decane ($C_{10}H_{22}$), and so on. The heavier the weight of the hydrocarbon, the greater its BTU value.[1]

37. Defendants knowingly understates the value of the natural gas they purchase by determining its BTU content on the basis of an unrepresentatively light (lower BTU content) sample. Defendants generally achieve this result by extracting gas for heating content analysis at a location (the "BTU Extraction Point") too close "downstream" from the orifice used to measure gas volume. Because this orifice always has a smaller diameter than the field-gathering line feeding into it, the orifice disturbs the normal flow of gas, resulting in a BTU sample that is not representative of the gas stream, to the detriment of Plaintiffs.

38. "Upstream" of flow disturbing elements such as the orifice, the gas is homogeneous: the heavier weight gas components--which always have a greater heating content--are representatively mixed with the lighter weight, lower heating content, gas components. Industry standards provide that appropriate gas samples for heating content analyses are obtained only under these conditions, where the mixture of hydrocarbons is representative of the mixture that is produced from the gas wells themselves. However, as the natural gas proceeds through the orifice, two physical effects occur. First, the gas experiences drops in pressure and temperature which result in a separation of the heavier weight (higher BTU) gas components from the lighter weight (lower BTU) components. Second, when the gas exits the orifice, it

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[1]For instance, the Federal Energy Regulatory Commission ("FERC") has published a table showing that an "ideal" cubic foot of methane (CH_4) would have a 1009.7 BTU value under standard temperature and pressure conditions of 60°F and 14.73 p.s.i., whereas an "ideal" cubic foot of decane ($C_{10}H_{22}$) would have a 7742.1 BTU value under similar conditions.

experiences "flattering turbulence," which causes the heavier weight components to travel along the inside wall of the pipe. Then, even if Defendants correctly insert a sample probe, used to extract a gas sample for heating content analysis, in the center 1/3 of the pipeline, the flow disturbing devices, such as the orifice, prevent a sample which is representative of the natural gas stream as a whole from being taken. Instead, the probe extracts mostly lighter weight (lower BTU) hydrocarbons, because the higher BTU hydrocarbons flow near the inside wall of the pipe at the gas sample extraction point for gas heating content analysis expressed in BTUs (hereinafter referred to as the "BTU Extraction Point"). This procedure yields a "skinny" gas sample with an unrepresentatively low heating content.

39. In recognition of this distorting effect, industry associations have promulgated standards to govern the proper placement of BTU Extraction Points relative to flow disturbing devices. See, e.g., ASTM 5287-92 6; ASTM 5503-94 5. For example, AGA Report No. 3 at Figures 4-9 instructs that in order to yield an accurate measurement, a probe must be placed somewhere between 6 and 45 pipe diameters "downstream" of a flow disturbing device, depending on the configuration of the gathering line and/or pipeline. The AGA Report sets forth factors to guide Defendants in the proper placement of each BTU Extraction Point. Under rare field conditions, industry standards might permit the BTU Extraction Point to be located a minimum of five pipe diameters downstream from any flow-disturbing elements. API Chapter 14.1.5.4.1. The API Standard, like the AGA Report, establishes required factors that govern the proper placement of the BTU Extraction Point beyond this minimum required distance.

40. Without considering any of these factors, however, Defendants routinely place the BTU Extraction Points about five pipe diameters or less downstream – a placement that under most, if not all, field conditions violates the industry standards. The purpose and effect of this practice is to reduce the analyzed heating content of the sample gas and thereby reduce the payments due Plaintiffs.

41. This mismeasurement practice is unheard of elsewhere in the world. International standards require placement of the BTU Extraction Point at least twenty pipe diameters downstream from any flow-disturbing element. Indeed, in Canada, France and Great Britain, among other countries, the heating content of natural gas is analyzed from natural gas samples taken "upstream" of the orifice, or from a separate parallel "sampling run" carried in a length of straight pipe that eliminates the distorting effects of upstream flow disturbances.

42. Indeed, Defendants recognize the value of these more accurate measuring conventions when an accurate measure of the value of gas is in Defendants' economic interest. Defendants or their affiliates sell or convey natural gas at locations remote from where it is measured for purposes of paying working interest, royalties and production taxes. At those remote locations, such as Salt Lake City, when selling or conveying the natural gas, Defendants regularly analyze the heating content upstream of the gas volume meter. In other words, Defendants or their affiliates analyze the heating content of natural gas differently at the point of purchase or input into a gas gathering line and/or pipeline than at the point of sale or conveyance.

43. Defendants installed additional flow disturbing devices upstream of the orifice but before the BTU Extraction Point, which create more flow disturbance, such as rectangularly

shaped "plug" valves that create more flow disturbance than a functionally equivalent, spherically shaped "ball" valve. Industry standards permit the use of plug valves in appropriate circumstances, but typically the valves must be fully open to minimize flow disturbance. Thus, Defendants fail to use the least disturbing valves and/or ensure that the valves are fully open.

44. Defendants also frequently exacerbate the flow disturbances occurring at the BTU Extraction Point by inserting a thermometer probe and/or a test probe into the center of the pipe immediately upstream of the BTU Extraction Point.

45. Industry standards permit Defendants to sample natural gas somewhat closer to flow-disturbing elements (the specific distances are determinable from industry standards) by installing commercially available equipment, known as "straightening vanes," inside the gathering line. Straightening vanes are groupings of short, small-diameter tubes similar to a bundle of large diameter straws. See AGA Report No. 3, Figure 9. The straightening vanes act to reduce turbulence and render more representative natural gas samples for heating content analyses. But Defendants have failed to install straightening vanes at the points where volume mismeasurement and heating content analyses are made.

46. Defendants know they mismeasure and wrongfully analyze the heating content expressed in BTUs. First, although Defendants are well aware that flow disturbance can negatively affect the heating content expressed in BTU of a natural gas sample, Defendants do not take and use an undisturbed, truly representative gas sample -- except at the point of sale, when it is to their benefit. Second, Defendants know that the heating content expressed in BTUs of natural gas produced from a given gas well should remain relatively constant over time, like

fingerprints or DNA. An exception to this rule applies to a gas field that is almost depleted and compression has to suck out the last of the gas. In those cases the heating content expressed in BTUs is significantly reduced because the high BTU liquid content stays in the formation. Nevertheless, the heating content expressed in BTUs reported by Defendants for natural gas from any given gas well varies considerably, indicating to Defendants the inaccuracy of their heating content expressed in BTUs determination.

2. Defendants Fail To Prevent or Account for Changes in the Flow Rate.

47. As the natural gas flow rate changes, the gas sample pulled from that stream changes as well. Consequently, industry standards require that to obtain a natural gas sample representative of the natural gas stream as a whole, "a sampling interval should be carefully chosen so that the collected sample reflects" any changes in a pipeline's flow rate. API Chapter 14.1.8.1. Defendant's fail to take into account the flow-rate changes. Defendants could, and should, eliminate this potential factor for mismeasurement. A well-known device called the Welker vanishing chamber continuous sampler GSS-4, for example, samples natural gas over an entire month to "average" the flow of natural gas in order to obtain the most accurate representation of the natural gas produced. Although this form of sampler has been on the market for approximately twenty-five years, Defendants have not utilized it (nor an equivalent device) to assess accurately the sampling for heating content analysis expressed in BTUs from each gas well connected to the Defendants' system. Defendant Questar Pipeline after all these years has recently installed a continuous sampler near its Master meter.

3. Defendants Allow Natural Gas To Cool and Liquefy Before Sampling, Which Artificially Lowers the BTU Value of the Sample.

48. Defendants locate the natural gas BTU Extraction Points 100 - 300 feet or more downstream from the separator and/or dehydrator unit. This placement causes the natural gas to cool to temperatures far below those that exist in the producing formation or in the well. In a natural gas reservoir at 9,000 feet, for example, gas has an approximate temperature of 160°F, is homogeneous, and is in one phase (that is, gaseous). The applicable regulations and industry standards recognize that it is imperative to obtain natural gas samples at a temperature representative of the true well temperature. See API 14.1.5.4.2; ASTM 5503-94-5. However, once the natural gas cools -- which occurs when the gas travels the 100 to over 300 feet described above -- the gas separates into two phase flows (that is, liquid and gaseous). The heavier natural gas elements, which have a higher heating content, liquefy and separate as they cool, yielding an unrepresentative gas sample that understates the percentage of hydrocarbons with a higher BTU value. To counter this effect, Defendants must either heat the natural gas before it is extracted (to ensure that it returns to one phase flow) or separately measure the hydrocarbons that have liquefied. Id.; see also API 14.1.6.3; ASTM 5503-94 1, 5. Defendants do neither.

4. Defendants Sample Gas at Lower than Wellhead Pressure or Flow Line Pressure, Which Lowers the BTU Value of the Sample.

49. Any natural gas sampling device "must extract a representative sample from a flowing pipeline." ASTM 5503-94 5.1; see also GPA 2166-86, 3.1. While industry standards permit natural gas sampling to be conducted in a variety of ways, Defendants fail to extract a "representative sample."

50. Defendants over the years have extracted natural gas samples by means of a steel sample container ("sample bomb") or similar device. The pressure in the sampling container that Defendants utilize is either at a vacuum or at atmospheric conditions. This pressure is far lower than the pressure of the natural gas either in its true subsurface state or after the gas is produced and flows in the gas gathering line and/or pipeline. Only when Defendants sample the natural gas is it subjected to this low a pressure. The type of sampling device Defendants use allows the gas to undergo a rapid and extreme drop in pressure (which occurs immediately before the sample enters the device used to determine the heating content of the gas). The natural gas is thus subjected to what is known in physics as the Joule-Thomson effect. Simply stated, the drop in pressure causes a drop in temperature, which, in turn, causes heavier gases -- with a higher heating content -- to liquefy, separate, and stay behind in the pipeline; whereas the lighter gases -- with a lower heating content -- remain in a gaseous phase and enter the gas sampling container. (As a physical matter, molecules of natural gas that have a higher heating content turn to liquid at lower pressures and temperatures than natural gas molecules with a lower heating content.) Accordingly, Defendants exclude a disproportionate amount of the heavier hydrocarbons with higher BTU values from the natural gas sampling process and subsequent heating content analysis.

51. Defendants could, and should, prevent this lowering of the BTU value of the natural gas sample. A natural gas sampling device known as a "Floating Piston Cylinder," wherein natural gas is retrieved into a pressurized container that can be adjusted to the pressure in the gathering line and/or pipeline, has been available in the industry for over twenty years.

The industry specifically permits the use of the Floating Piston Cylinder, which, when operated correctly, is least subject to the Joule-Thomson effect among all available sampling techniques. The Floating Piston Cylinder allows Defendants to extract a truly representative and reliable natural gas sample, thus complying with the sampling pressure requirements of the applicable standards, without having to make adjustments required with other sampling techniques. While the applicable standards do not require Defendants to use Floating Piston Cylinders under all circumstances, they do require Defendants to use appropriate measuring devices to avoid the Joule-Thomson effect in extracting natural gas for heating content analysis. See, e.g., API Chapter 14.110 and 14.1.14; GPA 2166-86, § 3.1 and 5-7, and the citations in ASTM 5503 - 94 § 5.1. Defendants often use Floating Piston Cylinders to analyze the heating content of gas sold to local distribution companies, but use the outmoded low pressure cylinders to sample natural gas when buying or measuring natural gas from producers. Indeed, the reported heating content of natural gas is increased when the Floating Piston Cylinder is used.

5. Defendants Improperly Use Inaccurate "Portable" Chromatographs.

52. Defendants in the last few years have started the use of a portable chromatograph to perform a natural gas sample heating content analysis directly in the field. However, analyses from portable chromatographs are accurate only up to C_8H_{18} (octane) level, and then only if the analyzer is correctly connected to the sample probe, which Defendants fail to do. The portable chromatograph, lines, filters, regulators, inlet systems and accessories must be heated in order for

a representative mixture of the natural gas to be delivered to the chromatograph. If this does not occur, as required by the applicable regulations and standards (see, e.g., API Chapter 14.1.16.3; GPA 2166-86 § 8), the portable chromatograph will understate the heating content and reduce payments to Plaintiffs.

53. Additionally, by forcing natural gas samples from a high-pressure gathering line (100 psi or higher) into a chromatograph with very low internal pressure (less than 20 psi), the natural gas sample is subjected to another Joule-Thomson effect. This causes liquefication of the heavier weight (higher BTU) hydrocarbons, which causes them to go undetected in the heating content analysis process, in contravention of the applicable regulations and standards. See, e.g., API Chapters 14.1.6.3, 14.1.9, and 14.1.16; ASTM 5503-94 § 5.5.5.1 and Order No. 5, § III.C.23.

54. Portable chromatographs also use a submicron filter which, due to the drop in pressure or series of drops in pressure caused by such filters, causes the heavier weight (higher BTU value) hydrocarbons to be lost, without ever being analyzed by the chromatographs. The effect on the natural gas from the use of this filter is similar to the effect described below regarding chromatographs with filters situated in laboratories.

55. The portable chromatograph does not properly analyze the heavier, higher BTU value hydrocarbons as required by API Chapter 14.1.16.4, GPA 2261-95 §§ 3-7, and Order No. 5, § III.C.23, and does not correct for nitrogen and oxygen which is found in certain natural gas streams.

6. The Joule-Thomson Effect Again Lowers Heating Content Value Expressed in BTUS When the Gas Sample Is Transferred to the Chromatograph for Analysis.

56. The unrepresentatively light BTU value gas sample described above is still further restricted as Defendants transport the gas sample from the BTU Extraction Point to a laboratory and transfer it to a "chromatograph" where its heating content is analyzed. When such a natural gas sample container is connected to the chromatograph, and the natural gas flows from the container into the chromatograph, the pressure drops in the gas sample container (which has no way of maintaining pressure at an appropriate level, creating another Joule-Thomson effect). As this pressure drop occurs, the heavier and lighter hydrocarbons separate from each other and only the lighter hydrocarbons with a lower BTU value tend to flow into the chromatograph. By this pressure drop, the higher BTU value hydrocarbons remain in the sample chamber without ever being analyzed.

7. Defendants Filter Out Heavier Hydrocarbon Molecules with Highest BTU Value.

57. Defendants place a filter at the exit point of the natural gas sample container (chamber), the result of which is to further restrict gas flow and disturb the gas stream. This placement again causes an inordinate exclusion of the heavier higher BTU value hydrocarbons, creating yet another Joule-Thomson effect. The purpose of the filter is to eliminate possible impurities from the natural gas sample entering the chromatograph; the filter is not intended to be a means by which Defendants may eliminate heavier, higher BTU value molecules from the natural gas sample being analyzed.

8. Defendants Measure the Natural Gas at Room Temperature, as Opposed to Higher Wellhead Temperature, to Lower the BTU Value.

58. Even if Defendants analyzed the heating content of natural gas at the appropriate pressure, interviews and research have shown that the Defendants authorize or allow their laboratories to analyze the gas sample at an inappropriate low temperature. Defendants analyze the retrieved natural gas sample for heating content in the laboratory at approximately 70° or room temperature, instead of the higher wellhead temperature. At room temperature, natural gas separates in the gas sample container into lower BTU value gaseous and higher BTU value liquid phases. Because the higher BTU value liquid phases are more viscous, they tend to cling to the walls of, and thus remain in, the gas sampling container, and therefore cannot properly be analyzed in the chromatograph. Industry standards require Defendants to analyze the heating content of the gas at a temperature that is between 20 and 50 degrees Fahrenheit higher than the sampling source (wellhead) temperature, or approximately 140°F to 150°F, whichever is higher. See, e.g., GPA 2166-86 8 and API Chapter 14.1.16.3. Worse yet, by failing to heat the gas sample to allow only the gaseous phase, Defendants permit the small amount of high BTU value liquids to be filtered out by the filter that would be too big to filter out the gaseous phase.

59. Thus, even if Defendants extracted a truly representative gas sample from the natural gas stream, gas in a chromatograph has an unrepresentatively lower heating content than does gas in a gas sample container. This violates, among other standards, API Chapter 14.1.9, 14.1.16.3-4 and GPA 2261-95 6-7.

9. Defendants Use False Assumptions Regarding the Percentage Composition of Heavier Hydrocarbons in Performing Heating Content Analysis Expressed in BTUs.

60. After engaging in all of the inappropriate sampling and laboratory procedures described above, Defendants compound the wrong by analyzing the heating content of only lighter weight (lower BTU value) hydrocarbons. Questar and its affiliates instructs the laboratories who analyze the heating content of the natural gas they purchase and/or transport to analyze only hydrocarbons CH_4 (methane) through C_6H_{14} (hexane) or C_7H_{16} (heptane) for heating content, instead of analyzing the heating content of all the hydrocarbons (including the heavier, high BTU value molecules). Rather than conduct the actual analysis, Defendants make conservative assumptions as to the percentage composition of the heavier weight hydrocarbons beyond C_6H_{14} (hexane). By so doing, Defendants violate the applicable regulations and industry standards. See, e.g., GPA 2261-95 6-7; API 14.1.16.4; and Order No. 5 III.C.23.

10. Defendants Misuse "Wet Gas" Analysis.

61. Depending on its state, natural gas is often referred to as "dry" or "wet." A chromatograph (described above) analyzes the heating content of natural gas only on a "dry" basis. The vast majority of gas contracts, however, call for natural gas to be delivered and paid for on a "wet" basis. Thus, a GPA formula exists for converting analyzed "dry" gas to the so-called "wet gas" basis. Defendants, through the use of wrong pressure data, use this formula incorrectly, to their advantage and to the detriment of Plaintiffs. A variable Defendants use for converting BTU values from the analyzed "dry" basis to the "wet" basis is the flowing pressure in the field gas gathering line. Defendants arbitrarily substitute an assumed atmospheric pressure

(such as 14.7 p.s.i., the atmospheric pressure at sea level, or a standard pressure) for the flowing pressure in the natural gas gathering line, on the false assumption that the natural gas in the gathering line (from which the natural gas sample is taken) is subject merely to atmospheric pressure, which it is not (or it would not move or "flow" in the pipeline). Instead, the natural gas is subject to far greater pressures in both the gas producing fields and while moving through the natural gas gathering lines, where pressures are 100 p.s.i., and usually more. Defendants should use in the formula the flowing pressure in the gathering line of at least 100 p.s.i. At this much higher true flowing pressure, the formula demonstrates that the difference between the analyzed heating content expressed in BTUs of the natural gas on a "dry" basis with the calculated "wet" basis is virtually non-existent. But by erroneously using atmospheric pressure of 14.7 p.s.i. in the formula, Defendants erroneously calculate that "wet" gas only has 98% of the BTU value of "dry" gas and, therefore, Defendants pay for only 98% of what Plaintiffs are really owed. The contracts require further calculations to ensure that the actual flow pressure and temperature are properly accounted for. Defendants erroneously make this calculation to their advantage and Plaintiffs' detriment.

11. Defendants Not Only Cause or Permit Gas To Separate into Two Phases (Gaseous and Liquid) and Under-measure the BTU Value in the Gaseous Phase, But Completely Ignore Measuring the BTU Value in the Liquid Phase.

62. Defendants have recovered the liquified ("condensate") natural gas, without paying Plaintiffs. Defendants do this by purging their gas gathering lines and gas pipeline

systems using a "pig," and in the process recover large quantities of gas liquids. These gas liquids should have been accounted for to the Plaintiffs but were not.

D. Fraudulent Concealment.

63. Despite having exercised reasonable diligence Plaintiffs could not discover, and were prevented from discovering Defendants' mismeasurement schemes described herein. Defendants periodically submitted statements to Plaintiffs reporting the volume in MCF and the heating content expressed in BTUs of the gas Plaintiffs produced and for which they were entitled to be paid the correct amount. Defendants reported the heating content in BTUs of the gas produced from wells in the Nitchie Gulch Gas Field that varied from 1,034 to 1,248 BTUs per MCF. This constitutes an approximate 20% difference in heating content which would result in an approximate 20% difference in payments. Attached as Exhibit C are graphs of the heating content of the gas produced from Plaintiffs' wells as reported by Questar Pipeline. The unexplained differences in heating content expressed in BTUs were presented as normal variations in the field that did not provide any basis for further inquiry or alarm. In fact, Defendants knew or should have known that the heating content expressed in BTUs of the gas in the field should have been roughly consistent within the field and over time. For the Dakota formation production the heating content should have been approximately approximately 1,248 BTUs. For the Frontier formation production the heating content should have been 1,273 BTUs. These variations should have alerted Defendants who were in a superior position to know the

significance of these variations, that there were problems with Defendants' measurement and analysis of the heating content expressed in BTUs.

64. Defendants never disclosed the mismeasurements and wrongful analyses in which they engaged as described above and instead explicitly and implicitly represented that they were complying with industry and BLM standards and their obligation to correctly analyze the heating content expressed in BTUs of the gas they gathered, purchased and transported.

65. In 1993 Plaintiff Jack Grynberg discovered that for many years there were pipe bypasses that he believed enabled Questar to receive gas that did not pass through its gas meters for which Questar did not pay. Upon discovering that Questar unilaterally without anyone's knowledge had installed ten meter bypass devices Grynberg conducted his own independent investigation and requested information from Questar about its measurements. In a then pending lawsuit in the United States District Court for the District of Wyoming ("Questar II"), the current Plaintiffs requested that Questar Pipeline produce monthly information from its gas Master meter, which is the meter that measures all of the gas gathered from the field. Except for line loss, the reading at the gas Master meter should equal the sum of the individual and separate gas meter readings from each of the particular wells in which Plaintiffs had an interest. The gas Master meter reading cannot properly record a greater quantity of gas then the sum of the individual wells delivering gas into the line and through the gas Master meter.

66. Questar Pipeline resisted producing information from the Master meter for eight months. When Questar Pipeline finally, by court order, produced volume reports from its Master

meter they showed that the volume at the Master meter was as much as 12% per month greater than the sum of the volumes from all of the feeder lines. This physical impossibility further demonstrated that Defendants' measurements were wrong and that they were underreporting and underpaying Plaintiffs for their production.

67. Plaintiffs raised their concerns about the volume mismeasurement and wrongful analysis of the heating content expressed in BTUs with Questar Pipeline's Alan Walker in 1993 and in many discussions thereafter. These discussions related to problems with all of the analyses for Nitchie Gulch Gas Field wells. Defendants denied the problem, evaded a response or gave incomplete answers.

68. Plaintiffs retained the services of Dr. Robert L. Lee an international authority in the heating content of natural gas and co-author of the McGraw-Hill textbook "Natural Gas Engineering." Questar Pipeline took the deposition of Dr. Lee in February 1994. Dr. Lee gave his opinion that Questar Pipeline's measurement and analysis techniques for BTU values resulted in underpayments to Plaintiffs. Questar's response was merely to disregard and to dismiss Dr. Lee's testimony without explanation or any attempt to correct either its prior mismeasurements or future procedures.

69. Questar Pipeline at all times has had sole control of the placement of measuring devices, extraction of gas samples, custody of gas samples and analysis of gas samples. It maintains records of such information. Questar Pipeline produces only information on the results of its analyses and has vigorously resisted attempts to obtain more specific information

about its mismeasurements. Without the whole mismeasurement picture the individual techniques could not be effectively evaluated and challenged by Plaintiffs.

70. Defendants knew that undervaluing the heating content of natural gas produced would adversely impact Plaintiffs' because payments to Plaintiffs are directly dependent upon the reported value of natural gas produced which in turn is a direct function of the heating content expressed in BTUs.

71. Defendants actively concealed the above material facts from Plaintiffs and from producers of gas to whom they owed either directly or indirectly or as intended beneficiaries contractual and fiduciary duties to provide accurate and honest accounting of the value of natural gas produced.

72. The running of the statute of limitations has been suspended with respect to claims that Plaintiffs allege herein, as Defendants, through various devices of secrecy, concealed the existence of their unlawful mismeasurement schemes and course of conduct from Plaintiffs.

E. Defendants Did Not Take or Pay For All Gas Required.

73. In addition to the mismeasurement delineated above, Defendants were obligated, under Contract 219 to take a certain volume of natural gas production for the period 1988 through 1992 (the "Contract Years") or, if such gas production was not taken, to pay for such volume as if it were taken. During the Contract Years, Defendant failed to take the required volume of gas and had refused to make the payment required by Contract 219.

74. In 1991 Plaintiffs raised an issue with Questar Pipeline as to whether it had taken or paid for all of the gas it was obligated to under Contract 219. John Carricaburu

("Carricaburu"), one of Questar Pipeline's officers, assured Plaintiffs that Questar Pipeline had met its take or pay obligations under Contract 219 for all prior years.

75. Contract 219 was to expire January 1, 1992. Questar Pipeline's obligation under the agreement required it to take or pay for 75% of the produceable gas. Questar therefore could shut the well in for three months each year. In fact, Questar shut the well in for four months in some years. Carricaburu represented to Plaintiffs that Questar scrupulously guarded against underproduction of Grynberg's well and in fact had overproduced the well in each year. Carricaburu claimed that the 1991 underproduction was an inadvertent shut in and agreed to pay Plaintiffs for an extra four months of production in 1992 after the contract expiration date to compensate Plaintiffs for the inadvertent shut in during 1991. In fact, Questar had not met its take or pay obligations in 1989, 1990 and 1991.

76. In reliance on Questar's representation that it had produced and taken at least 75% of the gas under Contract 219, Plaintiffs signed a new Gas Purchase Agreement that contained a general release in favor of Questar Pipeline.

77. Plaintiffs either were fraudulently induced to grant the release in favor of Questar Pipeline or the release was given under a mutual mistake of fact that Questar Pipeline had taken or paid for all of the gas it was obligated to under Contract 219. Alternatively, Plaintiffs were mistaken as to the actual take or pay by Questar under Contract 219 and were induced to execute a release based upon the fraud or inequitable conduct of Questar and therefore the release should be set aside.

IV. CAUSES OF ACTION

The Defendants are liable to Plaintiffs for one or more of the following reasons:

78. Breach of Contract: The Defendants have express and implied contractual obligations to Plaintiffs and Plaintiffs are intended beneficiaries by virtue of the Contracts, the Hunt Contracts and its transportation and gathering contracts and direct and implied obligations to Plaintiffs by statute, contract or common law. By mismeasuring and wrongly analyzing the heating content of the gas, Defendants have breached the Contracts, the Hunt Contracts, the transportation and gathering contracts and their implied terms, the duty to diligently market and correctly and honestly to report the proper gas values and the duty of good faith and fair dealing. As a direct and proximate result, Plaintiffs are entitled to recover damages to be proven at trial plus attorneys' fees, pre and post judgment interest and costs.

79. Declaratory Judgment: Pursuant to Utah Code Ann. § 78-33-1 *et seq.* there exists a dispute between the parties concerning the BTU content of the gas Questar Pipeline purchased or was obligated to purchase from Plaintiffs.

80. Plaintiffs claim that the heating content expressed in BTUs of the gas sold from each of the wells at issue should be as shown as the correct BTU value on Exhibit C and asks this Court to judicially declare the same.

81. Ancillary to the declaration of the correct BTU values, Plaintiffs are entitled to judgment of the Court awarding Plaintiffs the difference between the value of the gas based upon the correct BTU values and the value calculated according to Defendants' BTU mismeasurement. These damages through June 30, 1994 when Defendants claim and Plaintiffs dispute, that the

contracts terminated, plus interest are shown on Exhibit D. Damages for the period after June 30, 1994 through the period of the Hunt Contracts for the purchase of gas, November 1997, are shown on Exhibit E.

82. Negligent or Intentional Misrepresentation: Defendants negligently or intentionally misrepresented the gas measurements and wrongful analysis to Plaintiffs in each payment and statement of heat content and, negligently or intentionally concealed the mismeasurement from Plaintiffs, entitling Plaintiffs to a tolling of the statute of limitations, recovery of actual damages proximately caused by Defendants' mismeasurement in an amount to be proven at trial plus attorneys' fees, pre and post judgment interest and costs.

83. Fraud: Defendants' mismeasurement and misanalysis was a fraud on Plaintiffs proximately causing damage to Plaintiffs who actually and reasonably relied on Defendants' fraudulent representations to their detriment, entitling Plaintiffs to a tolling of the statute of limitations, actual damages, attorneys' fees, pre and post judgment interest and costs. Plaintiffs specifically reserve the right to recover punitive damages.

84. Common Carrier Liability: Defendants as common carriers have enhanced legal duties to Plaintiffs. As a result of Defendants' mismeasurement and wrongful heating content analysis, Defendants are liable to Plaintiffs for all damages resulting from their negligent and/or the intentional mismeasurement and wrongful analysis plus attorneys' fees, pre and post judgment interest and costs.

85. Conversion: By mismeasuring the gas, Defendants converted the use and benefit of Plaintiffs' gas to their use, proximately causing actual damages to Plaintiffs. As a result,

Plaintiffs are entitled to recover actual damages, attorneys' fees, pre and post judgment interest and costs. Plaintiffs specifically reserve their right to recover punitive damages.

86. Res Ipsa Loquitur and Negligence: Defendants at all relevant times had exclusive control of the devices and means of analyzing heating content of Plaintiffs' gas which caused substantial injury to Plaintiffs which would not ordinarily occur if Defendants had used proper care, such that negligence can be inferred as a matter of law. In addition, Defendants were simply negligent, or worse, such that Plaintiffs are entitled to recover actual damages, pre and post judgment interest and costs.

87. Breach of Fiduciary Duty: Defendants have a fiduciary relationship by business or association with each Plaintiff, who reasonably and actually placed special trust and confidence in Defendants to properly analyze the BTU content of Plaintiffs' gas. Plaintiffs placed special confidence in Defendants which, in equity and good conscience, bound Defendants to act in good faith and with due regard to the interest of the Plaintiffs, but as outlined above Defendants breached that fiduciary duty, entitling Plaintiffs to actual damages, attorneys' fees, pre and post judgment interest and costs. Plaintiffs specifically reserve their right to recover punitive damages against Defendants.

88. Equity (Injunction, Accounting, Quantum Meruit, and Unjust Enrichment): Plaintiffs are entitled to an injunction to prevent Defendants from mismeasuring and misanalyzing in the future, an accounting to determine the amount of damages from Defendants' past mismeasurement and wrongful analysis, and to recover all money unjustly enriching Defendants at the expense of Plaintiffs. As a result, Plaintiffs are entitled to a complete

accounting, an injunction, actual damages, attorneys fees, pre and post judgment interest and costs. Plaintiffs specifically reserve the right to recover punitive damages.

V. PRAYER FOR RELIEF

Wherefore, Plaintiffs Jack J. Grynberg, Celeste C. Grynberg and L&R Exploration Venture pray for judgment as follows:

1. A judicial declaration that the BTU content of the gas sold by Plaintiffs is as shown as the correct BTU value on Exhibit C.

2. Actual damages against Defendants, for the value of the gas that has been underpaid as described herein.

3. Actual damages against Defendants for the amount of the payment Defendants were obligated to make under Contract 219 for natural gas that Defendants were obligated either to take and pay for or pay for if not taken as described herein.

4. Interest on amounts due at the rate of 18% per annum from the date due as specified in § 30-5-301(a) of Wyoming Statutes, plus any gain or benefit interest with regard to Contract 219 in accordance with Colorado Revised Stat. § 5-12-102(1)(a).

5. An injunction prohibiting Defendants from mismeasuring and wrongly analyzing, as described herein, in the future.

6. An accounting to determine the actual underpayments by Defendants and others to Plaintiffs for past mismeasurements and wrongful analysis and to disgorge all monies unjustly received.

7. All types of production taxes that Plaintiffs will be required to pay on the actual damages Plaintiffs have suffered and for which Defendants are required to make reimbursement under the Contracts.

8. Defendants' court costs and reasonable attorney fees.

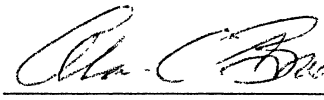
9. Such other and further relief to which Defendants' show themselves to be justly entitled.

JURY DEMAND

Plaintiffs hereby demand a jury trial on all issues so triable.

DATED this 1st day of June, 2000.

MANNING CURTIS BRADSHAW & BEDNAR LLC



Brent V. Manning
Alan C. Bradshaw
Jack M. Morgan, Jr.

Attorneys for Plaintiffs

Plaintiffs' Address:

5000 South Quebec Street, Suite 500
Denver, CO 80237

CERTIFICATE OF SERVICE

I hereby certify that I mailed, via United States Mail, a true and correct copy of the First Amended Complaint and Jury Trial Demand, postage prepaid, this 1st day of June, 2000 to the following:

Susie Inskeep Hindley
Holland & Hart LLP
215 South State Street, Suite 500
Salt Lake City, UT 84111-2346
Telephone: (801) 595-7800
Fax: (801) 364-9124

Donald I. Schultz
Holland & Hart
P.O. Box 1347
Cheyenne, WY 82003-1347
Telephone: (307) 778-4200
Fax: (307) 778-8175

Terrie T. McIntosh
Questar Corporation
180 East 100 South
P.O. Box 45433
Salt Lake City, UT 84145
Telephone: (801) 324-5532
Fax: (801) 324-5131

00 MAR 20 AM 8 41

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF WYOMING

QUESTAR PIPELINE COMPANY, Plaintiff, v. JACK J. GRYNBERG, CELESTE C. GRYNBERG, L & R EXPLORATION VENTURE, Defendants.	)	No. 92-CV-265-J

JUDGMENT FOLLOWING REMAND TO DISTRICT COURT AFTER APPEAL

THE ABOVE CAPTIONED MATTER has come before the Court for entry of Judgment by the Court, pursuant to the January 24, 2000 Decision and Judgment of the Tenth Circuit Court of Appeals, remanding this matter for entry of judgment consistent with the appellate court's opinion. Accordingly, it is therefore

ORDERED, ADJUDGED AND DECREED that the price to be paid under the gas purchase agreements for wells that deregulated on May 15, 1991 is $3.076 MMBtu and the price to be paid under the gas purchase agreements for

25
806

wells that deregulated on January 1, 1993 is $3.217 MMBTU. It is further

ORDERED, ADJUDGED AND DECREED that Questar Pipeline Company is entitled to judgment in its favor and that defendants Jack J. Grynberg, Celeste C. Grynberg, and L & R Exploration Venture recover nothing from the plaintiff on the following claims:

1. The duty to decontrol claim;
2. The claim for "ownership interests" (also called the "working interest claim");
3. The stolen gas claim.

It is further

ORDERED, ADJUDGED AND DECREED that defendants Jack J. Grynberg, Celeste C. Grynberg and L & R Exploration Venture recover from the plaintiff, Questar Pipeline Company, on the take-or-pay claim for Gas Purchase Agreement No. 246 as follows:

1988	$163,883.56
1990	$124,978.83
1992	$69,592.63

It is further

ORDERED, ADJUDGED AND DECREED that defendants Jack J.

Grynberg, Celeste C. Grynberg and L & R Exploration Venture recover from the plaintiff, Questar Pipeline Company, on the take-or-pay claim for Gas Purchase Agreements 245 and 249, as follows:

Gas Purchase Agreement 245 (Rogers Government Wells)

1988	$45,383.09
1989	$0
1991	$64,280.63

Gas Purchase Agreement 249 (North Nitchie Wells)

1988	$100,987.65
1992	$14,182.69

It is further

ORDERED, ADJUDGED AND DECREED that defendants Jack J. Grynberg, Celeste C. Grynberg and L & R Exploration Venture recover from the plaintiff, Questar Pipeline Company, on the claim for intentional interference with contract, the sum of $338,585.76. It is further

ORDERED, ADJUDGED AND DECREED that defendants Jack J. Grynberg, Celeste C. Grynberg and L & R Exploration Venture recover from the plaintiff, Questar Pipeline Company, on the 1989 make-up gas claim, the sum of $381,764.53. It is further

ORDERED, ADJUDGED AND DECREED that defendants Jack J. Grynberg, Celeste C. Grynberg and L & R Exploration Venture recover from the plaintiff, Questar Pipeline Company, punitive damages in the amount of $200,000.00.

Dated this 17th day of March 2000.

UNITED STATES DISTRICT JUDGE

ENTERED
ON THE DOCKET
Mar 20, 2000
(Date)
Betty A. Griess, Clerk
by Deputy Clerk

809

MANNING
CURTIS
BRADSHAW&
BEDNAR LLC
ATTORNEYS

Third Floor Newhouse Building
10 Exchange Place
Salt Lake City, Utah 84111
(801)363-5678
Facsimile: (801)364-5678

Alan C. Bradshaw
abradshaw@mc2b.com

FILED
DISTRICT COURT
00 JUN -2 PM 1:50
THIRD JUDICIAL DISTRICT
SALT LAKE COUNTY
BY DEPUTY CLERK

June 2, 2000

VIA HAND DELIVERY

Clerk of the Court
Third Judicial District
450 South State
Salt Lake City, UT 84114

RE: Grynberg, et al. v. Questar Pipeline Company, et al., Third Judicial District Court, Salt Lake County, State of Utah, Case No. 990909729, Judge Timothy R. Hanson

Dear Court Clerk:

Yesterday we filed Plaintiffs' First Amended Complaint and Jury Trial Demand in the above-referenced matter. Part of Exhibit B, a copy of Questar's check in the amount of $5,146,071.56 was inadvertently not attached. I have enclosed a copy of the check and hereby request that you insert this copy under Exhibit B. I apologize for this oversight and thank you in advance for your assistance.

Very truly yours,

Alan C. Bradshaw

ACB:rj

Enclosure

cc. Susie Inskeep Hindley
Donald I. Schultz
Terrie T. McIntosh
(via U.S. Mail, w/enclosure)

EMY OR DEL (D)

Vendor Number	Vendor Name		Total Discounts	
0000010785	Jack J Grynberg, Celeste C Grynberg,		$0.00	
Check Number	**Date**	**Total Amount**	**Discounts Taken**	**Total Paid Amount**
020624	15.Mar.2000	$5,146,071.56	$0.00	$5,146,071.56

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER

QUESTAR GAS COMPANY
180 East 100 South / P.O. Box 45360
Salt Lake City, UT 84145-0360

BANKERS TRUST (DELAWARE)
In Cooperation With
First Security Bank of Utah
62-38/311

020624

Date 15.Mar.2000 **Pay Amount** $5,146,071.56***

Pay ****FIVE MILLION ONE HUNDRED FORTY-SIX THOUSAND SEVENTY-ONE AND 56 / 100 US DOLLAR****

To The Order Of JACK J GRYNBERG, CELESTE C GRYNBERG,
L & R Exploration Venture
Denver, CO

Authorized Signature

THE BACK OF THIS DOCUMENT CONTAINS A WATERMARK - HOLD AT AN ANGLE TO VIEW

⑈020624⑈ ⑆031100380⑆ 00 574 28 2⑈

811

QUESTAR

Questar Corporation
180 East 100 South
P.O. Box 45433
Salt Lake City, UT 84145

Terrie T. McIntosh
Senior Corporate Counsel
Tel: 801 324 5532
Fax: 801 324 5131
E-mail: TerrieM@qsir.com

March 16, 2000

BY FEDERAL EXPRESS

Tom C. Toner, Esq.
Yonkee & Toner
319 W. Dow Street
Sheridan, WY 82801

Dear Tom:

Re: Questar Pipeline Company v. Jack J. Grynberg, et al., Civil No. 92-CV-265 J

Al Walker and Mr. Grynberg have been discussing the amounts Questar Gas Company would owe to the defendants upon entry of judgment in the captioned case. Although we are close to agreement on some of the amounts, there are several items that we have been unable to resolve.

Questar would like to pay the undisputed amounts in order to stop interest from continuing to accrue. Accordingly, I am enclosing Questar's check in the amount of $5,146,071.56. This tender is intended to pay amounts that Questar agrees are due on claims asserted in the case and is without any restrictions, limitations or reservation of rights. Questar acknowledges that Mr. Grynberg has stated that he believes he is owed additional amounts and that he will not accept a check for less than $5,640,606.15, which is the amount he claims is owed. Questar nonetheless requests that Mr. Grynberg accept the enclosed check for the amounts everyone agrees upon while we continue to try to resolve differences on other amounts.

I have enclosed a spreadsheet showing the amounts Questar believes it owes, with principal and interest broken out separately, and a comparison of our numbers with the numbers we have been given by Mr. Grynberg. We have computed interest in accordance with the Settlement Agreement with Mr. Grynberg dated August 11, 1994. I have enclosed a copy of that Agreement for your reference. As you may recall, at the time Questar and Mr. Grynberg were trying to determine the amounts to be included in a judgment based on the jury verdict, but we disagreed as to whether prejudgment interest should be paid on the

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contract claims (price, take-or-pay and makeup gas claims). In a letter to you dated May 2, 1994, John Shepherd outlined Questar's position and stated that Questar did not believe those amounts were liquidated and thus did not qualify for prejudgment interest under Wyoming law.

You responded on May 24, 1994 that you thought the court had instructed the jury that prejudgment interest would be paid on the take-or-pay claim and the other contract claims were liquidated under controlling legal authority. On June 10, 1994 you filed a motion for entry of judgment and argued that position in your pleading.

On June 24, 1994 John Shepherd sent to Mr. Grynberg (with your consent) a completed Settlement Agreement in which Questar agreed to pay prejudgment interest on the price, take-or-pay and makeup gas claims at the rate of 7%. Questar did not agree to pay prejudgment interest on the tortious interference and punitive damages claims, since those claims clearly were not liquidated. It is our view that no prejudgment interest was either due or agreed to on those claims. Mr. Grynberg has informed Al Walker that he disagrees with this view and believes Questar agreed to pay prejudgment interest on all claims. He further stated that he believes prejudgment interest continues to accrue on the claims, evidently since a favorable judgment was entered only on a portion of the take-or-pay claim.

In further support of Questar's position, I would like to draw your attention to footnote 1 of Questar's Objections to Portions of Defendant's Proposed Judgment, which was filed contemporaneously with the completion of the Settlement Agreement. In footnote 1 we explained the dispute on prejudgment interest had been compromised and said "Questar has agreed to pay prejudgment interest in the manner described by Tom Venglar's affidavit on any contract claims ultimately resolved against Questar." As you may recall, Mr. Venglar did not compute prejudgment interest on the tortious interference or punitive damages amounts awarded by the jury, consistent with the Settlement Agreement but contrary to Mr. Grynberg's current position.

Since Questar believes its current computations accurately reflect the Settlement Agreement, it is not willing to pay the additional amounts claimed by Mr. Grynberg as a result of his computation of prejudgment interest on all claims, unless the court accepts Mr. Grynberg's extreme position and enters judgment in the higher amount. Our differences based on how we compute interest amount to $335,098.

Our second major point of disagreement concerns the tender in 1998 of the amounts for the take-or-pay claim incorporated in the June and October, 1998 Judgment and Amended Judgment. As you recall, Questar tendered the amount stated in the judgments, plus interest, on October 29, 1998. After a period of delay, you returned the check, stating that Mr. Grynberg was concerned Questar was trying to restrict his rights on appeal. I immediately returned the check and stated Questar intended to pay only the amounts not in

dispute in the Judgment and Amended Judgment. Two months later, you returned the check again and asked for further assurances. I provided those additional assurances, sent the check back to you and asked for you to propose additional language if what I had said was unsatisfactory. I heard nothing more from you, but Mr. Grynberg never cashed the check.

Questar believes this tender and Mr. Grynberg's acceptance of the check were sufficient to stop interest from accruing, particularly in light of the fact that any remaining concerns could easily have been addressed and promptly resolved through a simple telephone call or timely exchange of correspondence. Mr. Grynberg informed Al Walker that he does not know where the check is, so Questar stopped payment on it last week and has included the amount it previously calculated in the check we are now tendering. However, unless the court determines that we owe interest while the check was in Mr. Grynberg's possession all of this time, Questar does not intend to pay additional interest on that part of the take-or-pay claim on which it tendered payment to stop interest. The difference between our computations is $13,717.

Finally, we disagree with Tom Venglar's calculation of the amounts owed if the jury price is applied to the volumes purchased by Questar under contracts 245, 246 and 249. Mr. Venglar has not provided us with detailed worksheets for his current calculations, but it appears he followed the same methods he used in 1994, namely taking the entire production for each well for each month and computing Mr. Grynberg's working interest share. He based his price analysis on those volumes.

Questar is likewise using its prior methodology. We have followed Mr. Venglar's methods on interest and part-month prices. The main difference appears to be that Questar is relying on its data which shows the amounts of gas that it actually received. As Questar explained in Al Walker's affidavit filed on June 24, 1994, during 1993 Questar had contracts with the producers at Nitchie Gulch containing varying purchase obligations. Hunt's contract, for example, had a 60% take obligation and release provisions, so if Questar was not purchasing gas, Hunt had the ability to sell gas to third parties. As we reconstructed what happened in that year, Questar did not purchase Mr. Grynberg's working interest at all times that the field was being produced. It was the operator's (Hunt's) responsibility to confirm nominations and direct the flow of gas. We have computed the amount owed based on our records of actual gas purchases. Questar does not believe the contract requires it to purchase gas that it did not receive. Accordingly, Questar continues to object to Mr. Venglar's methodology. Finally, as noted in Mr. Connolly's affidavit, we continue to have some differences over working interest percentages, and Questar is relying on its records in this respect. The difference between our computations is $140,798.

I would appreciate your prompt attention to this tender of payment. If you can identify ways in which we can narrow the remaining differences, I would appreciate hearing from you. In any event, I would like to know by **noon, March 24, 2000** whether Mr.

Grynberg will accept this unrestricted and unconditional tender and agree to disagree with Questar over any remaining disputed amounts. If I can provide you with any additional assurances on this point, please call me as quickly as possible. If I have not heard from you by noon on March 24, 2000, we will assume Mr. Grynberg has rejected this tender and will stop payment on the check.

Very truly yours,

Jerrie McDonald

TTM/ceu

cc: Don Schultz
John Shepherd
Alan Walker

Enclosures

SD93-176\TONER.L01

QUESTAR v. GRYNBERG JUDGEMENT COMPARISON

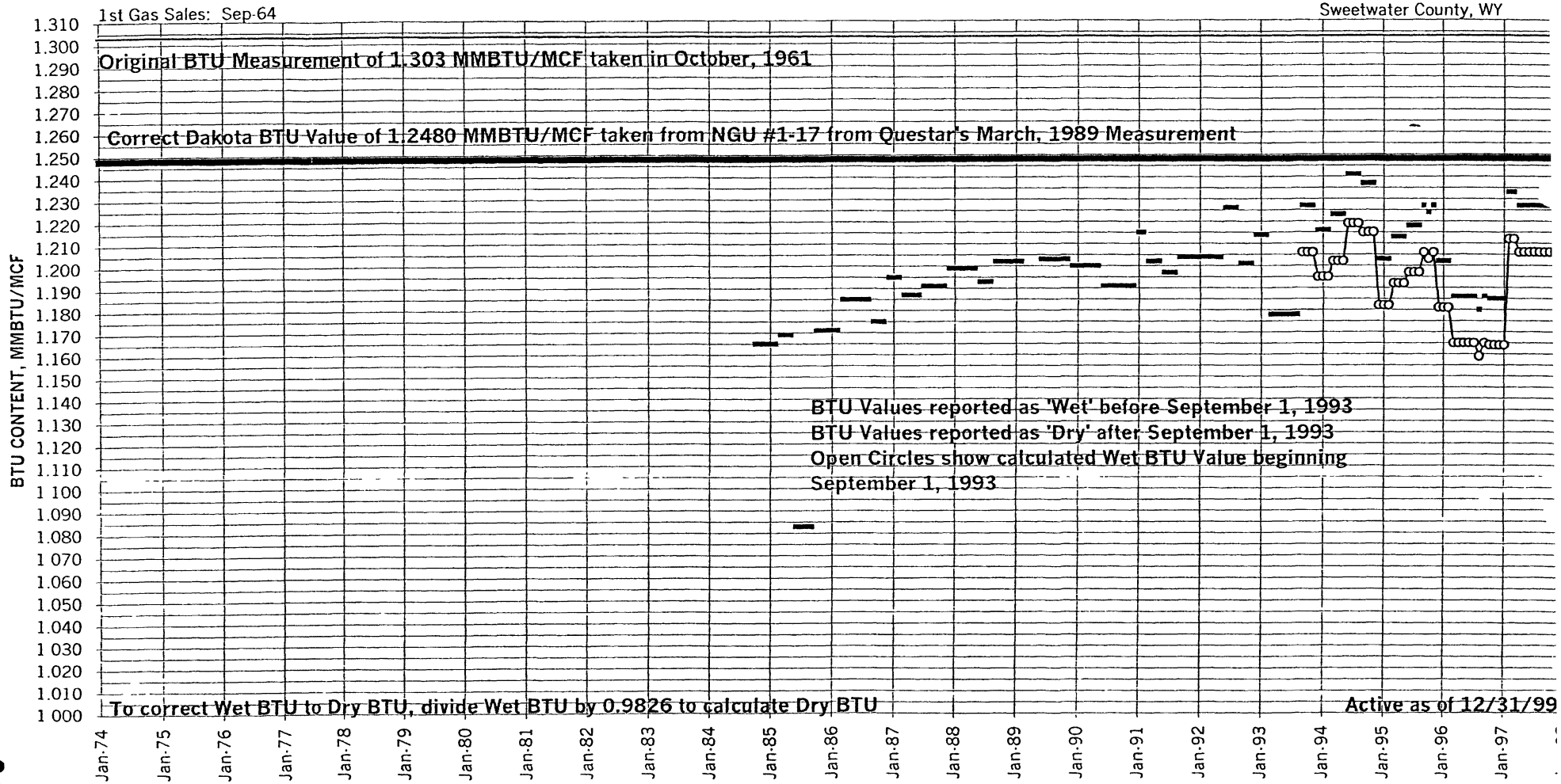
	QUESTAR	GRYNBERG	DIFFERENCE	TOTAL DIFFERENCE	
TAKE OR PAY					
PRINCIPAL	$ 583,298	$ 583,289	$ (9)		
INTEREST	384,336	398,061	13,726	$ 13,717	
MAKE UP					
PRINCIPAL	381,765	381,765	-		
INTEREST	289,505	294,427	4,922	$ 4,922	
INTERFERENCE					
PRINCIPAL	338,586	338,586	-		
INTEREST		250,734	250,734	$ 250,734	
DAMAGES					
PRINCIPAL	200,000	200,000	-		
INTEREST		84,364	84,364	$ 84,364	$ 335,098
PRICE: MAY 15, 1991					
PRINCIPAL	360,759	379,520	18,761		
INTEREST	186,281	195,450	9,169	$ 27,930	
PRICE: JAN 1, 1993					
PRINCIPAL	1,660,792	1,736,973	76,181		
INTEREST	760,750	797,437	36,687	$ 112,868	$ 140,798
TOTAL					
PRINCIPAL	$ 3,525,200	$ 3,620,133	$ 94,933		
INTEREST	$ 1,620,871	$ 2,020,473	$ 399,602	$ 494,535	
GRAND TOTAL	$ 5,146,071	$ 5,640,606	$ 494,535		

Nitchie Gulch Unit #1-17

Nitchie Gulch Field
1st Gas Sales: Sep-64

Dakota

C SESE Sec 17-23N-103W
Sweetwater County, WY



Original BTU Measurement of 1.303 MMBTU/MCF taken in October, 1961

Correct Dakota BTU Value of 1.2480 MMBTU/MCF taken from NGU #1-17 from Questar's March, 1989 Measurement

BTU Values reported as 'Wet' before September 1, 1993
BTU Values reported as 'Dry' after September 1, 1993
Open Circles show calculated Wet BTU Value beginning September 1, 1993

To correct Wet BTU to Dry BTU, divide Wet BTU by 0.9826 to calculate Dry BTU

Active as of 12/31/99

File: BTUCharts NGU1-17D

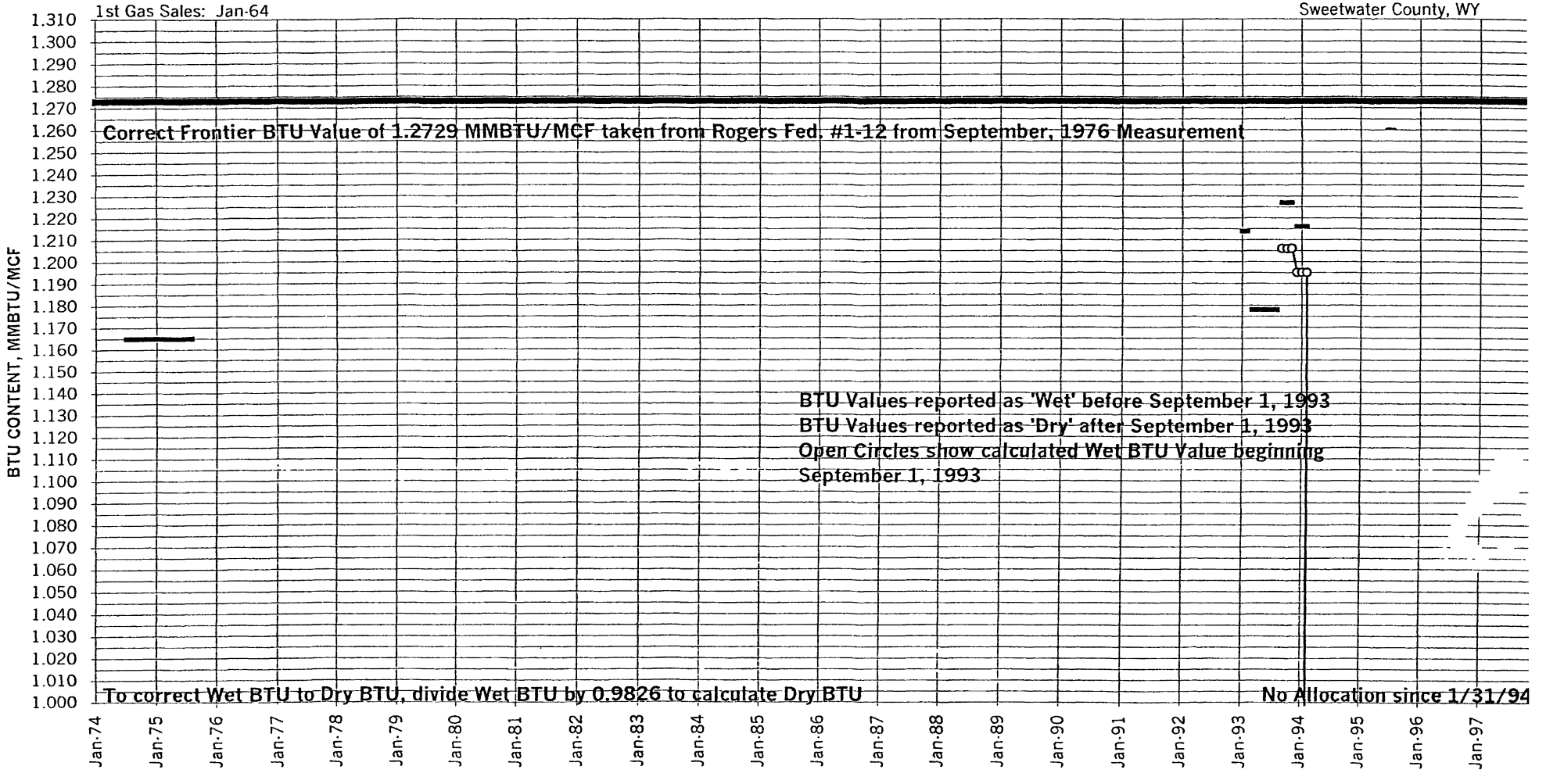
05/18/2000

Nitchie Gulch Unit #1-17

Nitchie Gulch Field
1st Gas Sales: Jan-64

Frontier

C SESE Sec 17-23N-103W
Sweetwater County, WY



File BTUCharts NGU1-17F

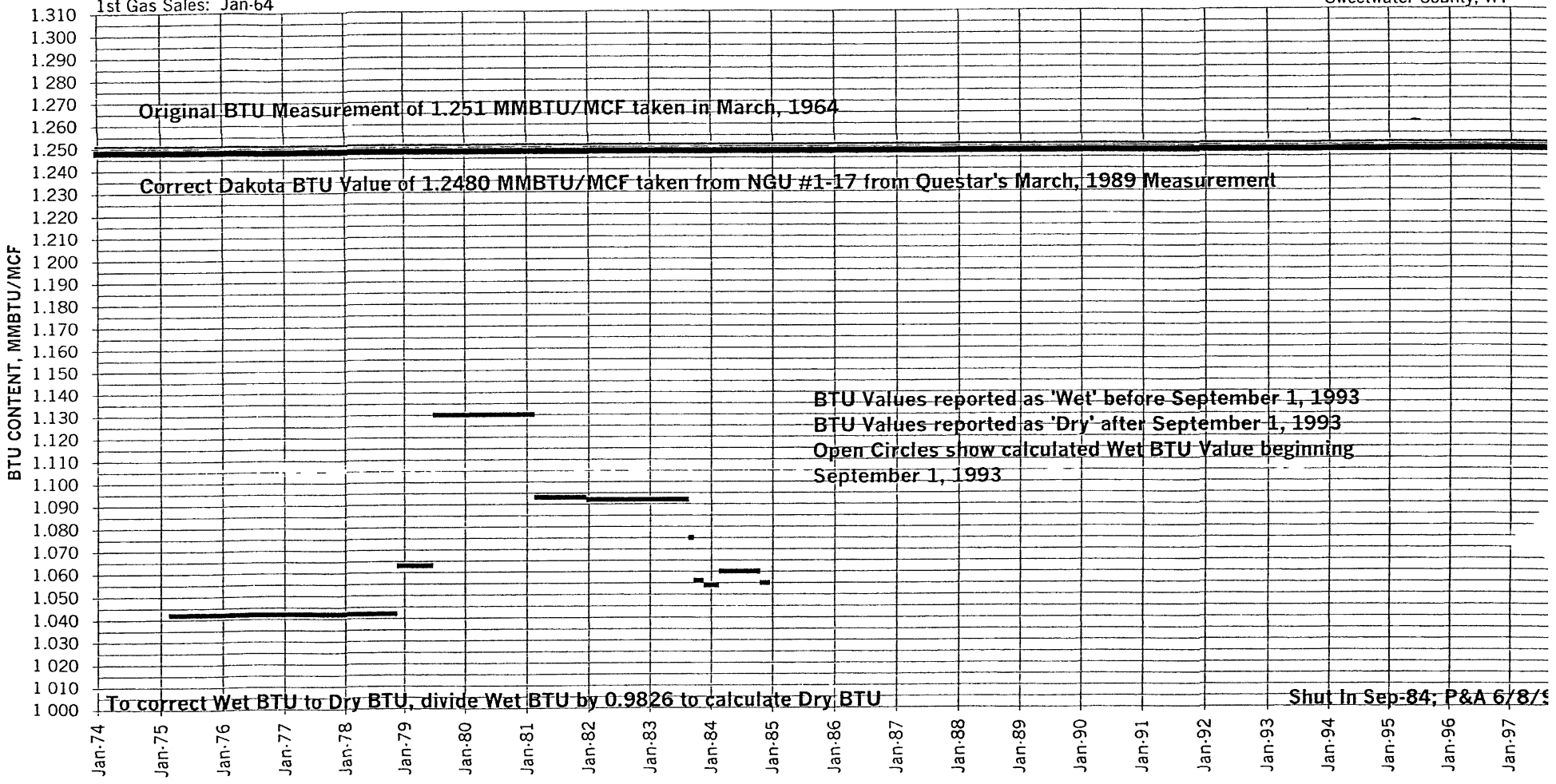
05/18/2000

Nitchie Gulch Unit #2-20

Nitchie Gulch Field
1st Gas Sales: Jan-64

Dakota

C NWSE Sec 20-23N-103W
Sweetwater County, WY



File BTUCharts NGU2-20D

05/18/2000

Nitchie Gulch Unit #2-20

Nitchie Gulch Field
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Frontier

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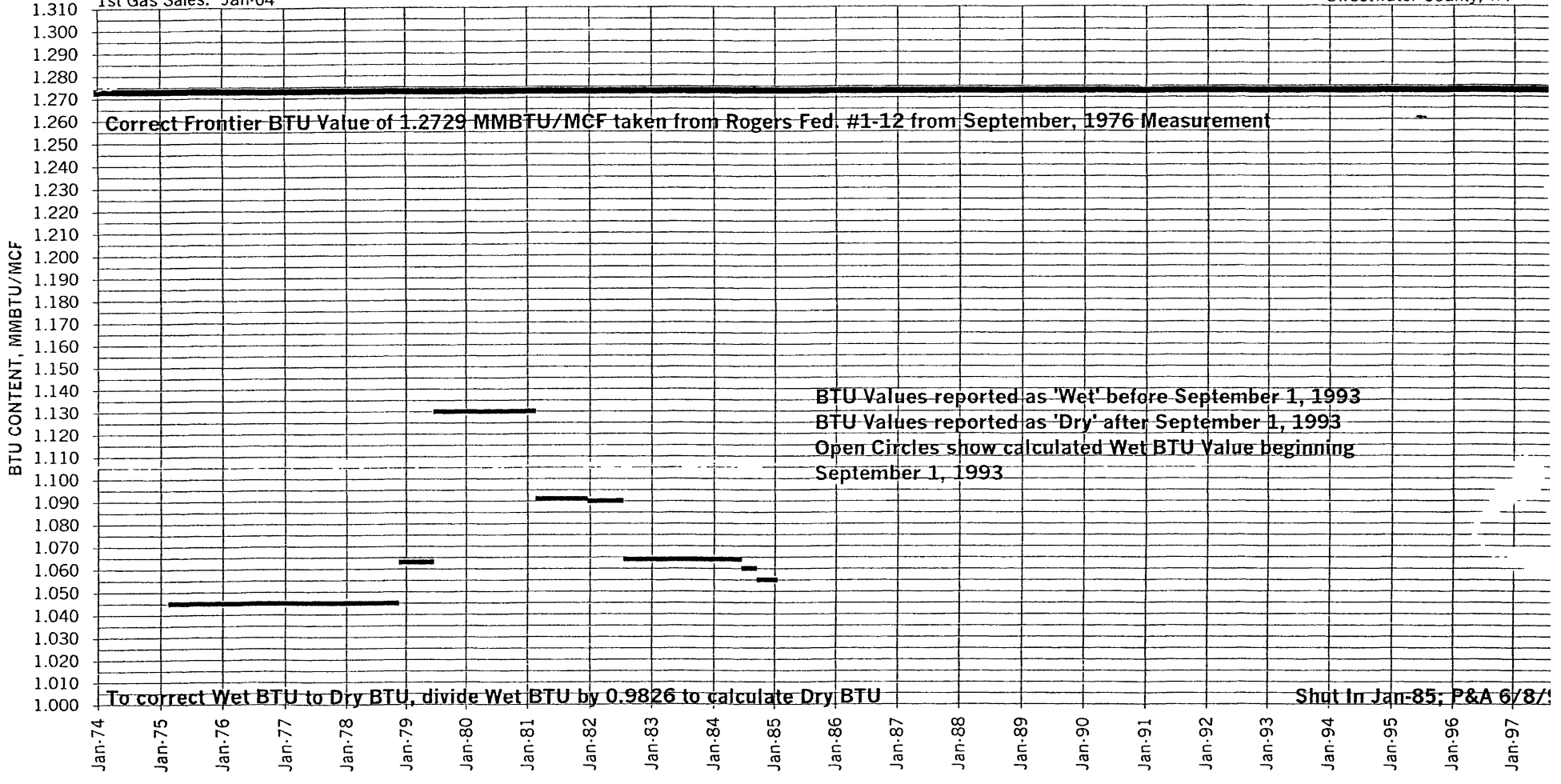
Sweetwater County, WY



618

File: BTUCharts NGU2-20F

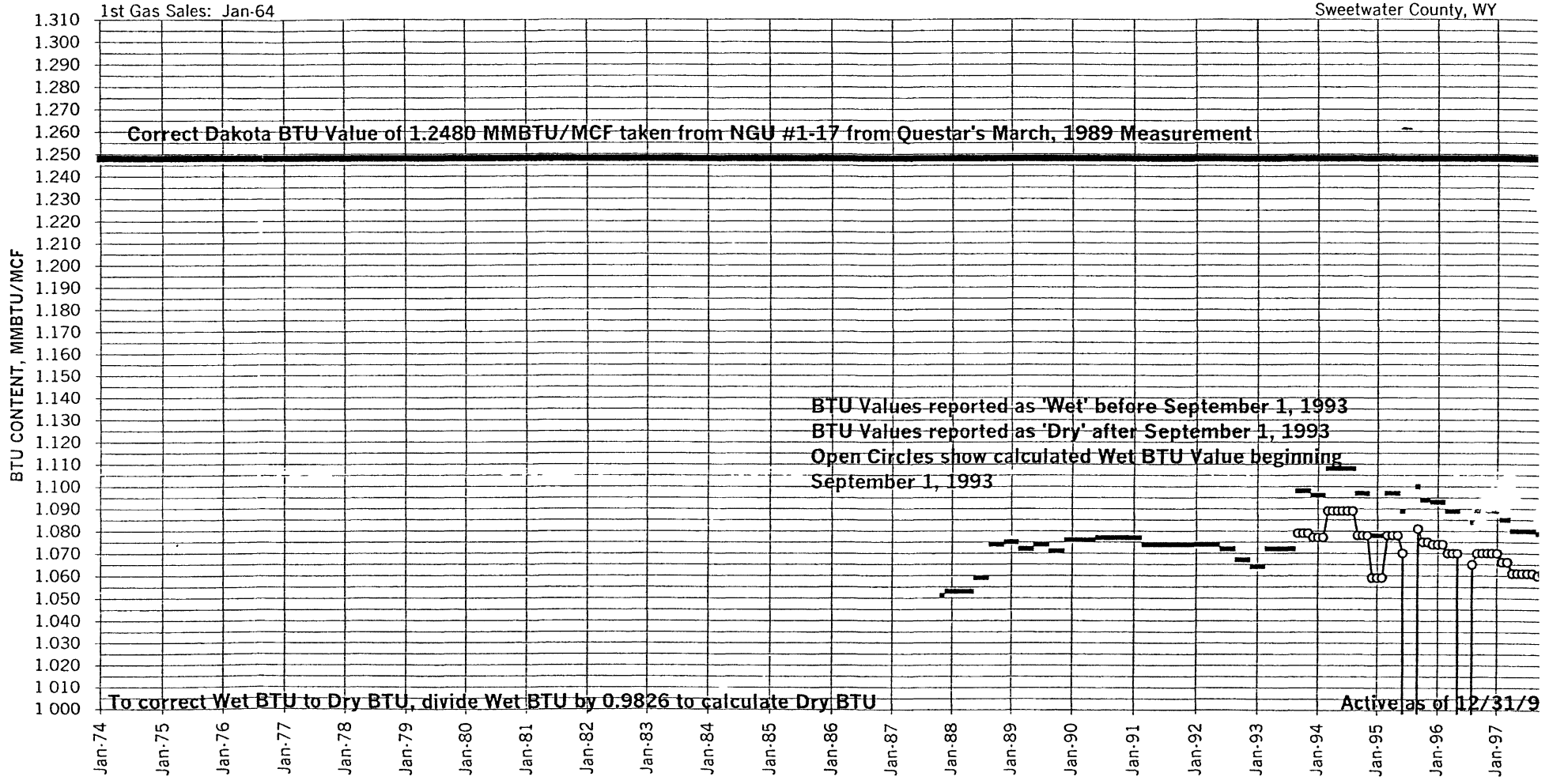
05/18/2000

Nitchie Gulch Unit #3-21

Nitchie Gulch Field
1st Gas Sales: Jan-64

Dakota

SENW Sec 21-23N-103W
Sweetwater County, WY



Correct Dakota BTU Value of 1.2480 MMBTU/MCF taken from NGU #1-17 from Questar's March, 1989 Measurement

BTU Values reported as 'Wet' before September 1, 1993
BTU Values reported as 'Dry' after September 1, 1993
Open Circles show calculated Wet BTU Value beginning September 1, 1993

To correct Wet BTU to Dry BTU, divide Wet BTU by 0.9826 to calculate Dry BTU

Active as of 12/31/9

File BTUCharts NGU3-21D

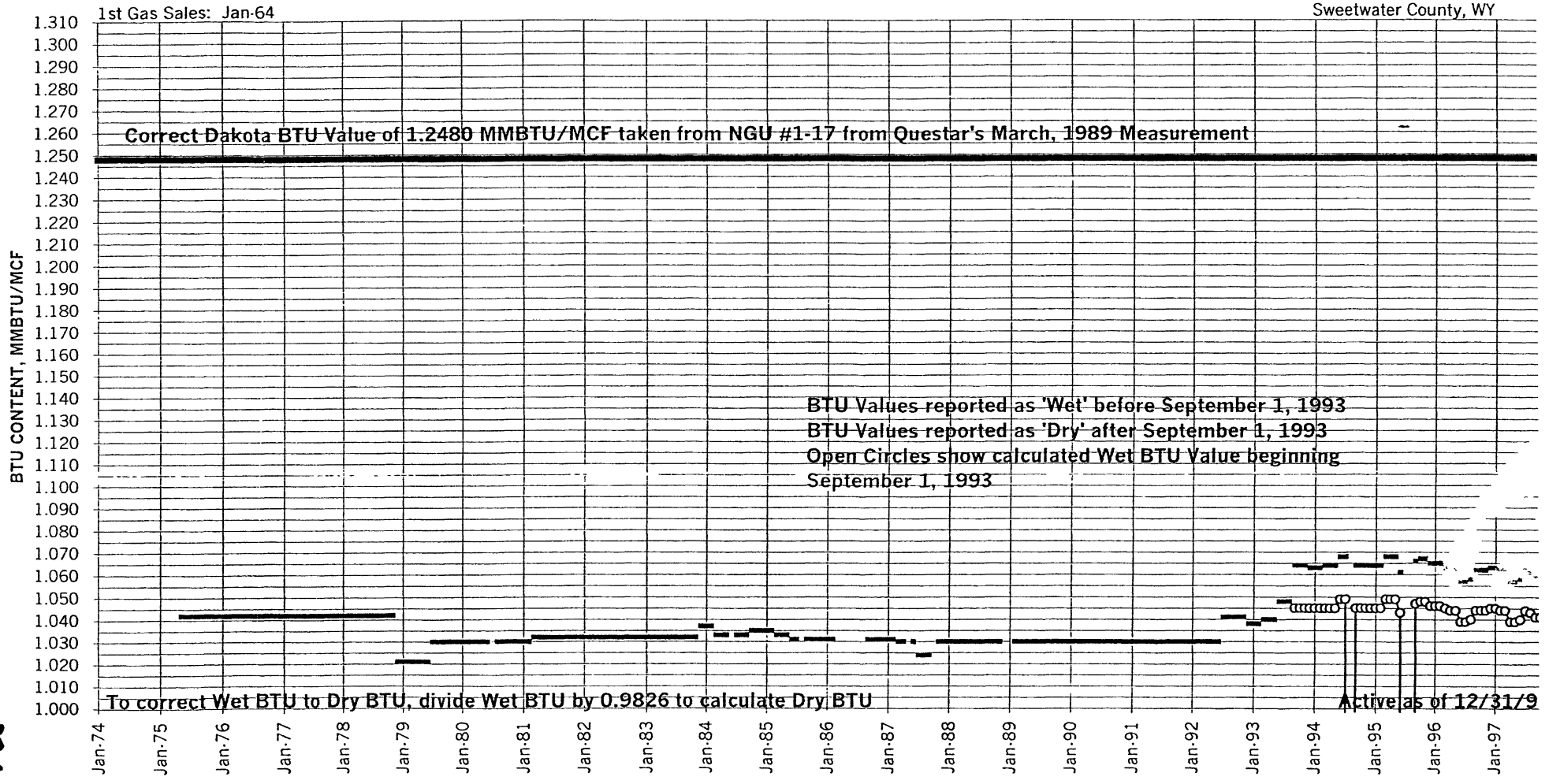
05/18/2000

Nitchie Gulch Unit #4-17

Nitchie Gulch Field
1st Gas Sales: Jan-64

Dakota

C NWSW Sec 17-23N-103W
Sweetwater County, WY



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File: BTUCharts NGU4-17D

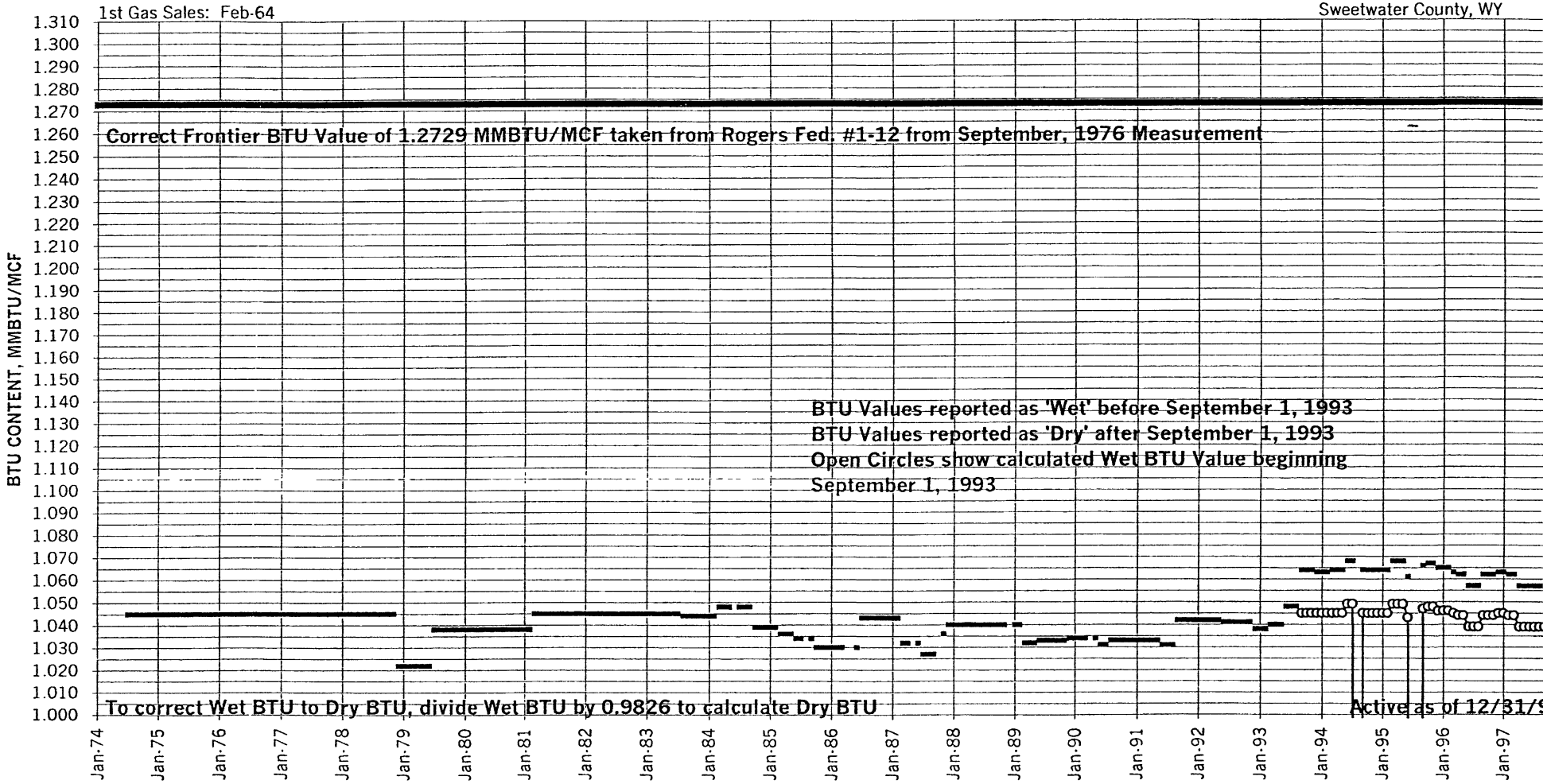
05/18/2000

Nitchie Gulch Unit #4-17

Nitchie Gulch Field
1st Gas Sales: Feb-64

Frontier

C NWSW Sec 17-23N-103W
Sweetwater County, WY



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File. BTUCharts NGU4-17F

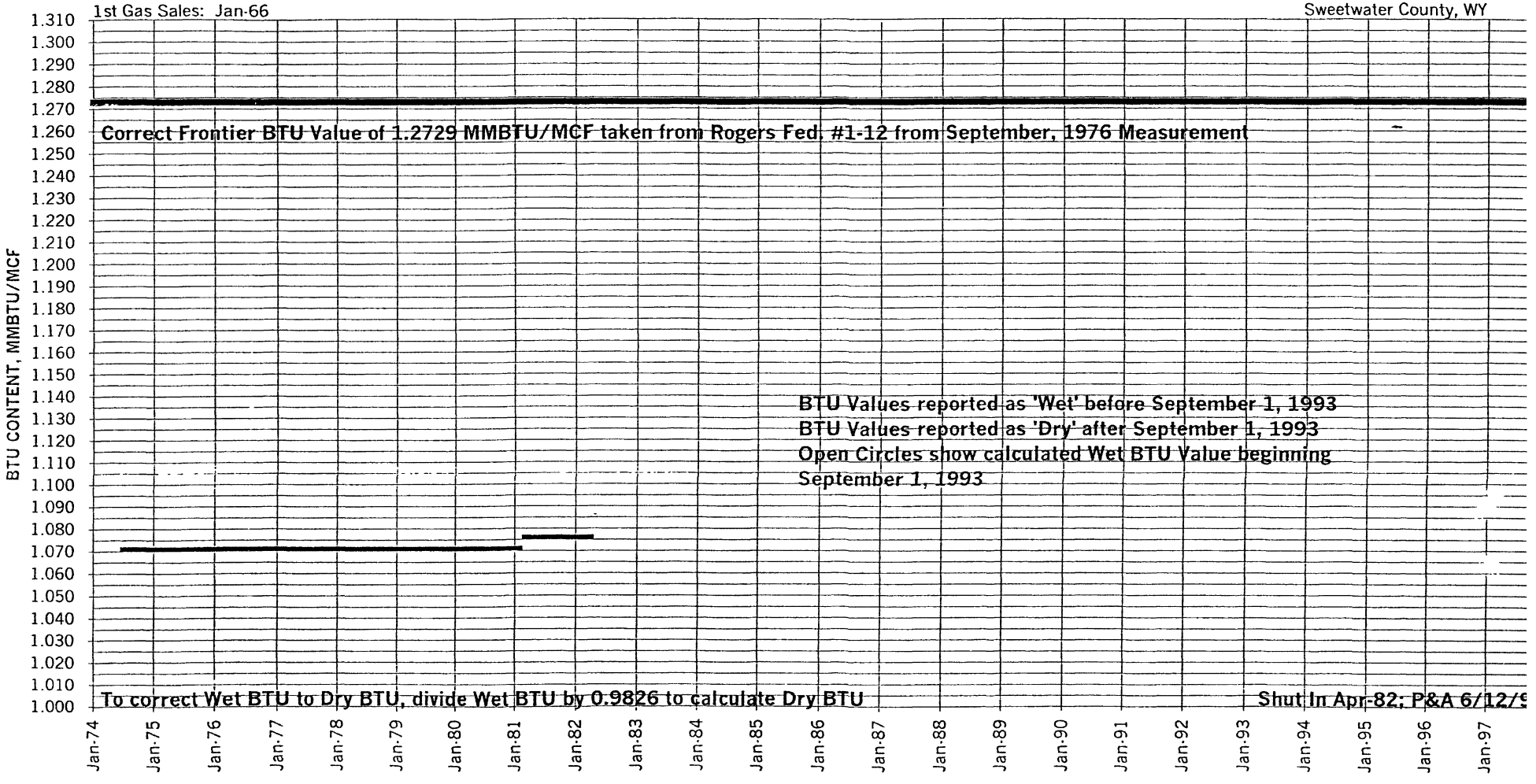
05/18/2000

Nitchie Gulch Unit #5-19

Nitchie Gulch Field
1st Gas Sales: Jan-66

Frontier

C SENW Sec 19-23N-103W
Sweetwater County, WY



823

File: BTUCharts NGU5-19F

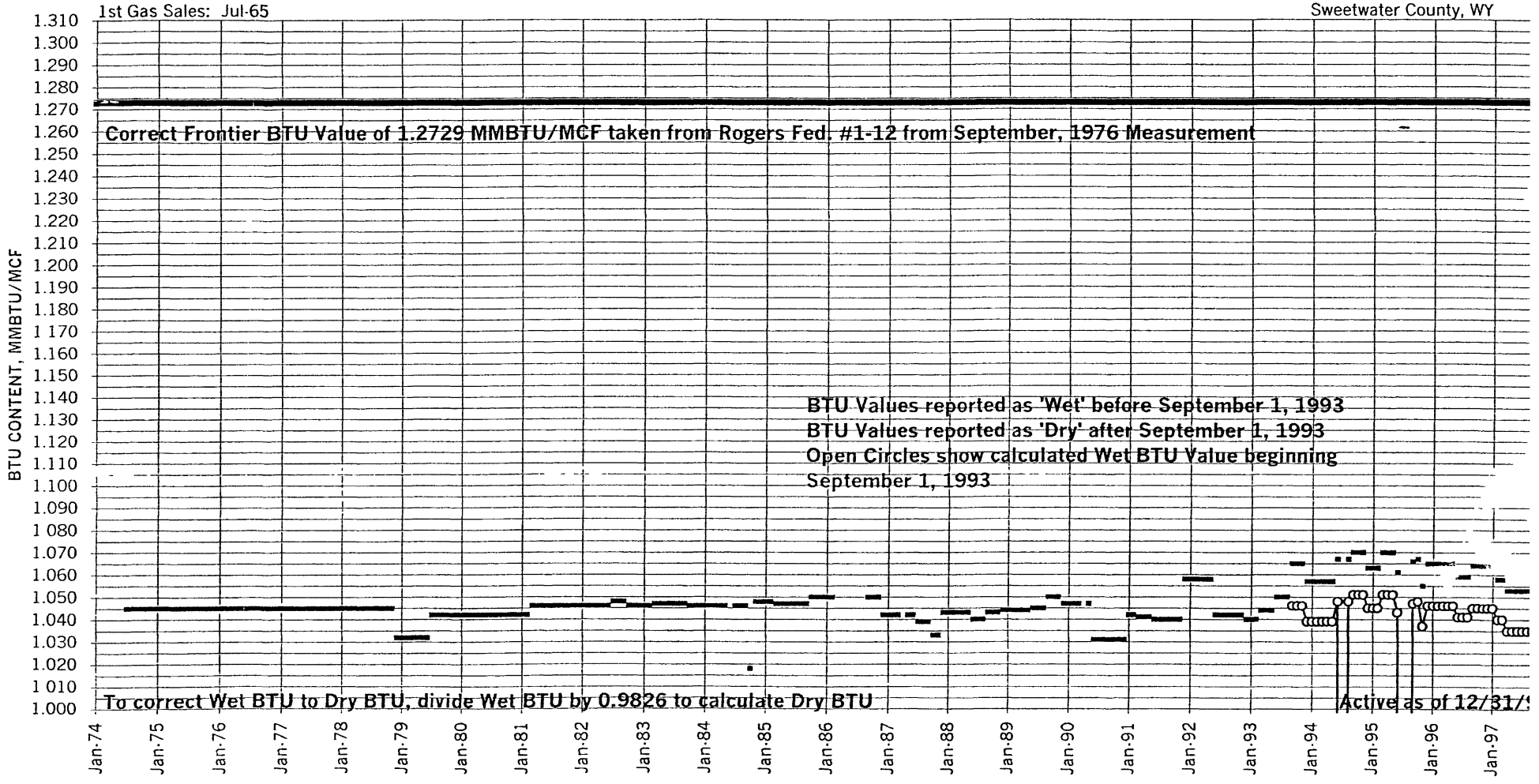
05/18/2000

Nitchie Gulch Unit #6-7

Nitchie Gulch Field
1st Gas Sales: Jul-65

Frontier

NESE Sec 7-23N-103W
Sweetwater County, WY



File: BTUCharts NGU6-7F

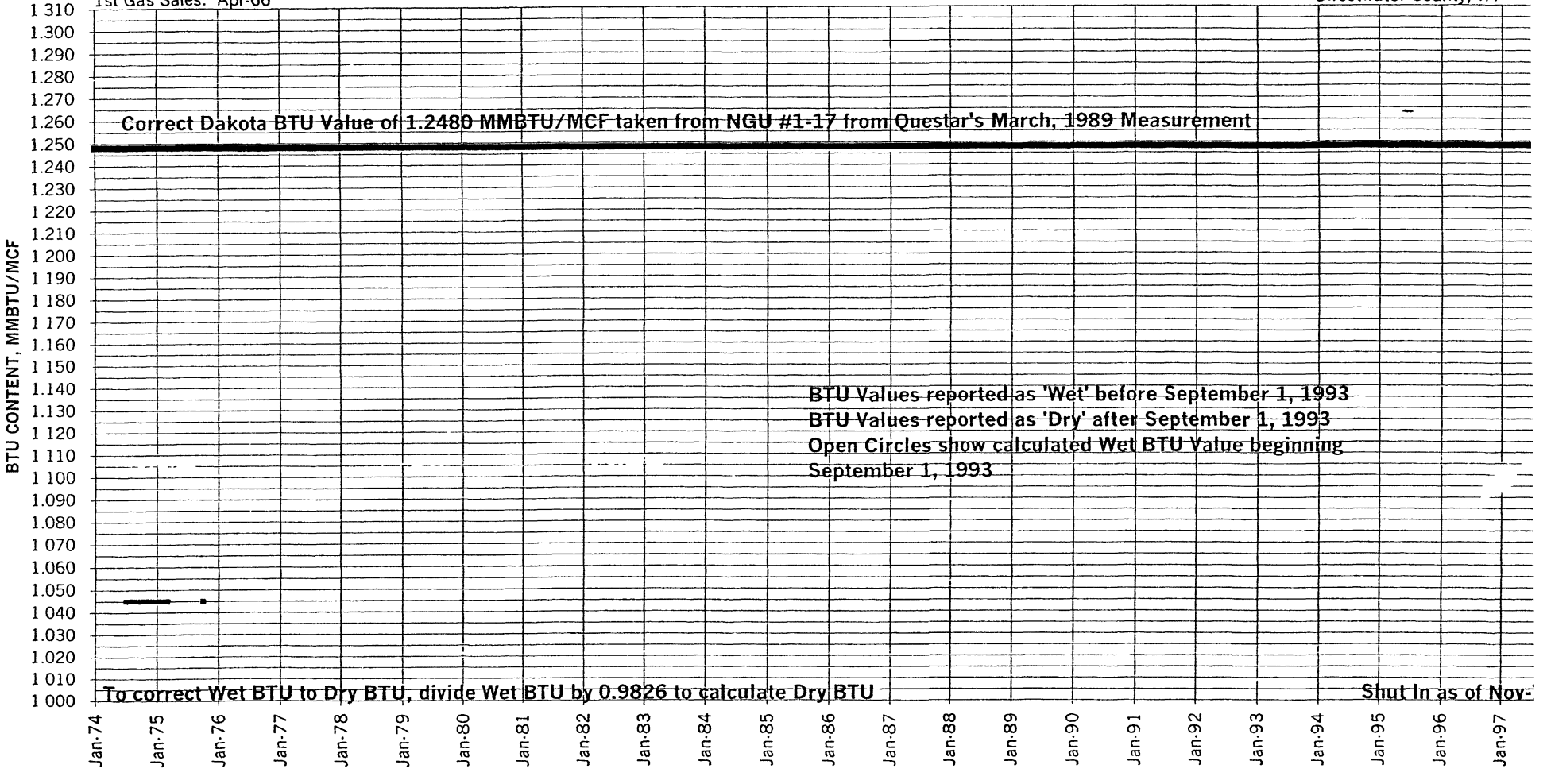
05/18/2000

Nitchie Gulch Unit #7-

Nitchie Gulch Field
1st Gas Sales: Apr-66

Dakota

W/2 NWSE Sec 8-23N-103W
Sweetwater County, WY



S28

File: BTUCharts NGU7-8D

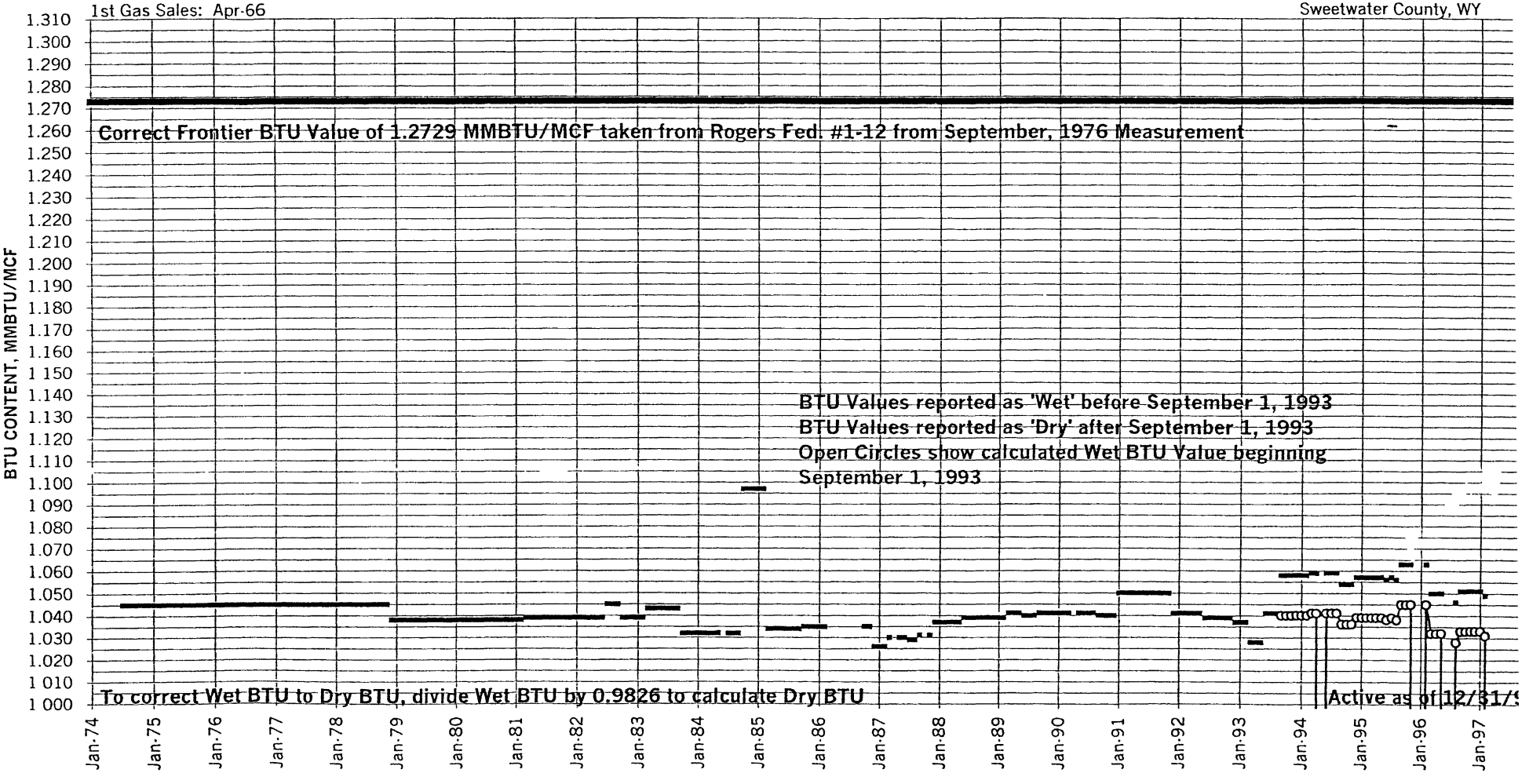
05/18/2000

Nitchie Gulch Unit #7-8

Nitchie Gulch Field
1st Gas Sales: Apr-66

Frontier

W/2 NWSE Sec 8-23N-103W
Sweetwater County, WY



File. BTUCharts NGU7-8F

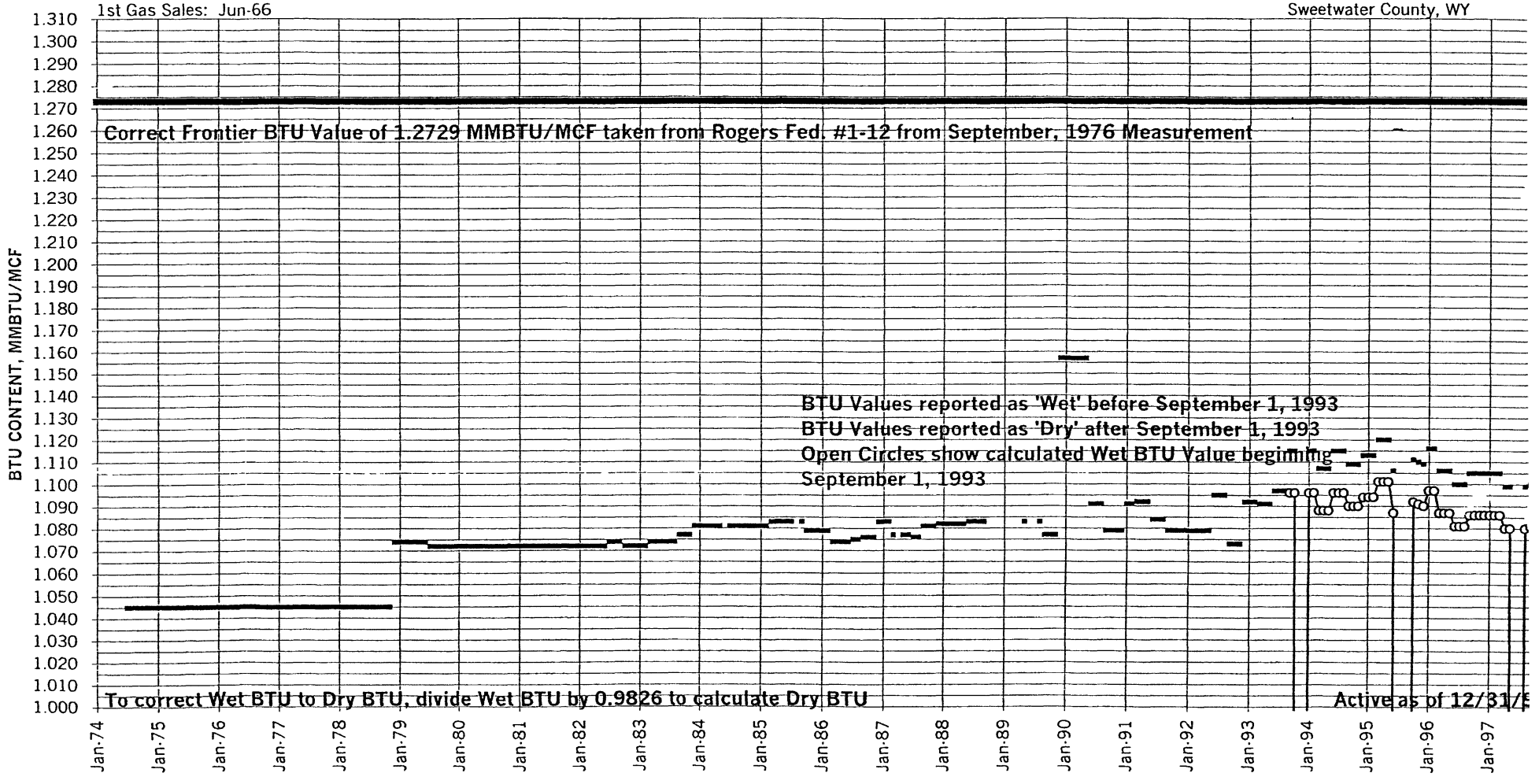
05/18/2000

Nitchie Gulch Unit #8-18

Nitchie Gulch Field
1st Gas Sales: Jun-66

Frontier

NWSWNW Sec 18-23N-103W
Sweetwater County, WY



File: BTUCharts NGU8-18F

05/18/2000

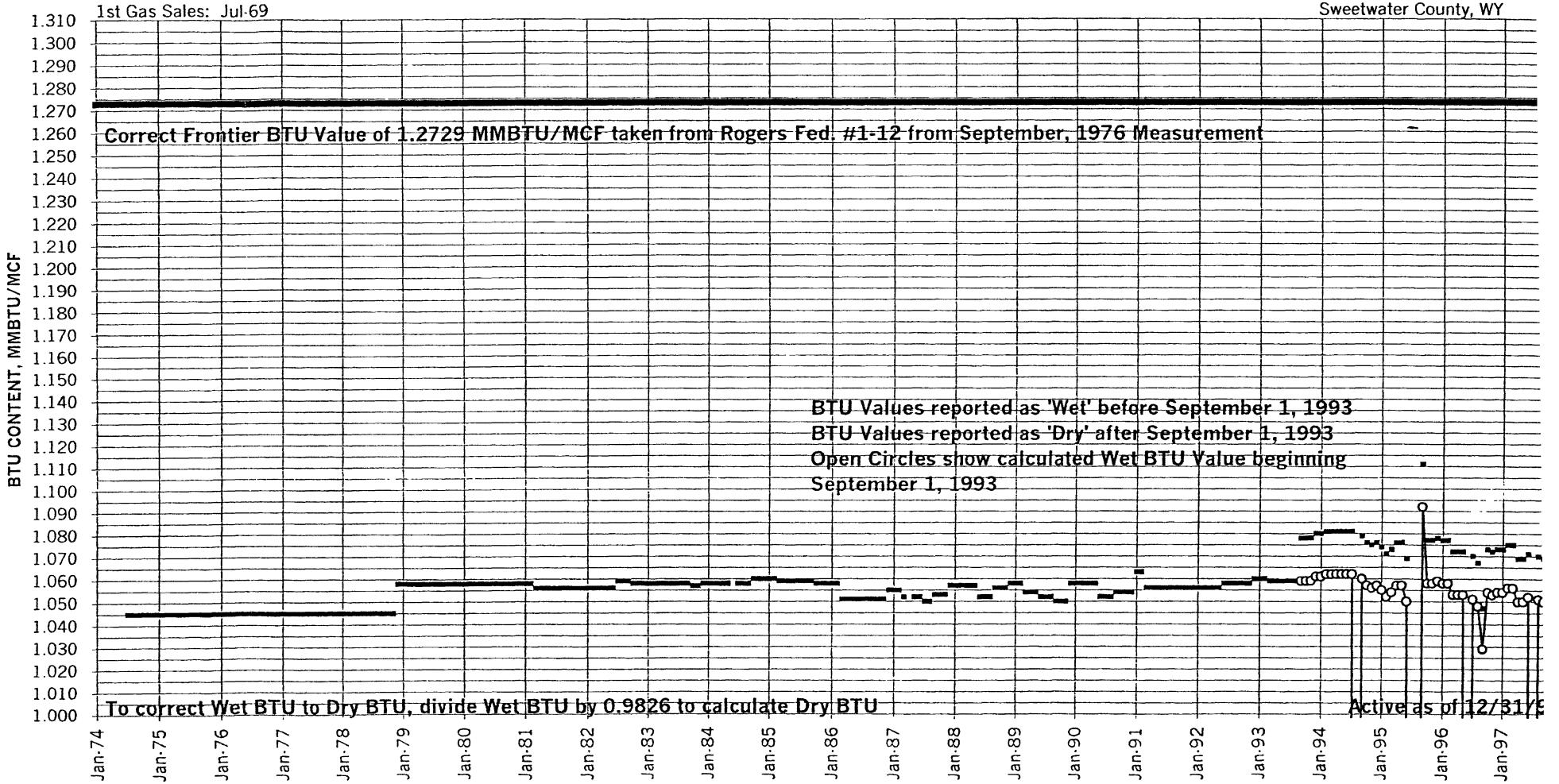
027

Nitchie Gulch Unit #11-9

Nitchie Gulch Field
1st Gas Sales: Jul-69

Frontier

C SENW Sec 9-23N-103W
Sweetwater County, WY



File: BTUCharts NGU11-9F

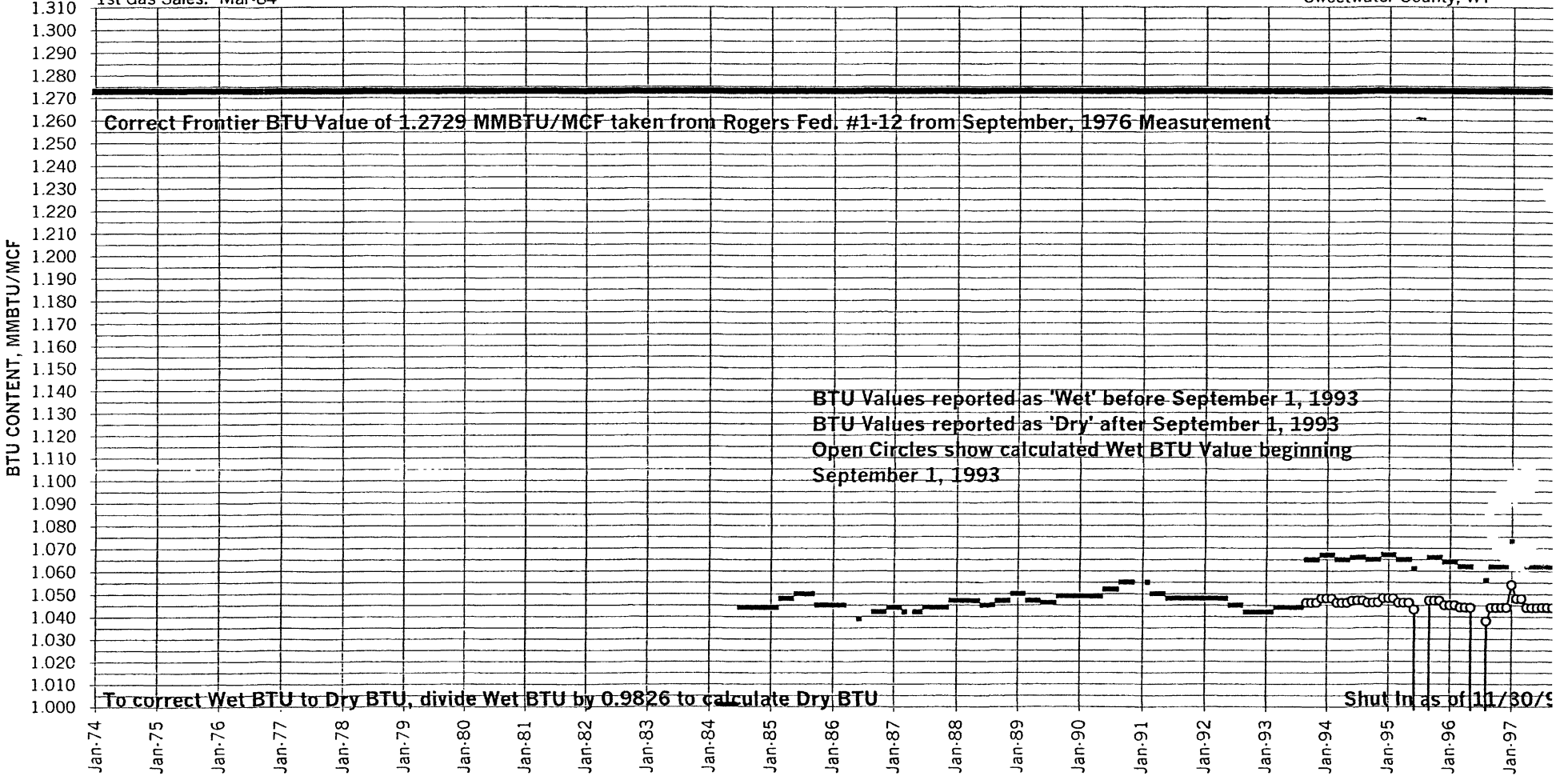
05/18/2000

Nitchie Gulch Unit #12-18

Nitchie Gulch Field
1st Gas Sales: Mar-84

Frontier

NWSENENE Sec 18-23N-103W
Sweetwater County, WY



Correct Frontier BTU Value of 1.2729 MMBTU/MCF taken from Rogers Fed. #1-12 from September, 1976 Measurement

BTU Values reported as 'Wet' before September 1, 1993
BTU Values reported as 'Dry' after September 1, 1993
Open Circles show calculated Wet BTU Value beginning September 1, 1993

To correct Wet BTU to Dry BTU, divide Wet BTU by 0.9826 to calculate Dry BTU

Shut In as of 11/30/9

File. BTUCharts NGU12-18F

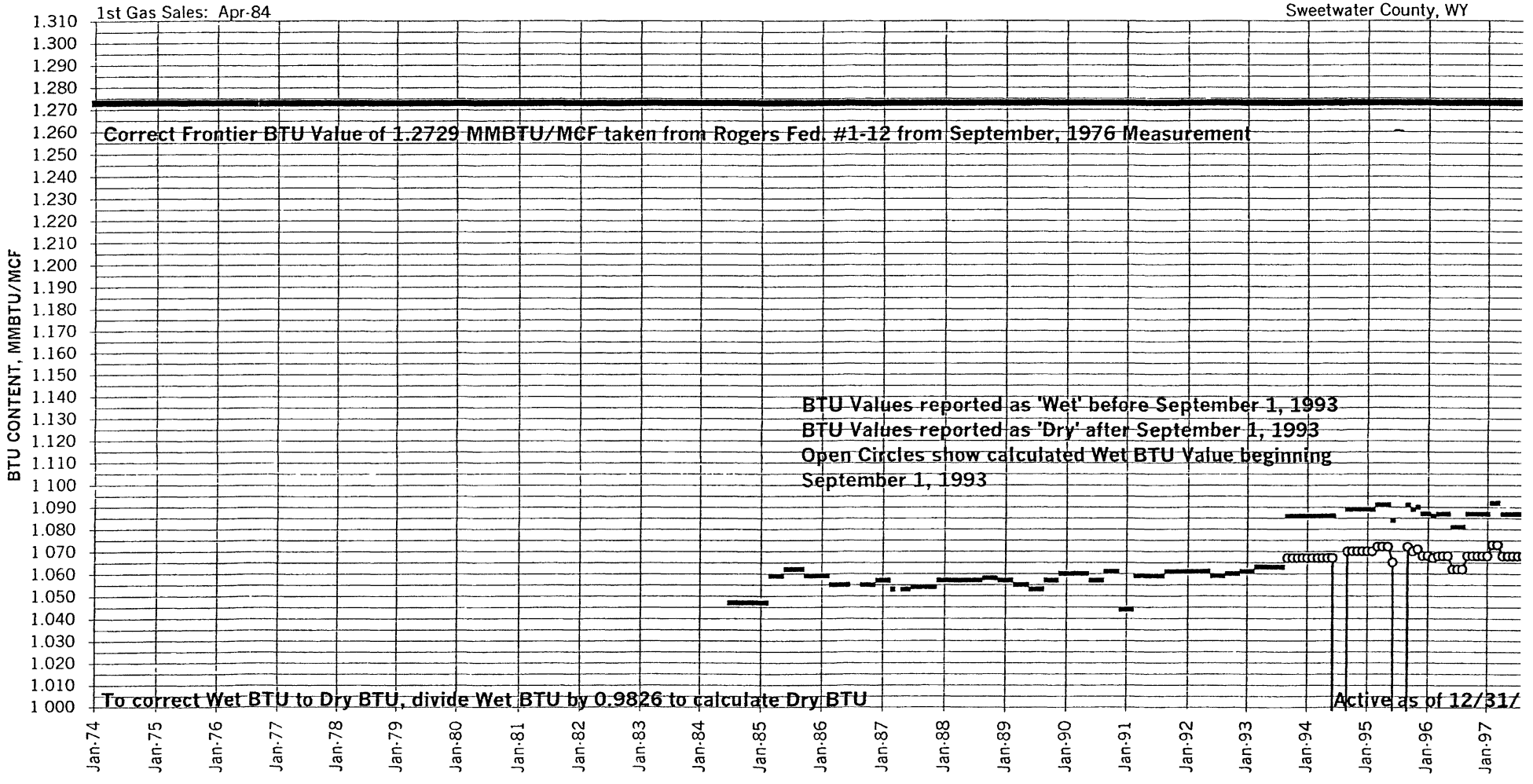
05/18/2000

Nitchie Gulch Unit #13-20

Nitchie Gulch Field
1st Gas Sales: Apr-84

Frontier

NENWNW Sec 20-23N-103W
Sweetwater County, WY



File BTUCharts NGU13-20F

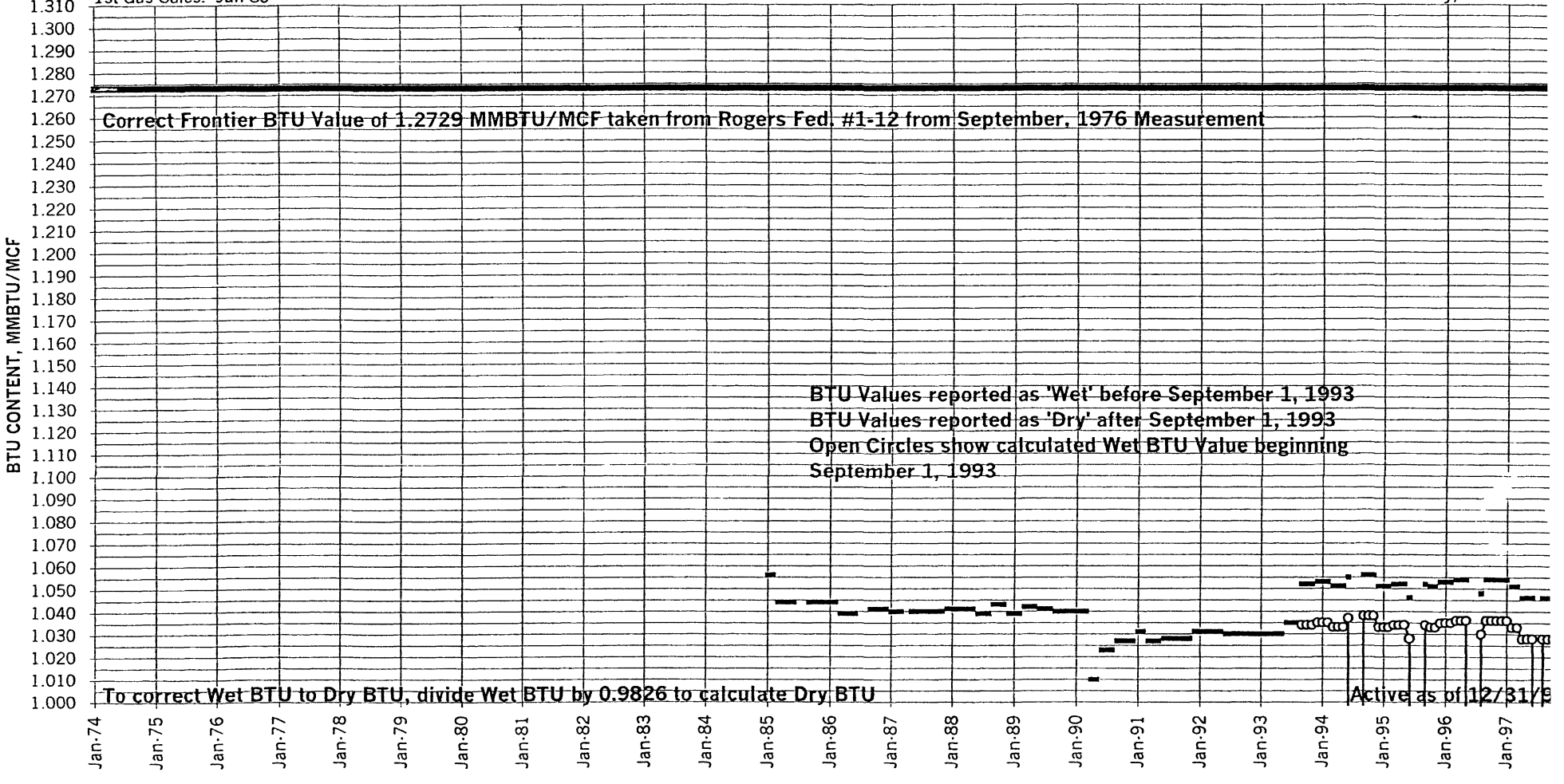
05/18/2000

Nitchie Gulch Unit #14-7

Nitchie Gulch Field
1st Gas Sales: Jan-85

Frontier

SWNENWNW Sec 7-23N-103W
Sweetwater County, WY



File: BTUCharts NGU14-7F

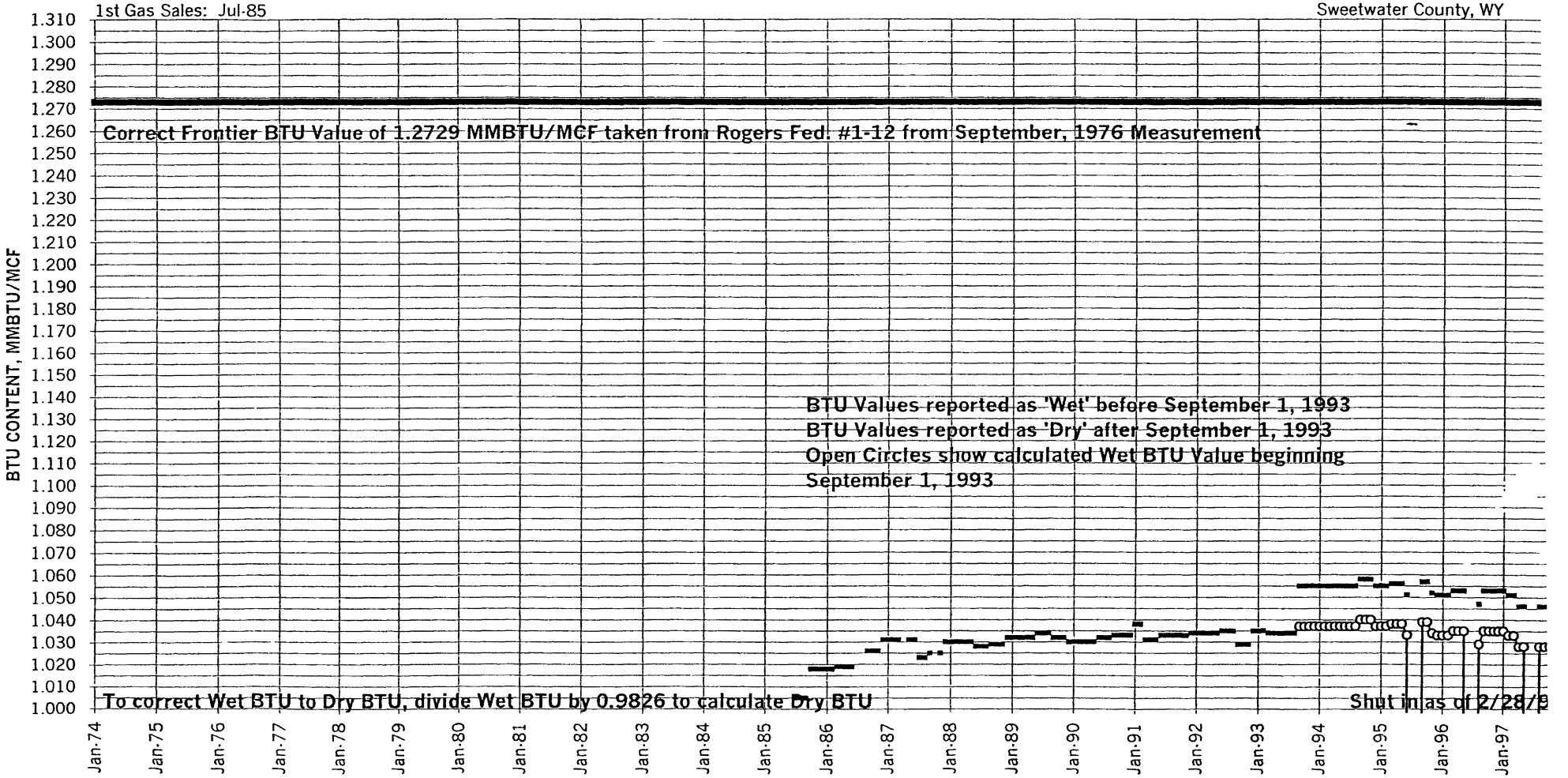
05/18/2000

Nitchie Gulch Unit #15-8X

Nitchie Gulch Field
1st Gas Sales: Jul-85

Frontier

SENWNW Sec 8-23N-103W
Sweetwater County, WY



File BTUCharts NGU15-8XF

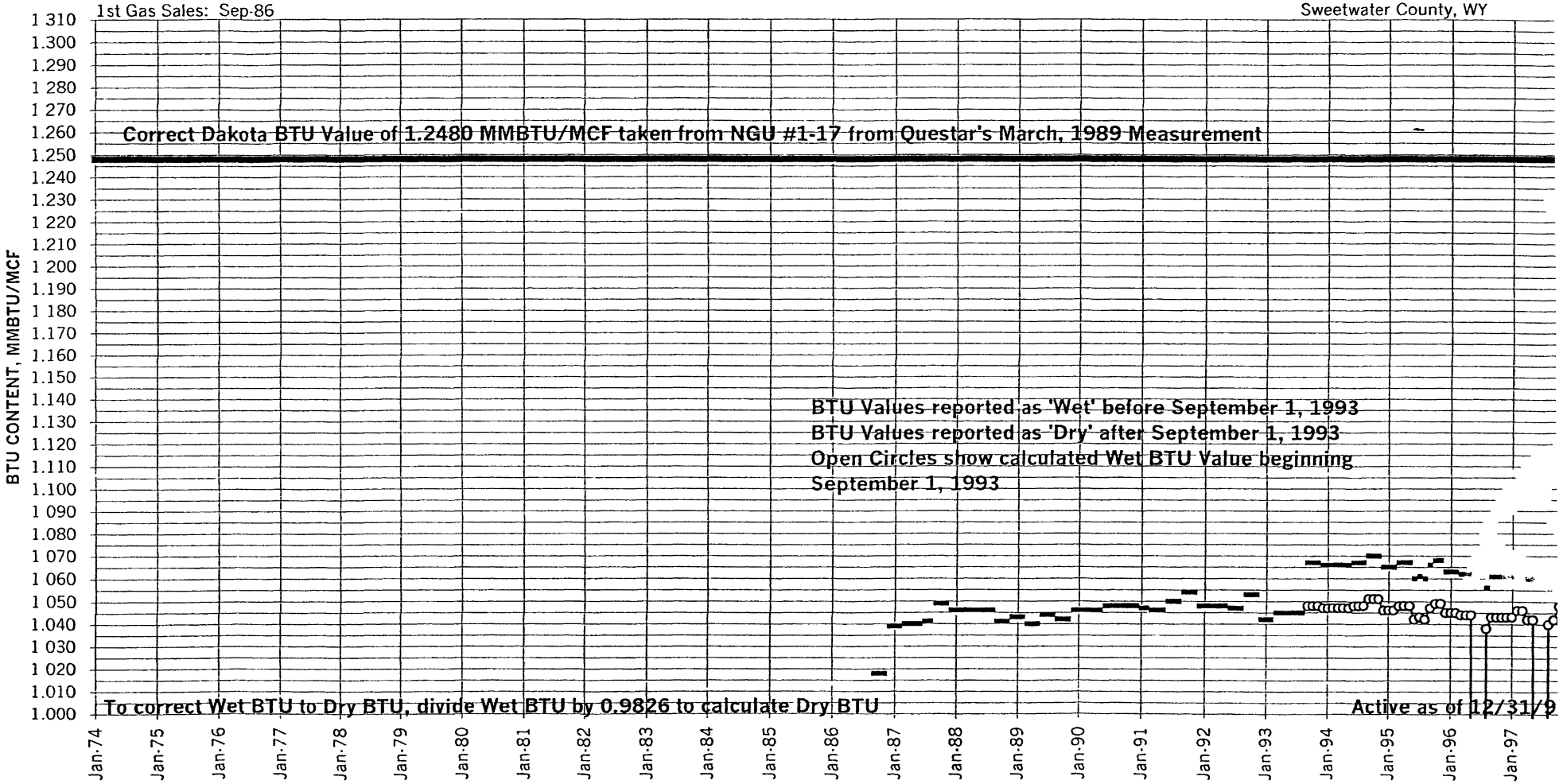
05/18/2000

Nitchie Gulch Unit #16-28

Nitchie Gulch Field
1st Gas Sales: Sep-86

Dakota

NENESWNWSec 28-23N-103W
Sweetwater County, WY



File BTUCharts NGU16-28D

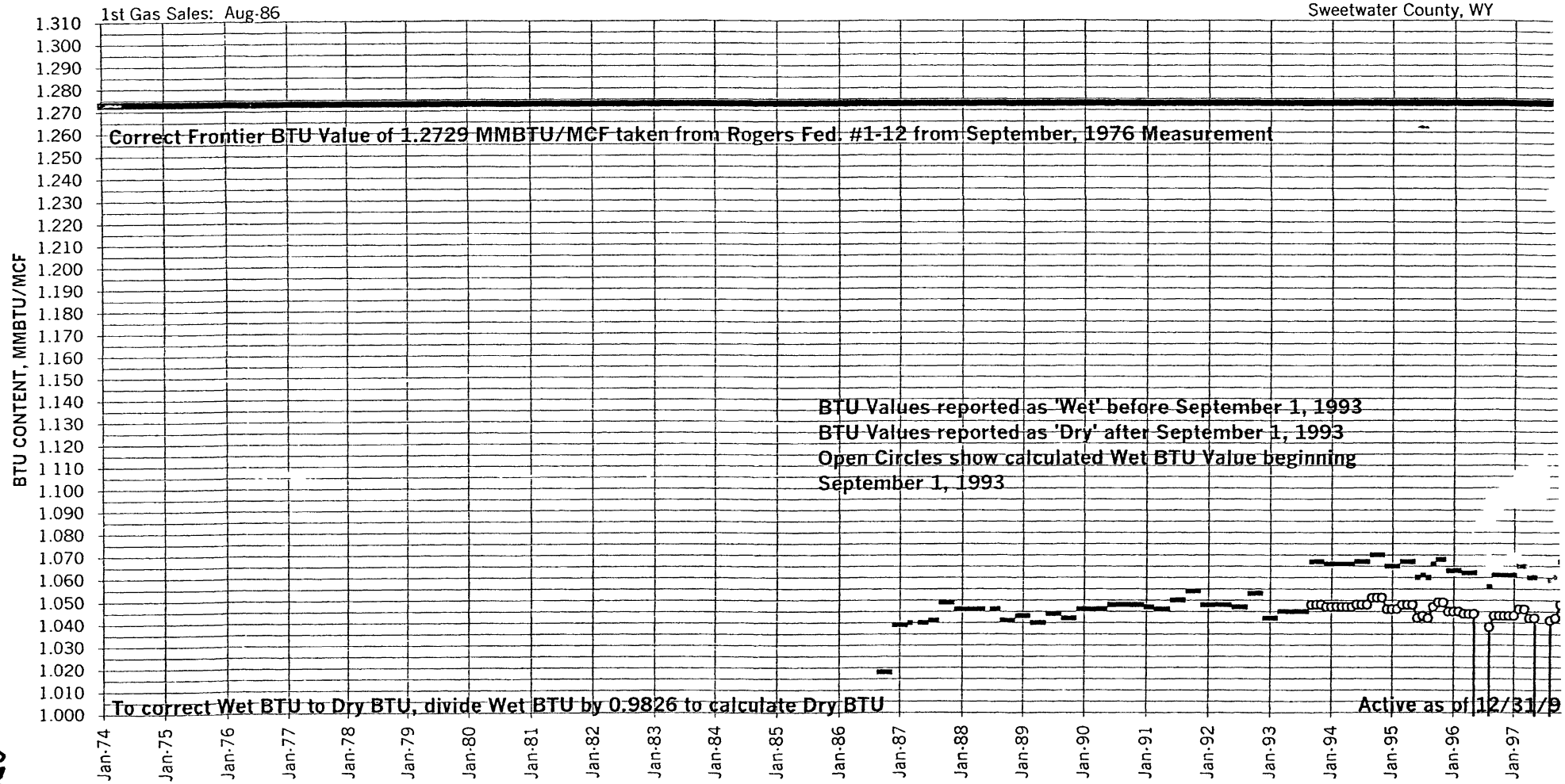
05/18/2000

Nitchie Gulch Unit #16-28

Nitchie Gulch Field
1st Gas Sales: Aug-86

Frontier

NENESWNWSec 28-23N-103W
Sweetwater County, WY



File BTUCharts NGU16-28F

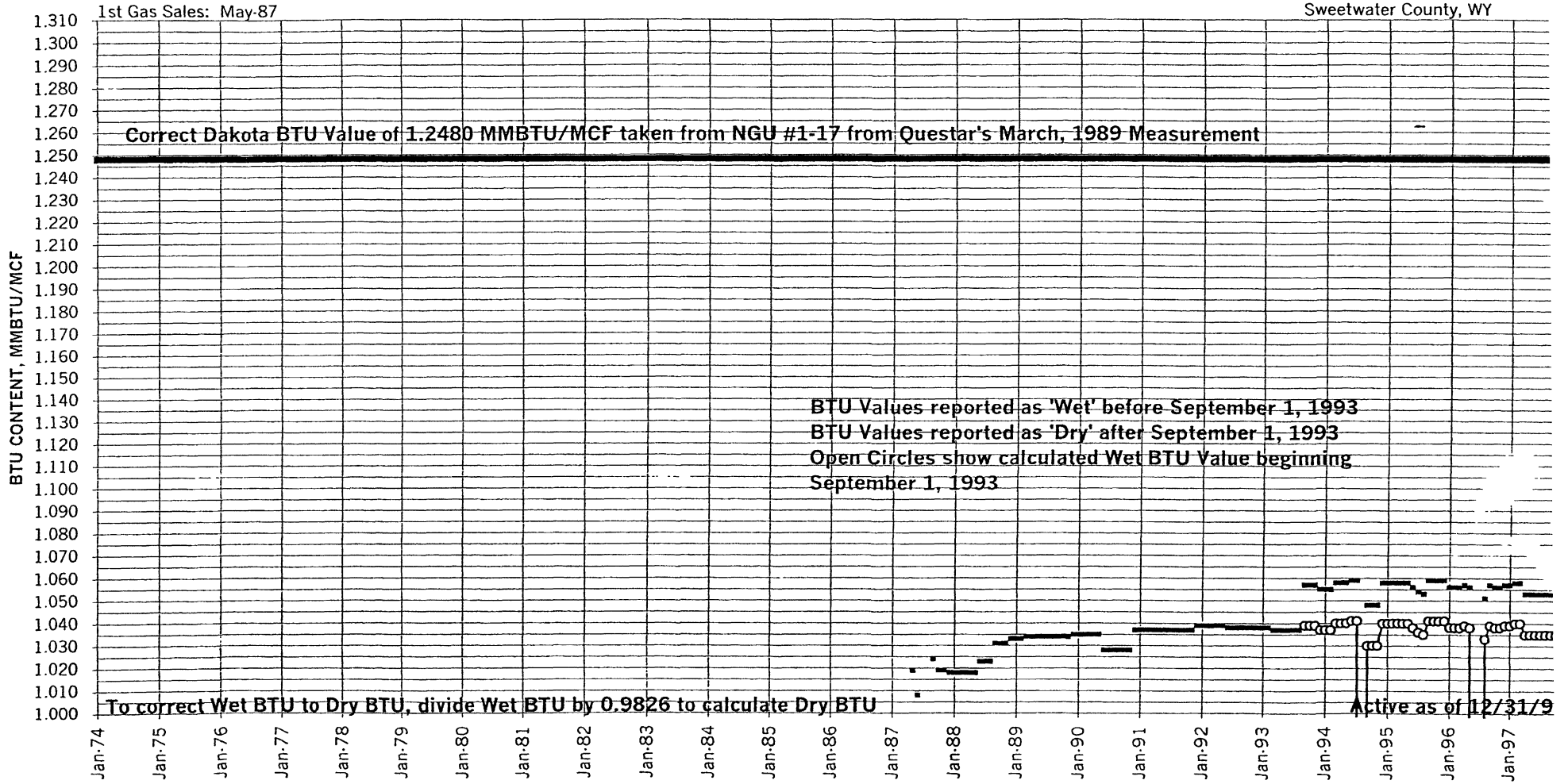
05/18/2000

Nitchie Gulch Unit #17-16

Nitchie Gulch Field
1st Gas Sales: May-87

Dakota

NWNWNW Sec 16-23N-103W
Sweetwater County, WY



D2C

File: BTUCharts NGU17-16D

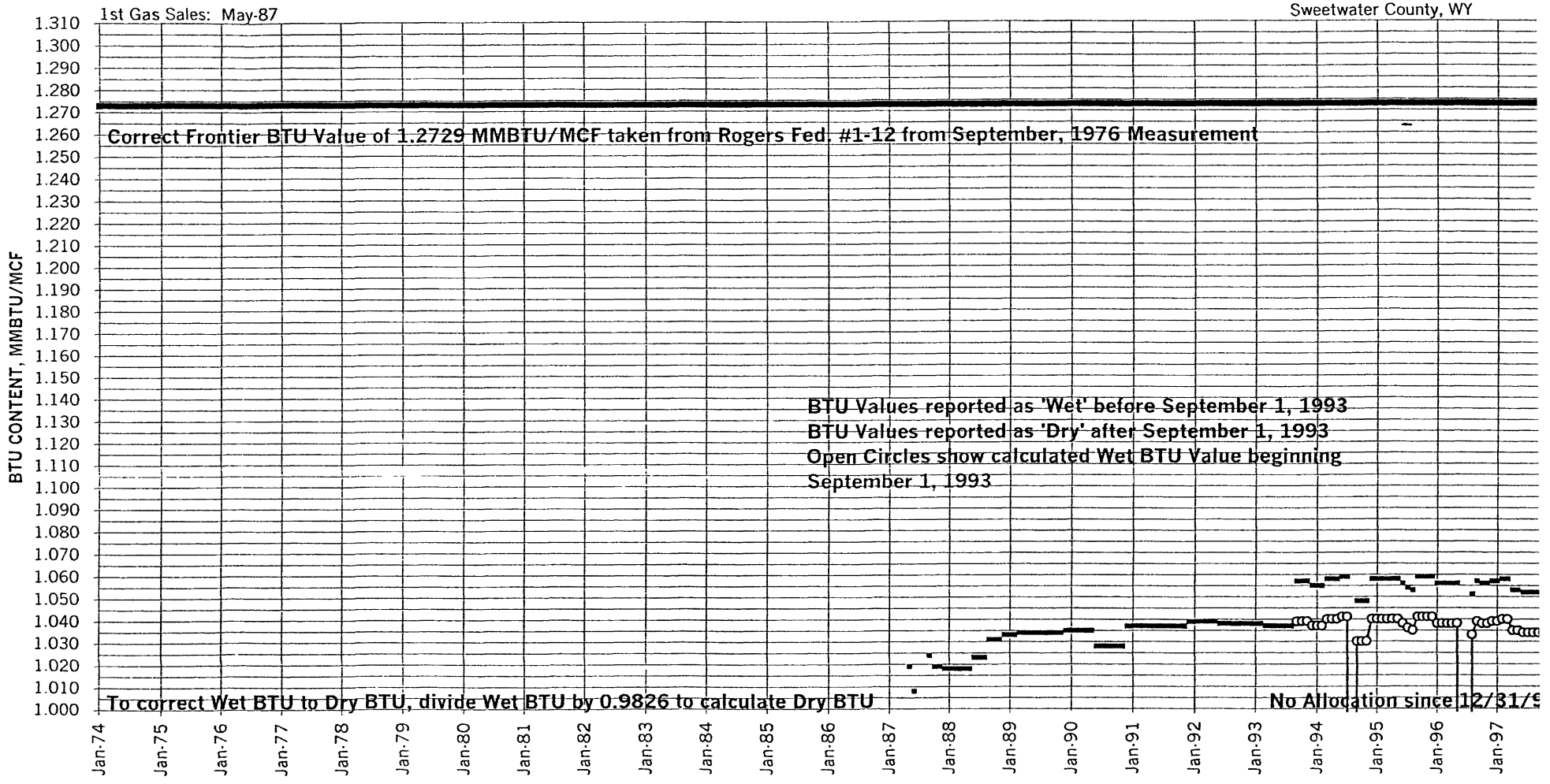
05/18/2000

Nitchie Gulch Unit #17-16

Nitchie Gulch Field
1st Gas Sales: May-87

Frontier

NWNWNW Sec 16-23N-103W
Sweetwater County, WY



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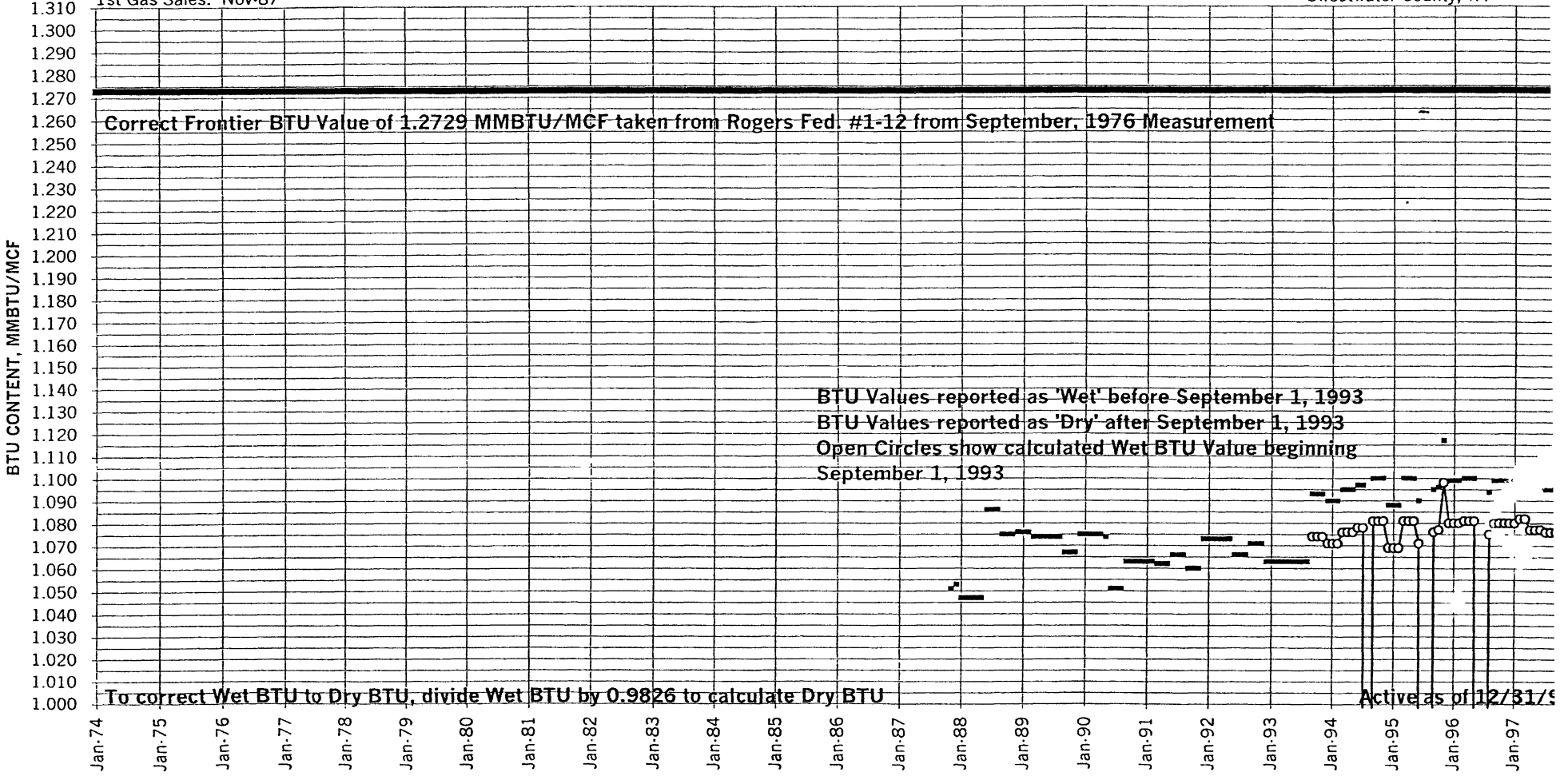
05/18/2000

Nitchie Gulch Unit #18-29

Nitchie Gulch Field
1st Gas Sales: Nov-87

Frontier

SESENWNE Sec 29-23N-103W
Sweetwater County, WY



L68

File: BTUCharts NGU18-29F

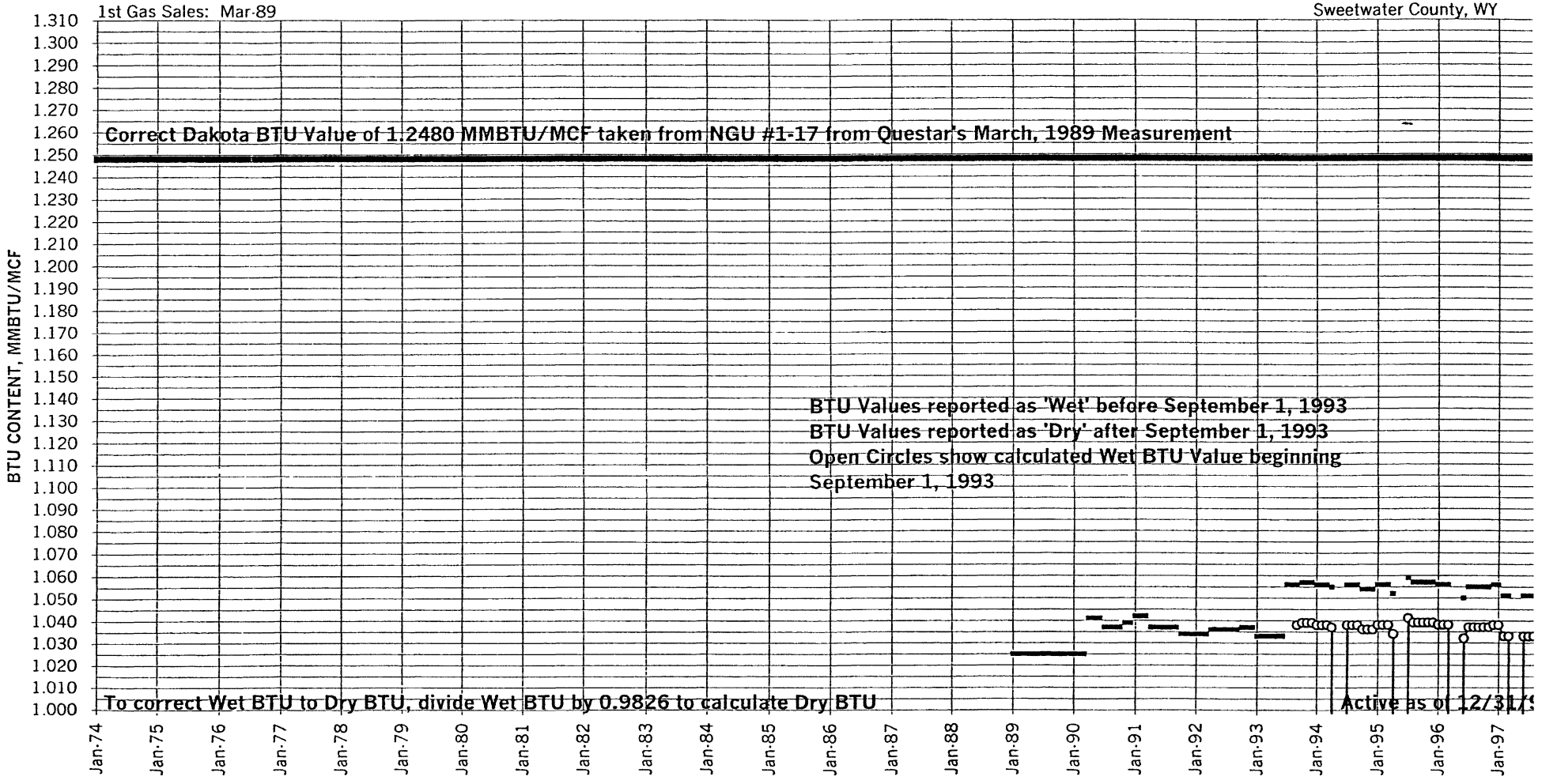
05/18/2000

Nitchie Gulch Unit #19-7

Nitchie Gulch Field
1st Gas Sales: Mar-89

Dakota

NESENW Sec 7-23N-103W
Sweetwater County, WY



File: BTUCharts NGU19-7D

05/18/2000

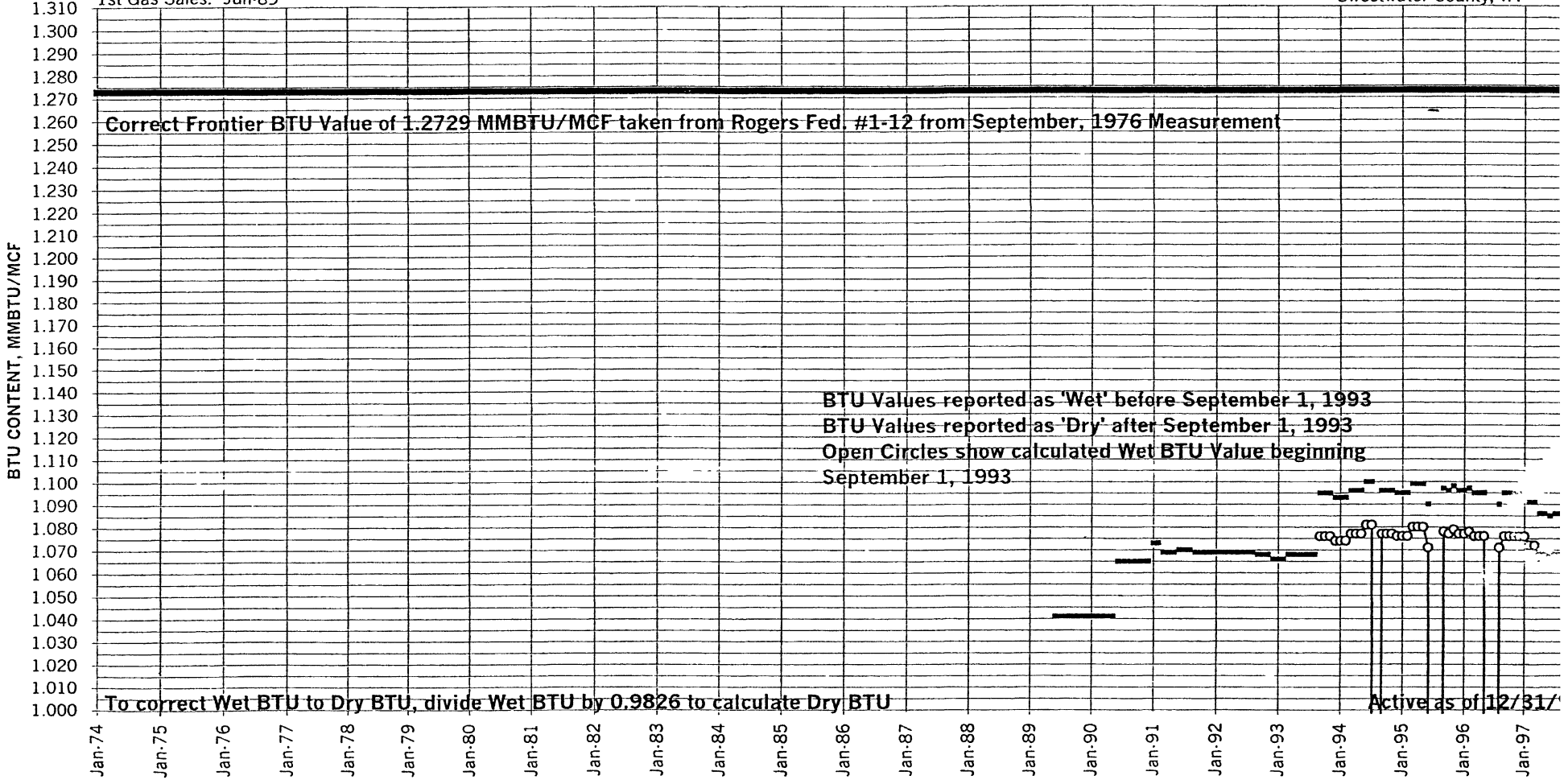
039

Nitchie Gulch Unit #20-19

Nitchie Gulch Field
1st Gas Sales: Jun-89

Frontier

SESENE Sec 19-23N-103W
Sweetwater County, WY



File. BTUCharts NGU20-19F

05/18/2000

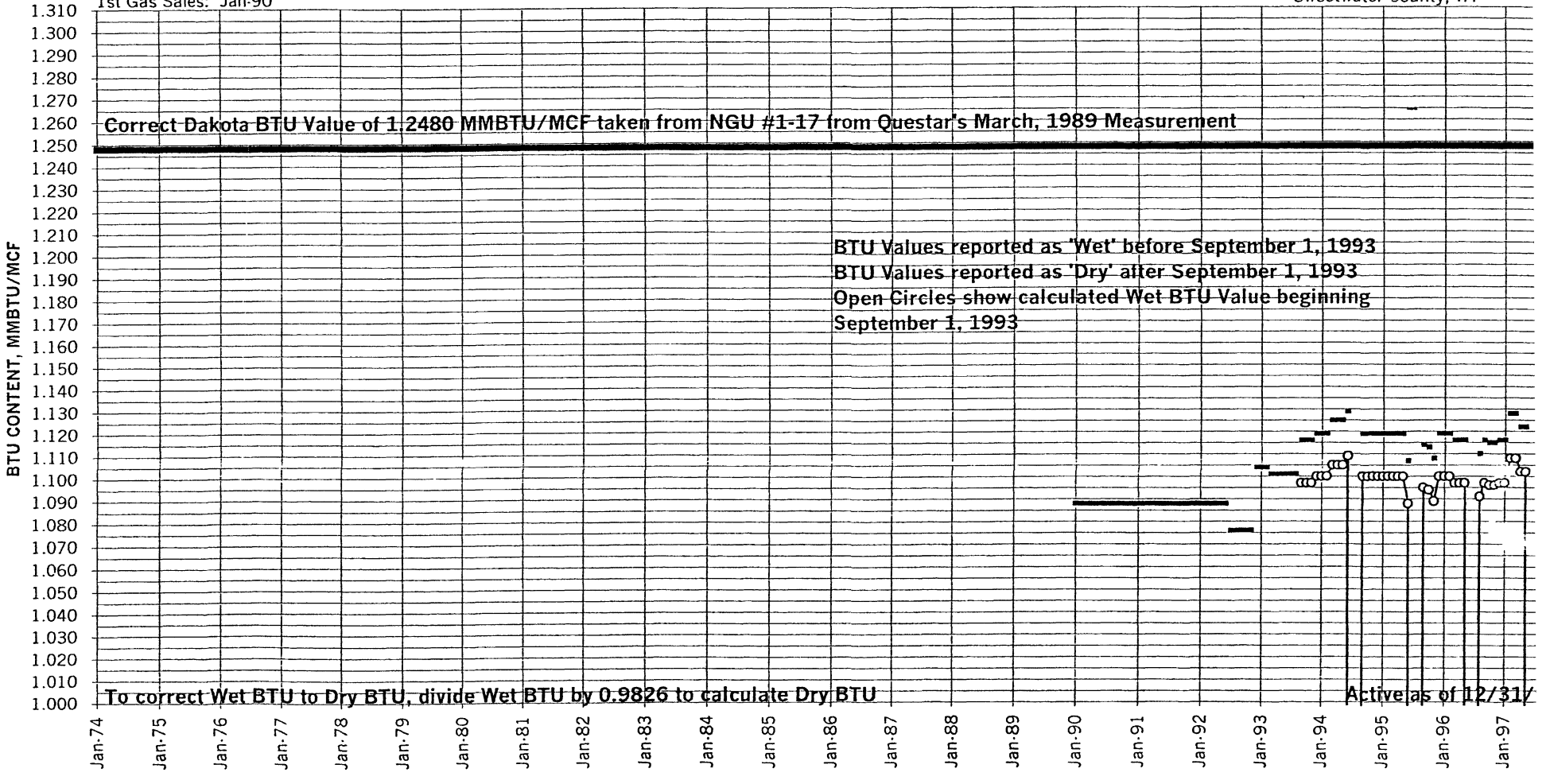
039

Nitchie Gulch Unit #21-21

Nitchie Gulch Field
1st Gas Sales: Jan-90

Dakota

NENWSW Sec 21-23N-103W
Sweetwater County, WY



Correct Dakota BTU Value of 1.2480 MMBTU/MCF taken from NGU #1-17 from Questar's March, 1989 Measurement

BTU Values reported as 'Wet' before September 1, 1993
BTU Values reported as 'Dry' after September 1, 1993
Open Circles show calculated Wet BTU Value beginning September 1, 1993

To correct Wet BTU to Dry BTU, divide Wet BTU by 0.9826 to calculate Dry BTU

Active as of 12/31/

840

File: BTUCharts NGU21-21D

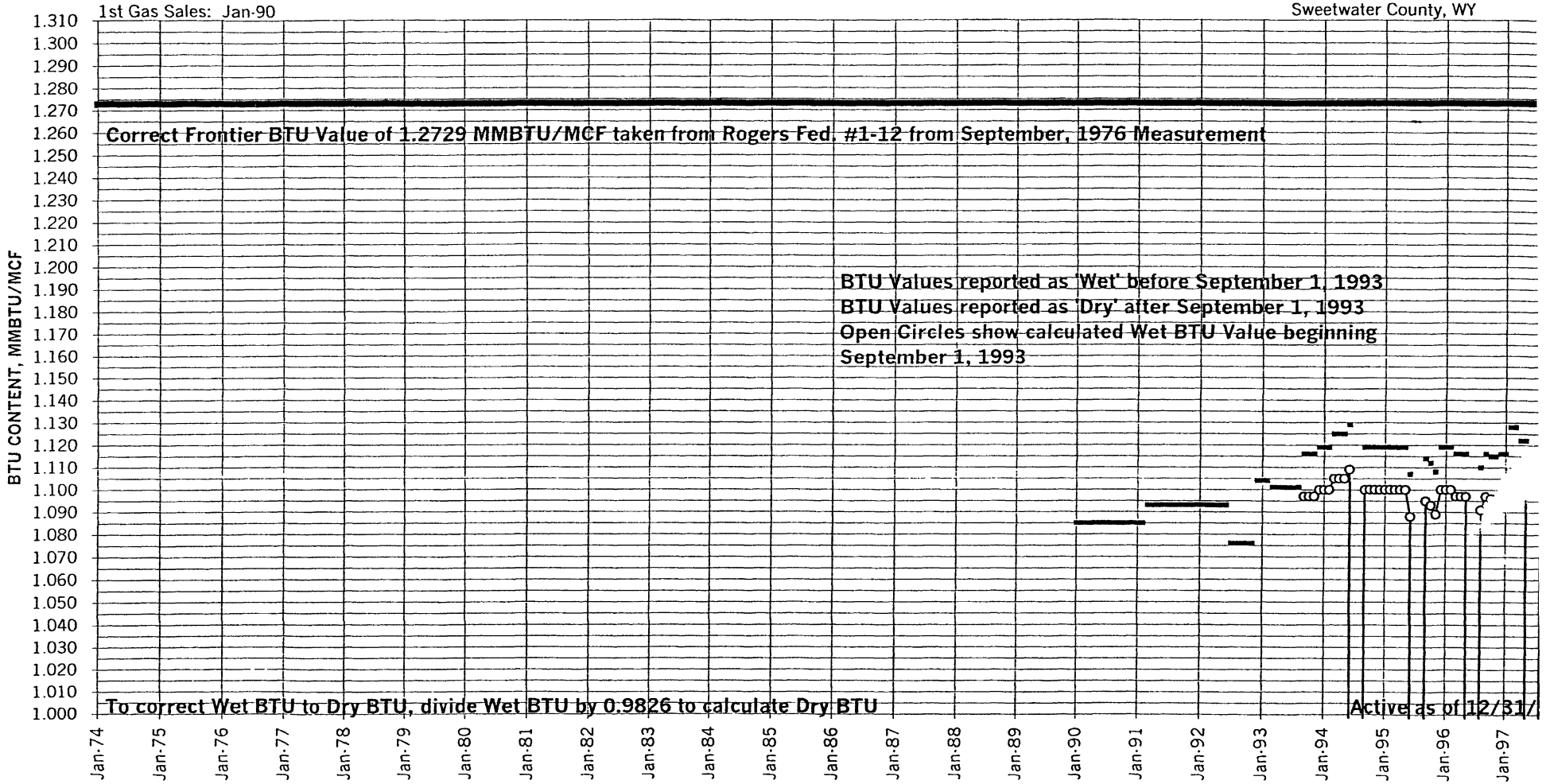
05/18/2000

Nitchie Gulch Unit #21-21

Nitchie Gulch Field
1st Gas Sales: Jan-90

Frontier

NENWSW Sec 21-23N-103W
Sweetwater County, WY



Correct Frontier BTU Value of 1.2729 MMBTU/MCF taken from Rogers Fed. #1-12 from September, 1976 Measurement

BTU Values reported as 'Wet' before September 1, 1993
BTU Values reported as 'Dry' after September 1, 1993
Open Circles show calculated Wet BTU Value beginning September 1, 1993

To correct Wet BTU to Dry BTU, divide Wet BTU by 0.9826 to calculate Dry BTU

Active as of 12/31/

184

File: BTUCharts NGU21-21F

05/18/2000

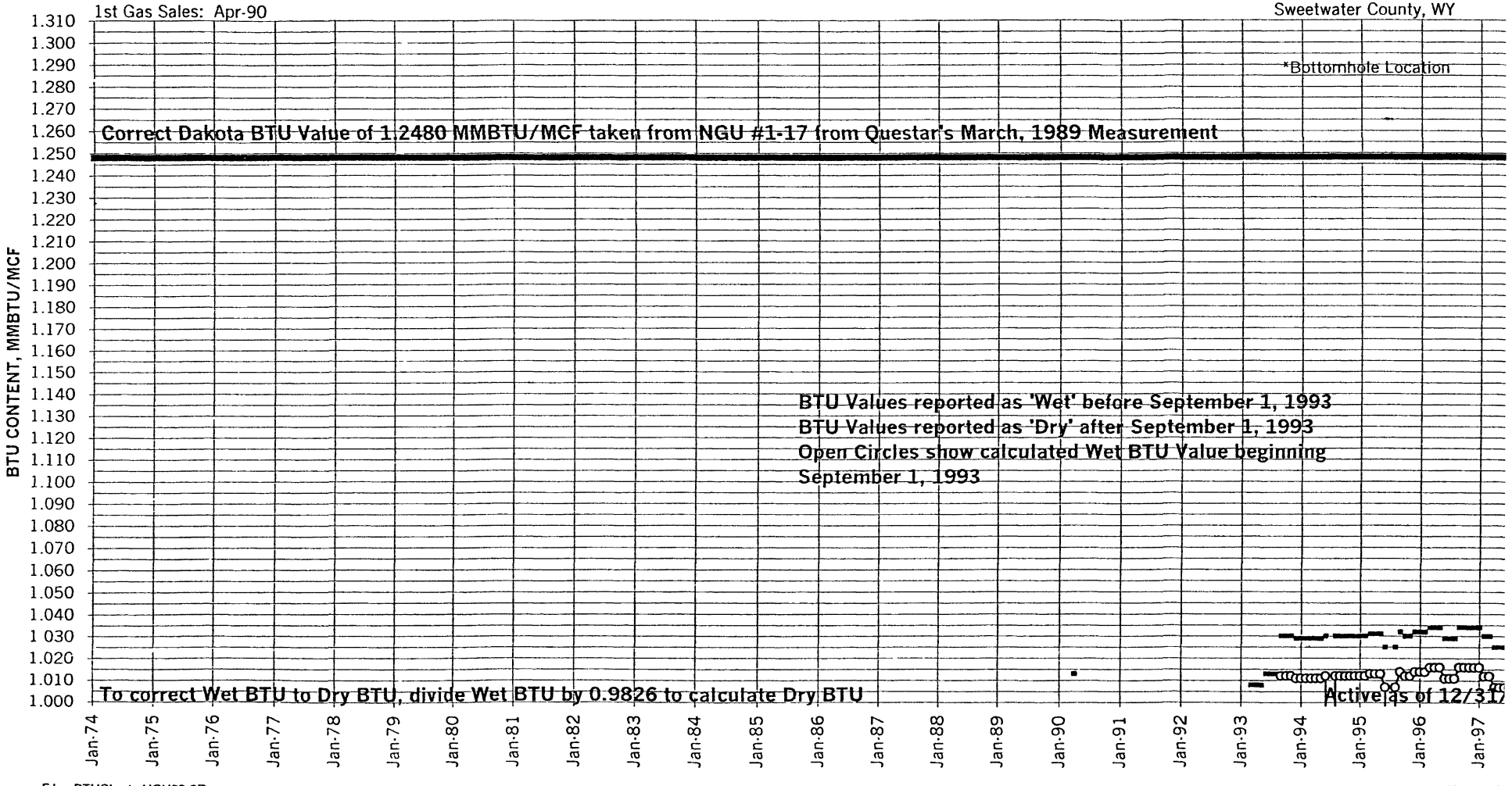
Nitchie Gulch Unit #22-8

Nitchie Gulch Field
1st Gas Sales: Apr-90

Dakota

*SESWNWSW Sec 8-23N-103W
Sweetwater County, WY

*Bottomhole Location



Correct Dakota BTU Value of 1.2480 MMBTU/MCF taken from NGU #1-17 from Questar's March, 1989 Measurement

BTU Values reported as 'Wet' before September 1, 1993
BTU Values reported as 'Dry' after September 1, 1993
Open Circles show calculated Wet BTU Value beginning September 1, 1993

To correct Wet BTU to Dry BTU, divide Wet BTU by 0.9826 to calculate Dry BTU

Active as of 12/31/

278

File BTUCharts NGU22-8D

05/18/200

Federal #1-28

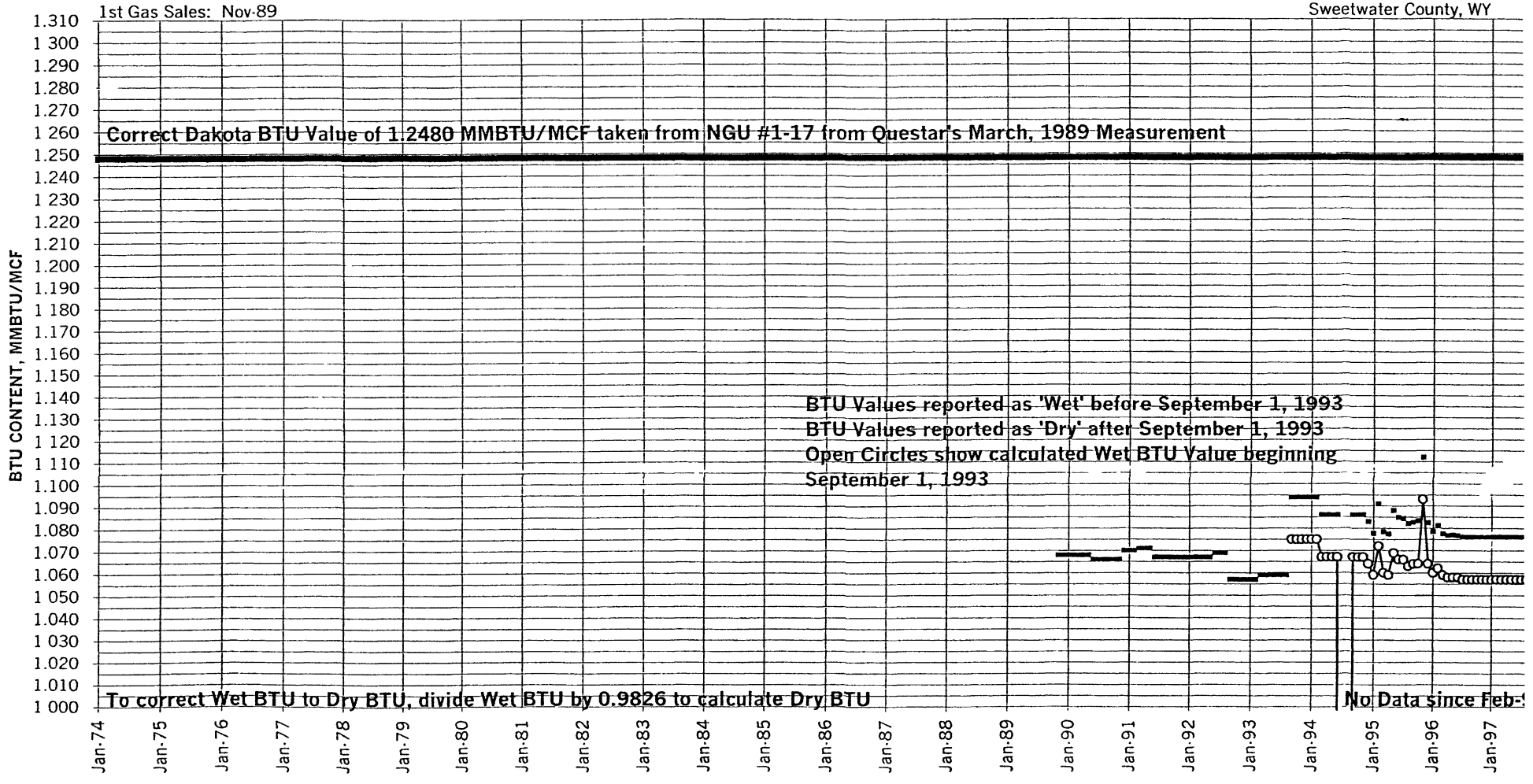
Dakota

Nitchie Gulch Field

1st Gas Sales: Nov-89

SWNENE Sec 28-23N-103W

Sweetwater County, WY



2nd

File BTUCharts Fed1-28D

05/18/2000

Federal #1-28

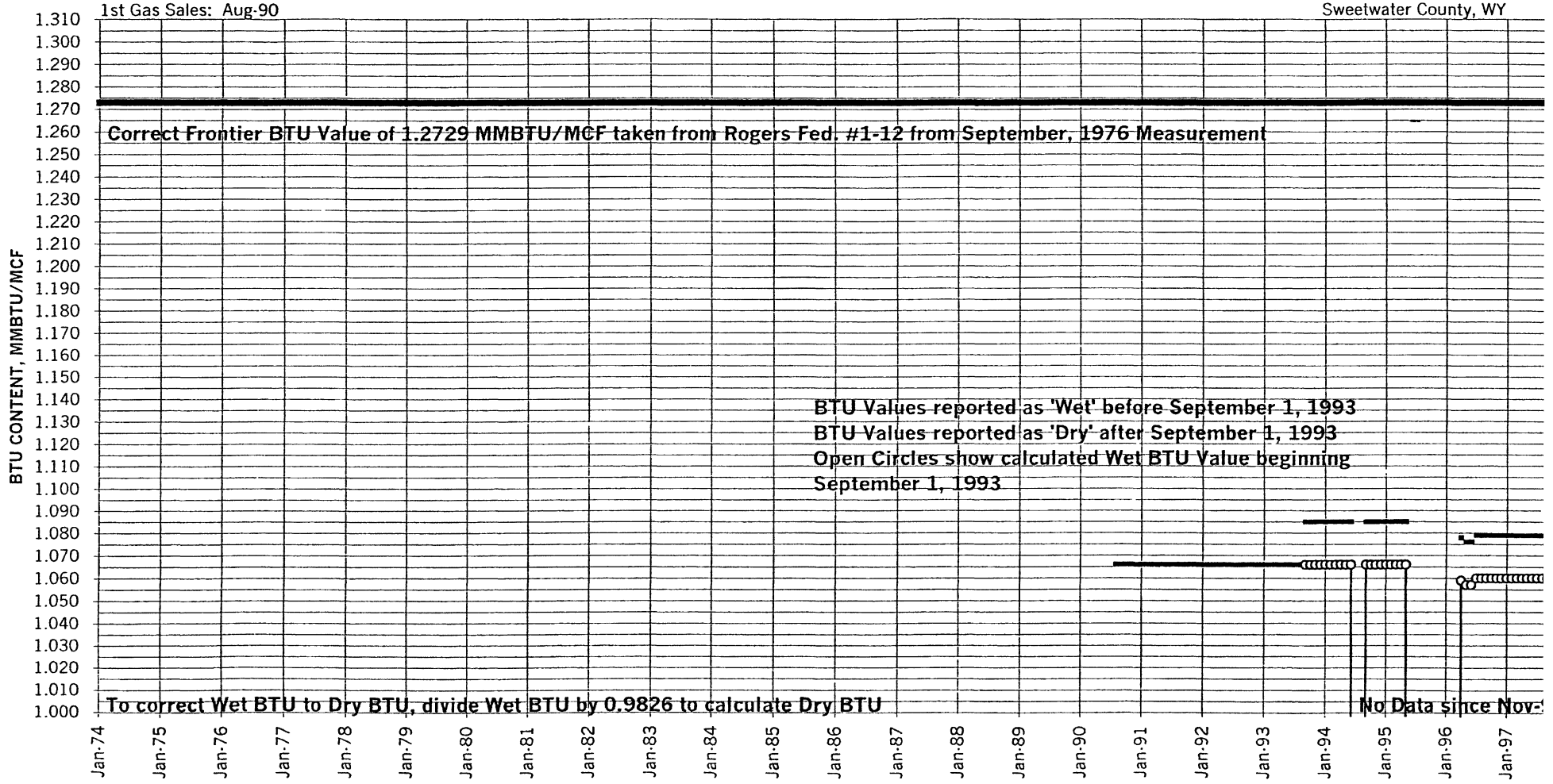
Nitchie Gulch Field

Frontier

SWNENE Sec 28-23N-103W

1st Gas Sales: Aug-90

Sweetwater County, WY



mb

File: BTUCharts Fed1-28F

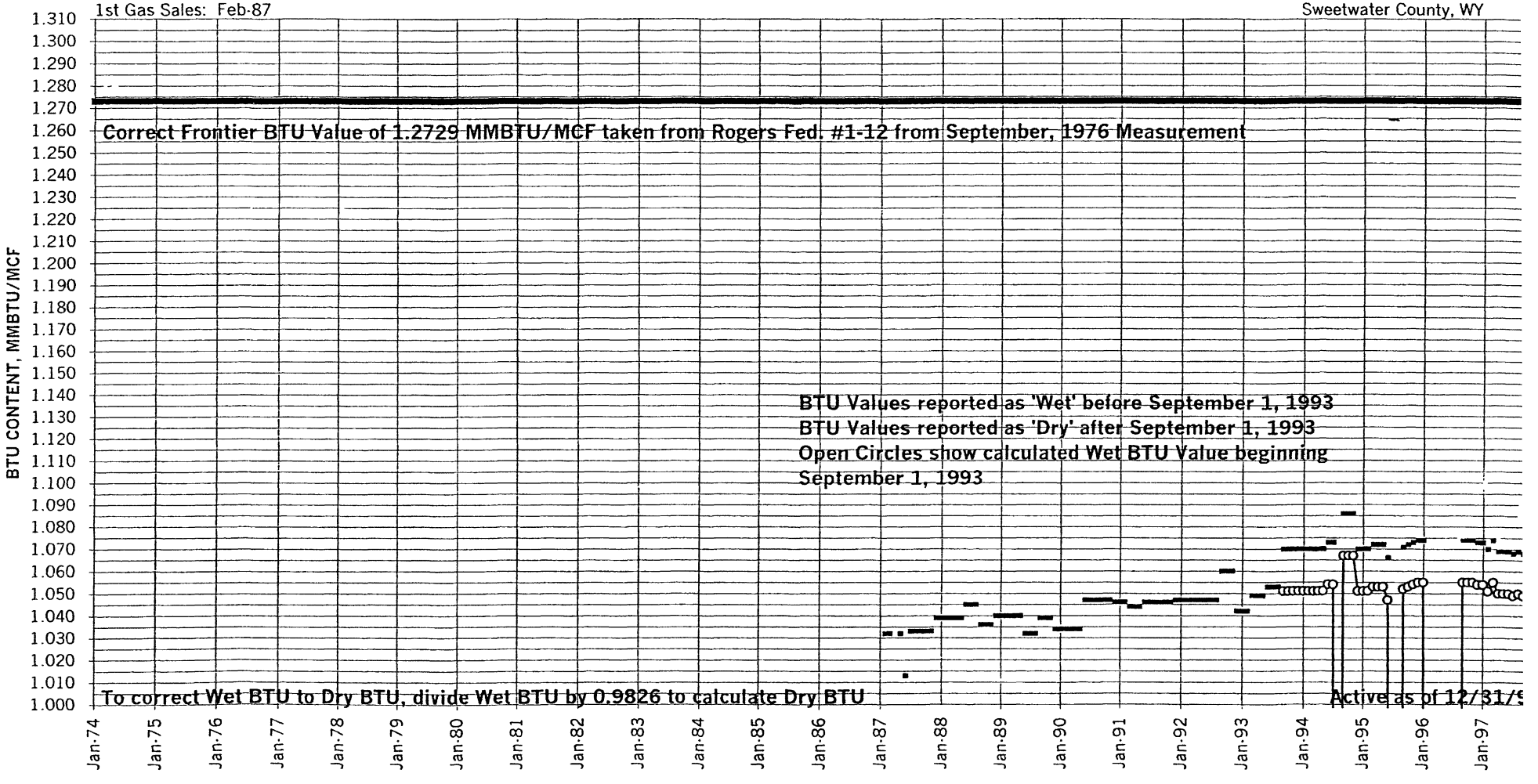
05/18/2000

North Nitchie Gulch #2-6

Nitchie Gulch Field
1st Gas Sales: Feb-87

Frontier

SENW Sec 6-23N-103W
Sweetwater County, WY



File: BTUCharts NNG2-6F

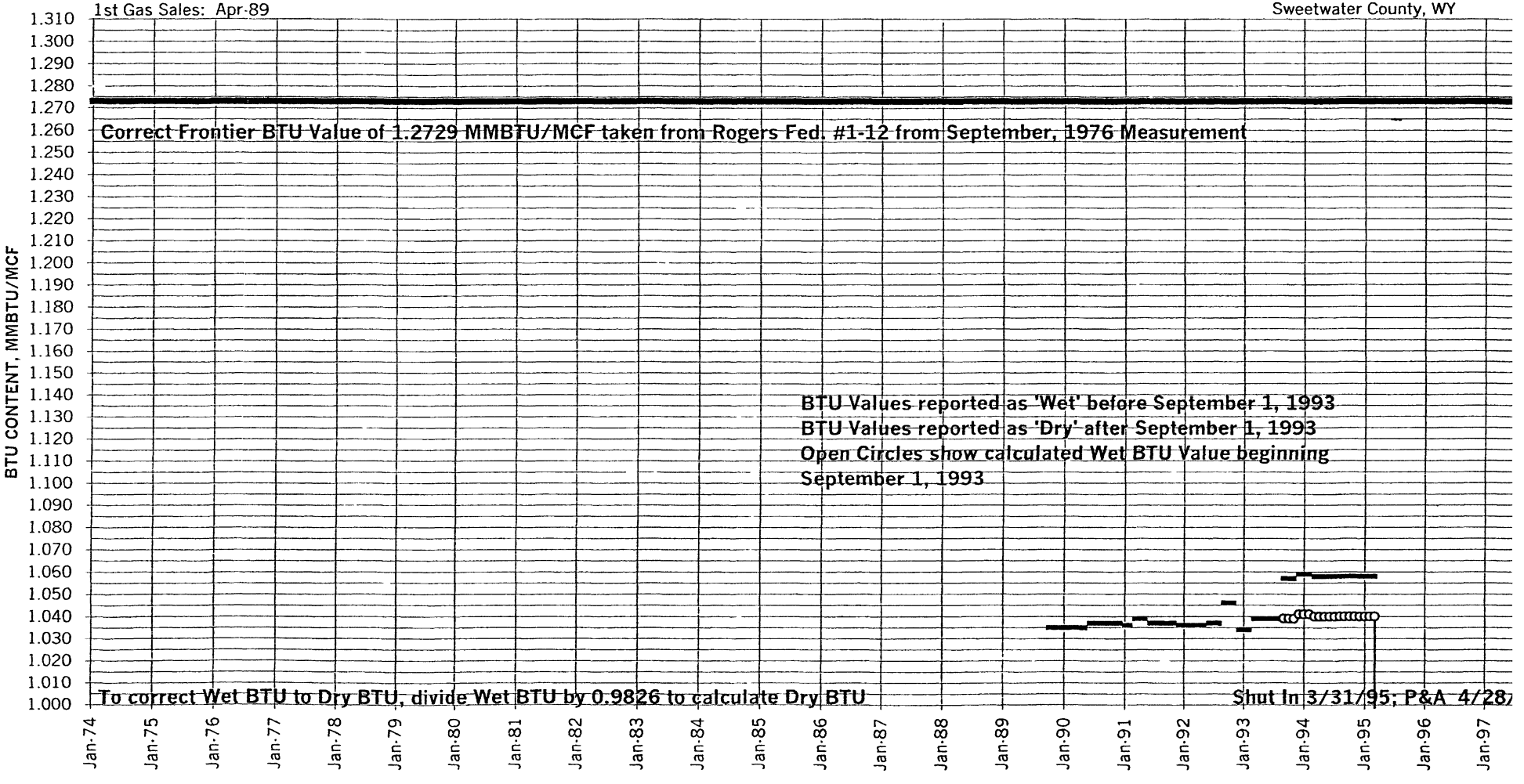
05/18/2000

North Nitchie Gulch #20-6

Nitchie Gulch Field
1st Gas Sales: Apr-89

Frontier

SESWNENE Sec 6-23N-103W
Sweetwater County, WY



File. BTUCharts NNG20-6F

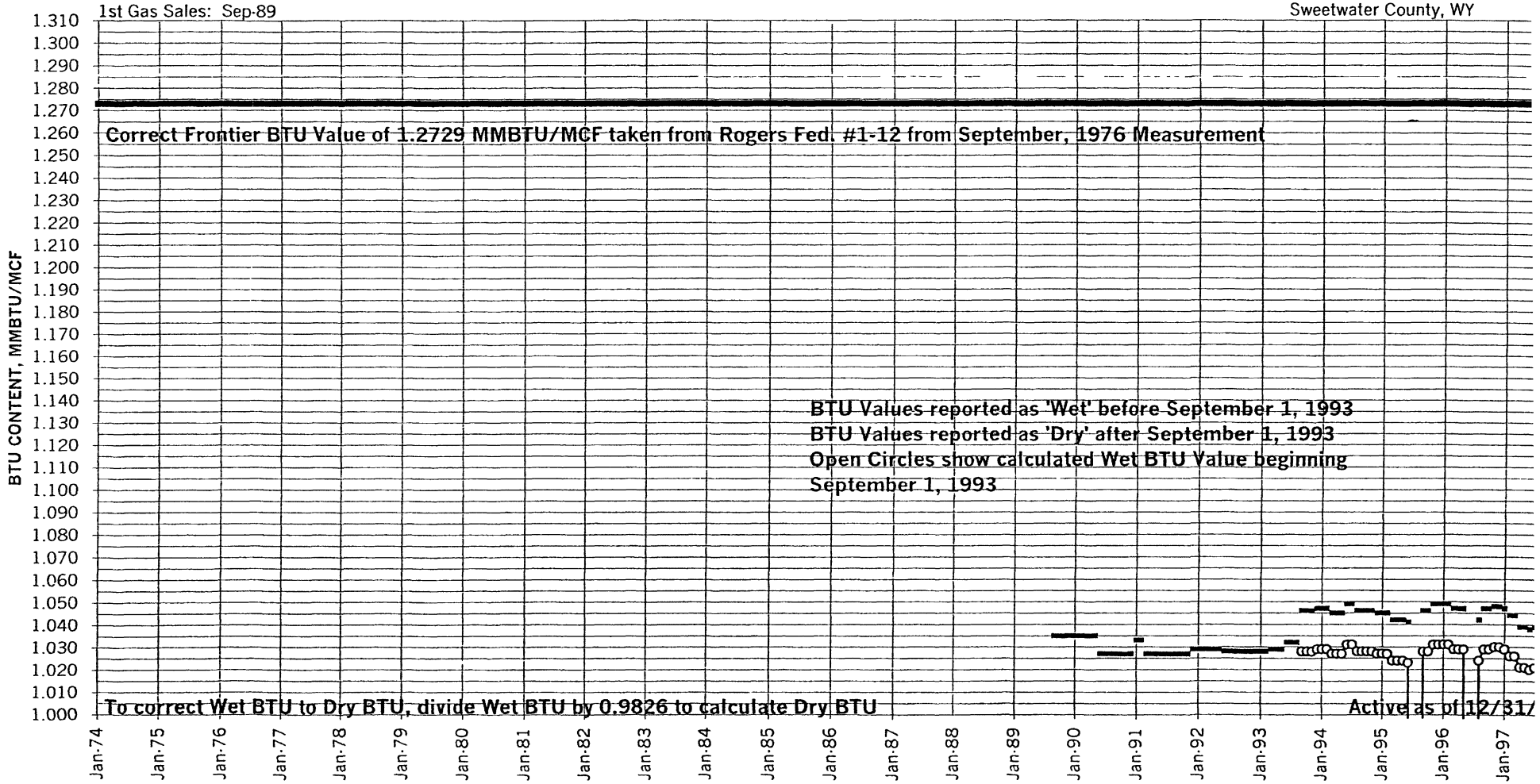
05/18/2000

North Nitchie Gulch #30-6

Nitchie Gulch Field
1st Gas Sales: Sep-89

Front/Dak

SESENWSW Sec 6-23N-103W
Sweetwater County, WY



File: BTUCharts NNG30-6F

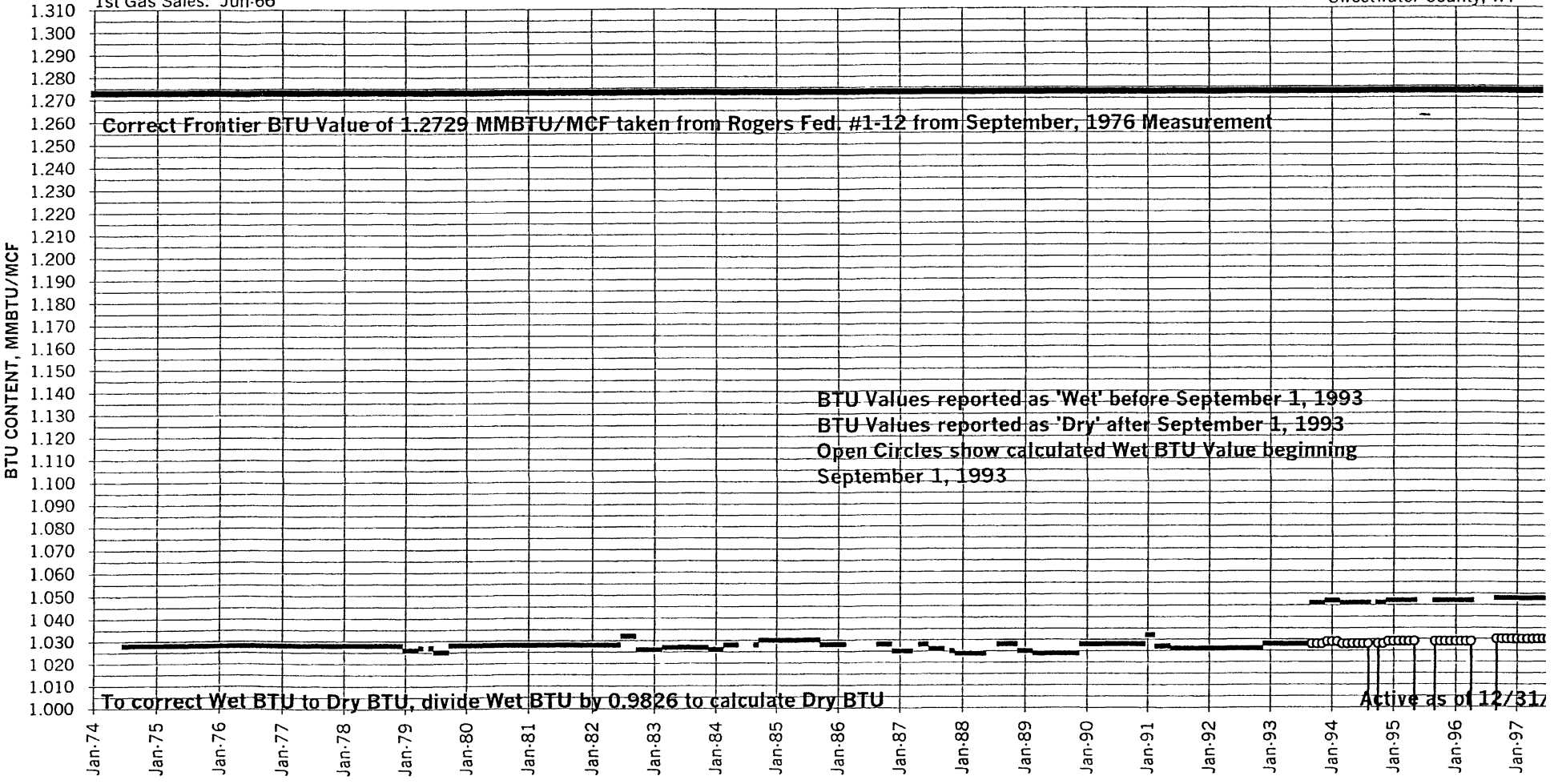
05/18/2000

Anderson Government #1-6

Nitchie Gulch Field
1st Gas Sales: Jun-66

Front/Dak

C SE Sec 6-23N-103W
Sweetwater County, WY



File BTUCharts Anderson1-6F

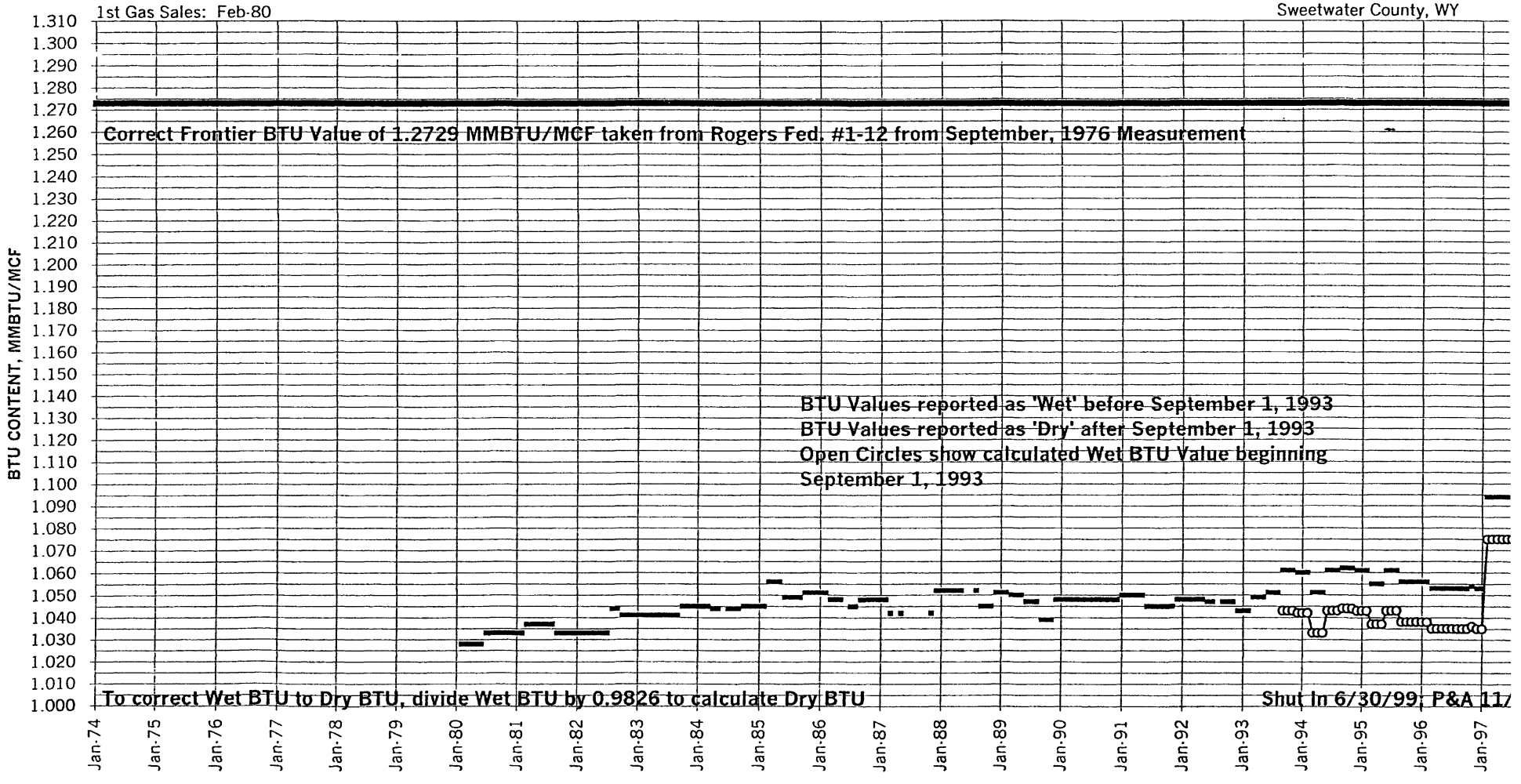
05/18/2000

Jamieson A-1

Nitchie Gulch Field
1st Gas Sales: Feb-80

Frontier

150' N of C SE Sec 1-23N-104W
Sweetwater County, WY



File: BTUCharts JamiesonA-1F

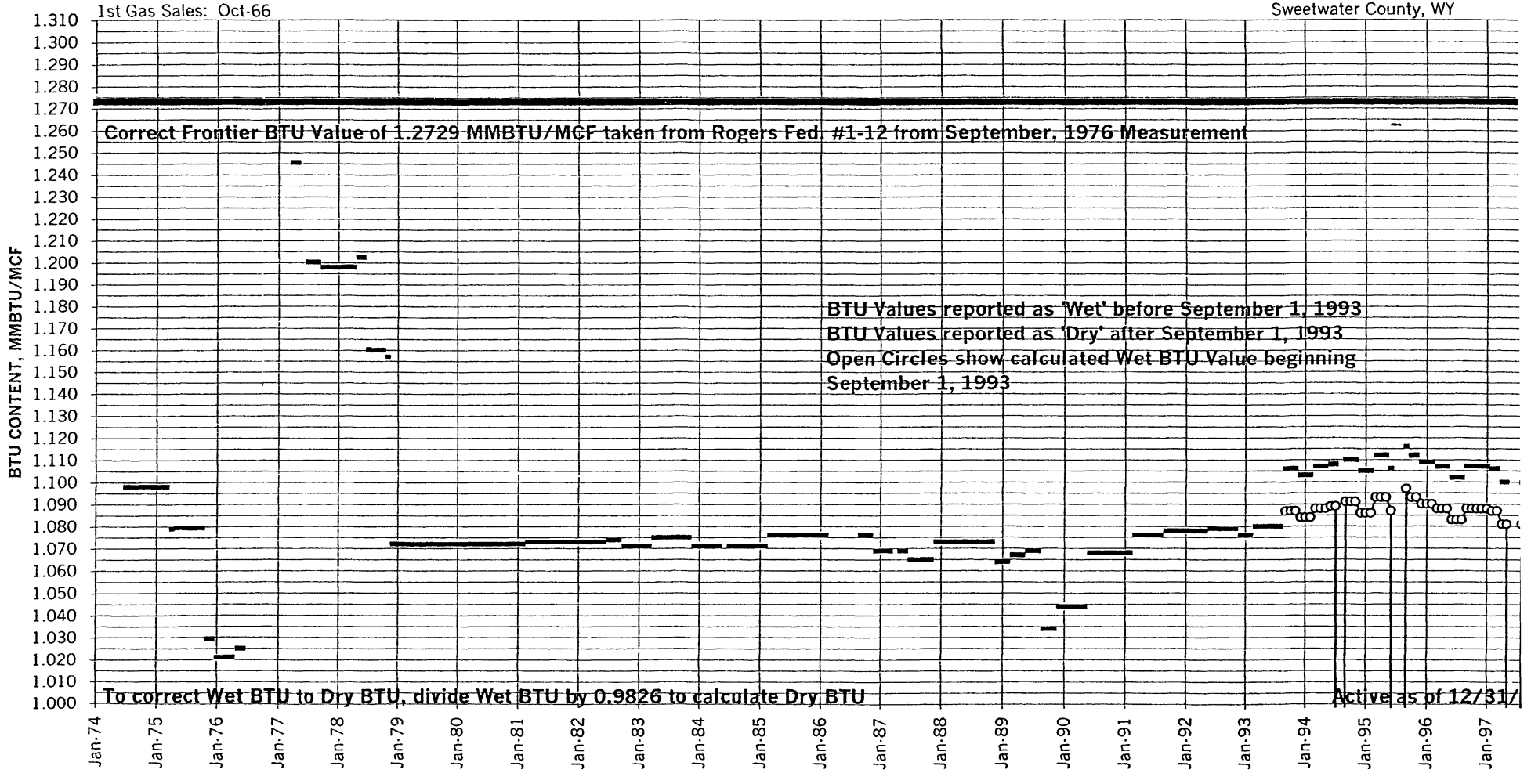
05/18/2000

Rogers Federal #1-12

Nitchie Gulch Field
1st Gas Sales: Oct-66

Frontier

NWNWSESE Sec 12-23N-104W
Sweetwater County, WY



File. BTUCharts Rogers1-12F

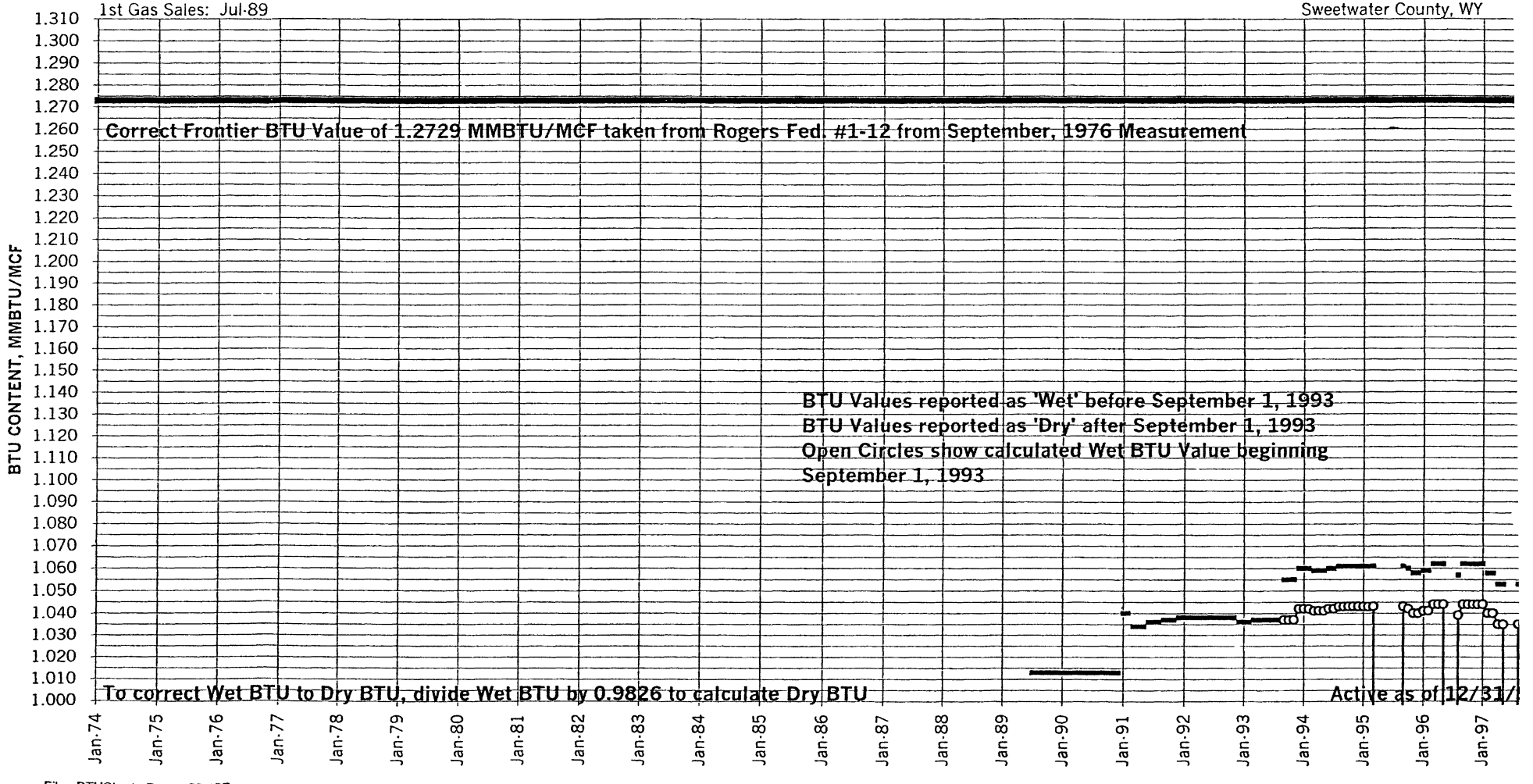
05/18/2000

Rogers Federal #20-12

Nitchie Gulch Field
1st Gas Sales: Jul-89

Frontier

C NE Sec 12-23N-104W
Sweetwater County, WY



File: BTUCharts Rogers20-12F

05/18/2000

EXHIBIT D

Jack J. Grynberg, et. al.
vs.
Questar Pipeline Company, et. al.
IN THE THIRD JUDICIAL DISTRICT COURT, DIVISION I
SALT LAKE COUNTY, STATE OF UTAH
Case No. 990909729
Damages due to Incorrect BTU Measurement and Analysis

Damages from July 1, 1974 thru June 30, 1994	**$8,032,070**
Simple Interest*	**$16,530,669**
Total Damages	**$24,562,739**

*Interest calculated as of 6/1/00

Simple Interest calculated at 7% through May 31, 1982
and at 18% Simple Interest thereafter until resolved

EXHIBIT ____

Jack J. Grynberg, et. al.
vs.
Questar Pipeline Company, et. al.
IN THE THIRD JUDICIAL DISTRICT COURT, DIVISION I
SALT LAKE COUNTY, STATE OF UTAH
Case No. 990909729
Damages due to Incorrect BTU Measurement and Analysis

Damages from July 1, 1994 thru November 30, 1997	**$1,357,350**
Simple Interest*	**$1,038,906**
Total Damages	**$2,396,256**

*Interest calculated as of 6/1/00

Simple Interest calculated at 7% through May 31, 1982
and at 18% Simple Interest thereafter until resolved

Tab H

RECEIVED
QUESTAR CORP.
JUL 19 1993
LEGAL DEPARTMENT

TOM C. TONER
YONKEE & TONER
P. O. BOX 6288
SHERIDAN, WYOMING 82801
(307) 674-7451

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

QUESTAR PIPELINE COMPANY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
JACK J. GRYNBERG, CELESTE C. GRYNBERG, L & R EXPLORATION VENTURE,	)	
	)	
Defendants.	)	No. 92CV0265

DEFENDANTS' FIRST AMENDED COUNTERCLAIM

Pursuant to the authority to file an amended counterclaim granted by the court during the hearing on July 12, 1993, the Defendants for their first amended counterclaim against the Plaintiff state and allege as follows:

First Claim

1. The Plaintiff and the Defendants are parties to agreements, including gas purchase agreements and a settlement agreement, which relate to the sale of gas by the Defendants to the Plaintiff.

2. The Plaintiff materially breached these agreements and intends to continue to breach these agreements in the future.

3. The Plaintiff breached the duty of good faith and fair dealing which the Plaintiff owes to the Defendants under these agreements.

4. The Plaintiff failed to pay the contract price for gas purchased under the contracts before deregulation.

5. The Plaintiff failed to pay the contract price for gas purchased under the contracts after deregulation.

6. The Plaintiff took gas from wells under the contracts and failed to pay for it.

7. The Plaintiff failed to take or pay for gas as required by the contracts for the years 1988-1992.

8. The Plaintiff cut and boost production under the contracts on a well by well basis.

9. The Plaintiff failed to properly reimburse the Defendants for taxes, including, without limitation, severance, production, conservation and ad valorem taxes, as required by the contracts.

10. The Plaintiff failed to pay correct compression charges in a timely manner.

11. The Plaintiff failed to take makeup gas in accordance with the contracts and attempted to "pipeline balance" by allocating to the Defendants without their consent up to 100% of the production from the Nitchie Gulch Unit in excess of the minimum contract quantity even though the Defendants' ownership interest was only approximately 32% and placing the Defendants in an imbalance situation with other working interest owners.

12. The Plaintiff failed to take the ministerial steps necessary to decontrol gas in

1989 which would have allowed the payment of higher prices to the Defendants.

13. The Plaintiff failed to pay the Defendants for their correct ownership interest in the gas purchased by the Plaintiff from the Defendants.

14. The Plaintiff paid for gas purchased from the Defendants using incorrect btu adjustments.

15. As a result of the Plaintiff's actions and breaches, the Defendants have been and will be damaged in:

(a) An amount equal to the difference between the price provided by the agreements and the price actually paid by the Defendants, together with interest, for gas sold and delivered to the Plaintiff and for gas which will be sold and delivered to the Plaintiff prior to trial under the agreements, and the Defendants have sustained incidental and consequential damages and lost profits and opportunity costs.

(b) An amount equal to the price of the gas neither taken nor paid for by the Plaintiff, together with interest, for gas which the Plaintiff was obligated to take or pay for in the calendar year 1988 and subsequent years, together with incidental and consequential damages and lost profits and opportunity costs.

(c) An amount equal to the purchase price of gas taken by the Plaintiff from wells under the contracts without paying for it, together with interest, and incidental and consequential damages and lost profits and

opportunity costs.

(d) The amount of taxes, including, without limitation, severance, conservation and ad valorem taxes, which the Plaintiff was required to reimburse to the Defendants, together with interest and incidental and consequential damages and lost profits and opportunity costs.

(e) An amount necessary to compensate the Defendants for the Plaintiff's action in attempting to place the Defendants in an imbalance situation with other working interest owners.

16. The amount of damages sustained by the Defendants and the amount in controversy, exclusive of interest and costs, exceeds $50,000.00.

Second Claim

17. The Defendants reallege all prior allegations.

18. The Defendants are persons legally entitled to proceeds derived from the sale to the Plaintiff of gas production from wells in Sweetwater County, Wyoming.

19. The Plaintiff failed to pay to the Defendants the proceeds to which the Defendants are entitled within the time limits specified in W.S. §30-5-301, et. seq., and failed to deposit those proceeds in an account using a standard escrow document form approved by the Attorney General of the State of Wyoming.

20. The Defendants are entitled to recover from the Plaintiff the unpaid amount of the proceeds derived from the sale of production together with interest thereon at the rate of 18% per annum on the unpaid principal balance from the due date specified in W.S.

§30-5-301(a) and together with all court costs and reasonable attorney fees.

Third Claim

21. The Defendants reallege all previous allegations.

22. The Plaintiff and the Defendants have entered into agreements for the sale and purchase of gas produced from Sweetwater County, Wyoming.

23. A controversy has arisen between the Plaintiff and the Defendants concerning the meaning and interpretation of these agreements.

24. The phrase "the price provided in this contract" as used in paragraph VI-3 of the agreements described in paragraph 10 of Plaintiff's complaint means, in accordance with the NOTWITHSTANDING paragraph in paragraph VI-1, the last regulated price prescribed for gas produced from a well as of the day before deregulation occurred, and the phrase does not refer to the prices stated in paragraphs VI-1(a), (b) and (c) of the agreements which precede the NOTWITHSTANDING paragraph.

25. The phrase "contracts made subsequent to the above-mentioned legal change" as used in paragraph VI-3 of the agreements means contracts made in the period after the date of legislation prescribing decontrol including, but not limited to, contracts made in the period after any subsequent effective dates of such decontrol.

26. Plaintiff is obligated to pay to Defendants the compression cost allowance for Defendants' interest in all of the wells covered by the agreements upon which compressors have been or will be installed within 30 days of receipt of Defendants' statement for such costs, and if Plaintiff fails to make timely payment, Plaintiff is obligated to pay interest on

the statement at the FERC posted rate.

Fourth Claim

27. The Defendants reallege all prior allegations.

28. The Plaintiff intentionally, culpably and without justification caused injury to the Defendants and their business and to the Defendants' legally protected property interests and engaged in a bad faith pattern of willful misconduct to injure the Defendants.

29. The Plaintiff installed and operated equipment on certain wells in the Nitchie Gulch Unit. This equipment allowed the Plaintiff to take gas without paying for it.

30. The Plaintiff intentionally, willfully and wantonly took the Defendants' gas from wells in the Nitchie Gulch Unit without paying for the gas.

31. The Defendants and Terra Resources, Inc. ("Terra"), which is now known as Pacific Enterprises Oil Company (USA) ("PEOC"), were parties to a Unit Agreement and Unit Operating Agreement for the Nitchie Gulch Unit in Sweetwater County, Wyoming.

32. The Plaintiff knew of the contractual relationship between the Defendants and Terra and PEOC.

33. The Plaintiff intentionally and improperly interfered with the performance of the contracts between the Defendants and Terra and PEOC by inducing or otherwise causing Terra and PEOC to breach or not perform the contracts.

34. As a result of the Plaintiff's acts, the Defendants have suffered pecuniary loss in excess of $50,000.00, exclusive of interest and costs, together with interest, incidental and consequential damages, and lost profits and opportunity costs.

35. As a result of the Plaintiff's acts, the Defendants have been damaged in the amount of the purchase price which should have been paid for the gas which was taken but not paid for together with interest, incidential and consequential damages, and lost profits and opportunity costs.

36. The acts of the Plaintiff were intentional, willful and wanton, and the Plaintiff should be held liable for punitive damages to the Defendants.

WHEREFORE, the Defendants prays judgment against the Plaintiff as follows:

1. For damages in an amount equal to the difference between the price provided by the agreements and the price actually paid by the Defendants, together with interest, for gas sold and delivered to the Plaintiff and for gas which will be sold and delivered to the Plaintiff prior to trial under the agreements.

2. For damages in an amount equal to the price of the gas neither taken nor paid for by the Plaintiff, together with interest, for gas which the Plaintiff was obligated to take or pay for in the calendar year 1988 and subsequent years.

3. For damages in an amount equal to the purchase price of gas taken by the Plaintiff from wells under the contracts without paying for it, together with interest.

4. For damages in an amount of the taxes, including, without limitation, production, severance, conservation and ad valorem taxes, which the Plaintiff was required to reimburse to the Defendants.

5. For damages in an amount necessary to compensate the Defendants for the Plaintiff's action in attempting to place the Defendants in an imbalance situation with other

working interest owners and in causing Terra and PEOC to breach and not perform the contracts with the Defendants.

6. For incidental and consequential damages and lost profits and opportunity costs.

7. For the proceeds derived from the sale to the Plaintiff of production from wells producing gas and related hydrocarbons in Sweetwater County, Wyoming, together with interest thereon at the rate of 18% per annum on the unpaid principal balance from the due date specified in W.S. §30-5-301(a).

8. For punitive damages.

9. For Defendants' court costs and reasonable attorney fees.

10. For a declaration of the rights and legal relations of the parties under the agreements pursuant to 28 U.S.C. §2201.

11. For a declaration that the phrase "the price provided in this contract," as used in paragraph VI-3 of the agreements described in paragraph 10 of Plaintiff's complaint means, in accordance with the NOTWITHSTANDING paragraph in paragraph VI-1, the last regulated price prescribed for gas produced from a well as of the day before deregulation occurred and that the phrase does not refer to the prices stated in the paragraphs VI-1(a) (b) and (c) of the agreements which precede the NOTWITHSTANDING paragraph.

12. For a declaration that the phrase "contracts made subsequent to the above-mentioned legal change" as used in paragraph VI-3 of the agreements means contracts

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made in the period after the date of legislation prescribing decontrol including, but not limited to, contracts made in the period after any subsequent effective dates of such decontrol.

13. For a declaration that Plaintiff is obligated to pay to the Defendants the compression cost allowance for Defendants' interest in all of the wells covered by the agreements upon which compressors had been or will be installed within 30 days of receipt of Defendants' statement for such costs, and if Plaintiff fails to make timely payment, Plaintiff is obligated to pay interest on the statement at the FERC posted rate.

14. For such further or necessary proper relief based on the declaratory judgment as allowed by 28 U.S.C. §2202.

15. For such other and further relief as the court deems just and proper.

DATED this 16 day of July, 1993.

YONKEE & TONER

By: _____
TOM C. TONER
Attorneys for Defendants
P. O. Box 6288
Sheridan, Wyoming 82801
307 674-7451

CERTIFICATE OF SERVICE

I, TOM C. TONER, hereby certify that on the 16 day of July, 1993, I caused the foregoing to be served on the other parties by facsimile transmission to John F. Shepherd and Terri T. McIntosh and by depositing a copy of the same in the United States mail, postage prepaid, at Sheridan, Wyoming, and duly addressed to:

John F. Shepherd
Holland & Hart
555 Seventeenth Street, Suite 2900
P. O. Box 8749
Denver, Colorado 80201
Fax No. 303 295-8261

Gary G. Sackett
Terrie T. McIntosh
Questar Pipeline Company
180 East 100 South Street
P. O. Box 11368
Salt Lake City, Utah 84139
Fax No. 801 534-5131

Tom C Toner

Yonkee & Toner

16/2

Tab I

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF WYOMING

QUESTAR PIPELINE COMPANY,

Plaintiff,

vs.

Civil No. 93CV 0265J
March 1, 1994
Volume II

JACK J. GRYNBERG, CELESTE C. GRYNBERG, L & R EXPLORATION VENTURE,

Defendants.

TRANSCRIPT OF TRIAL PROCEEDINGS

Transcript of Trial Proceedings on the above-entitled case before the Honorable Alan B. Johnson, Judge, and a jury of six, plus two alternates, commencing on the 28th day of February, 1994.

Court Reporter: Beverly L. Willis, RPR, CM
Official Court Reporter
District of Wyoming
111 South Wolcott
Casper, Wyoming 82601

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as well.

THE COURT: Yes. The final matter that -- well, not final matter -- but another matter that we considered last night, and I indicated a preliminary ruling, and plaintiff had reserved the opportunity to speak to his client concerning that matter, is the assertion of a claim based upon the BTU content of the natural gas over a lengthy period of time. There is now a -- what appears to be a claim, although it is not one that has ever made the pleadings, but it is represented in correspondence at this point between Mr. Walker and Mr. Grynberg, as to what can be litigated in this case -- mainly letters to Mr. Walker from Mr. Grynberg, I think is primarily what I'm seeing -- but anyway, representing that it was agreed that there might be an issue concerning the BTU content. And then there was a motion filed seeking dismissal, I believe, with prejudice, of that claim on the part of the plaintiff.

We haven't spent a lot of time with a formal hearing, but have discussed it thoroughly before the Court. And I understand that the plaintiff is of the view that adequate opportunity existed on the part of Mr. Grynberg to fully discover the BTU issue months ago, rather than at the last moment, and that this is a claim that should have been asserted, if he intended to assert it, by way of a proper pleading, and that it would be inequitable

to require Questar to -- or unfair to require Questar to have to go back in still another court proceedings, or to go forward with a trial of this issue, not being prepared at this point to even fully analyze Grynberg's claim, let alone to have the information to fully respond to it.

Mr. Toner candidly indicated that Mr. Schultz had great discomfort and difficulty in conducting an attempted telephone -- last-minute telephone deposition of Mr. Grynberg and his expert concerning the BTU content of the gas, and that it did appear that Questar was at some real disadvantage in terms of responding to a claim based upon the BTU content, which is changed substantially from a figure of six thousand sixty-eight hundred dollars (sic), approximately, now to one of several million dollars over time. And finally, that it appears that many of the records of BTU inspections have not yet been analyzed and are not available. So it would be a rather one-sided type of presentation.

Mr. Toner's concern is that whatever the ruling of the Court is in this regard, that it not be one that prejudices his client to proceeding to seek a judicial resolution on the merits of the BTU claim.

I've indicated on the record that I would construct a dismissal in this case without prejudice to allow that action to be separately pled and ruled upon by

the Court. There are other obvious rulings involving limitations periods, et cetera, that have not even been suggested at this point, really, or more than suggested. And that will be the ruling. I'll allow you to make your objection at this point.

MR. SCHULTZ: Your Honor, we would like to protect our record with respect to asking that the dismissal be with prejudice. The principal grounds, you've already stressed. Some of the additional things I would add are that this litigation has a history of a difficulty getting the counterclaimant to identify the nature of the claims of broad pleading, which necessitated burdensome interrogatories and motions for more definite statement of the defendant, or the plaintiff, rather, the counterclaim defendant, my client, having difficulty identifying what the claims to be litigated were, followed by two pretrial conference memo submissions and pretrial conferences, the purpose of which were to identify the issues and trial preparation. Had the BTU claims been raised timely, the preparation on those claims could have occurred simultaneously with all of the work that went into the stolen gas claims and the take-or-pay claims, because the chronology of the wells is what drives the finding of the documents.

I recognize there's a policy against dismissals

Tab J

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Tom C. Toner
Yonkee & Toner
P. O. Box 6288
Sheridan, Wyoming 82801
(307) 674-7451

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

Questar Pipeline Company, Plaintiff, v. Jack J. Grynberg, Celeste C. Grynberg, and L & R Exploration Venture, Defendants.	No. 92-CV-0265J

Defendants' Motion for Direction of Entry of Final Judgment Under Rule 54(b)

The Defendants move the court for an order determining that there is no just reason for delay and directing the entry of final judgment as to those claims decided in the court's (1) Partial Judgment filed July 9, 1993 and dated July 8, 1993 (hereafter referred to as "1993 Judgment"), (2) Order on Questar's Motion to Dismiss or, in the Alternative, for Partial Summary Judgment; On Questar's Second Motion for Partial Summary Judgment; On Questar's Motion to Strike Jack J. Grynberg's Declaration of Opinion on "Stolen Gas" Claims; On Defendants' Motion for Partial Summary Judgment; and On Questar's Motion for Order Establishing Order of Proof at Trial dated May 18, 1994 and filed May 19, 1994 (hereafter referred to as the "1994 Order"), and (3) the Judgment filed June 2, 1998 and

dated June 2, 1998 and entered on the docket June 3, 1998 (hereafter referred to as the "1998 Judgment").

The grounds for this motion are:

1. This case involves multiple claims between the parties. Some of those claims are resolved by the 1993 Judgment and other claims are resolved by the 1994 Order and the 1998 Judgment. Claims involving Gas Purchase Agreements 219 and 563 were bifurcated, but have not been set for trial, and the court orally directed that it would dismiss without prejudice the Defendants' claim that Questar paid for gas using incorrect BTU adjustments, but no order has been entered dismissing those claims without prejudice.

2. In the 1993 Judgment, the court entered a partial judgment in favor of Questar that as a matter of law, the price provided int he contracts is 24.48¢ or 40¢ per Mcf as adjusted under paragraphs VI-1(b) and (c) and that the phrase "as established by contracts made subsequent to the above-mentioned legal change" contemplates contracts that were entered into after deregulation actually occurred and that Questar did not violate Wyo. Stat. §30-5-301, e seq. in that said statutes are not applicable to the present situation.

3. Before the jury trial in this case, the court orally announced its ruling on several other motions. These rulings were later incorporated in the 1994 Order.

4. With respect to the Defendants' counterclaim for breaches on contracts No. 219 and 563, the court indicated that those claims would be bifurcated. In the 1994 Order,

the court said with respect to Defendants' breach of contract claims under Contracts 219 and 563:

> IT IS ORDERED that Questar's Motion to Dismiss or, in the Alternative, for Partial Summary Judgment is DENIED. Grynberg's claims relative to Contracts No. 219 and 563 are hereby bifurcated form the pending issues which have arisen under Contracts No. 245, 246 and 249.

5. The claims under Contracts No. 219 and 563 have never been set for trial as the entry of judgment on the claims which were tried to the jury was not entered until four years after the jury verdict.

6. With respect to Defendants' claim that Questar had paid for gas using incorrect BTU adjustments, the court said, "I've indicated on the record that I would construct a dismissal in this case without prejudice to allow that action to be separately pled and ruled upon by the Court." (Tr. Vol. II pp. 14-15 — 3/1/94). No written order has ever been issued dismissing without prejudice the BTU claim so that the Defendants could pursue those claims.

7. This case was tried to a jury beginning February 28, 1994, and the jury returned its verdict which generally favored the Defendants on all issues on March 22, 1994.

8. On June 13, 1994, Grynbergs filed a motion for entry of judgment on the jury verdict. Grynbergs' proposed form of judgment included a Rule 54(b) certification and direction for the entry of final judgment as to the claims decided by the jury. Grynbergs'

proposed form of judgment also provided that the Defendants' claim against the Plaintiff for paying for gas using incorrect BTU adjustments was dismissed without prejudice.

9. Questar filed objections to the proposed form of judgment on June 27, 1994, but even Questar's proposed form of judgment also included a Rule 54(b) certification and included an order dismissing the BTU claim without prejudice. Specifically, Questar's proposed form of judgment stated:

> IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendants' claim against the Plaintiff for paying for gas using incorrect btu adjustments is dismissed without prejudice.
>
> IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this action presented more than one claim for relief and the court determines pursuant to Fed.R.Civ.P. 54(b) that there is no just reason for delay and directs the entry of a final judgment as to the above-described claims.

10. No action was taken on the parties' proposed judgments, and on April 17, 1997, Questar filed a Motion under Rule 50 for Judgment as a Matter of Law or Alternatively, Motion for New Trial.

11. In the 1998 Judgment, this court ruled on Questar's motion and entered judgment. The judgment did not address the BTU claims and, of course, the Contracts 219 and 563 have not yet been presented to the court.

12. The 1998 judgment also states that a separate judgment covering the award of prejudgment interest on Gas Purchase Agreements 245 and 249, following calculation of the proper amounts due at the rate of 7% per annum from the date the payment was

due to March 1, 1994, shall be entered at a later date. The parties entered into a Settlement Agreement dated August 11, 1994 resolving the issue of prejudgment interest between them. A copy of the Settlement Agreement is attached to this motion. Therefore, it will not be necessary for the court to enter a separate judgment on the issue of prejudgment interest.

13. There is no just reason for delay in this matter and the court should direct the entry of the final judgment as to all of the claims which were resolved by the court's 1993 Judgment, the 1994 Order, and 1998 Judgment.

DATED this 29th day of June, 1998.

Yonkee & Toner

By: Tom C Toner

Tom C. Toner
Attorneys for Defendants
P. O. Box 6288
Sheridan, Wyoming 82801
(307) 674-7451

CERTIFICATE OF SERVICE

I, TOM C. TONER, hereby certify that on the 24th day of June, 1998, I caused the foregoing to be served on the other parties by depositing a copy of the same in the United States mail, postage prepaid, at Sheridan, Wyoming, and duly addressed to:

Donald I. Schultz, P.C.
Holland & Hart
P. O. Box 1347
Cheyenne, WY 82003-1347

Terrie T. McIntosh
Questar Corporation
P. O. Box 45433
Salt Lake City, UT 84145

John F. Shepherd
Holland & Hart
P. O. Box 8749
Denver, CO 80201-8749

Tom C Toner

of Yonkee & Toner

Tab K

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(307) 778-4217

John F. Shepherd
HOLLAND & HART LLP
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Denver, Colorado 80201
(303) 295-8309

Gary G. Sackett
Terrie T. McIntosh
P.O. Box 11368
Salt Lake City, Utah 84139
(801) 324-5563

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

QUESTAR PIPELINE COMPANY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 92-CV-265J
	)	
JACK J. GRYNBERG, et al.	)	
	)	
Defendants.	)	

QUESTAR'S RESPONSE TO DEFENDANTS' MOTION UNDER RULE 54(b)

Questar Pipeline Company ("Questar") generally concurs in defendants' motion requesting the Court to direct the entry of final judgment as to all claims resolved by the 1993 Judgment, the 1994 Order, and the 1998 Judgment. Before the Court enters final

judgment, however, Questar believes the Court needs to address two issues relating to the 1998 Judgment (and the underlying June 2, 1998 Order).

First, there appears to be a clerical mistake in the June 2, 1998 Order and Judgment concerning the amount of take-or-pay damages to be awarded based on the Court's analysis of the issues. The apparent mistake is actually in Questar's favor, but Questar believes it makes sense to bring this to the Court's attention for resolution before final judgment is rendered. Questar is filing a separate motion concurrently with this response to amend the June 2, 1998 Order and Judgment.

Second, Rule 50(c)(1) states that, if the court grants a renewed motion for judgment as a matter of law after trial, "the court shall also rule on the motion for a new trial, if any, by determining whether it should be granted if the judgment is thereafter vacated or reversed, and shall specify the grounds for granting or denying the motion for the new trial." In its motion filed in April 1997, Questar did ask in the alternative for a new trial. Accordingly, under Rule 50(c)(1), the Court should amend its 1998 Judgment to state whether the alternative motion for a new trial should be granted if the judgment is thereafter vacated or reversed, and specify the grounds for doing so. This matter is also addressed in Questar's separate motion to amend the June 2, 1998 Order and Judgment.

Questar also notes that defendants' motion (¶ 5) asserts that the bifurcated claims under Questar Contract Nos. 219 and 563 have not proceeded to trial because of the four

years that elapsed from the March 1994 trial until the 1998 Judgment. Questar maintains that defendants have failed to prosecute whatever claims they are asserting under those contracts and that those claims should be dismissed. In fact, it is due to defendants' failure to prosecute those claims that a Rule 54(b) issue is even presented. Questar is therefore filing a separate motion to dismiss those claims. The Court's resolution of that motion need not delay issuing a final judgment under Rule 54(b).

Dated: July 14, 1998.

Respectfully submitted,

Donald I. Schultz, P.C.
HOLLAND & HART
2515 Warren Avenue, Suite 450
Cheyenne, Wyoming 82001
(307) 778-4217

John F. Shepherd
HOLLAND & HART LLP
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Gary G. Sackett
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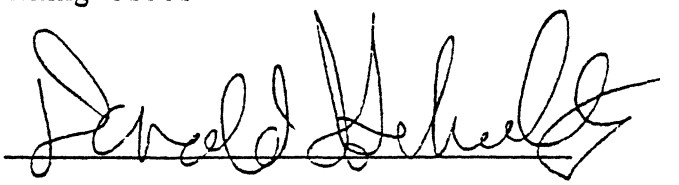
QUESTAR PIPELINE COMPANY
P.O. Box 45433
Salt Lake City, Utah 84145
(801) 534-5563

Attorneys for Plaintiff
Questar Pipeline Company

CERTIFICATE OF SERVICE

I hereby certify that on July 14, 1998, a copy of the foregoing was sent by Federal Express to:

Tom C. Toner
YONKEE & TONER
319 West Dow
Sheridan, Wyoming 82801



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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF WYOMING

QUESTAR PIPELINE COMPANY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 92-CV-265-J
	)	
JACK J. GRYNBERG, CELESTE C. GRYNBERG, L & R EXPLORATION VENTURE,	)	
	)	
Defendants.	)	

ORDER DISMISSING BTU CLAIMS AND CLAIMS RELATIVE TO CONTRACTS NO. 219 AND 563 WITHOUT PREJUDICE

The defendants' Motion for Direction of Entry of Final Judgment Under Rule 54(b) and Questar's Motion to Dismiss Counterclaims Relating to Contracts 219 and 563 came before the Court for consideration. The Court has reviewed the motions, the responses, the file and is fully advised in the premises. The Court finds that all counterclaims and claims asserted by defendants in the above captioned proceeding against Questar relative to Contracts No. 219 and 563 should be **DISMISSED WITHOUT PREJUDICE.** The Court believes that dismissal of these claims without prejudice is appropriate and does not agree with the contention of Questar that the claims should be dismissed for lack of prosecution. The Court believes it may be

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possible that the parties may be able to reach a resolution relative to these contracts now that the Court has entered judgment in the case as to all other issues.

Additionally, to the extent it is required, in accordance with prior rulings of this Court relative to defendants' claim against plaintiff for paying for gas using incorrect Btu adjustments (the Btu claims), the Btu claims have been **DISMISSED WITHOUT PREJUDICE.**

Accordingly, it is therefore

ORDERED that the defendants' Motion to Direction of Entry of Final Judgment Under Rule 54(b), insofar as that it seeks entry of judgment or an order of dismissal without prejudice as to the Btu claims and the claims relative to Contracts No. 219 and 563, shall be, and is, **GRANTED.** It is further

ORDERED that Plaintiff's Motion to Dismiss Defendants' Counterclaims Relating to Contracts 219 and 563 shall be **GRANTED**. It is further

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ORDERED that defendants' claims relative to the Btu claims and Contracts No. 219 and 563 shall be, and are, **DISMISSED WITHOUT PREJUDICE.**

Dated this 1st day of October, 1998.

CHIEF JUDGE, UNITED STATES
DISTRICT COURT

1701

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF WYOMING

QUESTAR PIPELINE COMPANY, Plaintiff, v. JACK J. GRYNBERG, CELESTE C. GRYNBERG, L & R EXPLORATION VENTURE, Defendants.	)	No. 92-CV-265-J

ORDER GRANTING MOTION FOR DIRECTION OF ENTRY OF FINAL JUDGMENT UNDER RULE 54(B) AND GRANTING QUESTAR'S MOTION TO AMEND JUNE 2, 1998 ORDER AND JUDGMENT
and
ORDER AMENDING JUNE 2, 1998 ORDER AND JUDGMENT

The defendants' Motion for Direction of Entry of Final Judgment Under Rule 54(b), Questar's Motion to Amend June 2, 1998 Order and Judgment and the defendants' response thereto came before the Court for consideration.

Questar correctly cites clerical error in that portion of the Court's Order and Judgment awarding amounts for take-or-pay liability. The Court stated the following in its June 2, 1998 Order regarding take or pay liability on

1702

Contract 246:

> . . . The second exhibit, Appendix, Vol. II, Exhibit 43, Trial Exhibit G-534, reflects that the take or pay liability for Gas Purchase Agreement 246 (Nitchie Gulch Unit Wells) is as follows:
>
> | | |
> |---|---|
> | 1988 | $15,812.44 |
> | 1990 | $28,337.10 |
> | 1992 | $69,600.16 |
>
> As this evidence is undisputed, as to Gas Purchase Agreement 246, judgment will be entered accordingly.

The Court omitted this determination from the "Conclusion" section of that Order and carried the error into the Judgment. The "Conclusion" section of the June 2, 1998 Order and the Judgment should be amended to reflect that defendants are entitled to Judgment on Contract No. 246, as set forth above.

The parties also entered into a settlement agreement on August 11, 1994, relating to the award of prejudgment interest on Gas Purchase Agreements 245 and 249. Thus, the portion of the Court's Judgment stating that a separate judgment as to the award of prejudgment interest should be amended to omit that provision.

Finally, the Court agrees with Questar that it must include a conditional ruling on Questar's motion for new trial, in accordance with Rule 50(c) of the Federal Rules of Civil Procedure. The Court's failure to rule on Questar's alternative Motion for a New Trial occurred through no fault of any of the parties. The express language of the rule requires such a conditional ruling.

Rule 50(c) provides:

> **(c) Granting Renewed Motion for Judgment as a Matter of Law; Conditional Rulings; New Trial Motion**
>
> (1) If the renewed motion for judgment as a matter of law is granted, the court shall also rule on the motion for a new trial, if any, by determining whether it should be granted if the judgment is thereafter vacated or reversed, and shall specify the grounds for granting or denying the motion for the new trial. If the motion for a new trial is thus conditionally granted, the order thereon does not affect the finality of the judgment. In case the motion for a new trial has been conditionally granted and the judgment is reversed on appeal, the new trial shall proceed unless the appellate court has otherwise ruled. In case the motion for a new trial has been conditionally denied, the appellee on appeal may assert error in that denial; and if the judgment is reversed on appeal, subsequent proceedings shall be in accordance with the order of the appellate court.
>
> * * *

In the event that the judgment entered herein is reversed on appeal, the Court believes that a new trial would be required in that the original jury trial was contaminated by numerous errors, as enumerated more fully in this Court's June 2, 1998 Order. Thus, the Court's conditional ruling on Questar's alternative Motion for a New Trial will to be conditionally grant the motion for a new trial. In the event that the judgment is reversed on appeal, the new trial shall proceed forthwith.

Accordingly, for the foregoing reasons, it is therefore

ORDERED that the Motion for Direction of Entry of Final Judgment Under

Rule 54(b) and Questar's Motion to Amend June 2, 1998 Order and Judgment shall be, and are **GRANTED, AS FOLLOWS:**

(1) The Court's June 2, 1998 Order shall be amended as follows:

Conclusion

The Court finds that the Questar's motion for judgment as a matter of law should be **GRANTED** with respect to all claims, except for the take or pay claims for Gas Purchase Agreements 245, 246 and 249. These claims include the 1989 make up gas claim, the duty to decontrol claim, Grynberg's intentional interference with contract claim, claim for punitive damages, and the claim styled as "ownership interests". The Court further finds that the price to be paid under the gas purchase agreements for wells that deregulated on May 15, 1991 is $1.50 MMBtu and the price to be paid under the gas purchase agreements for wells that deregulated on January 1, 1993 is $1.75 MMBTU. Accordingly, and for the foregoing reasons, it is therefore

ORDERED that the Questar's motion for judgment as a matter of law shall be, and is, **GRANTED,** with respect to the following:

1. The price to be paid under the gas purchase agreements for wells that deregulated on May 15, 1991 is $1.50 MMBtu and the price to be paid under the gas purchase agreements for wells that deregulated on January 1, 1993 is $1.75 MMBTU;
2. The 1989 make up gas claim;
3. The duty to decontrol claim;
4. The intentional interference with contract claim;
5. The claim for punitive damages.
6. Ownership interests claim.

The jury's special verdict as to the foregoing claims shall be set aside and judgment shall be entered in favor of Questar Pipeline Company on the those claims. It is further

ORDERED that the Questar's Motion for Judgment as a Matter of law with respect to the take-or-pay claims for Gas Purchase Agreements 245, 246 and 249 shall be, and is, **DENIED.**

It is further

ORDERED that judgment shall be entered in favor of defendants with respect to the take or pay claim for Gas Purchase Agreement 246 as follows:

1988	$15,812.44
1990	$28,337.10
1992	$69,600.16

It is further

ORDERED that judgment shall be entered in favor of defendants Jack J. Grynberg, Celeste C. Grynberg and L & R Exploration Venture as to the take-or-pay claim for Gas Purchase Agreements 245 and 249, as follows:

Gas Purchase Agreement 245 (Rogers Government Wells)

1989	$0
1991	$64,280.63

Gas Purchase Agreement 249 (North Nitchie Wells)

1988	$100,987.65
1992	$14,182.69

(2) That portion of the Court's June 2, 1998 Judgment stating that a separate judgment as to the award of prejudgment interest shall be, and is, amended to omit all references to the award of prejudgment interest on Gas Purchase Agreements 245 and 249.

(3) Questar's Alternative Motion for a New Trial shall be, and is, **CONDITIONALLY GRANTED.**

Dated this 15th day of October, 1998.

CHIEF JUDGE, UNITED STATES
DISTRICT COURT

1706

Tab M

C

United States Court of Appeals,
Tenth Circuit.

QUESTAR PIPELINE COMPANY, Plaintiff--Counter--Defendant--Appellee,
v.
Jack J. GRYNBERG; Celeste C. Grynberg; L & R Exploration Venture,
Defendants--Counter--Claimants--Appellants.

Nos. 98-8054, 98-8092.

Jan. 24, 2000.

Gas pipeline company sought declaratory judgment as to price due under gas purchase agreements with working interest owner after deregulation, and owner counterclaimed, alleging, inter alia, breach of contract and intentionally taking gas without paying for it. The United States District Court for the District of Wyoming, Alan B. Johnson, Chief District Judge, entered summary judgment for pipeline on latter counterclaim and, following verdict for owner on remaining counterclaims, reduced amount to be paid and entered judgment as a matter of law for pipeline on the counterclaims. Owner appealed. The Court of Appeals, Paul J. Kelly, Jr., Circuit Judge, held that: (1) evidence supported award for pipeline's breach of take-or-pay contract; (2) evidence supported finding of pipeline's interference with contract; (3) unit operating agreement did not permit voluntary non-ratable production; (4) evidence supported award of punitive damages; (5) evidence supported jury's determination of price due after deregulation; and (6) pipeline was not required, pursuant to duty of good faith and fair dealing, to agree to decontrol the prices prior to date set by the Natural Gas Wellhead Decontrol Act.

Reversed and judgment as a matter of law granted in part, affirmed in part, and remanded.

West Headnotes

[1] **Federal Courts** 627.1
170Bk627.1 Most Cited Cases

The general rule is that a party may not protest the jury's use of an exhibit to which that party did not object when offered into evidence.

[2] **Federal Civil Procedure** 2019
170Ak2019 Most Cited Cases

Right to later contest the jury's use of an exhibit was not waived by opposing party's failure to object when the exhibit was first offered, where inaccurate statement in the exhibit was not apparent on the exhibit's face and the basis of the objection only became apparent on cross-examination, but jury had right to rely on exhibit as basis for damages verdict where opposing party never moved to strike the exhibit after cross-examination, nor did it move for judgment as a matter of law at the close of evidence that the exhibit displayed a legally inaccurate calculation of damages. Fed.Rules Civ.Proc.Rule 50, 28 U.S.C.A.

[3] **Federal Civil Procedure** 1940
170Ak1940 Most Cited Cases

In action under take-or-pay gas purchase contract requiring pipeline to take an amount determined by a yearly test of productive capacity of wells, pretrial order ruling that working interest owner could not increase pipeline's take obligation by counting the additional production from any new wells added after the test period did not preclude increasing obligations by the addition of a compressor to an existing well that had been temporarily shut in due to mechanical problems during the initial testing period.

[4] **Gas** 13(1)
190k13(1) Most Cited Cases

In action under take-or-pay gas purchase contract, evidence as to amount of damages for breach was not undisputed, such that court could properly enter judgment as a matter of law for buyer, on ground that figures on which court relied were testified to by seller's own witness, where the witness went on to say that the lower damage figures were only an alternative scenario, that seller was not changing its initial position and was still asking for the larger amount listed in its exhibit, and testified that, in his opinion, the new, lower figures should not be used by the jury. Fed.Rules Civ.Proc.Rule 50, 28 U.S.C.A.

[5] **Federal Civil Procedure** 2152
170Ak2152 Most Cited Cases

Judgment as a matter of law is appropriate only if the evidence points but one way and is susceptible to no reasonable inferences supporting the party opposing the motion. Fed.Rules Civ.Proc.Rule 50, 28

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[6] Federal Courts 764
170Bk764 Most Cited Cases

[6] Federal Courts 765
170Bk765 Most Cited Cases

In reviewing grant of judgment as a matter of law, Court of Appeals may not weigh the evidence, pass on the credibility of witnesses, or substitute its judgment for that of the jury. Fed.Rules Civ.Proc.Rule 50, 28 U.S.C.A.

[7] Torts 12
379k12 Most Cited Cases

Under Wyoming law, a claim of intentional interference with contract requires proof of (1) the existence of a valid contractual relationship; (2) knowledge of the contractual relationship on the part of the defendant; (3) intentional and improper interference by the defendant inducing or otherwise causing a breach of the relationship; and (4) which resulted in damage to the plaintiffs.

[8] Torts 12
379k12 Most Cited Cases

Under Wyoming law, a gas pipeline which had prepaid pursuant to a settlement under a take-or-pay contract was liable for interference with contract when it induced one working interest owner, which was also the unit operator, to allocate 100% of the unit production to the owner with which the pipeline had the contract, when the price of gas was low, thereby increasing the amount of gas it could take before reaching the prepaid total.

[9] Mines and Minerals 109
260k109 Most Cited Cases

Under unit operating agreement requiring each working interest owner to take its full share of gas production, as well as industry custom, owner was not allowed to choose to underproduce when it could have a market for gas, thereby putting other owners into a position of overproduction, and provision permitting the operator to sell gas on a limited basis if a working interest owner fails to take or separately dispose of its share of production did not permit voluntary non-ratable production.

[10] Mines and Minerals 109
260k109 Most Cited Cases

Provision of unit agreement delegating to unit operator the power to allocate production did not give operator the right to consider one working interest owner the producer of 100% of the gas in the unit, in light of provision that unit operating agreement "shall also provide the manner in which the working interest owners shall be entitled to receive their respective proportionate and allocated share of the benefits," and provision of the unit operating agreement requiring each owner to take proportionately.

[11] Gas 9
190k9 Most Cited Cases

Under settlement agreement between gas pipeline and owner of working interest under take-or-pay contract, whereby pipeline prepaid and any gas taken in given year over minimum would be credited to making up prepaid amount, pipeline did not have the right to allocate 100% of the unit production to the owner in question when gas price was low, thereby increasing the amount of gas it could take before reaching the prepaid total.

[12] Damages 15
115k15 Most Cited Cases

Jury's award of $338,585.76 on intentional interference with contract claim was not shown to be improper as duplicative of its award of $381,764.83 on a breach of contract claim under take-or-pay gas purchase agreements, where the jury was explicitly instructed both by the court and on the special verdict form that it could not duplicate damages, and the total of the two amounts awarded was less than the amount claimed by working interest owner as damages resulting from the way gas prepayment was made up by pipeline, and was supported by exhibits.

[13] Federal Courts 796
170Bk796 Most Cited Cases

Juries are presumed to follow the court's instructions.

[14] Federal Civil Procedure 2345.1
170Ak2345.1 Most Cited Cases

The court can set aside a jury's punitive damage award only if no reasonable jury could have found on the record as a whole that defendant acted willfully and wantonly.

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[15] Damages 184
115k184 Most Cited Cases

Evidence supported the finding that gas pipeline wilfully breached its agreement with producer under take-or-pay gas purchase agreements and induced unit operator to breach its agreement as well, thus supporting jury's award punitive damages.

[16] Gas 9
190k9 Most Cited Cases

Gas purchase agreement providing that prices "shall be adjusted to reflect the effective date and price as set out in an order in the forthcoming proceedings in FPC" at a specified docket number was unambiguous and did not permit pricing revisions issued as part of future dockets to be considered part of the contract as well, for purposes of determining price following deregulation, and thus expert testimony supporting the latter interpretation was extrinsic evidence contradicting the plain language of the contract and was properly stricken.

[17] Federal Civil Procedure 2343
170Ak2343 Most Cited Cases

Where jury's award, setting price due under gas purchase contracts following deregulation, was within the range of evidence, judgment as a matter of law or a new trial was not appropriate even though the amount awarded was the same as that presented in stricken testimony. Fed.Rules Civ.Proc.Rule 50, 28 U.S.C.A.

[18] Federal Civil Procedure 2334
170Ak2334 Most Cited Cases

It was abuse of discretion to overturn jury's verdict as to price due under gas purchase agreements on basis of post-trial ruling that testimony supporting the verdict was based on an improper methodology and not supported by a sufficient foundation, where opposing party failed to make a timely objection to this evidence at trial.

[19] Federal Civil Procedure 2019
170Ak2019 Most Cited Cases

Objection that testimony was based on an improper methodology and not supported by a sufficient foundation was untimely, waiving right to later challenge the evidence, where party stated "No objection" upon proffer of exhibit showing the conclusions of the witness and did not raise objection until after the direct testimony of witness, even though it had a copy of the exhibit before trial and had deposed witness on the matter extensively.

[20] Federal Civil Procedure 2017.1
170Ak2017.1 Most Cited Cases

[20] Federal Courts 896.1
170Bk896.1 Most Cited Cases

By reversing its ruling made during trial that objection to testimony was untimely, the district court unfairly prejudiced objecting party, which had no way of knowing that it should offer additional evidence or try to prove the issue in a different manner.

[21] Federal Courts 611
170Bk611 Most Cited Cases

In civil cases, the plain error exception is limited to errors that significantly affect the fairness, integrity or public reputation of judicial proceedings.

[22] Federal Courts 628
170Bk628 Most Cited Cases

Admitting in a civil case testimony allegedly based on an improper methodology and not supported by a sufficient foundation was not plain error.

[23] Federal Civil Procedure 2019
170Ak2019 Most Cited Cases

Despite court's role as "gatekeeper" concerning scientific opinion evidence, a party may waive the right to object to evidence on ground it does not meet *Daubert* admissibility test by failing to make its objection in a timely manner.

[24] Federal Civil Procedure 2173.1(2)
170Ak2173.1(2) Most Cited Cases

If witness was not testifying as an expert witness on particular subject, *Daubert* instruction that district courts should conduct a preliminary assessment of the reliability of expert testimony did not apply.

[25] Gas 9
190k9 Most Cited Cases

Under gas purchase contracts providing for higher

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price if Federal Power Commission or successor authority set higher price, pipeline was not required, pursuant to duty of good faith and fair dealing, to agree to decontrol the prices pursuant to provision of the Natural Gas Wellhead Decontrol Act which permitted parties to voluntarily agree to deregulate the price of gas covered by existing contracts prior to the effective dates of deregulation; the Act merely set the stage for negotiations, and was not intended to give a seller the unilateral power to deregulate its wells early. Natural Gas Wellhead Decontrol Act of 1989, § 1 et seq., 103 Stat. 157.

[26] **Contracts** 168
95k168 Most Cited Cases

Good faith of contracting party is not an issue in the absence of a specific duty.

[27] **Gas** 9
190k9 Most Cited Cases

Pursuant to the division order, gas pipeline was obligated only to make payments for gas to the unit operator, and the operator explicitly agreed to account to all working interest owners of the gas, and thus it was not pipeline's responsibility to make sure the records it sent to the operator accurately reflected the various working interests.

[28] **Federal Courts** 698.1
170Bk698.1 Most Cited Cases

District court's finding on summary judgment that there was no genuine issue of material fact would not be overturned as contrary to the evidence where appellant, in creating its appendix, left out certain hearing testimony. F.R.A.P.Rule 10(b)(2), 28 U.S.C.A.; U.S.Ct. of App. 10th Cir.Rule 10.1(A)(1), 28 U.S.C.A.

***1280** John F. Shepherd (Jane L. Montgomery and Donald I. Schultz, Holland & Hart, and Terrie T. McIntosh, Questar Corporation, with him on the brief), for the Plaintiff-Counter-Defendant-Appellee.

***1281** Tom C. Toner, Yonkee & Toner, Sheridan, Wyoming, for Defendants- Counter-Claimants-Appellants.

Before TACHA, KELLY, and LUCERO, Circuit Judges.

PAUL KELLY, JR., Circuit Judge.

This case arises from disputes concerning several natural gas sales contracts. Appellee Questar Pipeline Company ("Questar") purchased natural gas from appellants Jack J. Grynberg, Celeste C. Grynberg, and L & R Exploration Venture ("Grynberg"). The gas purchase agreements at issue in this case were entered into in 1974, when gas prices were still regulated. Because the parties disagreed on the interpretation of the contract provision governing how to determine the price after deregulation, Questar brought a declaratory judgment action in 1992. Grynberg counterclaimed, charging that Questar: (1) did not take the amount of gas it was obligated to under several take-or-pay contracts; (2) breached the gas purchase agreements and an earlier settlement agreement; (3) intentionally interfered with the contractual relationship between Grynberg and the unit operator; (4) breached its duty of good faith and fair dealing by refusing to agree to decontrol certain wells upon Grynberg's request; (5) provided incorrect information to the unit operator concerning Grynberg's working interest, resulting in an underpayment; and (6) intentionally took gas without paying for it by placing devices on wells that allowed gas to flow around meters.

The district court granted summary judgment for Questar on the stolen gas issue (counterclaim 6). The deregulation price issue and the remaining counterclaims were then tried. The jury returned a verdict for Grynberg on all of its claims. Questar then sought judgment as a matter of law (formerly J.N.O.V.) under Fed.R.Civ.P. 50(b). The court greatly reduced the jury's determination of the price to be paid after deregulation and the amount to be paid under the take-or-pay contracts, and granted judgment for Questar on all of the counterclaims. Grynberg appeals the grants of judgment as a matter of law as well as the summary judgment on the stolen gas claim.

We reverse the district court's determination on the deregulation price issue, the take-or-pay contracts (counterclaim 1), and the breach of contract and intentional interference with contract claims (counterclaims 2 & 3). We affirm its ruling on the duty to decontrol (counterclaim 4), the working interest claim (counterclaim 5), and the stolen gas claim (counterclaim 6).

A. Take-or-Pay Contracts

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1. *Contract 246*

Proper damages for Grynberg's take-or-pay claims under contract 246 for the years 1988 and 1990 are still in dispute. The jury awarded Grynberg $163,883.56 for 1988 and $124,976.83 for 1990. The district court denied Questar's motion for judgment as a matter of law on these claims, but several years later reduced the damage awards to $15,812.44 and $28,337.10 respectively. This was an abuse of discretion.

The court entered judgment on the reduced damage amounts, characterizing the evidence on damages as "undisputed." In fact, evidence had been admitted--a Grynberg exhibit calculating damages in exactly the amount the jury ultimately awarded. This exhibit was part of the record, and the jury had the right to rely on it in reaching its verdict. While some conflicting evidence supported the court's finding of lower damages, the evidence was far from "undisputed," and the jury's verdict should not be disturbed.

The controversy centers on the proper way to calculate the volume of gas Questar was obligated to take from Grynberg in various years under the take-or- pay contracts. The initial amount Questar was obligated to take was determined by a yearly test of the production capacity of all of the wells in the contract area. In some cases, wells could not be tested during the ***1282** test period due to temporary mechanical problems. In other cases, new wells were brought on line after the date of the tests. In a pre-trial order, the court ruled that Grynberg could not increase Questar's take obligation by counting the additional production from any new wells added after the test period, unless Grynberg specifically requested a retest.

Abiding by the pre-trial order, Grynberg did not consider the production from any new wells when increasing Questar's obligation over the amount indicated by the initial tests. Rather, he attempted to increase the obligation by counting the increased capacity generated by the addition of compressors to existing wells that had been unable to produce during the initial testing period. Grynberg argued that this was allowed by Paragraph V-2(c) of its gas purchase agreement with Questar which provided "Should any well or wells be unable to be produced during the test period for temporary reasons such as mechanical failure or reworks, the test results shall be adjusted accordingly." Aplt.App. at 6238.

Questar contended, and the court agreed, that this method of calculation violated its pre-trial order. The court therefore reduced the jury's damage award (which took into account the increased production capability generated by adding compressors to existing wells) and entered judgment in an amount that disregarded any compressor-enhanced obligations.

[1][2] Grynberg introduced into evidence several different calculations of take-or-pay damages. One of these was Exhibit G-490, which contained the amounts the jury ultimately awarded. A footnote to this exhibit contained the words "Deliverability not changed due to compressor installation." In fact, the numbers in the exhibit *did* include changes in deliverability due to compressor installation. Because Questar believed the footnote to be accurate, it did not object when the exhibit was offered. The general rule is that a party may not protest the jury's use of an exhibit to which that party did not object when offered into evidence. *See United States v. Ivy*, 83 F.3d 1266, 1287 (10th Cir.1996). In this case, however, the inaccurate statement in the exhibit was not apparent on the exhibit's face and the basis of the objection--that the damage calculations were inconsistent with the footnote, only became apparent on cross-examination. Thus, Questar's right to later contest the jury's use of the exhibit was not waived by its failure to object when the exhibit was first offered.

However, after admission of the exhibit, Questar was able to elicit on cross- examination that some of the figures in the exhibit included increases due to compressor installation. Grynberg's witness admitted that these figures were inconsistent with the exhibit's footnote, admitted that increasing damage amounts to reflect the addition of compressors appeared to be a mistake in the analysis, and agreed that taking out the compressor-increased amounts would result in a reduced claim for damages from what was included in the exhibit. Aplt.App. at 4231-33. Questar never moved to strike the exhibit. Nor did it move for judgment as a matter of law at the close of evidence that Exhibit G- 490 displayed a legally inaccurate calculation of damages. The damage figures in the exhibit remained in the record for the jury to consider.

[3] Questar argues that it did not need to object to the exhibit or make a Rule 50 motion because it had obtained partial summary judgment on the issue. The district court agreed, finding that any damages claimed as a result of adding compressors were in

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violation of its pre-trial order. But the pre-trial order only concerned the need to subject *new* wells to a retest; it did not address the issue of how Questar's obligations would be affected by the addition of a compressor to an *existing* well that had been temporarily shut in due to mechanical problems during the initial testing period. Far from being an "inexorable extension" of the order, as Questar claimed, this issue remained open after the pre-trial order.

***1283** [4] Additionally, our review of the transcript does not support a characterization of the evidence as "undisputed." After discovering on cross-examination that the damage figures in Exhibit G-490 were enhanced by compressor installation, Questar called another Grynberg employee as an adverse witness. This witness's purpose was to present damage figures reflecting the elimination of compressor-enhanced delivery obligations. The reduced figures presented by this witness were those the court ultimately awarded to Grynberg. The witness did say that he believed his initial (larger) calculations may have been in error to the extent they included compressor-enhanced obligations. Aplt.App. at 5715. Had this been the end of the testimony, the court may have been correct in characterizing the evidence as "undisputed." However, the witness went on to say that the lower damage figures were only an alternative scenario, not the "correct" scenario; that Grynberg was not changing its initial position, and that Grynberg was still asking for the full amount listed in Exhibit G-490. *Id.* at 5733-36. In fact, this witness testified that, in his opinion, the new, lower figures should not be used by the jury. *Id.* at 5735.

Questar argues that a court may reduce damages "in those cases in which it is apparent as a matter of law that certain identifiable sums included in the verdict should not have been there." 11 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* § 2815 (2d ed.1995). This is not such a case. The jury's award was within the range of proof and was supported by evidence that Questar never moved to strike. Grynberg's method of calculating damages did not violate the court's pre-trial order. The jury's award was not so excessive as to shock our conscience, nor did it "raise an irresistible inference that passion, prejudice, corruption or other improper cause invaded the trial." *Malandris v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 703 F.2d 1152, 1168 (10th Cir.1983). We therefore remand to the district court to enter judgment on this claim consistent with the jury's verdict.

2. *Contract 245*

The jury awarded Grynberg $45,385.09 on Contract 245 for the year 1988. Due to either simple oversight or a clerical error, this amount was omitted from the final judgment. Questar consents to modification of the judgment to correct this error. We remand to the district court to modify the judgment accordingly.

B. *Breach of Contract; Intentional Interference with Contract; Punitive Damages*

Questar and Grynberg settled prior litigation in December 1988. Under the terms of the settlement agreement, Questar made a $1.7 million prepayment to Grynberg. The agreement provided that Questar had up to five years after the date of prepayment to "make up the gas in the manner provided for in the applicable gas purchase contracts." Aplt.App. at 6320. In other words, once Questar had taken the minimum amount of gas it was obligated to take from Grynberg in a given year under existing take-or-pay contracts, any additional gas taken from Grynberg in that year would be credited toward making up the prepaid amount under the settlement agreement. Thus, the lower the price of gas at the time Questar was making up its gas, the greater the volume Questar could take before reaching its prepaid $1.7 million total.

The parties do not dispute that Questar had the right to make up the prepayment. Rather, the dispute centers on how that right could be exercised. Once it had taken its minimum requirements from all of the owners in the Nitchie Gulch Unit for 1989, Questar attributed all further production in the unit for that year as having come from Grynberg's interest, even though Grynberg only had a 32% working interest share in the unit. In doing so, Questar made up its prepayment much more quickly than it could have done without ***1284** allocating 100% of unit production to Grynberg.

Grynberg contends that Questar was only permitted to make up the payment out of its 32% working interest share, and that Questar had no right under existing contracts to force Grynberg to produce in a non-ratable fashion. Grynberg further contends that the only way Questar could accomplish the result it did was by improperly inducing a third party, Terra Resources ("Terra"), [FN1] to breach its agreement with Grynberg by agreeing to non-ratable production.

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FN1. Shortly after signing the agreement with Questar, Terra became known as Pacific Enterprises Oil Company. The company will be referred to as "Terra" throughout the opinion to avoid confusion.

By being forced to take more than its share of the gas produced in the unit, Grynberg became "overproduced" vis-a-vis the other interest owners and was required to pay back the excess gas in the future. At the time it had to give back the gas to the other interest owners, gas was more valuable than it had been at the time it was forced into overproduction by Questar.

The jury found for Grynberg on all three of its claims: (1) that Questar breached its contract in the manner it made up the gas in 1989; (2) that Questar intentionally interfered with Grynberg's contract with Terra; and (3) that Questar should pay punitive damages for its willful and wanton actions in connection with the intentional interference claim. It awarded Grynberg $381,764.83 on the breach of contract claim, $338,585.76 on the intentional interference claim, and $200,000 in punitive damages.

The district court set aside the jury's verdict more than four years after the trial, and granted Questar judgment as a matter of law on these issues. Four years appears to be an inordinate amount of time. While we appreciate the busy caseload of a district court, fundamental fairness to the parties and the integrity of the judicial system require disposition of post- trial motions in a far more expeditious manner.

[5][6] We review a district court's ruling on a motion for judgment as a matter of law de novo. *See Greene v. Safeway Stores Inc.*, 98 F.3d 554, 557 (10th Cir.1996). Judgment as a matter of law is appropriate " 'only if the evidence points but one way and is susceptible to no reasonable inferences supporting the party opposing the motion.' " *Vining v. Enterprise Fin. Group, Inc.*, 148 F.3d 1206, 1213 (10th Cir.1998) (citation omitted). In reviewing, "we may not weigh the evidence, pass on the credibility of witnesses, or substitute our judgment for that of the jury." *Wolfgang v. Mid-America Motorsports, Inc.*, 111 F.3d 1515, 1522 (10th Cir.1997). We find that the district court erred when it set aside the jury's verdict on these claims.

[7] Under Wyoming law, a claim of intentional interference with contract requires proof of "(1) the existence of a valid contractual relationship; (2) knowledge of the contractual relationship on the part of the Defendant; and (3) intentional and improper interference by the [defendant] inducing or otherwise causing a breach of the relationship; (4) which resulted in damage to the Plaintiffs." *First Wyoming Bank v. Mudge*, 748 P.2d 713, 716 (Wyo.1988).

[8] In order to induce Terra, which was a working interest owner as well as the unit operator, not to take or dispose of its entire share of gas production, Questar secretly offered to build gathering lines to connect wells owned by Terra outside the unit to the main gas transmission line. These lines would allow Terra to sell gas it could not otherwise have produced. Questar and Terra finalized their arrangement in a confidential agreement in which Terra agreed to reduce its take non-ratably. Aplt.App. at 10570-75.

Questar admitted at trial that it would never have been able to make up all of its ***1285** prepaid gas within the allotted period without the side agreement with Terra. Aplt.App. at 4923. The relationship between the operator and the working interest owners, including how the gas is to be allocated, is governed by the Unit Agreement and the Unit Operating Agreement, two contracts to which Questar was not a party. Questar argued, and the court agreed, that the Unit Operating Agreement permitted non-ratable production, so that convincing Terra to forego production could not be considered an improper interference with the contracts.

[9] Grynberg argues that ratable production is mandatory, and is compelled by Section 6.3 of the Unit Operating Agreement, which provides that "Each Party shall currently as produced take in kind or separately dispose of its share of Production and pay Unit Operator for any extra expenditure necessitated thereby." Aplt.App. at 10591. Grynberg contends, and no evidence was adduced at trial to show otherwise, that because of this mandatory provision, no owner had ever failed to take its entire share of gas during the 20 year history of the Nitchie Gulch Unit except for the time Questar interfered with the contract.

The court based its conclusion that non-ratable production was permitted by the contract primarily on Section 6.4 of the Unit Operating Agreement, which permits the operator to sell gas on a limited basis if a working interest owner fails to take or separately dispose of its share of production. *Id.* The

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court also relied heavily on *Doheny v. Wexpro Co.*, 974 F.2d 130 (10th Cir.1992), which prescribed in-kind balancing of the type employed in this case as a remedy for one party's underproduction. In so finding, the court misconstrued both the Unit Operating Agreement and *Doheny.*

The court's reading of Section 6.4 would turn Section 6.3's requirement that each owner take its full share of production into a mere option to take. This would contradict the contract language, as well as industry custom. If an owner were allowed to choose to underproduce when itcould have a market for gas, thereby putting other owners into a position of overproduction, an environment for speculation would be created. The underproducing owner could either sell his withheld gas for a higher price at a later date, or, if the higher price never materializes, demand monetary compensation from the overproducing party. *See* Patrick H. Martin, *The Gas Balancing Agreement: What, When, Why, and How,* 36 Rocky Mtn. Min. L. Inst. 13-1, 13-8 (1990). Questar's senior attorney, an expert on industry practice, admitted that industry custom dictates that as long as an owner has a market for its gas it should not be allowed to make the strategic decision not to sell its gas and to make someone else take more than their share. Aplt.App. at 5010. In this context, the purpose of Section 6.3 is clear, and the Unit Operating Agreement must be read to prohibit voluntary non-ratable production.

The better reading of Section 6.4 and *Doheny* is to view them as addressing what to do in the event of underproduction, rather than whether voluntary underproduction is permitted. By providing a remedy for underproduction the Unit Operating Agreement is not authorizing it, but merely supplying a contractual response in case of a breach. Additionally, not all underproduction is the result of a breach; sometimes it is involuntary. For instance, in *Doheny,* the plaintiff was underproduced because it did not have a contract to sell gas, while other working interest owners did have contracts. When those with contracts met their obligations, the plaintiff became underproduced. The suit was to determine whether the proper way to achieve balance within the unit was to give plaintiff cash or gas. *Doheny,* 974 F.2d at 132-33. In the instant case, by contrast, the issue is whether the imbalance was caused by a breach of contract, not what the proper remedy should be for the imbalance situation. Thus, *Doheny* is distinguishable, and Section 6.4 can be ***1286** read in harmony with the mandatory take provisions of Section 6.3.

[10] Questar also argues that, under Article 8 of the Unit Agreement, Grynberg delegated to Terra, the operator, the power to allocate production among the various interest owners. Thus, Questar argues, Terra's allocation of 100% of unit production to Grynberg was not a breach of contract, and therefore Questar's actions cannot be considered improper. This argument fails for two reasons. First, Questar's reading of Article 8 ignores other relevant sections of the Unit Agreement. Second, even if Terra did have the authority to allocate 100% percent of the unit's production to Grynberg, it was Questar, not Terra, who manipulated this allocation.

Article 8 says, in relevant part:

> Except as otherwise specifically provided herein, the exclusive right, privilege, and duty of exercising any and all rights of the parties hereto which are necessary or convenient for prospecting for, producing, storing, allocating, and distributing the unitized substances are hereby delegated to and shall be exercised by the Unit Operator as herein provided.

Aplt.App. at 11979

Questar argues that the power of "allocating" granted to the Unit Operator gives Terra the right to consider Grynberg the producer of 100% of the gas in the unit. But Article 8 says *except as otherwise specifically provided herein,* and Questar's reading ignores specific limitations on this power found elsewhere in the Unit Agreement and the Unit Operating Agreement. Article 7 specifically declares that the Unit Operating Agreement "shall also provide the manner in which the working interest owners shall be entitled to receive their respective proportionate and allocated share of the benefits...." *Id.* The Unit Operating Agreement provides this manner of allocation in Section 6.3, requiring each owner to take proportionately, rather than subjecting allocation to the operator's whims.

Additionally, Article 12 of the Unit Agreement once again reiterates that all gas produced in the unit shall be allocated "on the basis prescribed in the unit operating agreement...." Aplt.App. at 11983. Once again, this is clear evidence that Grynberg did not give up its right to a ratable allotment when it signed the Unit Agreement.

Quite simply, under the circumstances, Grynberg could not be forced to sell any more than its 32%

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interest in the unit's production. Even Questar's own expert witness admitted that if Terra did not take its share of production, industry standard and practice dictated that Grynberg had the right, *but not the obligation,* to take that additional share. Aplt.App. at 5004.

[11] Notwithstanding the fact that Terra did not have the power to allocate 100% of the production to Grynberg, Questar's claim that Terra made such an allocation is also belied by the evidence. In fact it was Questar, not Terra, that treated 100% of the unit's production as having come from Grynberg. When Questar told Terra that it was allocating 100% of production to Grynberg, Terra protested that Questar's actions were "without basis or justification," and expressed concerns that Questar's actions "may run afoul of pre-existing rights and obligations" of working interest owners based on operating agreements and unit agreements. Aplt.App. at 10579-81. Clearly, Terra was not making the allocation, and Questar did not have the right to make it either.

Though it did not provide the essential basis for the court's decision to set aside the jury verdict, the court also found that Questar's affirmative defense of estoppel was supported by the evidence. The jury was instructed on all of the elements of this defense, and specifically found in a special verdict that Questar had failed to establish it. Numerous contradictions existed in the testimony as to both Grynberg's knowledge of Questar's activities, and whether Questar detrimentally relied on Grynberg's lack of protest. In light of ***1287** the special jury verdict, and the evidence supporting it, the court's finding that Grynberg should be estopped from contesting Questar's actions is error.

[12][13] Questar argues that the jury's award of $338,585.76 on the intentional interference with contract claim is duplicative of its award of $381,764.83 on the breach of contract claim. This argument fails for two reasons. First, the jury was explicitly instructed both by the court and on the special verdict form that it could not duplicate damages. Aplt.App. at 1520, 1585. Juries are presumed to follow the court's instructions. *See* *Townsend v. Daniel, Mann, Johnson, & Mendenhall,* 196 F.3d 1140, 1150 (10th Cir.1999). Absent further showing, we find no reason to conclude that the jury disobeyed its instructions. Second, the total of the two amounts awarded was actually less than the amount ($763,268.66) claimed by Grynberg as damages resulting from the way the gas prepayment was made up, and was supported by exhibits. Aplt.App. at 4185-93, 10728-39. Because the award is within a range of the evidence, we will not disturb it.

[14][15] Finally, we reinstate the jury's award of punitive damages. The district court overturned this award based on its findings that Questar had the right to act as it did in making up the gas, and that Terra had the right to choose to take non-ratably, meaning that there was no evidence that Questar acted inappropriately. The court can set aside a jury's punitive damage award only if no reasonable jury could have found on the record as a whole that Questar acted willfully and wantonly. *See* *Patton v. TIC United Corp.,* 77 F.3d 1235, 1245 (10th Cir.1996). Because we conclude that the evidence supports the finding that Questar did, in fact, wilfully breach its agreement with Grynberg and induce Terra to breach its agreement as well, we hold that the jury had sufficient grounds to award punitive damages.

C. *Price*

Another issue in this case is the price Questar was obligated to pay Grynberg for gas it purchased once gas prices were deregulated by the government. The method of calculating the price was governed by the Gas Purchase Agreements between Questar and Grynberg. The agreements provided for two methods of determining a price in the event of deregulation. The price would be the higher of 1) "the price provided in this contract"; or 2) "the average price of the two highest prices under contracts ... whose terms are for three years or longer adjusted to like quality and comparable terms and conditions as established by contracts made subsequent to the above mentioned legal change...." Paragraph VI-3, Aplt.App. at 6240.

Before trial, the district court made several rulings interpreting the language of these agreements. On two of these rulings, the court granted Questar's motions for summary judgment on the contested interpretations. First, the court ruled that the meaning of the phrase "the price provided in this contract" in Paragraph VI-3 of the agreements was unambiguous, and referred to a specific base price subject to adjustment, as opposed to Grynberg's contention that it could refer to the last regulated price for gas prior to deregulation. Attachment to Aplt. Br. at 56-57. Next, the court ruled that the phrase "contracts made subsequent to the above mentioned legal change" referred to contracts that

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took effect or were entered into after deregulation occurred, as opposed to Grynberg's interpretation that it referred to contracts entered into after Congress passed the Decontrol Act, but before deregulation actually occurred. *Id.* at 57-58. [FN2]

> FN2. Because of our reinstatement of the jury verdict, Grynberg is no longer pursuing its claims that the court erred in granting summary judgment for Questar on these contract interpretation issues. Thus, we need not address whether the court's interpretations were correct.

***1288** Despite these two rulings, which narrowed the issues and evidence to be considered at trial, conflicts remained over whether "the price provided in this contract" was higher than the average of the two highest prices under comparable contracts, and which contracts could appropriately be considered "comparable."

[16] Article VI-1(b), integral in defining "the price provided in this contract," stated that prices "shall be adjusted to reflect the effective date and price as set out in an order in the forthcoming proceedings in FPC [Federal Power Commission] Docket No. R-389B." Aplt.App. at 6239. Docket R-389B consisted of several opinions, the final one of which was called 699-H. This opinion provided for a base price of $.50 per mcf, with annual escalations of $.01 per mcf. If "the price provided in this contract" were limited to the opinions issued under Docket R-389B, as Questar argued it should be, this would result in a final price lower than the qualifying contract prices, requiring the price to be determined by adjusting qualifying contracts for comparable terms and conditions under Article VI-3.

Grynberg argued, however, that because Docket R-389B contained language mandating a review of prices every two years, pricing revisions issued as part of future dockets should be considered part of the contract as well. Before trial, the district court found that there was an issue of material fact as to how the language referring to Docket R-389B should be interpreted, and denied Questar's motion for summary judgment on that issue. The court allowed expert testimony on the issue.

Grynberg's primary expert on this issue was Nancy Skancke, an experienced consultant on energy regulation and pricing issues. Ms. Skancke testified that the pricing provision should be read to include opinions issued in future dockets, as well as the Natural Gas Policy Act of 1978. She testified that, if the contract were so interpreted, the prices Grynberg should be paid under the contract would be $3.076 per MMBTU for wells that deregulated on May 15, 1991, and $3.217 per MMBTU for wells that deregulated on January 1, 1993. These are precisely the prices the jury awarded to Grynberg.

After the jury returned its verdict, the district court concluded it had erred in not granting summary judgment on this interpretation issue in favor of Questar. It declared that the contract language referring to Docket R-389B was unambiguous as a matter of law, and that Ms. Skancke's testimony was extrinsic evidence that contradicted the plain language of Paragraph VI-1(b) and should not have been allowed. It thus ordered her testimony as it related to that issue to be stricken. Grynberg argues that the trial court erred in finding the language unambiguous. In making this argument, Grynberg relies heavily on *City of Farmington v. Amoco Gas Co.*, 777 F.2d 554 (10th Cir.1985), which found a price redetermination clause to be ambiguous in light of changed regulatory circumstances, and interpreted the clause to include future dockets and even the National Gas Policy Act.

We agree with the district court's finding that the language of Paragraph VI- 1(b) is unambiguous. *Farmington* does not persuade us otherwise. The clause at issue in *Farmington* did not specify any particular docket number which was to be binding. 777 F.2d at 557. In contrast, the contract at issue in this case manifestly limits pricing considerations to Docket R-389B. The parties were free to put in a provision to incorporate future proceedings, but did not do so. Ms. Skancke's testimony was extrinsic evidence contradicting the plain language of the contract and was properly stricken.

[17] However, this does not end the matter. The jury's award was within the range of evidence presented by Mr. Grynberg's testimony, which calculated the proper price as lying somewhere between $2.81 and $4.12 for wells that deregulated in 1991, and between $2.80 and $4.97 for wells deregulating in 1993. Because the ***1289** award was within the range of evidence, judgment as a matter of law or a new trial is not appropriate even though the amount awarded was the same as that presented in the stricken testimony. *See Midwest Underground Storage, Inc v Porter*, 717 F.2d 493, 500-01 (10th Cir.1983) (upholding jury's verdict for a winning

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claim that was, to the penny, an identical amount claimed as damages for a different claim on which plaintiff lost). To do so would be to impermissibly speculate as to the manner by which jurors arrived at the verdict. *See Howard D. Jury, Inc. v. R & G Sloane Mfg. Co.*, 666 F.2d 1348, 1352 (10th Cir.1981).

[18] The district court acknowledged that the verdict was within the range of evidence presented to the jury, but held that the jury should not have been allowed to consider Mr. Grynberg's testimony concerning how to calculate prices using the method of adjusting qualifying contracts for comparable terms and conditions under Article VI-3. The district court ruled post-trial that Mr. Grynberg's testimony was based on an improper methodology and not supported by a sufficient foundation. This was an abuse of the court's discretion, because Questar failed to make a timely objection to this evidence at trial.

[19] At trial, Questar did not object to Mr. Grynberg's testimony during direct examination. In fact, when Grynberg sought to introduce an exhibit showing Mr. Grynberg's conclusions on the price range *and his methodology in arriving at those figures,* Questar stated "No objection." Aplt.App. at 4456. It was only after Mr. Grynberg's direct examination that Questar objected to his testimony. The court overruled the objection on the grounds that it was untimely. Questar had a copy of the exhibit, showing Mr. Grynberg's methodology, before trial. In addition, it had deposed Mr. Grynberg on the matter extensively. It cannot now claim that it had to hear all of Mr. Grynberg's testimony before knowing whether it had grounds to object. By not making a timely objection, and even affirmatively stating that it had no objection to Mr. Grynberg's primary exhibit, Questar waived its right to later challenge this evidence.

[20] Finally, by reversing its ruling made during trial that Questar's objection to Grynberg's testimony was untimely, the court unfairly prejudiced Grynberg, which had no way of knowing that it should offer additional evidence or try to prove the issue in a different manner. *See Vallejos v. C.E. Glass Co.*, 583 F.2d 507, 511-12 (10th Cir.1978).

[21][22] Questar now argues that the timeliness of its objection is irrelevant in part because it would be plain error to admit Mr. Grynberg's testimony. In civil cases, the plain error exception is limited to errors that significantly affect "the fairness, integrity or public reputation of judicial proceedings." *Polys v. Trans-Colorado Airlines, Inc.*, 941 F.2d 1404, 1408 (10th Cir.1991) (citation and internal quotes omitted). We find that admission of Mr. Grynberg's testimony does not meet this high standard.

[23] Questar also argues that the court's role as "gatekeeper" concerning scientific opinion evidence is ongoing throughout the proceedings, allowing the court to strike evidence at any time, even without an objection ever having been lodged. *See Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137, 119 S.Ct. 1167, 143 L.Ed.2d 238 (1999); *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993). *Daubert* does note that, even after evidence is initially admitted, "in the event the trial court concludes that the scintilla of evidence presented supporting a position is insufficient to allow a reasonable juror to conclude that the position more likely than not is true, the court remains free to direct a judgment...." 509 U.S. at 596, 113 S.Ct. 2786. However, we do not read this as overriding the general requirement of a timely objection to the evidence. A party may waive the right to object to evidence on *Kumho/Daubert* ***1290** grounds by failing to make its objection in a timely manner.

Questar supports its argument that the trial court may strike expert testimony even in the absence of an objection by citing *Hoult v. Hoult*, 57 F.3d 1, 4 (1st Cir.1995). In *Hoult*, the defense did not object to the plaintiff's medical testimony before or during trial. However, the trial court did not strike the testimony, but accepted it. The First Circuit found that "*Daubert* does instruct district courts to conduct a preliminary assessment of the reliability of expert testimony, even in the absence of an objection." *Id.* It went on to say that district courts were not required, sua sponte, to make specific on-the-record rulings concerning the admissibility of expert testimony. *Id* at 4-5. We agree with this principle, but it does not aid Questar in these circumstances. The *Hoult* court spoke of a "preliminary assessment," which the district court made in this case. Nothing in the language of *Hoult* suggests the ability of a court to strike testimony after trial that it has otherwise deemed admissible during trial, in the absence of an objection.

[24] Further, Questar has not pointed us to any material indicating that Mr. Grynberg was actually testifying as an expert on the issue of prices. If Mr. Grynberg was not testifying as an expert witness on this subject, *Daubert* does not apply. In fact, just before overruling Questar's objection to Mr.

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Grynberg's testimony as untimely, the court indicated it was inclined to instruct the jury that Mr. Grynberg "is not an expert in this area but is entitled to state his opinion as to how he values his gas." Aplt.App. at 4475.

Because we find Mr. Grynberg's testimony was improperly stricken, and because the testimony's inclusion puts the jury's award within the range of evidence, the jury's award of $3.076 per MMBTU for wells that deregulated on May 15, 1991, and $3.217 per MMBTU for wells that deregulated on January 1, 1993 should be reinstated.

D. *Duty to Decontrol*

In 1989, Congress enacted the Natural Gas Wellhead Decontrol Act, which scheduled certain wells for deregulation on May 15, 1991, and others on January 1, 1993. Under the Act, parties to existing gas purchase contracts were permitted to voluntarily agree to deregulate the price of gas covered by those contracts prior to the effective dates of deregulation. In order to put such an agreement into effect, the parties could simply execute a document after March 23, 1989, agreeing that the gas sold from the existing well would no longer be subject to the maximum price ceilings.

[25] Grynberg claims it requested that Questar agree to deregulate a number of wells before the 1991 and 1993 effective dates of deregulation. Grynberg argues that Questar had a duty to agree to decontrol the prices, relying on the following language in Article VI of the gas purchase agreements:

> NOTWITHSTANDING anything herein to the contrary, it is agreed that if the Federal Power Commission, or any successor governmental authority having jurisdiction in the premises, shall prescribe or approve a price or prices, however determined, applicable to the gas being sold hereunder which ... is higher than the price otherwise applicable hereunder, then the price for gas sold hereunder shall be increased to equal such higher price effective upon the effective date prescribed by such governmental authority.

Aplt.App. at 6239.

Grynberg's claim is that the Act "approve[d] a price ... higher than the price otherwise applicable hereunder" and that Questar was obligated to agree to decontrol the wells, if requested, in order to comply with its duty of good faith and fair dealing. Questar contends that the NOTWITHSTANDING clause does not compel Questar to agree to decontrol simply at Grynberg's request. Prior to trial, the court denied Questar's motion for summary ***1291** judgment on the issue, finding that the issue of whether or not Questar acted in good faith was a fact question.

[26] The jury found that Questar acted in bad faith in refusing to decontrol the wells upon Grynberg's request. However, in ruling on Questar's post-trial motion for judgment as a matter of law, the court found that the contract provided no duty to decontrol. This was a contractual interpretation issue and a question of law for the court; good faith is not an issue in the absence of a specific duty, thus the question should not have been submitted to the jury.

We agree with the district court that the contractual issue of duty to decontrol is a question of law, and affirm the court's finding that no such duty can be found in the gas purchase agreements. The Act permitted, but did not require, parties to agree to deregulate. It merely set the stage for negotiations, and was not intended to give a seller the unilateral power to deregulate its wells early. The Act's legislative history speaks explicitly of the opportunity for existing contracts to be "voluntarily renegotiated." H.R.Rep. No. 101-29, at 2 (1989), *reprinted in* 1989 U.S.C.C.A.N. 51. In this sense, the Act cannot properly be read as a governmental authority "prescrib[ing]" or "approv[ing]" a higher price. If Grynberg's claim was valid, it would undermine Congress' intent that the renegotiation provision be voluntary.

Finally, we note that Grynberg's reliance on *Grynberg v. Rocky Mountain Natural Gas Co.,* 93-CA-0925 (Colo.App.Div.II, May 25, 1995) is misplaced. While the court in that case did find a duty to decontrol, the parties' agreement was significantly different from the gas purchase agreement at issue in this case. In *Rocky Mountain,* the gas purchase agreement was modified by a settlement agreement between the parties. The settlement agreement had a provision specifically requiring that the parties execute all documents and take all steps reasonably necessary to carry out the terms and intent of the settlement agreement. The context and language of the agreements are distinguishable from those in this case.

E. *Ownership Interests*

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[27] When Questar purchases gas, it pays the unit operator, which then divides the payment among the various working interest owners. At one point, Grynberg's working interest ownership percentage increased. Grynberg alleges that, although Questar paid for all of the gas it took from the unit, the records it sent to the operator did not reflect Grynberg's increased working interest ownership. As a result, the operator did not pay Grynberg the percentage he was owed. Grynberg claims it was Questar's responsibility to make sure the records it sent to the operator accurately reflected the various working interests.

The trial court denied Questar's motion for summary judgment on this issue, and presented it to the jury, which awarded Grynberg $112,685.11. In ruling on Questar's motion for judgment as a matter of law, the court concluded that the issue should not have been submitted to the jury, because it was properly a dispute between Grynberg and the unit operator.

We agree with the district court's ruling on this matter, and uphold its ruling for Questar as a matter of law. Pursuant to the division order, Questar was obligated only to make payments for the gas to the operator. The operator explicitly agreed to account to all owners of the gas. Aplt.App. at 13258. Once it paid the operator for the gas, Questar's obligations were complete.

F. *Stolen Gas Claim*

Grynberg contends that Questar stole gas from Grynberg by installing valves on the wells that allowed gas to bypass sales meters. The court held a two-day hearing on a motion to strike Mr. Grynberg's declaration of opinions about the stolen gas. After granting this motion, the court dismissed the claim on summary judgment, ***1292** finding that no evidence supported the stolen gas claim other than the conclusions and opinions of Mr. Grynberg.

[28] Grynberg does not appeal the striking of Mr. Grynberg's opinion. Instead, it argues that other evidence remaining in the record is sufficient to create a question of fact. In creating its appendix, Grynberg left out the hearing testimony of Questar's expert, as well as Mr. Grynberg's own hearing testimony. Because Grynberg claims that the district court's finding that there was no genuine issue of material fact was contrary to the evidence, it must "include in the record a transcript of all evidence relevant to that finding or conclusion." F.R.A.P. 10(b)(2). *See also* 10th Cir. Rule 10.1(A)(1) (Appellant required to "provide all portions of the transcript necessary to give the court a complete and accurate record of the proceedings related to the issue[ ] on appeal."). While we understand Grynberg's contention that this testimony need not be considered because sufficient evidence exists even without Mr. Grynberg's testimony, we are reluctant to overturn a district court's ruling without being able to examine the evidence or arguments it heard in making its ruling. Grynberg claims that a material question of fact is created by the numbers in Questar's "unaccounted-for gas reports" and other documents. In the absence of a complete record, we agree with the district court that, on the basis of the material in front of us, insufficient evidence exists to withstand a summary judgment motion.

G. *Conclusion*

We REVERSE the district court's reduction in damages on the take-or-pay contracts (counterclaim 1) and its grant of judgment as a matter of law on the breach of contract claim (counterclaim 2), the intentional interference with contract claim (counterclaim 3), and the price after deregulation issue. We AFFIRM the district courts grant of judgment as a matter of law on the duty to decontrol issue (counterclaim 4) and the working interest claim (counterclaim 5), as well as its grant of summary judgment on the stolen gas claim (counterclaim 6). We REMAND to the district court to enter judgment consistent with this opinion. The court's conditional grant of a new trial in the event of reversal is specifically overruled as unnecessary. *See* Fed.R.Civ.P. 50(c)(1).

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Tab N

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF WYOMING

QUESTAR PIPELINE COMPANY, Plaintiff, v. JACK J. GRYNBERG, CELESTE C. GRYNBERG, L & R EXPLORATION VENTURE, Defendants.	)	No. 92-CV-265-J

JUDGMENT FOLLOWING REMAND TO DISTRICT COURT AFTER APPEAL

THE ABOVE CAPTIONED MATTER has come before the Court for entry of Judgment by the Court, pursuant to the January 24, 2000 Decision and Judgment of the Tenth Circuit Court of Appeals, remanding this matter for entry of judgment consistent with the appellate court's opinion. Accordingly, it is therefore

ORDERED, ADJUDGED AND DECREED that the price to be paid under the gas purchase agreements for wells that deregulated on May 15, 1991 is $3.076 MMBtu and the price to be paid under the gas purchase agreements for

25
2370

wells that deregulated on January 1, 1993 is $3.217 MMBTU. It is further

ORDERED, ADJUDGED AND DECREED that Questar Pipeline Company is entitled to judgment in its favor and that defendants Jack J. Grynberg, Celeste C. Grynberg, and L & R Exploration Venture recover nothing from the plaintiff on the following claims:

1. The duty to decontrol claim;
2. The claim for "ownership interests" (also called the "working interest claim");
3. The stolen gas claim.

It is further

ORDERED, ADJUDGED AND DECREED that defendants Jack J. Grynberg, Celeste C. Grynberg and L & R Exploration Venture recover from the plaintiff, Questar Pipeline Company, on the take-or-pay claim for Gas Purchase Agreement No. 246 as follows:

1988	$163,883.56
1990	$124,978.83
1992	$69,592.63

It is further

ORDERED, ADJUDGED AND DECREED that defendants Jack J.

Grynberg, Celeste C. Grynberg and L & R Exploration Venture recover from the plaintiff, Questar Pipeline Company, on the take-or-pay claim for Gas Purchase Agreements 245 and 249, as follows:

Gas Purchase Agreement 245 (Rogers Government Wells)

1988	$45,383.09
1989	$0
1991	$64,280.63

Gas Purchase Agreement 249 (North Nitchie Wells)

1988	$100,987.65
1992	$14,182.69

It is further

ORDERED, ADJUDGED AND DECREED that defendants Jack J. Grynberg, Celeste C. Grynberg and L & R Exploration Venture recover from the plaintiff, Questar Pipeline Company, on the claim for intentional interference with contract, the sum of $338,585.76. It is further

ORDERED, ADJUDGED AND DECREED that defendants Jack J. Grynberg, Celeste C. Grynberg and L & R Exploration Venture recover from the plaintiff, Questar Pipeline Company, on the 1989 make-up gas claim, the sum of $381,764.53. It is further

ORDERED, ADJUDGED AND DECREED that defendants Jack J. Grynberg, Celeste C. Grynberg and L & R Exploration Venture recover from the plaintiff, Questar Pipeline Company, punitive damages in the amount of $200,000.00.

Dated this 17th day of March 2000.

UNITED STATES DISTRICT JUDGE

ENTERED
ON THE DOCKET
Mar 20, 2000
(Date)
Betty A. Griess, Clerk
by Deputy Clerk

Tab O

QUESTAR

Questar Corporation
180 East 100 South
P.O. Box 45433
Salt Lake City, UT 84145

Terrie T. McIntosh
Senior Corporate Counsel
Tel: 801 324 5532
Fax: 801 324 5131
E-mail: TerrieM@qstr.com

March 16, 2000

BY FEDERAL EXPRESS

Tom C. Toner, Esq.
Yonkee & Toner
319 W. Dow Street
Sheridan, WY 82801

Dear Tom:

Re: Questar Pipeline Company v. Jack J. Grynberg, et al., Civil No. 92-CV-265 J

Al Walker and Mr. Grynberg have been discussing the amounts Questar Gas Company would owe to the defendants upon entry of judgment in the captioned case. Although we are close to agreement on some of the amounts, there are several items that we have been unable to resolve.

Questar would like to pay the undisputed amounts in order to stop interest from continuing to accrue. Accordingly, I am enclosing Questar's check in the amount of $5,146,071.56. This tender is intended to pay amounts that Questar agrees are due on claims asserted in the case and is without any restrictions, limitations or reservation of rights. Questar acknowledges that Mr. Grynberg has stated that he believes he is owed additional amounts and that he will not accept a check for less than $5,640,606.15, which is the amount he claims is owed. Questar nonetheless requests that Mr. Grynberg accept the enclosed check for the amounts everyone agrees upon while we continue to try to resolve differences on other amounts.

I have enclosed a spreadsheet showing the amounts Questar believes it owes, with principal and interest broken out separately, and a comparison of our numbers with the numbers we have been given by Mr. Grynberg. We have computed interest in accordance with the Settlement Agreement with Mr. Grynberg dated August 11, 1994. I have enclosed a copy of that Agreement for your reference. As you may recall, at the time Questar and Mr. Grynberg were trying to determine the amounts to be included in a judgment based on the jury verdict, but we disagreed as to whether prejudgment interest should be paid on the

contract claims (price, take-or-pay and makeup gas claims). In a letter to you dated May 2, 1994, John Shepherd outlined Questar's position and stated that Questar did not believe those amounts were liquidated and thus did not qualify for prejudgment interest under Wyoming law.

You responded on May 24, 1994 that you thought the court had instructed the jury that prejudgment interest would be paid on the take-or-pay claim and the other contract claims were liquidated under controlling legal authority. On June 10, 1994 you filed a motion for entry of judgment and argued that position in your pleading.

On June 24, 1994 John Shepherd sent to Mr. Grynberg (with your consent) a completed Settlement Agreement in which Questar agreed to pay prejudgment interest on the price, take-or-pay and makeup gas claims at the rate of 7%. Questar did not agree to pay prejudgment interest on the tortious interference and punitive damages claims, since those claims clearly were not liquidated. It is our view that no prejudgment interest was either due or agreed to on those claims. Mr. Grynberg has informed Al Walker that he disagrees with this view and believes Questar agreed to pay prejudgment interest on all claims. He further stated that he believes prejudgment interest continues to accrue on the claims, evidently since a favorable judgment was entered only on a portion of the take-or-pay claim.

In further support of Questar's position, I would like to draw your attention to footnote 1 of Questar's Objections to Portions of Defendant's Proposed Judgment, which was filed contemporaneously with the completion of the Settlement Agreement. In footnote 1 we explained the dispute on prejudgment interest had been compromised and said "Questar has agreed to pay prejudgment interest in the manner described by Tom Venglar's affidavit on any contract claims ultimately resolved against Questar." As you may recall, Mr. Venglar did not compute prejudgment interest on the tortious interference or punitive damages amounts awarded by the jury, consistent with the Settlement Agreement but contrary to Mr. Grynberg's current position.

Since Questar believes its current computations accurately reflect the Settlement Agreement, it is not willing to pay the additional amounts claimed by Mr. Grynberg as a result of his computation of prejudgment interest on all claims, unless the court accepts Mr. Grynberg's extreme position and enters judgment in the higher amount. Our differences based on how we compute interest amount to $335,098.

Our second major point of disagreement concerns the tender in 1998 of the amounts for the take-or-pay claim incorporated in the June and October, 1998 Judgment and Amended Judgment. As you recall, Questar tendered the amount stated in the judgments, plus interest, on October 29, 1998. After a period of delay, you returned the check, stating that Mr. Grynberg was concerned Questar was trying to restrict his rights on appeal. I immediately returned the check and stated Questar intended to pay only the amounts not in

dispute in the Judgment and Amended Judgment. Two months later, you returned the check again and asked for further assurances. I provided those additional assurances, sent the check back to you and asked for you to propose additional language if what I had said was unsatisfactory. I heard nothing more from you, but Mr. Grynberg never cashed the check.

Questar believes this tender and Mr. Grynberg's acceptance of the check were sufficient to stop interest from accruing, particularly in light of the fact that any remaining concerns could easily have been addressed and promptly resolved through a simple telephone call or timely exchange of correspondence. Mr. Grynberg informed Al Walker that he does not know where the check is, so Questar stopped payment on it last week and has included the amount it previously calculated in the check we are now tendering. However, unless the court determines that we owe interest while the check was in Mr. Grynberg's possession all of this time, Questar does not intend to pay additional interest on that part of the take-or-pay claim on which it tendered payment to stop interest. The difference between our computations is $13,717.

Finally, we disagree with Tom Venglar's calculation of the amounts owed if the jury price is applied to the volumes purchased by Questar under contracts 245, 246 and 249. Mr. Venglar has not provided us with detailed worksheets for his current calculations, but it appears he followed the same methods he used in 1994, namely taking the entire production for each well for each month and computing Mr. Grynberg's working interest share. He based his price analysis on those volumes.

Questar is likewise using its prior methodology. We have followed Mr. Venglar's methods on interest and part-month prices. The main difference appears to be that Questar is relying on its data which shows the amounts of gas that it actually received. As Questar explained in Al Walker's affidavit filed on June 24, 1994, during 1993 Questar had contracts with the producers at Nitchie Gulch containing varying purchase obligations. Hunt's contract, for example, had a 60% take obligation and release provisions, so if Questar was not purchasing gas, Hunt had the ability to sell gas to third parties. As we reconstructed what happened in that year, Questar did not purchase Mr. Grynberg's working interest at all times that the field was being produced. It was the operator's (Hunt's) responsibility to confirm nominations and direct the flow of gas. We have computed the amount owed based on our records of actual gas purchases. Questar does not believe the contract requires it to purchase gas that it did not receive. Accordingly, Questar continues to object to Mr. Venglar's methodology. Finally, as noted in Mr. Connolly's affidavit, we continue to have some differences over working interest percentages, and Questar is relying on its records in this respect. The difference between our computations is $140,798.

I would appreciate your prompt attention to this tender of payment. If you can identify ways in which we can narrow the remaining differences, I would appreciate hearing from you. In any event, I would like to know by **noon, March 24, 2000** whether Mr.

Grynberg will accept this unrestricted and unconditional tender and agree to disagree with Questar over any remaining disputed amounts. If I can provide you with any additional assurances on this point, please call me as quickly as possible. If I have not heard from you by noon on March 24, 2000, we will assume Mr. Grynberg has rejected this tender and will stop payment on the check.

Very truly yours,

Jamie McCutchen

TTM/ceu

cc: Don Schultz
John Shepherd
Alan Walker

Enclosures

SD93-176\TONER L01

QUESTAR v. GRYNBERG JUDGEMENT COMPARISON

	QUESTAR	GRYNBERG	DIFFERENCE	TOTAL DIFFERENCE	
TAKE OR PAY					
PRINCIPAL	$ 583,298	$ 583,289	$ (9)		
INTEREST	384,336	398,061	13,726	$ 13,717	
MAKE UP					
PRINCIPAL	381,765	381,765	-		
INTEREST	289,505	294,427	4,922	$ 4,922	
INTERFERENCE					
PRINCIPAL	338,586	338,586	-		
INTEREST	-	250,734	250,734	$ 250,734	
DAMAGES					
PRINCIPAL	200,000	200,000	-		
INTEREST	-	84,364	84,364	$ 84,364	$ 335,098
PRICE: MAY 15, 1991					
PRINCIPAL	360,759	379,520	18,761		
INTEREST	186,281	195,450	9,169	$ 27,930	
PRICE: JAN 1, 1993					
PRINCIPAL	1,660,792	1,736,973	76,181		
INTEREST	760,750	797,437	36,687	$ 112,868	$ 140,798
TOTAL					
PRINCIPAL	$ 3,525,200	$ 3,620,133	$ 94,933		
INTEREST	$ 1,620,871	$ 2,020,473	$ 399,602	$ 494,535	
GRAND TOTAL	$ 5,146,071	$ 5,640,606	$ 494,535		

Vendor Number	Vendor Name		Total Discounts	
0000010785	Jack J Grynberg, Celeste C Grynberg,		$0.00	
Check Number	Date	Total Amount	Discounts Taken	Total Paid Amount
020624	15.Mar.2000	$5,146,071.56	$0.00	$5,146,071.56

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER

QUESTAR GAS COMPANY
180 East 100 South / P.O. Box 45360
Salt Lake City, UT 84145-0360

BANKERS TRUST (DELAWARE)
In Cooperation With
First Security Bank of Utah
62-38/311

020624

Date 15.Mar.2000 Pay Amount $5,146,071.56***

Pay ****FIVE MILLION ONE HUNDRED FORTY-SIX THOUSAND SEVENTY-ONE AND 56 / 100 US DOLLAR****

To The Order Of JACK J GRYNBERG, CELESTE C GRYNBERG,
L & R Exploration Venture
Denver, CO

Authorized Signature

THE BACK OF THIS DOCUMENT CONTAINS A WATERMARK - HOLD AT AN ANGLE TO VIEW

⑈020624⑈ ⑆031100380⑆ 00 574 28 2⑈

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Tab P

QUESTAR

P.O. Box 45360
Salt Lake City, UT 84145-0360
Tel 801 324 2010
Fax 801 324 2970
ajw@qstr.com

Alan J. Walker
Director, Gas Supply Management

July 31, 2000

Jack J. Grynberg
Grynberg Petroleum Company
5000 South Quebec, Suite 500
Denver, CO 80237-2707

Dear Mr. Grynberg

Re: Compression Reimbursement

Enclosed please find a check for $106,441 for Compression Reimbursement and related accounting schedules. You invoice was for $104,931 and the difference represents adjusted interest for the period through July 31, 2000.

This payment is forward to you via Federal Express, as per your request. If you have any questions please call me at (801) 324-2010.

Sincerely,

Alan J Walker

AJW:jm

Enclosure

QUESTAR PIPELINE COMPANY/QUESTAR GAS COMPANY

Grynberg Litigation -- Interest Calculations on Compression Reimbursement

Interest calculated through 7/31/00

	Grynberg et al Share of Deficiency	Interest Calculation Time Period	Interest Calculation @ FERC Rate	Total	Grand Total	FERC Posted Interest Rate %
12/31/92 Deregulation	$18,379.31		$9,359.87	$27,739.18	From Grynberg's Spreadsheet	
May-00		5/1/00- 5/31/00	$131.04	$27,870.22		8.58%
Jun-00		6/1/00-6/30/00	$126.82	$27,997.04		8.58%
Jul-00		7/1/00-7/31/00	$142.44	$28,139.48		9.02%
	$18,379.31		$9,760.17		$28,139.48	
5/15/91 Deregulation	$8,996.15		$4,936.71	$13,932.86	From Grynberg's Spreadsheet	
May-00		5/1/00- 5/31/00	$64.14	$13,997.00		8.58%
Jun-00		6/1/00-6/30/00	$62.07	$14,059.08		8.58%
Jul-00		7/1/00-7/31/00	$69.72	$14,128.80		9.02%
	$8,996.15		$5,132.65		$14,128.80	
12/31/92 Deregulation	$41,932.20		$21,327.24	$63,259.44	From Grynberg's Spreadsheet	
May-00		5/1/00- 5/31/00	$298.98	$63,558.42		8.58%
Jun-00		6/1/00-6/30/00	$289.33	$63,847.75		8.58%
Jul-00		7/1/00-7/31/00	$324.97	$64,172.72		9.02%
	$41,932.20		$22,240.52		$64,172.72	
GRAND TOTAL	$69,307.66		$37,133.34		$106,441.00	

NOTE: The daily rate used for the 2nd quarter was .00023 (8.58%/366 days) and for the 3rd quarter was .00025 (9.02%/366 days)

EMY HOCKENBURY

Vendor Number	Vendor Name		Total Discounts	
0000010785	Jack J Grynberg, Celeste C Grynberg,		$0.00	
Check Number	**Date**	**Total Amount**	**Discounts Taken**	**Total Paid Amount**
026184	31.Jul.2000	$106,441.00	$0.00	$106,441.00

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER

QUESTAR GAS COMPANY
180 East 100 South / P.O. Box 45360
Salt Lake City, UT 84145-0360

BANKERS TRUST (DELAWARE)
In Cooperation With
First Security Bank of Utah
62-38/311

026184

Date 31.Jul.2000 **Pay Amount** $106,441.00***

Pay ****ONE HUNDRED SIX THOUSAND FOUR HUNDRED FORTY-ONE AND XX / 100 US DOLLAR****

To The Order Of JACK J GRYNBERG, CELESTE C GRYNBERG,
L & R Exploration Venture
Denver, CO

Stephen E Parker
Authorized Signature

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3282

Tab Q

expect. Therefore, please provide the following information so that Questar may verify the appropriate reimbursement:

a. A copy of your tax assessment
b. A copy of your check in payment of the tax
c. Well(s) and area name
d. Type of tax
e. Total period of taxed production
f. Volumes and amounts by well by month
g. Government Royalty exempt status by well

After receiving this backup information, Questar expects to be able to make an additional tax reimbursement. Hopefully this satisfies your request of December 20th and precludes the need for Grynberg to "file a lawsuit immediately."

Sincerely,

Allan J. Walker

AJW:jm

Enclosure

QUESTAR PIPELINE COMPANY/QUESTAR GAS COMPANY

Grynberg Litigation -- Tax Reimbursement Invoice #13982

Tax Reimbursement	Invoice Amount	Interest Calculation Time Period	Interest Calculation @ 7% Simple	Total	Grand Total
Invoice #13982	$86,460.57	1/15/94 - 1/14/95	$6,052.24	$92,512.81	
		1/15/95 - 1/14/96	$6,052.24	$98,565.05	
		1/15/96 - 1/14/97	$6,052.24	$104,617.29	
		1/15/97 - 1/14/98	$6,052.24	$110,669.53	
		1/15/98 - 1/14/99	$6,052.24	$116,721.77	
		1/15/99 - 1/14/00	$6,052.24	$122,774.01	
		1/15/00 - 1/5/01	$5,903.41	$128,677.42	$128,677.42
	$86,460.57		$42,216.85		

Invoice Number	Invoice Date	Voucher ID	Gross Amount	Discount Available	Paid Amount
13982	05 Jan.2001	00061807	128,677 42	0.00	128,677 42
EMY HOCKENBURY (D)					

Vendor Number	Vendor Name			Total Discounts	
0000010785	Jack J Grynberg, Celeste C Grynberg,			$0 00	
Check Number	Date		Total Amount	Discounts Taken	Total Paid Amount
032174	05 Jan 2001		$128.677 42	$0 00	$128.677 42

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QUESTAR GAS COMPANY
180 East 100 South / P.O Box 45360
Salt Lake City, UT 84145-0360

BANKERS TRUST (DELAWARE)
In Cooperation With
First Security Bank of Utah
62-38/311

032174

Date 05 Jan 2001 Pay Amount $128,677.42***

Pay ****ONE HUNDRED TWENTY-EIGHT THOUSAND SIX HUNDRED SEVENTY-SEVEN AND 42 / 100 US DOLLAR****

To The Order Of JACK J GRYNBERG, CELESTE C GRYNBERG,
I. & R Exploration Venture
Denver, CO

Authorized Signature

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Tab R

Check Date: 15.Aug.2001		QUESTAR GAS COMPANY			Check No. 039890
Invoice Number	Invoice Date	Voucher ID	Gross Amount	Discount Available	Paid Amount
INTEREST 081501	15.Aug.2001	00076244	4,601.48	0.00	4,601.48
EMY HOCKENBURY (D)					

Vendor Number	Vendor Name		Total Discounts	
0000010785	Jack J Grynberg, Celeste C Grynberg,		$0.00	
Check Number	**Date**	**Total Amount**	**Discounts Taken**	**Total Paid Amount**
039890	15.Aug.2001	$4,601.48	$0.00	$4,601.48

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QUESTAR GAS COMPANY
180 East 100 South / P.O. Box 45360
Salt Lake City, UT 84145-0360

WACHOVIA BANK, N.A.
In Cooperation With
Wells Fargo Bank, N.A.
4759-503154

039890
67-1532

Date 15.Aug.2001 Pay Amount $4,601.48***

Pay ****FOUR THOUSAND SIX HUNDRED ONE AND 48 / 100 US DOLLAR****

To The Order Of JACK J GRYNBERG, CELESTE C GRYNBERG,
J & R Exploration Venture
Denver, CO

Stephen E Parker
Authorized Signature

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Check Date: 03.Aug.2001		QUESTAR GAS COMPANY			Check No. 039541
Invoice Number	Invoice Date	Voucher ID	Gross Amount	Discount Available	Paid Amount
GRYNBERGCASE0801	03.Aug.2001	00075466	231 803.91	0.00	231,803.91
EMY HOCKENBURY					

REC'D AUG 6 2001

Vendor Number	Vendor Name			Total Discounts	
0000010785	Jack J Grynberg, Celeste C Grynberg,			$0.00	
Check Number	Date		Total Amount	Discounts Taken	Total Paid Amount
039541	03.Aug.2001		$231,803.91	$0.00	$231,803.91

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QUESTAR GAS COMPANY
180 East 100 South / P.O. Box 45360
Salt Lake City, UT 84145-0360

WACHOVIA BANK, N.A.
In Cooperation With
Wells Fargo Bank, N.A.
4759-503154

039541
67-1/532

Date 03.Aug.2001 Pay Amount $231,803.91***

Pay ****TWO HUNDRED THIRTY-ONE THOUSAND EIGHT HUNDRED THREE AND 91/100 US DOLLAR****

To The Order Of JACK J GRYNBERG, CELESTE C GRYNBERG,
L & R Exploration Venture
Denver CO

Authorized Signature

VOID VOID VOID

Check Date: 18.May.2001 | QUESTAR GAS COMPANY | Check No. 036917

Invoice Number	Invoice Date	Voucher ID	Gross Amount	Discount Available	Paid Amount
TAX REIMBUR 0501	16.May.2001	00070530	681,626.80	0.00	681,626.80
EMY OR DEL					

Vendor Number	Vendor Name			Total Discounts	
0000010785	Jack J Grynberg, Celeste C Grynberg,			$0.00	
Check Number	**Date**		**Total Amount**	**Discounts Taken**	**Total Paid Amount**
036917	18.May.2001		$681,626.80	$0.00	$681,626.80

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER

QUESTAR GAS COMPANY
180 East 100 South / P.O. Box 45360
Salt Lake City, UT 84145-0360

WACHOVIA BANK, N.A.
In Cooperation With
Wells Fargo Bank, N.A.
4759-503154

036917
67-1/532

Date 18.May.2001 Pay Amount $681,626.80***

Pay ****SIX HUNDRED EIGHTY-ONE THOUSAND SIX HUNDRED TWENTY-SIX AND 80 / 100 US DOLLAR****

To The Order Of JACK J GRYNBERG, CELESTE C GRYNBERG,
L & R Exploration Venture
Denver, CO

Authorized Signature

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⑈036917⑈ ⑆053200019⑆ 540498156⑈

Check Date: 30.Mar.2001 QUESTAR GAS COMPANY Check No. 035227

Invoice Number	Invoice Date	Voucher ID	Gross Amount	Discount Available	Paid Amount
TAXONREVENUE2000	30.Mar.2001	00067565	342,763.34	0.00	342,763.34

CHUCK HOWISEY

Vendor Number	Vendor Name		Total Discounts	
0000001679	Grynberg Petroleum Co GP		$0.00	
Check Number	**Date**	**Total Amount**	**Discounts Taken**	**Total Paid Amount**
035227	30.Mar.2001	$342,763.34	$0.00	$342,763.34

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER

QUESTAR GAS COMPANY
180 East 100 South / P.O. Box 45360
Salt Lake City, UT 84145-0360

BANKERS TRUST (DELAWARE)
In Cooperation With
First Security Bank of Utah
62-38/324

035227

Date 30 Mar 2001 Pay Amount $342,763.34**

Pay THREE HUNDRED FORTY-TWO THOUSAND SEVEN HUNDRED SIXTY-THREE AND 34/100 US DOLLAR**

To The Order Of GRYNBERG PETROLEUM CO GP
5000 South Quebec St
Ste 390
Denver, CO 80237

Authorized Signature

VOID VOID VOID

Tab S

QUESTAR CORPORATION

180 East First South St.
Salt Lake City, Utah 84111
Phone: (801) 534-5692

P.O. Box 45433
Salt Lake City, Utah 84145
Fax: (801) 534-5731

Teresa T. Middleton
Senior Corporate Counsel

March 31, 1995

By Fax

Tom C. Toner, Esq.
Yonkee & Toner
319 W. Dow
P.O. Box 6288
Sheridan, WY 82801

Dear Tom:

Al Walker and Jack Grynberg have had several conversations concerning Mr. Grynberg's views about the testing and measuring of the Btu content of gas that is brought into Questar Pipeline Company's system. Mr. Grynberg has indicated that he believes he has a basis for filing an action on behalf of the United States based on the provisions of the federal False Claims Act. Before doing so, he has offered to resolve the matter through a settlement that he has outlined to Mr. Walker.

We have been considering Mr. Grynberg's claims as best we can, given the limited information that we have. Our preliminary review indicates that commonly accepted gas-industry procedures for testing and measuring (to which Questar subscribes) do not support Mr. Grynberg's views, as we understand them.

At the present time, we do not have a basis for making a definite response to Mr. Grynberg's settlement proposal. Before making a final response, it would be helpful if we could obtain a more complete description and explanation of the scientific basis for Mr. Grynberg's claims. I understand that Dr. Robert Lee has been involved in developing the theory. If the Company's engineers could review his theoretical work and, if necessary, have it reviewed by an outside consultant, we would be better able to respond to Mr. Grynberg's claims about Btu measurement.

We would appreciate your asking Mr. Grynberg if written material could be made available to us for these purposes.

Very truly yours,

Jeanie McIntosh

tmm-046\TT-853.L

Tab T

Gas Gathering Agreement

This Agreement is entered into on this _____ day of _____, 1995, between _____ _____, _____ (Shipper), and Questar Gas Management Company, P.O. Box 115030, Salt Lake City, Utah 84147 (QGM). Shipper and QGM are collectively referred to as the Parties.

The Parties represent as follows:

A. QGM owns natural gas gathering facilities located in the _____ area of _ _____ County, _____.

B. Shipper owns or otherwise controls supplies of gas that it wishes to have gathered through the gathering facilities of QGM.

C. QGM is willing to gather the gas on the following terms.

The Parties agree as follows:

ARTICLE 1 - Receipts and Deliveries

1.1 QGM shall gather, on an interruptible basis, all volumes of gas tendered by Shipper at the receipt points listed on Appendix A.

1.2 Shipper shall commit for gathering by QGM production from the wells described on Appendix A. Shipper shall tender gas at pressures sufficient for delivery into QGM's facilities against the existing pressures, but not exceeding the maximum allowable operating pressures of QGM's facilities.

1.3 QGM shall redeliver thermally equivalent volumes of gas less fuel gas and lost and unaccounted-for volumes as provided in § 11 of the general terms and conditions. Delivery by QGM shall take place at the delivery points listed on Appendix A. QGM shall deliver the gas into the receiving party's facilities at the existing pressures, but not exceeding the maximum allowable operating pressures in QGM's facilities at the delivery points.

ARTICLE 2 - Gathering Charge and Payment

From the effective date of this Agreement until _____, 19____, Shipper shall pay QGM a gathering charge of $_____ measured on a dry basis. Thereafter, the rate will be adjusted annually to reflect the arithmetic average of the rates of change for the preceding calendar year in the (1) Implicit Price Deflator for the Gross National Product and (2) Natural Gas Component of the Producer Price Index as published quarterly by the U.S. Department of Commerce. However, the adjusted rate shall never be less than the initial rate under this Agreement.

ARTICLE 3 - Term

This Agreement shall take effect on _____, and shall remain in full force and effect for two years, and from month to month thereafter, until terminated by either party upon 30 days' written notice.

ARTICLE 4 - NOTICES

All notices required in this Agreement shall be in writing and shall be considered as having been given if delivered by mail or FAX to either QGM or Shipper at the designated address. Normal operating instructions can be delivered by telephone or any electronic means. Notice of events of force majeure may be made by telephone and confirmed in writing within 5 days of commencement of the force majeure event. Monthly statements, payments, and any communications shall be considered as delivered when mailed to the addresses listed below or to such other address as either party shall designate in writing:

QGM:
Contract Administrator
Gathering Division
Questar Gas Management Company
79 South State Street (84111)
P.O. Box 115030
Salt Lake City, Utah 84147
FAX: (801) 530-2570

SHIPPER:
_____
_____
_____
_____
_____
_____
_____

ARTICLE 5 - ENTIRE AGREEMENT

This Agreement, including its general terms and conditions and appendixes, represent the entire understanding between the Parties. No representations or agreements, other than rate confirmations, shall modify, change, amend or affect the obligations of the Parties under this Agreement, unless specifically agreed to in writing and signed by the authorized representatives of both Parties.

THIS AGREEMENT is entered into by the authorized representatives of the Parties whose signatures appear below.

SHIPPER:

_____

By_____

_____
(please type name and title)

QUESTAR GAS MANAGEMENT COMPANY:

By_____
J. B. Carricaburu, Vice President, Marketing

PROTOGATHQGM.KGG

General Terms and Conditions
Gathering Agreement

1. Definitions

1.1 "Btu" means British thermal unit. That is the amount of heat required to raise the temperature of one pound of water one degree from 59 degrees to 60 degrees Fahrenheit. "MMBtu" means 1,000,000 Btu's.

1.2 "Cubic foot" means the quantity of gas that would occupy one cubic foot at a temperature of 60 degrees Fahrenheit and at a pressure of 14.73 psia.

1.3 "Day" or "gas day" means a period of 24 hours beginning and ending at 12:00 noon, Mountain Time.

1.4 "Decatherm" or "Dth" means a unit of heating value equivalent to 1,000,000 Btu's.

1.5 "Delivery point" means a point where QGM delivers gas.

1.6 "Firm" means the service will be provided unless QGM's performance obligation is waived, reduced, modified or terminated by force-majeure events.

1.7 "Force majeure event" includes without limitation by this recital: acts of God, including fires, explosions, earthquakes or volcanic eruptions, storms, floods, washouts and extreme cold or freezing weather; necessity for compliance with any court order, law, regulation or ordinance promulgated by any governmental authority having jurisdiction, either federal, state or local, civil or military; acts of a public enemy; wars and civil disturbances; strikes, lockouts or other industrial disturbances; unscheduled shutdowns for purposes of necessary repairs, essential relocations or construction of facilities, breakage or accident to machinery or lines of pipe; the necessity for testing (as required by governmental authority or as deemed necessary for safe operation by the testing party); inability of either party to obtain necessary materials, supplies, permits or labor to perform or comply with any obligation or condition of this Agreement; inability to obtain rights of way; and any other causes that are not reasonably in the control of the party claiming suspension.

1.8 "Gas or natural gas" means combustible hydrocarbon gas.

1.9 "Imbalance" means the difference between the quantity of gas received by QGM from the Shipper and the quantity of gas delivered to the Shipper by QGM during the applicable nomination period adjusted for fuel use and lost and unaccounted-for gas.

1.10 "Inert substances" means non-combustible substances contained in the gas, including, but not limited to, helium, carbon dioxide and nitrogen.

1.11 "Interruptible" means the gathering service shall be provided subject to available capacity and to QGM's ability to receive and deliver Shipper's gas.

1.12 "Interruption" means reducing, suspending or discontinuing either the receipt or delivery of gas.

1.13 "Liquefiable hydrocarbons" means all hydrocarbons (except those hydrocarbons separated from the gas stream by conventional single stage, mechanical field separation methods) or any mixture that may be extracted from Shipper's gas other than methane, including, but not limited to, natural gasolines, butanes, propanes and ethanes.

1.14 "Mcf" means 1,000 cubic feet of gas at 14.73 psia at 60°F. "MMcf" means 1,000,000 cubic feet of gas.

1.15 "Month" means the period of time beginning at 12:00 noon Mountain Time on the first day of any calendar month and ending at the same hour on the first day of the succeeding calendar month.

1.16 "Receipt point" means a point at which gas is received from Shipper.

1.17 Any undefined terms shall have standard industry meaning.

2. Scheduling of Gas Receipts and Deliveries

2.1 *Scheduling.* (All times are Mountain Time.) If Shipper wishes to have gas gathered on gas day one of a month, Shipper must notify QGM's nomination department no later than 10:00 a.m. 3 working days prior to the commencement of service. For all succeeding days of the month, Shipper shall notify QGM's nomination department no later than 10:00 a.m. each day of the quantity of natural gas it

wishes to have gathered from specific sources and receipt points commencing at 12:00 noon on the succeeding calendar day. Whenever Shipper schedules or nominates gas, it must provide to QGM all applicable upstream and downstream contract and confirmation numbers. QGM shall then notify Shipper of the quantity that it can receive and deliver. QGM shall commence to deliver an equivalent volume of natural gas no later than 12:00 noon of the scheduled day. All scheduling of deliveries of gas between Shipper and QGM shall take this scheduled timing difference into account. Upon written agreement or telephone agreement (to be confirmed in writing) between QGM and Shipper, receipts and deliveries may commence earlier than provided by this schedule.

2.2 *Operating Requirements.* (a) Shipper shall use reasonable efforts to deliver and receive gas at uniform hourly and daily rates of flow.

(b) Shipper shall deliver gas to QGM at the receipt points at a pressure sufficient to allow the gas to enter QGM's gathering system. QGM shall not be required to compress natural gas into its system. If requested by QGM, Shipper shall provide equipment acceptable to QGM at each receipt point to prevent overpressuring QGM's system.

(c) QGM shall deliver gas to the receiving party at the pressure in QGM's system after required measurement, flow control or regulation.

2.3 *Limitations on QGM's Gathering Obligations.* On any day, QGM shall not be obligated to deliver to Shipper a quantity of gas different from the thermal quantity received from Shipper during the same day, as adjusted under § 11 below.

3. Balancing

3.1 *General Provision.* Shipper must monitor its receipts and deliveries of gas and, if necessary, make adjustments to maintain a balance of receipts and deliveries. QGM shall not be obligated to receive or deliver gas quantities that differ from the confirmed nominations between Shipper and QGM. All balancing will be done on a dry Dth basis.

QGM will monitor its receipts and deliveries at the receipt and delivery points on its gathering system. If the volume of gas received exceeds the amount nominated, and the excess cannot prudently be accommodated, QGM, at its sole discretion, may restrict receipts into the system. Conversely, if the volumes received are less than the volumes nominated, and the difference cannot be readily compensated for by QGM, QGM, at its sole discretion, may adjust Shipper's nominations and deliveries to maintain system integrity.

QGM will advise Shipper of any imbalances. Upon notification that an imbalance exists, a Shipper must immediately begin adjusting its receipts and deliveries to correct or avoid any imbalance. Any adjustment to receipts and deliveries by Shipper, whether or not pursuant to notification from QGM, will be nominated, scheduled and approved by QGM's gas representatives according to QGM's scheduling procedures.

3.2 *Daily Balancing.* Shipper shall maintain a daily thermal balance between receipts and deliveries within a ±5% daily imbalance tolerance.

QGM may require Shipper to adjust its receipts or deliveries, if necessary, in order to keep QGM's system in balance. After notification by QGM that an adjustment is necessary to keep its system in balance, Shipper will be afforded reasonable opportunity to remedy its imbalance consistent with existing operational conditions. If the imbalance is not corrected within the time specified, QGM will take whatever action it deems necessary to remedy the imbalance situation.

If required to maintain operational stability and system integrity, QGM may adjust all receipts and deliveries on its system, even if Shipper is within the ±5% imbalance tolerance limits.

Adjustments at each receipt or delivery point transfer meter will be made according to the affected shipper's operational balancing agreement (OBA) or pre-determined allocation arrangement (PDA) with operators upstream or downstream of QGM's gathering system. Absent written notice to QGM of an OBA or PDA reflecting agreement of all affected shippers delivering gas to QGM at a given transfer meter, adjustments will be made

pro rata according to each shipper's confirmed daily nomination. QGM must be notified immediately of any changes to an existing OBA or PDA. Shipper shall provide QGM a copy of any document effecting changes to an OBA or PDA immediately upon execution. The OBA or PDA must be in place prior to gas day one of each month.

3.3 ***Monthly Balancing.*** (a) Shipper must maintain a monthly balance between receipts and deliveries within a ±5% imbalance tolerance. QGM will notify Shipper of its monthly imbalance within 30 days of the applicable month.

(b) For the determination of monthly imbalances, Shipper's receipt volumes shall be allocated according to Shipper's formal balancing agreements with operators upstream of the receipt point into QGM's gathering system. In the absence of a formal balancing agreement, Shipper's volumes will be allocated pro rata at the receipt point based on each shipper's confirmed nomination.

(c) When adjustments become operationally necessary, adjustments at each transfer meter will be made following the same procedure.

(d) When Shipper's scheduling practices or imbalances threaten deliveries to other shippers, QGM may impose non-ratable allocations on Shipper to cure any current imbalance or prevent future imbalances and to protect system integrity.

3.4 ***Imbalance Payback Option.*** Subject to QGM's available capacity, operational constraints and approval by QGM, Shipper shall, within the 30-day period following notification of its monthly imbalance, eliminate its prior month's imbalance through either a physical payback or taking of gas. QGM will consider Shipper's request and, subject to prudent operational practices, honor the request. Gas delivered to QGM by Shipper shall be allocated first to Shipper's daily nomination and then to any quantities nominated by Shipper to cure its imbalance.

QGM will permit imbalance trading between similarly situated shippers.

3.5 ***Assessment of Imbalance Charges.*** If Shipper has an imbalance at the end of the imbalance cure period, QGM may assess imbalance charges. However, QGM will not assess imbalance charges if Shipper's action is excusable by force majeure and Shipper has properly invoked force majeure or if the imbalance results from QGM's error or if the imbalance could not be cured as a result of QGM's inability to receive or deliver the imbalance volumes once Shipper's nomination has been confirmed. Imbalance charges will be calculated as follows:

QGM will impose an imbalance charge of $.50/Dth on any imbalances (*i.e.*, overdeliveries or underdeliveries) from 5% to 7% and a charge of $1.00/Dth on imbalances greater than 7%.

If Shipper is underdelivered, QGM will charge an additional amount equal to the average of the reported price of gas delivered to Northwest Pipeline Corporation, Colorado Interstate Gas Company and QGM for gas delivered in the Rocky Mountains as published in the *Inside FERC Gas Market Report*, published at the beginning of each month in which the imbalance occurred.

If any one of the indices referred to above is no longer reported or if the *Inside FERC Gas Market Report* ceases to be available, then QGM will use a similar index or publication.

3.6 ***Balancing at Agreement Termination.*** Following the termination of its Agreement, Shipper shall correct any remaining cumulative imbalance in receipts and deliveries within 30 days after the determination by QGM that an excess or deficiency exists. If, at the end of the 30-day period, there remains an imbalance that has not been eliminated by Shipper, QGM shall impose the appropriate imbalance charge set forth in this section.

3.7 ***Unauthorized Receipt or Delivery of Gas.*** If Shipper delivers gas to QGM or takes gas from QGM and has made no corresponding nomination under this Agreement or, if Shipper's nomination has been rejected by QGM, then QGM may impose an unauthorized overrun charge of $10 per Dth. In addition, upon determination that such unauthorized action has been taken by Shipper, QGM may take action to terminate such unauthorized use of its system.

3284

3.8 *Maintenance of System Integrity.* Nothing in this section limits QGM's right to take action as may be required, including the issuance of operational flow control orders, to adjust receipts and deliveries of gas in order to alleviate conditions that threaten the integrity of its system, including maintenance of service to higher priority customers.

4. Quality

4.1 The gas received from Shipper and delivered by QGM shall conform to the tariff quality specifications of the transporting pipeline receiving the gas from QGM's gathering facilities. However, QGM will bear the responsibility of dehydrating gas entering QGM's system from wells where QGM has installed dehydration equipment.

4.2 If the gas tendered by Shipper fails at any time to conform to such specifications, QGM shall notify the Shipper and may, at its option, refuse to accept further receipt of gas pending correction. Shipper shall indemnify QGM and hold it harmless from all suits, actions, regulatory proceedings, damages, costs, losses and expenses (including reasonable attorney fees) arising out of the failure of the gas tendered by Shipper to conform to the quality specifications, including any injury or damage done to QGM's facilities.

4.3 Acceptance of gas that does not conform to these specifications is at the option of QGM. Acceptance of the gas does not constitute any waiver of QGM's right to refuse to accept similarly nonconforming gas.

4.4 Shipper shall not process the gas for recovery of liquefiable hydrocarbons prior to the receipt of Shipper's gas by QGM. Unless agreed to otherwise in writing, title to all liquids and liquefiable hydrocarbons shall pass to QGM. QGM shall retain ownership of all liquid or liquefiable hydrocarbons which condense in its facilities or are recovered from Shipper's gas by QGM.

5. Measurement

5.1 *Use of Measurement.* Gas volumes determined according to this section will be used for billing, balancing and calculation of fuel use.

5.2 *Unit of Measurement and Metering Base.* The volumetric measurement base shall be one cubic foot of gas at a pressure base of 14.73 pounds per square inch absolute, at a temperature base of 60 degrees Fahrenheit, without adjustment for water vapor.

5.3 *Atmospheric Pressure.* For the purpose of measurement, calculation and meter calibration, the average absolute atmospheric (barometric) pressure will be based on the actual altitude at each point of measurement irrespective of variations in natural atmospheric pressure from time to time. When electronic computer measurement is used, the gas pressure will be measured directly, using a pressure measuring device for continuous input to the electronic computer.

5.4 *Temperature.* The temperature of the gas will be determined at the points of measurement by means of a properly installed recording thermometer or continuous electronic transducer input to a computer of standard manufacture selected by QGM and installed according to the recommendations contained in ANSI/API 2530 (Orifice Metering of Natural Gas). The arithmetic average of temperatures for each day will be used in computing temperatures of the gas during such day for conventional chart measurement. When electronic computer measurement is used, average daily temperature will be computed as a running average.

5.5 *Determination of Gross Heating Value and Specific Gravity.* The determination of gross heating value and specific gravity will be made from the composition by calculation using physical gas constants for gas compounds as outlined in GPA Standard 2145-92 and GPA Standard 2172-86 (Table of Physical Constants of paraffin Hydrocarbons and Other Components of Natural Gas) with any subsequent amendments or revisions that QGM may adopt.

If QGM elects to install chart measurement, the arithmetic average of the hourly heating value and specific gravity recorded during periods of flow each day by a recording calorimeter and gravitometer or recording chromatograph, if installed, will be the gross heating value and specific gravity for all gas delivered during the applicable sample period at the sample site each day.

If a continuous gas sampling device is used, determinations will be made not less than once every month. The determinations will be the gross heating value and specific gravity for all gas delivered during the applicable sampling period at the same site. Gross heating values and specific gravities determined from spot samples will be used in calculating gas delivered for the day on which the test is made and all following days until the next test is made.

The calculations (for Btu) will be based on dry gas if the gas at the measurement points contain less than 5 pounds of water per MMcf. If the gas at the measurement points contains more than 5 pounds of water per MMcf, the proper procedure as established in GPA Standard 2172-86 will be applied for determining the Btu content of the gas and converted to a dry basis.

5.6 ***Supercompressibility.*** The measurement of gas will be corrected for deviation from Boyle's Law at the pressures and temperatures under which gas is measured by use of the calculation appearing in the manual entitled "PAR Research Project NX-19, Extension of Range of Supercompressibility Table," AGA Catalog No. 48/PR published by the American Gas Association in 1963 and/or AGA Committee Report #8 as supplemented or amended. Inert content of the metered gas stream used in the Formula NX-19 calculations shall be determined by a chromatographic analysis using spot sampling when deliveries begin and thereafter by (i) chromatographic analysis not less than semiannually, (ii) or chromatographic input at each of the points where the gas is received and delivered.

5.7 ***Measuring Equipment.*** Both QGM and shipper shall have the right to be present at the time of any installing, reading, cleaning, changing, repairing, inspecting, testing, calibrating, or adjusting done in connection with the other's measuring equipment. The failure of either QGM or shipper to witness such an operation shall not affect the validity of the operation in any way.

The records from the measuring equipment shall remain the property of the party owning the equipment, but within 10 days of a request, each will permit the other party to inspect its records and charts, together with related calculations.

The measurement equipment of shipper shall be for check purposes only, except as expressly provided in this Agreement, shall not be used to measure the gas.

5.8 ***Metering.*** QGM may install orifice or turbine meters.

(a) ***Orifice Meters.*** All orifice meters will be installed and gas volumes computed according to the standards prescribed in ANSI/API 2530 (Orifice Metering of Natural Gas, Second Edition September 1985).

(b) ***Turbine Meters.*** All turbine meters will be installed and gas volumes computed in accordance with the standards prescribed in Transmission Measurement Committee Report No. 7 (Measurement of Fuel Gas by Turbine Meters).

(c) QGM may adopt the most recent edition of standard ANSI/API 2530 and the Transmission Measurement Committee Report No. 7.

5.9 ***Electronic Flow Computers.*** QGM may install electronic flow computers to permit the direct computation of gas flows without the use of charts.

5.10 ***New Measurement Techniques.*** If a new method or technique is developed for gas measurement or the determination of the factors used in the gas measurement, the new method or technique may be substituted by QGM. QGM shall promptly inform all shippers of any new techniques adopted.

5.11 ***Calibration and Test of Meters.*** The accuracy of all measuring equipment will be verified by QGM at reasonable intervals, and if requested, in the presence of shipper, but neither shipper nor QGM shall be required to verify the accuracy of the equipment more frequently than once in a 30-day period. If either party desires a special test of any measuring equipment, it will promptly notify the other, and the parties shall then cooperate to secure a prompt verification of the accuracy of the equipment. The party requesting the special test shall bear all costs.

5.12 ***Correction of Metering Errors.*** If any measuring equipment is found to be inaccurate, the equipment will be adjusted immediately to measure accurately. If the measuring

equipment in the aggregate is found to be inaccurate by two percent or more at a recording corresponding to the average hourly rate of gas flow for the period since the last preceding test, any payments based upon inaccurate measurement will be corrected at the rate of the inaccuracy for any period that is known definitely or agreed upon, but in case the period is not known definitely or agreed upon, the correction shall be for a period extending over one half of the time elapsed since the date of the last test.

5.13 *Failure of Measuring Equipment.* If any measuring equipment is out of service or is registering inaccurately and the error is not determinable by test, or by previous recordings, receipts or deliveries through the equipment will be estimated and agreed to by the parties upon the first of the following methods that is feasible:

(a) By correcting the error if the percentage of error is ascertainable by calibration, special test, or mathematical calculation, or, in the absence of (a);

(b) By using the registration of any check meter or meters, if installed and accurately registering, or, in the absence of (a) and (b);

(c) By estimating the quantity of gas received or delivered based on receipts or deliveries during preceding periods under similar conditions when the measuring equipment was registering accurately.

5.14 *Preservation of Records.* Shipper and QGM shall preserve for a period of at least three years, or for such longer period as may be required by appropriate authority, test data, charts or other similar records.

5.15 *Claims.* All claims of any party as to the quantity of gas tendered and delivered must be submitted in writing by the party within 1 year from the date of commencement of the claimed discrepancy.

5.16 *Check meters.* Either party may, at its option and expense, install and operate check measuring equipment, provided that the equipment is installed in a way that does not interfere with the operations of the other party. Either party's check meters shall be subject at all reasonable times to inspection and examination by a representative of the other party, but the reading, calibration, adjustment, and changing of charts shall be done only by the party installing the check meters.

5.17 *Records.* Each party shall, upon request, furnish to the other party at the earliest possible time all charts upon which it has based any statement. Each party shall return to the other party all charts within a 30-day period. Each party shall have access to the other party's records and books at all reasonable business hours so far as they affect measurement and settlement for the gas received or delivered.

5.18 *Billing Adjustments.* Upon written request, QGM shall furnish Shipper with the measurement data used in compiling any monthly statements. If Shipper's computation of the volume of gas varies from QGM's computation by less than the greater of 2% or 50 Dth, QGM's computation shall be deemed correct. If Shipper's computation differs from QGM's by more than the greater of 2% or 50 Dth, then QGM shall redetermine the volume of gas gathered. If QGM's second computation varies from Shipper's computation by less than the greater of 2% or 50 Dth, Shipper's computation shall be deemed correct. However, if QGM's second computation still varies from Shipper's computation by more than the greater of 2% or 50 Dth, then QGM's second computation shall be deemed correct.

6. Billing and Payment

6.1 On or before the 25th day of each calendar month, QGM shall issue to Shipper statements showing the total volume and Btu content of the gas received from Shipper and the volume and Btu content of the gas delivered by QGM to Shipper for the preceding calendar month. The statements shall also show the total amount due from Shipper. Shipper shall make payment within 15 days of date of the statement.

6.2 Payment by Shipper shall not be deemed to be a waiver of any rights to recoup any amounts in dispute. Any statement must be contested, if at all, within 1 year from the date of the statement.

6.3 The Parties shall retain all records prepared in connection with any statement or payment for a period of at least 3 years after

preparation or such other periods as may be required by law.

6.4 Each party shall have the right to examine the books and records of the other party relating to the service provided during normal business hours for the purpose of determining or confirming all billings and payments.

6.5 Shipper may withhold any amounts in dispute provided that (1) Shipper contests the bill or a portion thereof in good faith and (2) pays the undisputed portion of the billing. Interest shall not accrue on any disputed amount resolved in favor of shipper. Otherwise, if Shipper fails to pay all of the amount of any statement when the amount is due, interest on the unpaid portion shall accrue at the rate of 1½% per month on the unpaid portion from the due date until the date of payment. If the failure to pay continues for 30 days after payment is due, QGM, in addition to any other remedy it may have, may suspend further receipt or delivery of gas until the amount is paid.

7. Government Requirements

If this Agreement and the services provided become subject to the jurisdiction of the FERC, or any other governmental authorities, and either party is adversely affected by the assertion of the jurisdiction, that party may terminate this Agreement by providing the other party with 60 days written notice. Notice of termination must be given within 30 days of the attachment of jurisdiction.

8. Liability

Each party assumes full responsibility and liability arising from the operation of the facilities it owns and agrees to hold the other party harmless from any liability whatever arising from the owning party's installation, ownership or operation of its facilities.

9. Warranty

Shipper warrants title to or the right to deliver and use the gas shipped or committed to use under this Agreement and further warrants that the gas is free from all liens and adverse claims, including tax liens. Shipper shall have the obligation to make settlements for all royalties due and payments owed to Shipper's mineral and royalty owners. Shipper agrees to indemnify QGM and save it harmless from all suits, actions, claims, debts, accounts, damages, costs, losses, liens, license fees, and expenses which arise from Shipper's obligations under this section.

10. Force Majeure

If either party is rendered wholly or partially unable to carry out its obligations under this Agreement due to force majeure, the party shall give written notice describing the event of force majeure as soon as is reasonably possible after the occurrence. The obligations of the Parties, other than to make payments of amounts due so far as they are affected by such force majeure, shall be suspended during the continuance of the event of force majeure, but for no longer period. The affected party shall remedy the event of force majeure in a commercially reasonable manner. Nothing in this Agreement shall be construed to require either party to settle a strike or labor dispute against its better judgment.

11. Fuel Gas

11.1 Shipper shall provide all fuel gas used to bring the gas to QGM's specifications and to introduce the gas into and gather the gas through QGM's system. Shipper shall also provide its pro rata share of lost-and-unaccounted-for volumes.

11.2 Shipper's total nominations into QGM's gathering system must include the amount of gas required to reimburse QGM for fuel use and lost and unaccounted-for gas.

12. Assignment

All rights and duties under this Agreement shall inure to and be binding upon the successors and assigns of the Parties. No transfer of any interest of either party, except a transfer to an affiliate, shall be binding upon the other party until the other party has been furnished with notice and a true copy of the conveyance or transfer. No transfer shall be binding on QGM until the successor or assignee meets the creditworthiness requirements of

this Agreement. Any successor or assignee will be bound by all the terms and conditions of the Agreement and that the successor or assignee assumes all the obligations of its assignor or predecessor in interest.

13. Creditworthiness

13.1 *Insolvent Shipper.* QGM shall not be required to perform any gathering services for Shipper if Shipper is or becomes insolvent or, at QGM's request, fails within a reasonable period to demonstrate creditworthiness.

13.2 *Credit Evaluation.* QGM may as it deems necessary determine the acceptability of Shipper's overall financial condition, working capital and profitability trends.

(a) Shipper shall provide at QGM's request (1) current audited financial statements, annual reports, 10-K reports or other filings with regulatory agencies, (2) a list of all corporate affiliates, parent companies and subsidiaries, (3) any available reports from credit-reporting agencies, (4) bank reference and at least 2 trade references. The results of reference checks and any credit reports must show that Shipper's obligations are being paid on a prompt basis.

(b) Shipper must not be operating under any chapter of the bankruptcy laws and must not be subject to liquidation or debt reduction procedures, such as an assignment for the benefit of creditors, or any informal creditors' committee agreement. An exception may be made for a shipper who is a debtor in possession operating under Chapter XI of the Federal Bankruptcy Act but only with adequate assurances that billings will be paid promptly as cost of administration under the federal court's jurisdiction.

(c) Shipper must not be subject to the uncertainty of pending liquidation or proceedings in state or federal courts or before any administrative agency that could cause a substantial deterioration in its financial condition, which could cause a condition of insolvency or the inability to exist as an ongoing business entity.

(d) No delinquent monetary balances may be outstanding for services previously provided by QGM. Shipper must have paid its account for past periods according to terms of the Agreement.

(e) No significant collection lawsuits or judgments shall be outstanding that would seriously reflect upon Shipper's ability to remain solvent.

13.3 *Options.* If Shipper fails to satisfy the credit criteria, Shipper may still obtain service by electing one of the following options: (1) payment in advance for 6 months' service, (2) a standby irrevocable letter of credit drawn upon a bank acceptable to QGM, (3) a security interest in collateral provided by Shipper that is satisfactory to QGM or (4) guarantee of performance of all Shipper's obligations to QGM by a party that satisfies QGM's credit appraisal.

13.4 *Subsequent Information.* (a) If any of the events or actions described in §§ 13.2(b), 13.2(c) and 13.2(e) above occur during the term of this Agreement, Shipper shall provide notification to QGM within 2 working days of the imposed event or action. Shipper shall also promptly provide additional Shipper credit information as may be reasonably required by QGM to determine Shipper's creditworthiness at any time during the term of service under this Agreement.

(b) After receipt of a request for service, QGM may require that Shipper furnish additional information as a prerequisite to QGM providing the service. The information may include proof of Shipper's lawful right and title to deliver the gas to QGM.

14. Installation of Facilities

Except as specifically set forth in this Agreement, QGM shall not be required to install or construct any additional facilities in order to gather Shipper's gas.

15. Access.

Shipper shall provide and maintain access for QGM to QGM's facilities used to provide gathering services to Shipper.

16. Miscellaneous

16.1 A waiver by either party of any one or more defaults by the other party shall not operate as a waiver of any future default.

16.2 This Agreement, including any ap-

pendixes and these general terms and conditions, contains the entire understanding of the parties and may only be amended by an instrument in writing signed by both Parties.

16.3 In interpreting this Agreement, the recitals shall be considered as part of this Agreement and not as surplusage.

16.4 This Agreement shall be construed under the laws of Utah.

Tab U

JUN 13 2001
By SALT LAKE COUNTY
Cynthia Thompson
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

JACK J. GRYNBERG; CELESTE C. GRYNBERG and L & R EXPLORATION VENTURE,	:	**MINUTE ENTRY**
	:	**CASE NO. 990909729**
Plaintiffs,	:	
vs.	:	
QUESTAR PIPELINE COMPANY, a Utah corporation; QUESTAR GAS MANAGEMENT COMPANY, a Utah corporation, and QUESTAR ENERGY TRADING COMPANY, a Utah corporation,	:	
	:	
Defendants.		

The Court has before it a request for decision filed by the defendants seeking a ruling on their proposed Order and Final Judgment and the plaintiffs' Objections thereto. Having reviewed the moving and responding memoranda, the Court rules as stated herein.

The Court determines that the proposed Order and Final Judgment filed by the defendants is consistent with this Court's Memorandum Decision, entered March 8, 2001, and needs to be altered (or clarified) only in the following respects:

1. The defendants are to omit paragraph 21 of the Revised Proposed Order. The Court did not rely on Rules 8, 12 or 9(b) in its Memorandum Decision. The defendants are to also omit any other

reference suggesting that the plaintiffs "failed to properly plead. . ." (i.e. paragraph 17). (The Court also notes that paragraph 16 has been skipped in the Revised Proposed Order).

2. The defendants are to review paragraphs 5 and 6 for accuracy. It appears from the plaintiff's Reply that the United States District Court of Wyoming has not entered a final appealable order. If that is indeed the case, these paragraphs should be modified in the manner suggested by the plaintiffs.

3. Paragraph 9 should add language that is consistent with the Court's Memorandum Decision at p. 8, fn. 4. Specifically, this paragraph should clarify that while the plaintiffs did raise **an issue** concerning BTU content before the U.S. District Court of Wyoming, this issue was limited in scope.

Counsel for the defendants is to prepare a final Order with the foregoing revisions and submit the same to the Court for review and signature. The Court is filing the initial proposed Order and Final Judgment and the Revised Proposed Order unsigned.

Dated this 13 day of June, 2001.

THIRD DISTRICT COURT SALT LAKE CITY UTAH STATE OF

TIMOTHY R. HANSON
DISTRICT COURT JUDGE

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Minute Entry, to the following, this 13 day of June, 2001:

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AND QUESTAR ENERGY TRADING COMPANY

IN THE THIRD JUDICIAL DISTRICT COURT, DIVISION I
SALT LAKE COUNTY, STATE OF UTAH

JACK J. GRYNBERG, CELESTE C. GRYNBERG, and L & R EXPLORATION VENTURE, Plaintiffs, v. QUESTAR PIPELINE COMPANY, a Utah corporation; QUESTAR GAS MANAGEMENT COMPANY, a Utah corporation, and QUESTAR ENERGY TRADING COMPANY, a Utah corporation, Defendants.	**ORDER GRANTING SUMMARY JUDGMENT FOR DEFENDANTS** Case No. 990909729 Judge Timothy R. Hanson

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This matter came before the Court on Defendants' Motion to Dismiss First Amended Complaint filed July 6, 2000. Plaintiffs Jack J. Grynberg, Celeste C. Grynberg, and L & R Exploration Venture (collectively, "Plaintiffs") filed a Memorandum in Opposition to Defendants' Motion to Dismiss on August 8, 2000. On August 31, 2000, Defendants filed a Reply to Plaintiffs' Memorandum in Opposition to Defendants' Motion to Dismiss First Amended Complaint. Defendants' motion came before the Court for hearing on December 18, 2000.

On January 21, 2001, Plaintiffs filed a Supplementation of Record. Three days later, Defendants filed a Motion to Strike Plaintiff's proposed supplementation. The Court considered Plaintiffs' Supplementation of Record, which postponed the Court's determination of Defendants' Motion to Dismiss. On March 8, 2001, the Court issued a Memorandum Decision concerning Defendant's Motion. The Court has reviewed the parties' briefs, affidavits, and exhibits, and heard oral argument on December 18, 2001. Now being fully advised in the premises, the Court

HEREBY FINDS AND ORDERS AS FOLLOWS:

1. The Court considered extraneous materials submitted by the parties and therefore treats Defendants' Motion to Dismiss as a motion for Summary Judgment. Utah R. Civ. P. 12(b); 56.

2. The Court's March 8, 2001 Memorandum Decision and the findings and conclusions set forth therein are incorporated by reference as if set forth fully in this Order.

3. The Court denies Plaintiffs' request to postpone ruling on Defendants' motion until Plaintiffs have had an opportunity to conduct discovery. The Court finds, for the reasons set forth in the Memorandum Decision, that Plaintiffs have failed to demonstrate how additional discovery would be of any assistance to their response to Defendants' motion.

4. Defendants are hereby granted summary judgment on the merits of each of Plaintiffs' claims, and each of these claims are dismissed with prejudice, as follows:

Claims Relating to Time Periods Prior to July 1994: Contract Claims

5. Plaintiffs' First Amended Complaint included a claim for "Breach of Contract" (First Amended Complaint at ¶ 78) and a claim for a "Declaratory Judgment" (First Amended Complaint ¶¶ 79-81), which rest upon long-term 20-year gas purchase agreements in effect between Questar Pipeline Company and Plaintiffs from 1974 to July 1994.

6. All of the contracts at issue in this case terminated and all causes of action accrued more than four years before Plaintiffs initially filed this action. As a result, Plaintiffs' contract claims are barred by the four-year U.C.C. statute of limitations. Utah Code Ann. § 70A-2-725. Defendants are therefore entitled to summary judgment dismissing all of Plaintiffs' breach of contract claims.

7. There are no genuine issues of material fact concerning Plaintiffs' allegations of fraudulent concealment by Defendants sufficient to toll the U.C.C. limitations period. Defendants have shown by unrefuted evidence that Plaintiffs were on notice of the

claimed misconduct by no later than early 1995, more than four years before Plaintiffs filed suit.

8. As a matter of law, the one-year general savings clause found in Utah Code Ann. § 78-12-40 does not apply to this case. The more specific six-month savings statute found in the U.C.C. for actions involving contracts for the sale of goods, Utah Code Ann. § 70A-2-725(3), applies to this case. *Perry v. Pioneer Wholesale Co.*, 681 P.2d 214 (Utah 1984).

9. A prior action between Plaintiffs and Defendants before the United States District Court for the District of Wyoming involving related claims terminated as to the related prior allegations on October 1, 1998, with no appeal of relevant claims. *Questar Pipeline Co. v. Grynberg et al.*, 201 F.3d 1277 (10th Cir. 2000). Plaintiffs' claims in this matter were filed on September 29, 1999, more than six months after October 1, 1998, outside the six-month savings period, and are therefore time-barred and subject to dismissal with prejudice as a matter of law, even if one were to assume the same claims had been pleaded in the prior action.

9. The relation back doctrine is not available to Plaintiffs because they did not plead the same claims, theories, or operative facts brought before this Court in the earlier action before the U.S. District Court in Wyoming.

Claims Relating to Time Periods Prior to July 1994: Tort Claims

10. Plaintiffs' tort claims in the First Amended Complaint included "Negligent or Intentional Misrepresentation" (¶ 82), "Fraud" (¶ 83), "Conversion" (¶ 85), "Res Ipsa

Loquitur and Negligence" (¶ 86), "Breach of Fiduciary Duty" (¶ 87), and "Equity (Injunction, Accounting, Quantum Meruit, and Unjust Enrichment)" (¶ 88).

11. None of these six tort claims exists independently from Plaintiffs' contract claims. The parties' U C.C. contracts fully cover the alleged duties associated with gas sampling and heating content. The parties agreed to embrace contractual remedies with respect to alleged conduct by the Defendants. The economic loss doctrine bars each of Plaintiffs' tort claims.

12. Fraud, misrepresentation, and concealment are possible exceptions to the economic loss doctrine. However, Plaintiffs' fraud, misrepresentation, and concealment claims are also barred. Plaintiffs had actual notice of their fraud or misrepresentation claims by early 1995, but allowed the three-year statute of limitations to run.

13. Defendants have demonstrated multiple inquiry notice opportunities which would have lead a reasonable plaintiff to discover the claims earlier and render any alleged acts of concealment irrelevant. *Snow v. Rudd,* 998 P.2d 262 (Utah 2000). These opportunities were particularly evident in four documents presented by Defendants: (i) Mr. Grynberg's affidavit filed in the District of Wyoming in February 1994, which shows that when he acted as a diligent commercial seller of goods, he was able to discover the alleged mismeasurement independently of Defendants based upon facts Defendants provided to him and his own inquiry opportunities. Defendants' Exhibit ("App. Ex.") 23; (ii) The letter from John R. Landreth of Hunt Oil Company to Mr. Grynberg dated July 21, 1993, in which Mr. Landreth wrote: "Enclosed you will find

copies of the latest Questar BTU measurement reports together with copies of *our April, 1993 independent sample analysis*." App. Ex. 33 (emphasis added); (iii) The Plaintiffs' own Expert Designation in the earlier suit in the District of Wyoming, dated August 17, 1993, in which the Plaintiffs stated their expert would testify that for periods covered by the long-term contracts "the gross heating value was to be determined by Questar at least quarterly and that based on his review of Questar's reports of Btu tests, Questar failed to conduct the Btu tests as required by the contract." App. Ex. 19, p.4; and (iv) Mr. Grynberg's response to Questar Pipeline Company's Interrogatory #41 in the federal litigation in Wyoming, dated September 6, 1993, in which Mr. Grynberg admitted: "documents showing the dates of btu tests are documents produced by Questar to the Defendants. These documents show the dates Questar conducted the btu measurements." App. Ex. 14, pp. 40-41. There can be no "relation back" of fraud or misrepresentation tort claims to the prior litigation because no such claims were plead in that litigation.

Claims Relating to Time Periods Prior to July 1994: Common Carrier Liability

14. Plaintiffs' fifth cause of action for alleged "Common Carrier Liability" (¶ 84) is dismissed with prejudice as a matter of law because common carrier liability is not applicable to natural gas pipelines.

Claims Relating to Time Periods After July 1994

15. Plaintiffs' claims that relate to time periods after July 1994 (following the termination of the long-term contracts at issue in this case) are barred in part by the statute of limitations, in their entirety by the economic loss doctrine, by the lack of any

applicable common carrier liability, by the absence of facts to support any contended fiduciary relationship, and by the absence of facts to support any contended third-party beneficiary status. No sound contractual or tort duty exists upon which Plaintiffs can base their claims for time periods after the long-term contracts between the parties expired.

17. Plaintiffs failed to properly plead, or submit facts to support, third-party contractual beneficiary status. Specifically, Plaintiffs have failed to offer evidence that parties to post-July 1994 contracts entered into between the operator of Plaintiffs' wells and Defendants, at the time of the formation of those contracts, intended to benefit Plaintiffs as required under applicable Wyoming law. *Hoiness-La Bar Ins. v. Julien Const. Co.*, 743 P.2d 1262 (Wyo. 1987). The form contract language Plaintiffs proffer shows instead the parties' intent to negative third-party reliance, the Plaintiffs' operator agreeing to be responsible for and to indemnify Defendants from any claims by other interest owners in the wells.

18. No evidence exists to support recognition of any fiduciary relationship between or among the parties. Plaintiffs are sophisticated commercial sellers of goods and the parties have a history of sophisticated commercial negotiations and litigation, not one of dependence by Plaintiffs upon Defendants.

19. Plaintiffs' conversion claim should be dismissed on the additional ground that after the termination of the contracts between Defendants and Plaintiffs, Defendants only transported gas owned by parties other than Plaintiffs.

20. All claims related to gas delivered under Contract 219, which terminated in early 1992, should be dismissed for the following additional reasons:

a) Both Utah and Colorado statutes of limitations applicable to that contract have run so as to bar any such claims; and

b) The parties previously entered into a binding settlement and release of all claims under Contract 219 and Plaintiffs have failed to raise a genuine issue of material fact regarding enforceability of that release or of concealment.

21. In addition to the substantive grounds for dismissal described above, in the alternative, each of Plaintiffs' claims related to time periods after expiration of the long-term contracts in July 1994, are also dismissed because Plaintiffs failed to plead those claims with particularity, as required by Rule 9(b), Utah R. Civ. P., and also failed to meet minimal pleading requirements of Rules 8 and 12 by failing to provide fair notice to each Defendant of the conduct alleged against each of them.

Defendants' Motion to Dismiss First Amended Complaint is GRANTED and this action is dismissed in its entirety with prejudice.

DATED this _____day of _____, 2001.

BY THE COURT

_____

Judge Timothy R. Hanson

CERTIFICATE OF SERVICE

I certify that on March 23, 2001, I served a copy of the foregoing ORDER GRANTING SUMMARY JUDGMENT FOR DEFENDANTS via hand delivery to the following:

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ATTORNEYS FOR DEFENDANT
QUESTAR PIPELINE COMPANY

IN THE THIRD JUDICIAL DISTRICT COURT, DIVISION I
SALT LAKE COUNTY, STATE OF UTAH

JACK J. GRYNBERG, CELESTE C. GRYNBERG, and L & R EXPLORATION VENTURE, Plaintiffs, v. QUESTAR PIPELINE COMPANY, Defendant.	QUESTAR'S OPPOSITION TO PLAINTIFFS' APPLICATION FOR DEFAULT JUDGMENT, CONSENT TO ENLARGEMENT OF PLAINTIFFS' RESPONSE TIME, AND REPLY IN SUPPORT OF MOTION FOR PROTECTIVE ORDER Case No 990909729 Judge Timothy R Hanson

Defendant, Questar Pipeline Company ("Questar"), hereby opposes Plaintiffs' application for a default judgment, consents to enlargement of time for Plaintiffs to respond to Questar's Motion to Dismiss, and replies to Plaintiffs' brief in opposition to Questar's motion for a protective order.

I. This Court's Orders Authorize the Filing of Questar's Motion to Dismiss

Plaintiffs' application for a default judgment flies in the face of both the letter and spirit of the Court's orders which preserved Questar's right to file either an answer or further motion(s) as its initial substantive response to Plaintiffs' Complaint.

Questar's October 18, 1999 Motion to Stay or Dismiss asked this Court to exercise its inherent authority and discretion to defer exercise of jurisdiction. Such a motion did not appear to fall squarely under Rule 12. Moreover, since Questar thought that a stay was appropriate in order to avoid duplication of litigation and promote judicial economy, it did not make sense to respond to the Complaint on the merits before the stay issue was determined. Therefore, upon filing its Motion to Stay or Dismiss, Questar sought enlargement of its time to file its original answer or motion in response to the Complaint. Questar's Motion to Enlarge Time for Answer, Motion and Discovery Response Pending Decision on Questar's Motion to Stay or Dismiss Proceedings, filed October 18, 1999. Questar candidly explained to the Court its uncertainty regarding

whether or not the Motion to Stay should be considered a Motion under Rule 12, sufficient to delay the answer or motion date, and therefore asked the Court to preserve its opportunity to file an answer or motion on the merits:

> It may be that Questar's Motion to Stay or Dismiss these proceedings, should be considered the equivalent of a motion to dismiss under Rule 12(b)(1), Utah Rules of Civil Procedure, such that no answer or other response to the Complaint is required pending a ruling on the Motion. However, because that result is not clear under Utah law, and in an abundance of caution, Questar now moves formally to "extend the answer or other response date, pending the Court's decision on Questar's broader motion to stay or dismiss."

Id. ¶7.

The Court entered its minute order and described Questar's motion as "seeking to enlarge the time to Answer, [or] *file appropriate Motions*," and as a motion for enlargement of time to "file an Answer, [or] *file other Motions*." Minute Order, filed November 8, 1999 [emphasis added]. The Court ruled "that it is appropriate to grant Questar's Motion to Enlarge the Time to File an Answer, *or take other appropriate action in connection with the plaintiffs' Complaint." Id.* [emphasis added].

The Court also signed and entered its Order Regarding Questar's Motion to Enlarge Time for Answer, Motion and Discovery Response Pending Decision on Questar's Motion to Stay or Dismiss Proceedings. That order, entered in the form proposed by Questar, "hereby orders that the time for Questar to *answer, move or*

otherwise respond to Plaintiffs' Complaint" is enlarged to 30 days following the Court's order on Questar's Motion to Stay or Dismiss Proceedings. *Id.* [emphasis added].

It is evident, given the stated grounds for Questar's motion and the Court's Orders granting the motion, that Questar's time for filing an initial substantive response to the Complaint—whether a Rule 12 motion, an answer, or some other response—was extended. It is also evident that the filing of the Motion to Stay or Dismiss was not intended, by Questar or the Court, to constitute Questar's only opportunity for pre-answer motion practice. Plaintiffs' assertion that Questar's only remaining option was to file an answer flies in the face of the language of this Court's orders extending the time for filing of motions.

Plaintiffs have cited no legal authority to support their proposition that the initial Motion to Stay or Dismiss should be considered a motion which was filed under Rule 12 and which therefore required consolidation of all grounds for dismissal. Even if the Motion to Stay or Dismiss could be so characterized, Plaintiffs have not shown that this Court lacked authority to grant Questar the opportunity to file a second or later motion, as contemplated in the minute order and order enlarging time.

II. Default Judgment is Improper

Plaintiffs' Application for Entry of a Default Judgment is bereft of any authority to support entry of default judgment under the circumstances. The extreme penalty of a default judgment should not be applied against a Defendant who has appeared and filed a motion to dismiss that was authorized by the Court, within the time specified in the Court's order. Such a penalty would be particularly unjust in that Questar's motion raises serious substantive challenges to the legal basis of every claim asserted in the Complaint, including challenges based on statute of limitations bars, challenges to subject matter jurisdiction (which cannot be waived) and challenges under Rule 12(b)(6) which would be considered as Rule 12(c) motions even if the earlier Motion to Stay could be considered a motion under Rule 12. *Interstate Excavating, Inc. v. Agla Dev. Corp.*, 611 P.2d 369, 371 (Utah 1980) ("[default judgments] are not favored in the law, especially where the party has timely responded with challenging pleadings").

III. Questar Consents to Plaintiffs' Requested Enlargement of Time

Questar does not oppose an extension of time for Plaintiffs to file their opposition to Questar's motion to dismiss and would have stipulated to a 30-day extension if Plaintiffs' counsel had first inquired. After receiving Plaintiffs' motion, Questar counsel

contacted Plaintiffs' counsel and the parties have arrived at a letter agreement regarding the timing of the parties' respective opposition and reply briefs.

Plaintiffs' counsel, however, wished to preserve Plaintiffs' argument that Questar's Motion to Dismiss should be stricken as improper, so that Plaintiffs should not be required to file any response. Questar disagrees for the reasons shown above.

Accordingly, Questar's proposed order filed herewith suggests that the Court enter an order which requires Plaintiffs to respond to the Motion to Dismiss in accordance with the briefing schedule as agreed among the parties' counsel.

IV. Discovery Should be Deferred Pending Ruling on the Motion to Dismiss

Plaintiffs have opposed a protective order which would postpone the onset of enormously burdensome discovery covering more than 26 years of operating history, not only as to the transactions between the parties, but also as to virtually every transaction and gas measurement covering Questar's entire operations in three different states. Even Plaintiffs' argument recognizes that on its face the UCC statute of limitations has run because plaintiffs failed to re-file within the six months savings provision contained within that same UCC statute. Plaintiffs embrace the first part of the UCC limitations statute, the four-year time limit in Section 725(1), but then seek to avoid the six-month

"savings" provision of Section 725(3) under the strained suggestion that the savings clause is permissive and not mandatory.

Questar does not believe it is appropriate for the parties to attempt to brief the limitations bar issues in their protective order arguments, or for the Court to seek to pre-determine who will "win" those arguments. It is sufficient, and apparent even from reading Plaintiffs' own effort to urge application of a different "savings" clause, that, at a minimum Questar has raised a colorable and genuine challenge to the scope of the claims pleaded. It would be extremely wasteful for Plaintiffs' proposed discovery to proceed only to learn the Court agrees with Questar that, as a matter of law, the statute of limitations bars Plaintiffs' claims for the vast majority of the 26 years for which Plaintiffs seek wide-ranging and burdensome discovery.

Plaintiffs' also contend that they need discovery to respond to Questar's Motion to Dismiss. Questar disputes that proposition for three reasons.

First, there can be no genuine issue of concealment where the Plaintiffs already sued Questar for breach of contract due to alleged BTU mismeasurement (in their private 1993 lawsuit in the District of Wyoming), and where Jack J. Grynberg, acting as Relator for the United States already sued Questar for fraud in its BTU practices in a 1995 action in the District of Columbia. It is beyond dispute that the

claims were not only discovered, but were actually filed, more than four years before the Complaint herein, so that there can be no issue of concealment and the only question is whether the Plaintiffs re-filed within the savings period.

Second, how can Plaintiffs claim that they were victims of concealment lulling them into complacency to keep from filing a lawsuit until they belatedly discovered the claims, yet also claim that they are unable to present facts to show such concealment based upon information they already know and were supposed to have pleaded with particularity (but did not) in their Complaint?

Third, even if it could somehow possibly be the case that Plaintiffs need discovery simply to defend the sufficiency of the complaint they filed, then under treatment of the Rule 12(b)(6) motion as one filed under Rule 56, they should have to make an adequate showing under Rule 56(f) regarding why they need discovery to respond to the purely legal arguments raised. The import of Plaintiffs' argument is that any party who pleads concealment, with no particularity whatsover, should always have full blown discovery before the Court can consider the statute of limitations defense. That proposition would undermine the purposes of the limitations statutes.

V. Conclusion

Questar's is the type of Rule 12 motion which ought to be brought and determined early in a complex lawsuit. Questar proceeded timely, in accordance with the Rules of Civil Procedure to first request a complete stay of proceedings. When that stay request was denied, Questar acted within the Rules and as authorized by this Court's orders to file its Motion to Dismiss. There is no basis in the procedural history for any finding that any default occurred. There is no basis for entry of a default judgment. The Motion to Dismiss consolidates, and presents in an orderly fashion, threshold legal issues which may resolve all or a great portion of the Plaintiffs' claims as a matter of law, before the parties spend a lot of money on "fishing expedition" discovery. Under these circumstances a brief deferral of discovery is sensible.

For these reasons, Questar respectfully suggests that the Court should deny the Application for a Default Judgment, should enter its order requiring the Plaintiffs to file their opposition to Questar's Motion to Dismiss within 30 days after it was filed (or on an agreed briefing schedule), and should grant Questar's motion for a protective order.

Respectfully submitted,

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QUESTAR CORPORATION

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ATTORNEYS FOR DEFENDANT
QUESTAR PIPELINE COMPANY

CERTIFICATE OF SERVICE

I certify that on May 12, 2000, I served a copy of the foregoing QUESTAR'S OPPOSITION TO PLAINTIFFS' APPLICATION FOR DEFAULT JUDGMENT, CONSENT TO ENLARGEMENT OF PLAINTIFFS' RESPONSE TIME, AND REPLY IN SUPPORT OF MOTION FOR PROTECTIVE ORDER to the following by

☐ U.S. Mail, postage prepaid
☒ Hand Delivery
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Tab X

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

JACK J. GRYNBERG; CELESTE C. GRYNBERG and L & R EXPLORATION VENTURE,	:	**MINUTE ENTRY**
	:	**CASE NO. 990909729**
Plaintiffs,	:	
vs.	:	
QUESTAR PIPELINE COMPANY, a Utah corporation; QUESTAR GAS MANAGEMENT COMPANY, a Utah corporation, and QUESTAR ENERGY TRADING COMPANY, a Utah corporation,	:	
	:	
Defendants.		

The Court has before it the plaintiff's Supplementation of the Record. This "Supplementation" was filed on January 12, 2001, nearly one month after the parties appeared before the Court for oral argument in connection with the defendants' Motion to Dismiss First Amended Complaint. The Supplementation purports to make the Court "aware" that the plaintiffs received a payment from defendant Questar on January 5, 2001, which qualifies as an acknowledgment of the defendants' obligation to the plaintiffs and, under Wyoming Code Ann. §1-3-119, commences the running of the statute of limitations in this case anew. In response to the filing of the Supplementation, defendant Questar Pipeline Company filed an Opposition to and Motion to Strike Plaintiffs' Proffered

"Supplementation of the Record." The plaintiffs then filed an Opposition to the Defendants' Motion to Strike (filed on January 30, 2001), followed by the Affidavit of Jack J. Grynberg (filed on January 31, 2001). The Supplementation and Motion to Strike have been formally submitted for decision, and are ripe for this Court's consideration.

The Court determines although the Supplementation filed by the plaintiffs is procedurally inappropriate in that attempts to introduce additional materials into the record after the pending Motion has already been fully briefed and oral argument has taken place, the Court is nevertheless willing to consider this supplementary material, as well as defendant Questar's opposition thereto. However, since the plaintiffs have already had an opportunity to respond to the arguments raised in Questar's opposition and Motion to Strike[1], the Court denies their request for further briefing.

Turning next to the substance of the plaintiffs' Supplementation, the Court agrees with Questar that the January 5, 2001, partial payment to the plaintiffs stems from or is related to (i.e. payment for additional taxes) the plaintiffs' pricing claims,

[1] In point of fact, the plaintiffs did file and the Court has considered the plaintiffs' Opposition to defendant Questar's Motion, wherein they address, albeit in a limited fashion, the points raised in defendant Questar's Opposition and Motion.

which have been previously adjudicated. These payments are clearly unrelated to the plaintiffs' collateral BTU claims, which the plaintiffs' have previously acknowledged to be separate from their previously raised pricing claims. Since these claims are distinguishable, the payment cannot be construed as an acknowledgment of an obligation on the BTU claims. In fact, as defendant Questar points out, it is not even clear that the payment can even be construed as an acknowledgment of the pricing claims because it was made in compliance with court orders, rather than as a voluntary acknowledgment of a pre-existing debt. Therefore, defendant Questar is correct in its assertion that the Wyoming statute is simply inapplicable to the present facts. Accordingly, having considered the plaintiffs' supplementary materials, the Court determines that the January 5, 2001, payment to the plaintiffs has no bearing on the statute of limitations issues raised in the defendants' Motion to Dismiss, which is currently under advisement by this Court. In addition, since the Supplementation has no substantive basis, defendant Questar's Motion to Strike is granted.

This Minute Entry decision will stand as the Order of the Court, granting defendant Questar's Motion to Strike.

Dated this 8 day of March, 2001.

TIMOTHY R. HANSON
DISTRICT COURT JUDGE

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Minute Entry, to the following, this 8 day of March, 2001:

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