

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

ORIGINAL

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

Case No. : 14763

APPLICATION OF MACK ENERGY CORPORATION FOR COMPULSORY
POOLING, LEA COUNTY, NEW MEXICO.

REPORTER'S TRANSCRIPT OF PROCEEDINGS
EXAMINER HEARING

BEFORE: WILLIAM V. JONES, Technical Examiner
DAVID K. BROOKS, Legal Examiner

January 5, 2012

Santa Fe, New Mexico

This matter came on for hearing before the New Mexico Oil Conservation Division, WILLIAM V. JONES, Technical Examiner, and DAVID K. BROOKS, Legal Examiner, on January 5, 2012, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South St. Francis, Drive, Room 102, Santa Fe, New Mexico.

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A P P E A R A N C E S

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1 EXAMINER BROOKS: Okay. We will once again call
2 Case Number 14763, application of Mack Energy Corporation for
3 compulsory pooling in Lea County, New Mexico. Call for
4 appearances.

5 MR. BRUCE: Mr. Examiner, Jim Bruce of Santa Fe
6 representing the applicant. I have two witnesses.

7 MR. HALL: Mr. Examiner, Scott Hall, Montgomery and
8 Andrews Law Firm, Santa Fe, appearing on behalf Siana Oil and
9 Gas and Mr. Tom Ragsdale. One witness this morning.

10 EXAMINER BROOKS: Okay. Would all the witness
11 please stand, identify themselves, and be sworn.

12 MS. SANDERS: Staci Sanders.

13 MR. RAGSDALE: Tom Ragsdale.

14 MR. McCOY: Michael McCoy.

15 (Witnesses sworn.)

16 EXAMINER BROOKS: You may proceed, Mr. Bruce.

17 STACI SANDERS

18 (Sworn, testified as follows:)

19 DIRECT EXAMINATION

20 BY MR. JAMES BRUCE:

21 Q. Would you please state your name for the record?

22 A. Staci Sanders.

23 Q. Where do you reside?

24 A. I live in Artesia, New Mexico.

25 Q. Who do you work for and in what capacity?

1 A. I work for Mack Energy Corporation as a landman.

2 Q. Have you previously testified before the Division?

3 A. No.

4 Q. Could you summarize your educational and employment
5 background for the Examiners?

6 A. I have been at New Mexico State University for three
7 and a half years where -- where I have been, I started my
8 family. And then in 1992, November, I went to work for Mack
9 Energy. I have been there going on 20 years.

10 Q. How did you start out at Mack?

11 A. I actually started from the bottom, hands on,
12 learned everything as I went. Worked for the various landmen
13 that have come on through the years and just learned
14 everything hands on.

15 Q. Including checking records, reviewing title
16 opinions, preparing JOAs, things of that nature?

17 A. Yes, sir.

18 Q. Does your area of responsibility at Mack Energy
19 include this portion of Southeast New Mexico?

20 A. Yes, sir.

21 Q. Are you familiar and involved with the land matters
22 involved in this case?

23 A. Yes.

24 MR. BRUCE: Mr. Examiner, I tender Ms. Sanders as
25 expert petroleum landman.

1 MR. HALL: No objection.

2 EXAMINER BROOKS: So accepted.

3 Q. Ms. Sanders, could you identify Exhibit 1 and
4 briefly describe what Mack seeks in this case?

5 A. This is a Midland map plat that we had made, and it
6 has the southeast of the northwest quarter of Section
7 32-17-33. The southeast northwest is the spacing unit for
8 the Cockburn A State Number 5 Well, and Mack Energy seeks an
9 order pooling all mineral interests from the surface to the
10 Abo Formation underlying the spacing unit.

11 Q. And this is an existing well?

12 A. Yes, sir.

13 Q. What is the status of the well?

14 A. The well was drilled in 1988, and in 2004, May of
15 2004, Mack Energy Corporation took over as operator, and the
16 well is currently producing between 20 barrels of oil per day
17 from the Abo Formation.

18 Q. And does Mack seek to re-enter the well to frac the
19 Abo to increase production?

20 A. Yes, sir.

21 Q. Who do you seek to pool in this case?

22 A. Mr. Tom Ragsdale.

23 Q. And what is -- what is his interest or percentage
24 interest in the well?

25 A. He has a 6.25 percent working interest in the

1 well.

2 Q. Does he also have an overriding royalty?

3 A. Yes.

4 Q. What is Exhibit 2?

5 A. Exhibit 2 is my letter -- Mack Energy's letter to
6 Mr. Ragsdale on August 30, 2011, proposing the frac that we
7 would like to do on the Cockburn A State Number 5, along with
8 it was an AFE, which we submitted at that time.

9 Q. And is this AFE fair and reasonable and reflective
10 of the costs of fracs in the Abo Formation in this area?

11 A. Yes, sir.

12 Q. Going through the pages -- well, let's -- there is a
13 December 7 letter, but let's go a couple of pages beyond
14 that.

15 A. Okay.

16 Q. And there is an e-mail from --

17 A. It's actually from Joel Carson, and it's one that
18 Lee Livingston, our engineer, had forwarded to Joel Carson to
19 give to me. Lee --

20 MR. HALL: At this point I have to object,
21 Mr. Examiner. Looks like we are about to get some hearsay
22 testimony.

23 THE WITNESS: It's just a conversation.

24 MR. HALL: Exactly.

25 MR. BRUCE: Mr. Examiner, this is an internal e-mail

1 that reflects the contacts between Mack Energy and Mr.
2 Ragsdale or someone who works for him, and it's --

3 Q. Is this maintained in the normal course of business
4 records?

5 A. Yes.

6 MR. BRUCE: I don't know if she has to comment on
7 the specific conversation, but it's not hearsay.

8 MR. HALL: The witness is unavailable, it's hearsay.
9 We would be glad to examine Mr. Carson given the opportunity,
10 but --

11 EXAMINER BROOKS: Well, I'm not sure for what
12 purpose it's being offered at this point, so I will overrule
13 the objection and consider it to the extent that it contains
14 admissible evidence.

15 Q. I will ask you simply this question, Ms. Sanders,
16 did Mr. Livingston have several contacts with representatives
17 of Mr. Ragsdale?

18 A. Yes, sir.

19 Q. He informed you of that?

20 A. Yes. We talked about them on a daily basis when he
21 was talking to this gentleman.

22 Q. And Mr. Livingston informed you that Matt Doffer was
23 the person he spoke with?

24 A. Yes. He said that he had contacted him to begin
25 with on behalf of Mr. Ragsdale and that they were looking at

1 the AFE.

2 Q. Okay. Let's go beyond that. There is some
3 handwritten notes. Were those prepared by you?

4 A. Yes, sir.

5 Q. Without going into great detail, could you please
6 explain the contacts that these represent?

7 A. The first one, Mr. Tom Zabel, Mr. Ragsdale's lawyer,
8 had called me to visit about the AFE, wanting to know what
9 was going on. So I explained in the AFE what we would like
10 to do. He basically talked about that there wasn't an
11 operating agreement that governed the well because there was
12 an operating agreement that we found of record in Lea County,
13 but it actually ended up being a -- more of an assignment.
14 It was from 1960, and it was between the owner and the
15 operator.

16 So we told him that the reason we did the AFE is
17 because we knew we needed to AFE Mr. Ragsdale for any work we
18 needed to. And at the time Mr. Zabel suggested that maybe we
19 should send an OA at some point in time to Mr. Ragsdale so we
20 could get one in place between us. And I agreed that we
21 should, because, up to that point, all of our contact had
22 been kind of a verbal contact on the phone, that type of
23 stuff throughout the years up to this point. So, anyway,
24 that was the first conversation with Mr. Zabel, and he said
25 he was going to talk to Mr. Ragsdale about the AFE.

1 Q. Okay. And then that conversation was before
2 Thanksgiving?

3 A. Yes, sir.

4 Q. Did you prepare a JOA?

5 A. Yes, I did. I sent it on December 7, which is in
6 Exhibit 2.

7 Q. Okay. So Exhibit -- there is a letter in the file
8 from December 7 sending the proposed JOA to Mr. Ragsdale?

9 A. Yeah. And I had sent it when we got the prehearing
10 statement response to our compulsory pooling, we sent the OA
11 so that we could voluntarily try to get this worked out and
12 in the hopes to not have to come to hearing.

13 Q. And then back to your handwritten notes, did you
14 later call Mr. Ragsdale?

15 A. Yes. After the holidays I contacted Mr. Ragsdale's
16 office on the 28th of December, and the receptionist advised
17 me that Mr. Ragsdale wasn't in the office. I then told her I
18 was calling to see if Mr. Ragsdale received the JOA that we
19 sent, that we would like to try to discuss it so that we
20 could avoid going to hearing. She said to call him on his
21 cell phone because he was in Houston for the week.

22 So then the next note is where I called Mr. Ragsdale
23 on his cell phone, and I got his voice mail and left a
24 message that to call back, we would like to try to get
25 something worked out so that we didn't have to go to hearing.

1 You want me to keep going?

2 Q. Yeah, just briefly. Did you finally reach or get in
3 contact --

4 A. Yes. Mr. Ragsdale finally called me back on the 3rd
5 of January. I was at lunch, so then I called him back. We
6 played phone tag, and then we finally hooked up the same day
7 and we discussed the AFE and the OA, and there is notes in
8 here about our conversation.

9 Q. Okay. But, again, you just wanted some voluntary
10 agreement done?

11 A. Yes, sir.

12 Q. Now, let's go into a little history on the
13 acquisition of the interests in the well. Can you give a
14 little history of -- of Mack as operator, of Chase acquiring
15 interests and how Mr. Ragsdale got his interest?

16 A. Okay. May of 2004 -- May 1, 2004, was the effective
17 date when we acquired the interest from Siana Operating,
18 which was Mr. Ragsdale's company. Mr. Ragsdale had acquired
19 it in 1998, December, from Oxy, and effective the same day,
20 we conveyed an interest to -- an overriding royalty interest
21 to Mr. Ragsdale and a couple of other people. And then also
22 effective the same day on a separate assignment, assigned him
23 the working interest that he acquired, and with some other
24 Chase entities that are part of the deal.

25 Q. Okay. Now, when Siana assigned it to you folks,

1 they owned 100 percent working interest in the well?

2 A. Yes, sir.

3 Q. So there was no JOA in place?

4 A. Right.

5 Q. Had -- after it was acquired, the well was
6 re-entered to the Abo Formation, was it not?

7 A. Yes, sir.

8 Q. Okay. Was -- let me step back. Let's go to Exhibit
9 3. What is Exhibit 3?

10 A. Exhibit 3 is Navajo Refining Division Order. I had
11 contacted Navajo after getting their prehearing statement --
12 the statement, the amended one. Mr. Ragsdale was asking for
13 information about the billings and revenue and different --
14 basically audit -- wanting to audit. So I started getting
15 information together, and also it was just for the purpose of
16 providing that Mr. Ragsdale has indeed been paid and paid his
17 bills. First ones are Navajo Refining Company Division Order
18 which is signed by Mr. Ragsdale.

19 Q. And was Navajo early on paying revenues on the
20 well?

21 A. Yes, sir. Effective June 2004 is what this is from,
22 and they paid up through March of 2006, whenever Mack Energy
23 took over the proceeds on this.

24 Q. So this contains payment information --

25 A. Yes, sir.

1 Q. -- on the subject well?

2 A. Yes. Also includes another well, which isn't in
3 question, but it is on here.

4 Q. And then Exhibit 4, you said that Mack took over
5 duties in -- payment duties in 2006. What is Exhibit 4?

6 A. This is Mack Energy Oil and Gas Division Order,
7 signed by Mr. Ragsdale, effective 3-1-2006.

8 Q. And what is Exhibit 5?

9 A. This is the, the query in our database of all the
10 bills from Mrs. Livingston who is head of our accounting
11 department, and it's all the invoices that were billed and
12 paid by Mr. Ragsdale from 5-1-2004 through the current
13 date.

14 Q. And so over the years, Mr. Ragsdale voluntarily
15 joined in the recompletion of the well, did he not?

16 A. Yes.

17 MR. HALL: And I'm going to object to leading
18 questions like that, too.

19 EXAMINER BROOKS: Okay. Well, I guess, in view of
20 the objection, please state your question as non-leading.

21 Q. Okay. Based on the documents you reviewed, has Mr.
22 Ragsdale voluntarily joined in the well's operations?

23 A. Yes.

24 Q. And I notice that at least over the last year and a
25 quarter or so, Mr. Ragsdale has not paid?

1 A. Yes, that's correct.

2 Q. Okay. What is Exhibit 6?

3 A. This is just a copy of one of Mr. Ragsdale's checks
4 just to show that he has been paying, and this is just the
5 latest one. We actually received it in November for an
6 August JIB.

7 Q. Okay.

8 EXAMINER BROOKS: Okay. Just for clarification, I
9 thought you said for a year and a half he had not been
10 paying?

11 THE WITNESS: He has not -- well, there is one -- if
12 you look at this --

13 EXAMINER BROOKS: This is dated November of 2011.

14 THE WITNESS: Yes, sir. If you look on the final
15 page of Exhibit -- of the previous Exhibit 5, 10-31-2010, he
16 hasn't paid from that point forward until you get to the
17 billing for 8-31. This check that he paid in November was
18 for August, but there are many months outstanding.

19 EXAMINER BROOKS: Oh, okay. Thank you.

20 Q. And then what is Exhibit 7?

21 A. Exhibit 7 is the revenue payments that, effective of
22 March of 2006, Mack Energy starting paying Mr. Ragsdale, and
23 it's the revenue history for Cockburn A State Well and other
24 wells that Mr. Ragsdale gets money on.

25 Q. Okay. And so over the years on these two wells,

1 Mack has paid several hundred thousand dollars to Mr.

2 Ragsdale. Is that correct?

3 A. Yes.

4 Q. And, in your opinion, has Mack Energy made a
5 good-faith effort to obtain the voluntary joinder of Mr.
6 Ragsdale in the proposed re-entry of this well?

7 A. Yes.

8 Q. Let me ask just as a general land matter. When you
9 get a -- when Mack or the Chase entities receive a well
10 proposal, do you respond to proposals?

11 A. Yes, sir.

12 Q. Just --

13 A. The practice is 30 days, and we always try to make
14 contact with the operator in question before that time is
15 up.

16 Q. Let's move on to Exhibit 9, skipping an exhibit for
17 now. There is some OCD documents here. Where did you obtain
18 these?

19 A. From the OCD website, online.

20 Q. Okay.

21 A. Plus we have them in our file, but I went to the
22 website to make sure they were of public record.

23 Q. Okay. So these are simply documents from the OCD's
24 well file?

25 A. Yes.

1 Q. And do they reflect some of Mack's operations on the
2 well?

3 A. Yes, sir. Would you like me to go through them, or
4 just --

5 Q. Not at this point, I don't think we need to.

6 A. Okay.

7 Q. Does Mack request that it be appointed operator of
8 the well?

9 A. Yes.

10 Q. Do you have a recommendation for the overhead
11 rates?

12 A. Yes, sir. We went with what has been -- basically
13 been proposed to us by other operators, and we went with the
14 65 hundred for drilling and 650 for daily.

15 Q. For producing?

16 A. For producing. Excuse me, I'm sorry.

17 Q. Are these amounts equivalent to those normally
18 charged by Mack and other operators in area for wells of this
19 depth?

20 A. Yes.

21 Q. Do you request that the rates be periodically
22 adjusted as provided by the COPAS accounting procedure?

23 A. Yes, sir.

24 Q. Does Mack request the maximum cost plus 200 percent
25 risk charge if Mr. Ragsdale non-consents the well?

1 A. Yes.

2 Q. And was Mr. Ragsdale notified of this hearing?

3 A. Yes, he was.

4 Q. And is that reflected in my affidavit of notice
5 marked Exhibit 8?

6 A. Yes, sir.

7 Q. Now, this hearing was originally scheduled for
8 December 1. Did Mack voluntarily agree to continuances after
9 that?

10 A. Yes, sir.

11 Q. And were Exhibits 1 through 8 prepared by you or
12 under your supervision or compiled from company business
13 records?

14 A. Yes.

15 Q. In your opinion, is the granting of this application
16 in the interest of conservation and prevention of waste?

17 A. Yes, sir.

18 MR. BRUCE: Mr. Examiner, I move the admission of
19 Exhibits 1 through 9.

20 EXAMINER BROOKS: 1 through 9 admitted.

21 MR. HALL: No objection, with the exception of the
22 January 3, 2012 e-mail. It's hearsay.

23 EXAMINER BROOKS: The objection will be overruled.
24 I said admitted before I gave you a chance to object. So I
25 will just say it again now that I ruled on your objection.

1 Exhibits 1 through 9 are admitted. Mr. Hall, you want to
2 question the witness?

3 (Exhibits 1 through 9 admitted.)

4 CROSS-EXAMINATION

5 BY MR. HALL:

6 Q. Would you turn to a portion your Exhibit 9 are the
7 documents from the OCD well file, and turn to the C-102 plat
8 there, please.

9 A. I think it's C-102, has a handwritten Mack Energy at
10 the top?

11 Q. Yes.

12 A. I can't quite read the number at the top, right
13 corner.

14 Q. Right.

15 A. Okay.

16 Q. It looks like this.

17 A. Yes, sir.

18 Q. Okay. In your capacity as landman for Mack, you are
19 somewhat familiar with the requirements of the Oil
20 Conservation Division in completing these forms?

21 A. I don't know that I'm completely familiar because we
22 have a department that does all of these regulatory forms.
23 We don't do anything on those forms ourselves. I know
24 spacing, yes, but -- if that answers your question.

25 Q. Okay. Are you familiar with the Division's

1 requirements that diverse interests in a well spacing and
2 proration unit be consolidated?

3 A. Yes, sir.

4 Q. Okay. And let's look at the C-102, if you would.
5 Look at numbered Paragraph 3. It asks, "If more than one
6 lease or different ownership is dedicated to the well, have
7 the interests of all owners been consolidated by
8 communitization, unitization, forced pooling," et cetera. Do
9 you see that question?

10 A. Uh-huh.

11 Q. Was that question answered?

12 A. It looks like it was not.

13 Q. What was the answer to the question at the time? Do
14 you know?

15 A. Yes. Yes, sir.

16 Q. At what point were the interests consolidated?

17 A. Whenever we acquired the well, we gave the
18 assignment to Mr. Ragsdale and everything was done verbally,
19 and -- I'm not for sure I'm following your question here.

20 Q. All right. Can you point to us any instrument,
21 document, or agreement that establishes that all of the
22 diverse interests in the well are consolidated?

23 A. The only outside party was Mr. Ragsdale, who -- who
24 brought the deal to us.

25 Q. Did you understand my question?

1 A. Yes, sir, I do, but there is no documentation
2 because everything, in my understanding, because I did not
3 work this deal when it first happened, was between Mr.
4 Ragsdale and my boss, Mack Chase.

5 Q. All right.

6 A. Everything was handled verbally. Mr. Ragsdale would
7 ask for Mack to meet him in the field, and we proceeded with
8 paperwork for the OCD and then did assignments, but as far as
9 any kind of a joinder, we basically had his approval.

10 Q. All right. And based on your education and
11 experience as a landman, you understand that we are dealing
12 with real property interests here?

13 A. Yes, sir.

14 Q. And, again, there is no communitization agreement,
15 farmout, anything that establishes these interests have been
16 consolidated?

17 A. No, sir, other than just the assignment itself.

18 Q. All right. The assignment itself, does it have the
19 effect of consolidating the diverse interests?

20 A. No, sir.

21 Q. Okay. So would you agree with me that the C-102
22 form filed by Mack Energy Corporation is incomplete?

23 A. Yes, sir, probably so.

24 Q. And this is dated -- signed by an Oxy engineer on
25 May 23, 1988.

1 A. Uh-huh.

2 Q. How did Mack Energy's name get on here?

3 A. We used the same plat that they used because we took
4 over as operator from Oxy. Mr. Ragsdale never even did a
5 change of operator from Oxy to himself, and we did a change
6 of operator from Oxy to Mack Energy, and we went through Oxy
7 and attained this information to file the paperwork.

8 Q. All right. Did you ask Oxy if any diverse interests
9 had been consolidated, force pooled?

10 A. No, sir. Some of the stuff was done prior to the
11 land department. This is because it was a good-faith effort
12 between Mr. Ragsdale and Mack Chase.

13 Q. Okay. Is it safe to assume that the C-102 is
14 vintage 2004?

15 A. Yes.

16 Q. Okay. How long have you personally known that the
17 interests in the Cockburn A State Well Number 5 have not been
18 consolidated?

19 A. Basically when we started looking for an operating
20 agreement and couldn't locate one in the files obtained from
21 Mr. Ragsdale, we started looking in the county records. And
22 basically all of this stuff was brought to us by Mr.
23 Ragsdale; we acquired his files. And we went on operating as
24 normal between -- the understanding between the two parties,
25 but when we found that there was no OA, and that's why we

1 proceeded with this hearing so we could get something in
2 place and the AFE and everything else.

3 Q. Correct. So we are in agreement then that there is
4 no joint operating agreement or --

5 A. No.

6 Q. -- any other document in place --

7 A. No.

8 Q. -- governing operations and the relationship between
9 the parties?

10 A. No. It was just a hand-shake deal between the two
11 gentlemen.

12 Q. All right. Do you have an interest in the well?

13 A. I actually do.

14 Q. And is it a working interest?

15 A. Yes, sir.

16 Q. Is it governed by any operating agreement?

17 A. No, sir. It's an employee participation. We just,
18 as an employee, they offered in the past, which no longer
19 they do, but this is one of the wells I actually have an
20 interest in.

21 Q. All right. Let's look back at your Exhibit 2.
22 That's your August 30, 2011, letter transmitting the AFE for
23 a frac job.

24 A. Yes, sir.

25 Q. Were there any communications between Mack Energy

1 and Mr. Ragsdale that you know of regarding the proposal to
2 apply a frac job to the well?

3 A. Not Mr. Ragsdale. Mr. Doffer contacted Lee
4 Livingston, our engineer, on behalf of Mr. Ragsdale.

5 Q. And when was that?

6 A. The -- after he received this, I don't have an exact
7 date, Mr. Doffer contacted Lee to ask about the AFE and asked
8 questions about what the plan was, size of the job, that type
9 of thing, they discussed it between them.

10 Q. Okay. Aside from your letter, was there any
11 technical information provided, a plan, a design, any
12 documentation at all about the frac job?

13 A. Other than the AFE and the information provided by
14 phone to Mr. Doffer on Mr. Ragsdale's behalf, no.

15 Q. Then are we in agreement that the next act of Mack
16 Energy was to file its application for compulsory pooling on
17 November 7?

18 A. Yes, sir.

19 Q. No communications that you're aware of that you
20 participated in --

21 A. No.

22 Q. -- on behalf of Mack and Mr. Ragsdale?

23 A. No, but the letter has asked them to contact Mr. Lee
24 Livingston if they have any questions about the AFE. I
25 didn't prepare the AFE, I just submitted it.

1 Q. Can you tell us why there was no operating agreement
2 proposed to Mr. Ragsdale before Mack filed its application
3 for compulsory pooling?

4 A. Well, basically the OA that we had found of record,
5 we weren't for sure of what it really was. We had it looked
6 at, and so we proposed the AFE, and the operating agreement
7 was just really a, like I said, a basic assignment. And once
8 conferring with Mr. Bruce and our in-house counsel, we
9 decided it really wasn't an OA, but everybody had assumed --
10 and you shouldn't assume, I know, but we all did -- that
11 there was an OA and basically had kind of operated under
12 those terms until we found it, and it wasn't an actual,
13 typical JOA. So we did not provide one until we felt like,
14 you know, we had proposed an AFE, and then we were going to
15 go to hearing, and we all discussed it, and then Mr. Zabel
16 called. We discussed it and I sent one.

17 Q. All right. When was the determination made in-house
18 that Mack -- that the old operating agreement was
19 inapplicable?

20 A. When we first started trying to get ready to do this
21 work is when we started contemplating that it wasn't a
22 typical OA because it was not in the files originally. We
23 had to search records.

24 Q. What date?

25 A. I don't have a date to tell you, other than it was

1 in the midst of this when we started doing the work to do
2 this frac job, we wanted to -- we wanted -- after we
3 submitted the AFE, they started asking questions to me at the
4 land department as to whether -- you know, what we would have
5 to do.

6 And I said, "This typically isn't an OA, so it
7 doesn't address there is 30 days," that type of stuff. So
8 that's when we decided to go to hearing, because we didn't
9 have any other way to do anything without a voluntary joinder
10 by Mr. Ragsdale of the AFE, so we felt like we had to go to
11 hearing to do so.

12 Q. All right. And so the AFE proposal was August?

13 A. Uh-huh.

14 Q. So sometime before August or around August --

15 A. Yes, sir.

16 Q. -- the determination that the old operating
17 agreement did not apply was made?

18 A. It was after this was sent, and we had passed -- the
19 time had passed with all the phone conversations with
20 Mr. Doffer, and we were trying to decide what to do next, so
21 it was probably right before we decided to go to hearing that
22 we started really looking into the OA.

23 Q. So before the time the application for compulsory
24 pooling was filed --

25 A. Uh-huh.

1 Q. -- it was realized that there was no consolidation
2 of interest, no applicable JOA?

3 A. Yes, sir.

4 Q. Okay. Any reason you couldn't have proposed a JOA
5 at that time?

6 A. We had tried to even go by Mr. Ragsdale's office.
7 We had called Mr. Doffer and asked if we could go by to --
8 because Mr. Doffer indicated that Mr. Ragsdale was going to
9 sign the AFE. And we said, "Well, we're going to be in
10 Midland, and so we would like to send somebody by to get the
11 AFE if Mr. Ragsdale is going to join."

12 At that time Mr. Doffer advised that Mr. Ragsdale
13 needed more time and that he was going to hang on to the AFE.
14 And so we basically felt like Mr. Ragsdale wasn't going to
15 join, and we felt like we had to go to hearing. And, yes, we
16 probably should have provided an OA with the AFE to begin
17 with, but we weren't sure of the OA that was in place.

18 Q. Okay. Tell me what your attorney told you --

19 MR. BRUCE: I would object to any attorney/client --

20 Q. -- when the determination was made that the old
21 operating agreement did not apply.

22 MR. BRUCE: I would object to any attorney/client
23 communications.

24 EXAMINER BROOKS: Well --

25 MR. HALL: The door was already opened for it.

1 EXAMINER BROOKS: I will sustain the objection to
2 attorney/client privilege.

3 Q. All right. Tell me -- don't tell me what Mr. Carson
4 or Mr. Bruce told you, but tell me when they told you.

5 A. It's probably around the same time as we filed for
6 the hearing because of the whole matter we needed to get
7 something in place, we were trying to do everything legally,
8 we felt like there was -- you know, that's why we were doing
9 this.

10 Q. And is that the reason that Mack Energy
11 Corporation's application asks for the Division to otherwise
12 commit interest to the well?

13 A. Yes, sir.

14 Q. Okay. Let's talk about your notes -- this does not
15 have an exhibit number -- but your handwritten notes about
16 your contacts with Mr. Zabel and Mr. Ragsdale.

17 A. Yes, sir.

18 Q. Why is the earliest entry on here November 21, 2011?

19 A. That's whenever Mr. Zabel contacted us after Mr.
20 Ragsdale received the -- he had already had the AFE for quite
21 some time before Mr. Zabel contacted me.

22 Q. So your notes don't reflect any other contacts by
23 you --

24 A. No, sir.

25 Q. -- before that time? All right. Let's look back to

1 the document right on top of that. That's the January 3,
2 2012 e-mail from Mr. Carson to you and to Lee Livingston.

3 A. Yes.

4 Q. Why was this document created?

5 A. Lee actually sat down with Mr. Carson and he typed
6 this up and then they forwarded it to me. They sat together,
7 Lee made notes of his conversation per notes on a note pad,
8 and they just provided them to me because he was the contact
9 that Mr. Doffer had contacted, Lee Livingston was.

10 Q. And this e-mail doesn't reflect the date of that
11 particular contact.

12 A. No, it does not.

13 Q. So we don't know when that occurred?

14 A. I don't know specifically. I think he should have
15 put dates on it, I agree. The contact was made.

16 Q. Okay. Let's look at your AFE that's under
17 Exhibit 2.

18 A. Uh-huh.

19 Q. And you testified that you thought that the charges
20 for the AFE were fair and reasonable?

21 A. Yes, sir.

22 Q. What's the basis for that?

23 A. Mack Energy is known to be a prudent operator, and
24 these are prepared by our department that do -- I didn't
25 prepare this. We have never had any objections to our AFEs.

1 In fact, we are usually lower than most other people, so I
2 feel like it's, based upon our engineering department and the
3 work that they do and comparisons that they make compared to
4 other people's AFEs that we have received, that this is
5 comparable.

6 Q. So cost determinations are outside of the scope of
7 your regular responsibilities?

8 A. Yes. I don't handle this.

9 Q. Okay. Now, let's look at your notes again about
10 your communication with Mr. Ragsdale's entry in there for
11 January 3 of this year. And about mid paragraph, just make
12 sure you have it here, it says, "Mr. Ragsdale said he thought
13 we were operating the wells illegally since we did not have
14 an OA." Did you react to that?

15 A. I just basically told him I did not believe that to
16 be true as everything between Mack and him had been verbal
17 and a handshake deal and he had known everything about the
18 well to begin with. He had signed Division orders. He had
19 paid his JIB, and he had received revenues, and he has never
20 once called us to contest anything with me on anything about
21 there not being an OA.

22 Q. Okay. So every time Mr. Ragsdale or Siana has
23 called and requested information about any aspect of the
24 well, Mack has provided that?

25 A. Yes, we have.

1 Q. There has not been any information that Mack has
2 refused to supply to Siana?

3 A. No, sir, not that I'm aware.

4 Q. Okay. Let's look at your Exhibit 5. This is the
5 summary of your invoices.

6 A. Uh-huh.

7 Q. Did Mack generate AFEs for all of these?

8 A. No, sir. I -- this is just Cockburn.

9 Q. Okay.

10 A. The first one I did, I want to make note that in the
11 beginning we acquired these from Mr. Ragsdale. There was an
12 agreement made between Mack and Mr. Ragsdale that we would
13 credit his JIB with \$33,333.34, and it was because of the
14 work that was going to be done on the wells, and they had
15 talked about in advance, and that work was going to be done
16 on the wells -- the wells were all temporarily abandoned --
17 and that they were going to go in and work on the wells. And
18 Mr. Ragsdale brought this deal to our company and was aware
19 of all this, and, therefore, had a credit, so therefore there
20 was a credit to his JIB for some of that expense.

21 Q. And so can you tell us from this exhibit what date
22 that credit would have been exhausted?

23 A. Looks probably around just -- just estimating --
24 August, November -- August to September, I would say,
25 somewhere in there.

1 Q. 2004?

2 A. Yes, sir.

3 Q. And after that time, did Mack generate invoices for
4 each of these entries?

5 A. Yes, sir. We sent a JIB every month to Mr. Ragsdale
6 with backup data, the details.

7 Q. At any time did Mack Energy JIB net Mr. Ragsdale's
8 interests? Do you know what that term means?

9 A. Yes, I do. Not that I'm aware of. Not that I know
10 of.

11 Q. And, again, I don't think I got an answer to my
12 question. Why are there no AFEs for any of these entries?
13 Are there any AFEs?

14 A. No, sir, not for this well.

15 Q. Why is that?

16 A. Because they all agreed to it to begin with. You
17 know, I don't know why. I wasn't handling it at the time.
18 Typically, yes, you would do an AFE, and we typically always
19 do AFEs. Things with Mr. Ragsdale were handled differently
20 because Mack and him had a relationship, and it's just the
21 way the business was with him.

22 Q. Okay. Is it a good relationship?

23 A. I think it was to begin with.

24 Q. Let's talk briefly about the overhead rates. You
25 are requesting overhead rates of 6,500 while drilling and 650

1 while producing.

2 A. Uh-huh.

3 Q. Has Mack historically been charging those rates to
4 its other partners in the well?

5 A. Not always. We have increased some of our rates
6 because of the fact that that's what we are being charged.
7 We have taken the other operating agreements we have gotten
8 from Cimarex, COG, other bigger operators, and have compared
9 them, and that's what we have been charging recently for
10 wells, not just this one.

11 Q. Do you know what the historic overhead rates have
12 been? I mean, can you --

13 A. No, I can't.

14 Q. -- show us the invoices?

15 A. No, this is just a combined -- a condensed invoice
16 detail. It's not the actual JIB themselves, so I can't tell
17 what you the overhead was or has been.

18 Q. Okay. We just don't know?

19 A. Well, the accounting department would know, but
20 that's not my area, so I can't attest to that.

21 Q. And you testified that Mack Energy is seeking the
22 200 percent risk penalty for the frac operation, correct?

23 A. If he actually goes non-consent, yes, sir.

24 Q. Why 200 percent?

25 A. It's standard on a JOA.

1 Q. Per frac job?

2 A. Not necessarily for a frac job, but just because we
3 are doing this the way we are doing it, so we put in a 200
4 percent penalty based upon what a normal compulsory pooling
5 would be.

6 Q. Okay. Any other analysis that went into the request
7 for 200 percent?

8 A. No, other than it's a standard percent for
9 penalties.

10 Q. Okay. No evaluation of actual risk from the
11 operations?

12 A. No, sir.

13 Q. Do you know if any risk evaluation was done in-house
14 by the engineer?

15 A. Yes, sir.

16 Q. Who was that?

17 A. Lee Livingston, himself.

18 Q. And he agrees it ought to be 200 percent?

19 A. Yes, sir.

20 Q. Okay.

21 MR. HALL: No further questions. Pass the witness.

22 EXAMINER BROOKS: Okay. I would like to get clear,
23 in my mind, the chronology of this --

24 THE WITNESS: Okay.

25 EXAMINER BROOKS: -- because I'm missing some

1 things. Did you say in 1988 Mack acquired this interest?

2 THE WITNESS: 2004, May of 2004.

3 EXAMINER BROOKS: Okay.

4 THE WITNESS: The well was originally drilled in
5 1988 by Oxy.

6 EXAMINER BROOKS: Mack acquired the interest from
7 Mr. Ragsdale?

8 THE WITNESS: Yes, sir.

9 EXAMINER BROOKS: Was it assigned by Mr. Ragsdale?

10 THE WITNESS: It was assign from Siana Operating
11 LLC, his company.

12 EXAMINER BROOKS: Okay. And at that time who was
13 the operator?

14 THE WITNESS: Well, of record it shows Oxy because
15 Mr. Ragsdale had never done a change of operator into his
16 company, so Oxy was the operator of record.

17 EXAMINER BROOKS: With the OCD?

18 THE WITNESS: Yes, sir.

19 EXAMINER BROOKS: But was Mr. Ragsdale the actual
20 operator of the well?

21 THE WITNESS: The wells were temporarily abandoned,
22 so I really can't say because there was nothing ever filed
23 under Mr. Ragsdale's name.

24 EXAMINER BROOKS: So you don't know if Mr. Ragsdale
25 ever physically operated the well?

1 THE WITNESS: No, sir, because there is nothing of
2 record anywhere that shows his name as the operator.

3 EXAMINER BROOKS: Okay. And what interest did Mack
4 acquire in the well?

5 THE WITNESS: We acquired all -- Mack Energy does
6 not have an interest -- let me back up -- Mack Energy is just
7 the operator. Our company at the time was CAZA Energy LLC,
8 which now is another company for other purposes have done,
9 and it's Chase Oil Corporation an affiliate company. So we
10 owned -- we acquired the interest.

11 EXAMINER BROOKS: And you acquired -- Chase Oil
12 acquired 100 percent interest in the oil --

13 THE WITNESS: Yes, and effective the same day,
14 assigned Mr. Ragsdale and some other parties on his request
15 an override, and then also assigned him a working interest of
16 6.25 percent.

17 EXAMINER BROOKS: Okay. Now, as of now, are there
18 any other working interests in this well, other than Mr.
19 Ragsdale's and Chase Oil and affiliated entities?

20 THE WITNESS: Just the -- it's the Chase Oil
21 affiliated entities, including some employees that are not of
22 record.

23 EXAMINER BROOKS: But all the working interest is
24 basically owned in-house.

25 THE WITNESS: Yes, sir, besides Mr. Ragsdale.

1 EXAMINER BROOKS: Okay. Now, from the time in --
2 you said 2004 you acquired this interest?

3 THE WITNESS: Yes, sir.

4 EXAMINER BROOKS: From that time up until sometime
5 in 2010, Mr. Ragsdale was billed for -- for expenses, and
6 regularly paid those expenses?

7 THE WITNESS: Yes, sir.

8 EXAMINER BROOKS: And sometime in 2010 Mr. Ragsdale
9 witness quit paying has JIBs?

10 THE WITNESS: Yes, sir.

11 EXAMINER BROOKS: And most of these expenses, except
12 for the ones back in 04, and then the 3,370 in 05, the rest
13 of these items seem to be fairly small, I would assume,
14 just -- well, you don't know anything about the account.

15 THE WITNESS: I would assume just normal
16 operating --

17 EXAMINER BROOKS: That's what I was going to say. I
18 would assume it's operating expenses.

19 THE WITNESS: Yes, sir.

20 EXAMINER BROOKS: Well, your company would not
21 normally AFE operating expenses, would they?

22 THE WITNESS: No, sir.

23 EXAMINER BROOKS: Nobody does.

24 THE WITNESS: No.

25 EXAMINER BROOKS: But do you know what occurred in

1 this 2005 transaction?

2 THE WITNESS: I cannot tell you that. I wish I
3 could, but I cannot.

4 EXAMINER BROOKS: Okay. Okay. Now, this arose
5 because you want to do a recompletion, correct?

6 THE WITNESS: Yes, sir.

7 EXAMINER BROOKS: And that's the recompletion that's
8 described in the AFE that's attached to Exhibit 2?

9 THE WITNESS: Yes.

10 EXAMINER BROOKS: And you propose to spend 234,000
11 and change on that?

12 THE WITNESS: I would --

13 EXAMINER BROOKS: Yeah, 234,000 and change, right?

14 THE WITNESS: Yes, sir.

15 EXAMINER BROOKS: Okay. And the reason that you are
16 then bringing this compulsory pooling proceeding is because
17 you want to, if Mr. Ragsdale doesn't pay his share of that,
18 you want to be able to charge him a 200 percent risk charge?

19 THE WITNESS: Yes, sir.

20 EXAMINER BROOKS: Well, I think I understand the
21 basics. Mr. Jones?

22 EXAMINER JONES: Well, I'm a little farther removed
23 from the knowledge scale here.

24 THE WITNESS: It's a little confusing.

25 EXAMINER JONES: Mr. Ragsdale -- I'll ask you

1 because you are the witness. Mr. Ragsdale -- is it Mr.
2 Ragsdale, or is it Siana?

3 THE WITNESS: Mr. Ragsdale owns the interest now.

4 EXAMINER JONES: In his name?

5 THE WITNESS: Yes, sir, Tom N. Ragsdale, that's how
6 the assignment is made out.

7 EXAMINER JONES: Okay. But in the past it was
8 Siana?

9 THE WITNESS: He acquired it as Siana, yes, he
10 acquired it from Oxy and Siana, and then whenever he assigned
11 to us, Siana assigned to us, he wanted -- my understanding,
12 the way the paperwork is done -- then the interest went back
13 to him in his personal name. That's why it was done in
14 separate assignments, because we took it clearly, plain, 100
15 percent, all right, title and interest in to CAZA Energy
16 which was Chase Oil's successor, too.

17 EXAMINER JONES: CAZA Energy?

18 THE WITNESS: CAZA Energy was our first company --
19 and I know that's all getting confusing -- and they are all
20 affiliates owned by the same -- the same party, the Chases.
21 Mack.

22 EXAMINER JONES: Is the applicant in this case --
23 who is the applicant in this case? Is that CAZA?

24 MR. BRUCE: No. Mack Energy.

25 THE WITNESS: Mack Energy is the operator.

1 EXAMINER JONES: The operator.

2 MR. BRUCE: Operator of record.

3 EXAMINER JONES: Operator of record.

4 THE WITNESS: I'm just telling you how we came to
5 acquired from who --

6 EXAMINER JONES: But you are seeking to compulsory
7 pool both Tom --

8 THE WITNESS: Tom Ragsdale and --

9 EXAMINER JONES: And Siana?

10 THE WITNESS: No, not Siana. They have nothing to
11 do with -- our letter was to Mr. Tom Ragsdale.

12 EXAMINER JONES: That AFE, was that Tom Ragsdale's
13 interest only portion, so the 6 percent.

14 THE WITNESS: No, no. It's 100 percent, and his
15 would be 6.25 percent.

16 EXAMINER JONES: You had it written on the bottom.

17 THE WITNESS: His interest is written on the bottom
18 as 6.25 percent.

19 EXAMINER JONES: So it's 100 percent fee, and is it
20 prepared by your engineers in your company?

21 THE WITNESS: Yes, sir.

22 EXAMINER JONES: But you don't supervise the
23 engineers?

24 THE WITNESS: No, I do not.

25 EXAMINER JONES: And they don't work for you? You

1 don't supervise them, and they are not here to testify about
2 it or anything?

3 THE WITNESS: No, sir.

4 EXAMINER JONES: Why did you ask to compulsory pool
5 from the surface to -- you said to the Abo. Did you mean to
6 the bottom of the Abo?

7 THE WITNESS: The well is producing from the Abo,
8 and we're just basically wanting to frac the zone we are in.
9 That's the way it was written by Mr. Bruce. To frac the well
10 is basically all we want to do to increase production.

11 EXAMINER JONES: So you are not planning on doing
12 anything above the Abo?

13 THE WITNESS: No, sir.

14 EXAMINER JONES: It's just a refrac of the Abo?

15 THE WITNESS: The Abo was never fracked to begin
16 with, so that's why we would like to frac the well.

17 EXAMINER JONES: So there is no additional perfs?

18 THE WITNESS: No.

19 EXAMINER JONES: So there is no -- there used to be
20 some kind of a benefit for adding perfs IDC type, but that's
21 not the case here?

22 THE WITNESS: No, sir, not that I'm aware.

23 EXAMINER JONES: Okay. And these billing invoices,
24 are they -- do those include COPAS?

25 THE WITNESS: I assume they do. They are from the

1 accounting department. They just ran a query of all the
2 invoices and did just a summary.

3 EXAMINER JONES: Right.

4 THE WITNESS: So -- and, you know, but there -- I
5 don't know for sure if there would be COPAS involved in that
6 because of the fact that, you know, unless we provide that,
7 we go with a standard whatever they charge, which was pretty
8 low years ago.

9 EXAMINER JONES: Okay. So but you don't know if the
10 COPAS that was likely included in this is different from the
11 COPAS you are proposing?

12 THE WITNESS: I do not. I can't answer that. The
13 numbers that appear in here for COPAS are what we put in
14 as -- as proposing a new OA, basically, because there wasn't
15 one in place, and that is because of standard -- what we have
16 been receiving from other operators right now and what we
17 have been sending out on our operating agreements to other
18 parties.

19 EXAMINER JONES: Okay. The unpaid billing here, is
20 that -- I'm not sure if that can be included in a -- in
21 requirements for payment or even the --

22 MR. BRUCE: Mr. Examiner, we are not asking for
23 anything that's on this exhibit.

24 EXAMINER JONES: So just before the AFE?

25 MR. BRUCE: Just simply be for the AFE.

1 THE WITNESS: Just for the work.

2 EXAMINER BROOKS: That's what I was assuming, but --

3 THE WITNESS: We are not trying to bring anything
4 else into this. We just want to frac the well. That's all
5 we are wanting to do.

6 EXAMINER JONES: Okay. As far as redoing your
7 C-102, have you talked to our district office about that at
8 all?

9 THE WITNESS: No one has ever brought it up, so I
10 don't know anything about it. I mean, Mr. Hall brought this
11 up, so -- and, like I said, I don't prepare the regulatory
12 reports. We have departments for every part of this, and our
13 regulatory department handles all of that. And normally that
14 wouldn't have happened. I don't -- I can't tell you why that
15 was missed, you know, I can't -- I can't speak for anybody
16 else, so I definitely -- we would be willing to fix whatever
17 we need to fix. That's why we are doing what we are doing
18 and trying to get things going and make it legally done.

19 EXAMINER JONES: Okay.

20 EXAMINER BROOKS: Mr. Jones' question brought up one
21 other thing.

22 THE WITNESS: Okay.

23 EXAMINER BROOKS: Is Mr. Ragsdale's interest uniform
24 as to all depths from the surface to the base of the Abo?

25 THE WITNESS: I think -- yes, sir.

1 EXAMINER BROOKS: Okay.

2 THE WITNESS: I don't have anything in front of me
3 to verify that, but off the top of my head, I believe so.

4 EXAMINER BROOKS: Okay. And Chase and its
5 affiliates own all the rest?

6 THE WITNESS: Yes, sir.

7 EXAMINER JONES: Do you have a copy of the JOA that
8 you are proposing?

9 THE WITNESS: Yes, I do.

10 EXAMINER JONES: Was that presented here?

11 MR. BRUCE: No, but we can submit it, Mr. Examiner.

12 THE WITNESS: We have it. I think he was just
13 trying to keep from giving you so much paper, but we do
14 have -- you've got it? Okay.

15 EXAMINER JONES: But it was submitted to Mr.
16 Ragsdale?

17 THE WITNESS: Yes, sir.

18 REDIRECT EXAMINATION

19 BY MR. BRUCE:

20 Q. Ms. Sanders, I have handed you what's been marked
21 Exhibit 11. Could you identify that for the Examiners?

22 EXAMINER JONES: Okay. I'm going to pass -- go on
23 to David here.

24 EXAMINER BROOKS: Well, I have a copy.

25 A. It's a typical JOA.

1 EXAMINER BROOKS: You've given me a copy, of course
2 we have two Examiners, we get copies for each of the
3 Examiners and one of those sets goes in the trash at the end
4 of the hearing.

5 Q. (By Mr. Bruce) Ms. Sanders, is that a complete copy
6 of the AFE that you submitted to Mr. Ragsdale with your
7 letter of December 7?

8 A. JOA?

9 Q. Yes, JOA.

10 A. Yes, sir.

11 EXAMINER BROOKS: Anything further from this
12 witness, Mr. Bruce?

13 MR. BRUCE: Just a couple of questions. I wanted to
14 confirm dates on a couple of things from Mr. Hall's
15 questions.

16 Q. (By Mr. Bruce) When you began looking for a JOA, it
17 was sometime late summer, early fall to see if there was a
18 JOA in place for this well?

19 A. Yes, sir.

20 Q. So you didn't know until that time that there was no
21 JOA in place?

22 A. No, sir.

23 Q. And the document you found which was called an
24 operating agreement was, you said, I believe, that it was
25 simply an assignment, and not a JOA like Exhibit 11?

1 A. Right.

2 Q. And under the JOA that you propose, what is the
3 non-consent penalty if someone does not participate in an
4 operation?

5 A. I think it's -- I would have to make sure, but it's
6 usually 200 percent. If it's marked. I don't want to say
7 off the top of my head without looking on here, but I think
8 that's exactly what we have in here. I'm trying to find my
9 page. I'm sorry -- smaller typing. Actually, in here we
10 have it marked as 300 percent, so that is something we would
11 have to amend or whatever.

12 Q. Well, they talk about 300 percent of costs in a
13 JOA?

14 A. Yes.

15 Q. Isn't that the same as cost plus 200 percent?

16 A. Yes, sir. Yes.

17 Q. And then if Mr. Ragsdale had asked you in September
18 or October for a JOA, would you have sent one at that time?

19 A. Gladly.

20 Q. And has he submitted any comments to you on the JOA,
21 request for changes?

22 A. No, sir. He hasn't responded at all.

23 Q. And has -- has Mack received any objection to the
24 costs set forth in the AFE?

25 A. No.

1 MR. BRUCE: That's all I have, Mr. Examiner. I
2 would move the admission of Exhibit 11.

3 MR. HALL: No objection. Brief follow-up based
4 on --

5 EXAMINER BROOKS: Yeah, I was going to give you that
6 opportunity, but we need to get the admission. You have no
7 objection, so Exhibit 11 is admitted.

8 MR. HALL: No objection.

9 (Exhibit 11 admitted.)

10 EXAMINER BROOKS: Recross.

11 RECROSS-EXAMINATION

12 BY MR. HALL:

13 Q. Ms. Sanders, the assignment that you received from
14 CAZA included more acreage than just the 40 acres for this
15 well, correct?

16 A. Yes, sir.

17 Q. Are there other wells on the assigned acreage that
18 you own an interest in?

19 A. Myself, or --

20 Q. Yes, you.

21 A. Yes, sir.

22 Q. How many?

23 A. I don't know, off the top of my head, I don't have
24 it in front of me. There was another lease. I think there
25 is two leases involved.

1 Q. Right. And were those -- is any of that acreage
2 drilled, any re-entries, anything done on the other acreage?

3 A. At the same time when we took over the wells, yes,
4 sir.

5 Q. What was done?

6 A. To the wells?

7 Q. Yes.

8 A. They re-entered the wells.

9 Q. Okay. As an interest owner, did you receive an AFE
10 from the operator for those operations?

11 A. No, sir.

12 Q. Why not?

13 A. Because we got an assignment later, and we just
14 participated. It was an employee participation.

15 Q. Okay.

16 A. And --

17 Q. Do you receive JIB statements for your --

18 A. Yes, I do.

19 Q. And you pay those?

20 A. Yes, I do.

21 Q. If you ever elected to go non-consent on an
22 operation on any of those wells under this assignment, how do
23 you do that?

24 A. Actually, as an employee we have -- we had to sign
25 an employee participation agreement which is not part of

1 this, and if we elect to not participate in a well or do
2 something, we have to assign our interest back.

3 Q. Okay. So there are governing contract terms that
4 determine how you go non-consent?

5 A. Well, it's not non-consent, really, I guess. I
6 guess they -- it's totally different than that because it's
7 an employee participation plan. It's not a typical -- we
8 don't have it -- like, for example, there is no assignment to
9 me on this property or any of the other ones you are speaking
10 of.

11 Q. I'm sorry, there is no assignment to you?

12 A. No, sir, it's internal with the company.

13 Q. I see. I'm a little confused. Do you not own a
14 working interest of record in the well?

15 A. I don't own of record. I own through the company.
16 I participate, I guess you could say. That's why it's called
17 a participation.

18 Q. Okay, I see. So does that explain why you've never
19 been offered the opportunity to sign a joint operating
20 agreement to cover your interest?

21 A. Basically if it -- if it would clear up -- if it
22 could clear up matters for anybody that ever comes to it, we
23 would be forced to sign an OA, also, and we would be given an
24 assignment if we were going to be made parties to the
25 agreement. In this case we have not received an assignment,

1 so we are not parties listed on the agreement at the time
2 being.

3 Q. Semester agreement?

4 A. Yes.

5 Q. So the record is clear on this, the operator has no
6 ownership interest in this well or the acreage?

7 A. No, sir.

8 Q. No other right to be out there that we know of?

9 A. They are just the operator. They own no interest at
10 all.

11 Q. Okay. Thank you, Ms. Sanders.

12 THE WITNESS: Thank you.

13 EXAMINER BROOKS: Any redirect, Mr. Bruce?

14 MR. BRUCE: No, sir.

15 EXAMINER BROOKS: Very good. Witness may step down,
16 and you may call your next witness.

17 MR. BRUCE: Call Mr. McCoy to the stand.

18 EXAMINER BROOKS: Looks like a speeding bullet here.

19 MICHAEL MCCOY

20 (Sworn, testified as follows:)

21 DIRECT EXAMINATION

22 BY MR. BRUCE:

23 Q. Would you please state your name and city of
24 residence for the record?

25 A. I'm Michael McCoy, and I live in Woodlands, Texas.

1 Q. Who are you employed by?

2 A. By Ely and Associates.

3 Q. What is your position there?

4 A. I'm an engineer. I'm one of the partners of the
5 firm. It's an engineering consulting firm.

6 Q. Okay. And what is your relationship to Mack Energy
7 in this case?

8 A. I was asked to review some materials on -- on the
9 Cockburn A5 Well, and look at fracturing treatments.

10 Q. Okay. Have you previously testified before the
11 Division?

12 A. Not -- not in New Mexico.

13 Q. Okay. Could you summarize your educational and
14 employment background for the Examiner.

15 A. I graduated in 1983 from Texas A and M University
16 with a petroleum engineering degree and went to work in May
17 of 83 for Getty Oil Company as a drilling and production
18 engineer. And then I went to work for Phillips Petroleum
19 Company as a reservoir, senior reservoir engineer, and that
20 was from -- that was in 1996. And in 1996 --

21 Q. 86, we are in 86?

22 A. In 83 I went to work for Getty Oil Company, and
23 then -- well, then Phillips in 1986 to 1993. And in 1993 to
24 2002 I worked for Mercer Oil and Gas as a well technologist,
25 and in that group we looked at well completion and

1 stimulation treatments for wells in the North Sea, and then
2 later in the Arabian Gulf. So I worked for Mercer for ten
3 years. And then in 2002 I moved back to the United States
4 and I have been associated with Ely and Associates since that
5 time.

6 Q. What type of work does Ely and Associates do?

7 A. We primarily design and have people out for job
8 execution on frac jobs.

9 Q. And does it do that job worldwide?

10 A. Yes, we do.

11 Q. Can you -- how many companies or how many consulting
12 firms are there that do this type of work in, well, let's say
13 Houston or Texas?

14 A. Well, I think, in North America there is probably a
15 dozen or so that do this. Ely is by far the largest. We do
16 work -- well, personally in the last few years, I have been
17 on jobs in Australia, India, South America, and we go -- I
18 have been in New Mexico, also, and all over the US. We have
19 done jobs here in New Mexico.

20 Q. So you have done consulting work on fracture
21 stimulation and completions in the Permian Basin?

22 A. Yes.

23 Q. And what -- you said Ely and Associates was by far
24 the largest. What type of market share does it have in this
25 area?

1 A. I would -- I would guess that we have probably 70
2 percent of that. We have -- we have over 50 full-time
3 engineers on staff with another about 20 contracts, so we
4 have about 70 engineers that go out and do jobs. Our core
5 areas are Texas, Oklahoma, and New Mexico.

6 Q. And are you a professional engineer in any state?

7 A. I am a professional engineer in the state of
8 Texas.

9 Q. Okay. And have you reviewed data on the proposed
10 fracture of the subject well?

11 A. Yes, I have.

12 MR. BRUCE: Mr. Examiner, I tender Mr. McCoy as an
13 expert petroleum engineer.

14 MR. HALL: No objection.

15 EXAMINER BROOKS: He is so qualified.

16 Q. Could you identify for the Examiner Exhibit 10 and
17 run through it, tell the Examiners what you were contacted to
18 do by Mack Energy and the results -- what you have done and
19 the results of your analysis?

20 A. Yes. This exhibit, it's two pages, it has three
21 plots on it. It all has to do with the Cockburn A5 Well.
22 The upper plot on the first page is the hydraulic fracture
23 treatment design that's proposed for the well. And on this
24 plot you see a kind of a stair-stepped, red dashed line going
25 up. That's the same concentration over time.

1 There is another red line that's almost straight
2 across. That's the slurry treatment rate at 80 barrels a
3 minute. This treatment proposes to place 246,700 pounds of
4 sand and resin-coated sand into the formation at a maximum
5 concentration of four pounds per gallon.

6 So I took that data, along with some reservoir data
7 that I was given on this particular well. We had some logs
8 and sidewall core analysis, and I looked at the well
9 schematic, how the well was completed with the size of casing
10 and put that information into a FracPro simulation model.
11 FracPro is by far the dominant model in the industry. It has
12 probably 90 percent of the market share for fracture design
13 analysis.

14 So this is a three-dimensional fracture design. The
15 plot at the bottom shows the resulting frac design. The area
16 shaded in yellow is the pay zone, and what you see from this
17 is the frac basically covers from the top to the bottom and
18 really doesn't extend into the overlying or underlying layers
19 very much, and that's because the lower pressure is primarily
20 in the perforated zone.

21 This well has been on production for a while, so the
22 reservoir pressure has been reduced as compared to the
23 overlying underlying layers, and that helps contain the
24 fracture. So the model shows a fracture of about 350 feet or
25 so, and from top to bottom of the formation.

1 Q. And going on to the second page of your exhibit, at
2 this point, what is the -- what is the subject well producing
3 probably in a daily rate?

4 A. Yeah, the data I had for November was that -- or at
5 the end of November -- is that the well was making about 22
6 barrels of oil per day and 19 MCF per day.

7 Q. And with this frac, what do you hope to achieve from
8 conducting this operation?

9 A. Well, the production forecasts I generated was using
10 the FracPro model, and it uses the same reservoir data that
11 went into the fracture design, but it takes the resulting
12 dimensions and what the conductivity of the frac is, all that
13 data, and puts it in, actually in the production forecast on
14 a TD simulation. But this is the result of that, carrying
15 all of that data through, and at the end of the year, at the
16 end of the first year, the well is producing at about 45
17 barrels per day, is what the simulation predicts. The
18 average for that first year is 60 barrels of oil per day.

19 So we are going from 22 to 60, if you are looking at
20 an average for the first year. It's not quite three times
21 the rate. I think that's reasonable, as the well was
22 initially perforated and acidized with 5,000 gallons of acid,
23 so it was a relatively small acid treatment, and just the
24 production is actually, in my opinion, pretty good for this
25 well, what it has, but it's only had a small stimulation. I

1 think there is quite a bit of potential left in the well.

2 And this forecast is about eight years in length, and it has
3 a -- shows a cumulative recovery of 93,000 barrels.

4 Q. So, in your opinion, it would be reasonable to
5 conduct this frac job on this well?

6 A. Absolutely.

7 Q. And, in your opinion, it will result in an increase
8 in production over the life of the well?

9 A. Yes.

10 Q. Everybody hopes things will go well on the -- on the
11 re-entry, but is there a risk involved in re-entering the
12 well?

13 A. Yes, sir, there is. I think there is a risk
14 whenever you do a fracture stimulation treatment, and then
15 there is a risk whenever you do any entry in a wellbore.

16 Q. Is there a -- you said you looked at the logs on
17 this well?

18 A. Yes.

19 Q. Did -- did you -- and in looking at the data, did
20 you -- define oil and water contact?

21 A. No. On the logs there is not an oil and water
22 contact, but the well does produce some water. I think the
23 well produces about 17 barrels of oil per day, so there is a
24 risk associated with that water production, and there's a
25 mechanical risk of going into the well.

1 Q. There is a risk that the water -- the water
2 production could increase?

3 A. Yes.

4 Q. Okay. Was Exhibit 10 prepared by you?

5 A. Yes, it was.

6 Q. In your opinion, is the granting of this interest in
7 the best interest of conservation and prevention of waste?

8 A. Yes, it is.

9 MR. BRUCE: Mr. Examiner, I move the admission of
10 Exhibit 10.

11 MR. HALL: No objection.

12 EXAMINER BROOKS: Exhibit 10 is admitted.

13 (Exhibit 10 admitted.)

14 MR. BRUCE: I pass the witness.

15 EXAMINER BROOKS: Mr. Hall?

16 CROSS-EXAMINATION

17 BY MR. HALL:

18 Q. Mr. McCoy, could you tell us when you were first
19 contacted by Mack Energy to evaluate the well?

20 A. I think it was November 16, plus or minus a couple
21 of days in there.

22 Q. Did you have any involvement at all in the
23 preparation of Mack Energy's AFE for the procedure?

24 A. No.

25 Q. Have you even seen the AFE?

1 A. No.

2 Q. Do you know what information Mack might have used in
3 preparation of the AFE?

4 A. No.

5 Q. Among the materials available to you, you identify
6 the well logs?

7 A. Yes.

8 Q. And I believe you said you had a sidewall core. Is
9 that correct?

10 A. There is several within this interval, yes.

11 Q. From this well?

12 A. That's what I thought, yes.

13 Q. Okay. Do you know if any of that data had ever been
14 shared with the non-operators in the well?

15 A. No, I have no -- no idea what the communications
16 between the parties were.

17 Q. What other data were you provided by Mack?

18 A. I had the -- I had some well operating reports, a
19 well schematic, the well logs, some log core analysis. I
20 think that was it.

21 Q. Okay. I'm sorry, is it Ely or Heely?

22 A. It's Ely, E-l-y.

23 Q. Okay. Did you or your company ever participate in
24 fracture stimulation jobs that you consult on with the
25 operator.

1 A. When you say "participate," you are saying, do we
2 have a working interest in the well?

3 Q. Did you ever acquire an interest?

4 A. Not as a company, no.

5 Q. You individually?

6 A. I don't personally know of any, but I wouldn't be
7 surprised.

8 Q. Of your own.

9 A. Oh, no, not me personally.

10 Q. Ask you about your production forecast. We stand at
11 the current oil production rate as 22 barrels a day?

12 A. Yes.

13 Q. And, historically, how would you characterize the
14 production decline for oil production from the well? Would
15 you characterize it as flat or steep?

16 A. I didn't review the oil production decline.

17 Q. What's your forecast for the decline curve? Would
18 you characterize it as flatter or steeper?

19 A. I think -- I guess your question to me implies a
20 reference, but I would say, in general, for wells around the
21 world, with what my experience is, after -- after the first
22 year it's relatively flat.

23 Q. After the stimulation?

24 A. Well, after -- one year after the stimulation. I
25 mean, there is an initial transient period on production when

1 it starts off high and goes down, but then I would say it's
2 relatively flat with a slow decline.

3 Q. Okay.

4 A. But again, I'm not sure what your reference is, what
5 you are asking me.

6 Q. Well, tell us what data went into the preparation of
7 the production forecast, your Page 2.

8 A. Okay. We started off, and I took the permeabilities
9 from the sidewall cores and the porosity from this. The
10 porosity I use an arithmetic average to come with up with an
11 average for the zone. On the permeability, there was a
12 couple of samples that I had what I thought were erroneously
13 high permeabilities, near a Darcy permeability, which I
14 didn't think was representative of the zone, and those I
15 excluded.

16 And the remaining permeabilities, I took a geometric
17 average, and I applied those average numbers for the zone,
18 and I used rock properties that are consistent with -- with
19 this type of rock in this area for the fracturing model and
20 the sands that were used, it's -- it's a common white sand,
21 Ottawa Sand that we put in the fracture, and at the very end
22 fracture, it's held in, and the last sand that's pumped is a
23 resin-coated sand that helps stop the proppant flowback into
24 the well.

25 So that all went into the -- into the fracture

1 model. The fracture dimensions were calculated by the model,
2 and I took those reservoir parameters, the average numbers
3 with the -- with the oil properties from this oil. So we had
4 reservoir fluid properties, we had reservoir rock properties,
5 and then we had the fracture that we generated, and we used
6 average reservoir pressure of -- of 1000 PSI, and
7 forecasted -- used that number in the production forecasting
8 module, which again is a -- it's not a 3D finite element
9 analysis, we just don't have the data to do it -- and used
10 that to forecast the resulting production rate.

11 Q. All right. In the preparation of your treatment
12 design in the production forecast, did you utilize data from
13 the fracture stimulation jobs from other Abo wells in this
14 immediate area?

15 A. I looked at some of the -- some of the treatments in
16 the area, but I didn't use that data, per se.

17 Q. Okay. Were you able to make a determination about
18 or quantify a success rate for fracture stimulation in the
19 Abo?

20 A. I didn't look at that. That really wasn't the
21 question that I was trying to look at.

22 Q. Okay. And you spoke a little bit about the risks
23 involved with the re-entry and fracture treatment. Did you
24 attempt to quantify those at all?

25 A. As far as percent risk?

1 Q. Yes.

2 A. No, I didn't.

3 Q. All right. You didn't attempt to try to weight one
4 factor more than another?

5 A. No.

6 Q. Okay. You indicated that you thought that there
7 might be some risk of an increase in water production as a
8 result of the stimulation treatment. Is that right?

9 A. Yes.

10 Q. Is it -- should that be a recoverable risk by the
11 operator?

12 A. I don't understand your question.

13 Q. I will withdraw the question. Your production
14 forecast, you don't offer that as a guarantee of results
15 here?

16 A. No, it's a prediction.

17 Q. And your production forecast, is it -- would you
18 characterize it as incremental production or accelerated
19 production?

20 A. I would think it's both.

21 Q. Both?

22 A. Yes.

23 Q. Okay. Can you quantify which component?

24 A. I didn't separate those out, but there is -- the
25 well will have, because of the fracture treatment that it

1 goes out into the reservoir 300 feet, the well itself is
2 going to recover additional reserves just because of that.
3 It's going to contact more reservoir and be able to pull it
4 from the larger area.

5 And the final abandonment pressure of the zone is
6 going to be less because the well will have a highly negative
7 scan. There's -- the oil is going to be able to flow into
8 the wellbore easier, so there will be a resulting lower
9 abandonment pressure, so there is going to be incremental
10 reserves from mainly those two factors.

11 Q. By the way, has Mack indicated to you which surface
12 company will be performing the fracture stimulation?

13 A. No.

14 Q. Do we know if Mack is doing it in-house?

15 A. I'm not sure.

16 MR. HALL: Nothing more. Thank you.

17 EXAMINER BROOKS: Well, since this a technical
18 witness, I'm going to let the technical examiner begin the
19 questioning.

20 EXAMINER JONES: Well, I'll just quickly, I hope you
21 don't mind that Getty got bought by Texaco.

22 THE WITNESS: Uh-huh.

23 EXAMINER JONES: What did you do between then.

24 THE WITNESS: I worked for Texaco for a little
25 while, and then -- and then moved over to the Phillips

1 Petroleum. Now, I did work for Texaco; I didn't separate
2 those out. It was actually Texaco Producing, Inc., I think
3 is the name of the company.

4 EXAMINER JONES: Well, where did you work with them
5 at?

6 THE WITNESS: With Getty I was in the Kilgore
7 office. And when I was going to school, I worked in their
8 Houston offshore district office, so -- and with Getty it was
9 primarily the East Texas and North Louisiana kind of area.

10 EXAMINER JONES: Okay. How close is this well to
11 the Abo?

12 THE WITNESS: The perforations are 86.4.5 to
13 89.14.5.

14 EXAMINER JONES: Okay. You don't -- you can use
15 regular sand? You don't need any ceramic?

16 THE WITNESS: Well, the reservoir pressure is pretty
17 low on this, so the closure stress on the proppant is going
18 to be low. That's what I would recommend.

19 EXAMINER JONES: Is that why you need resin-coated
20 is because the pressure is so low?

21 THE WITNESS: Personally I always like to put in
22 resin-coated at the end. It has a little bit higher
23 conductivity than sand, and you know that you are not going
24 to have -- well, it lessens the risk of proppant flowback,
25 and especially if this is a dry pump well, you don't want

1 sand coming back into the pump.

2 EXAMINER JONES: Is it a bore-gel job or --

3 THE WITNESS: Yes. It was designed -- I didn't go
4 into that, but it's a 25 pound bore-gel cross-link with -- a
5 boric cross-link with a 25 pound bore-gel, high boric or
6 whatever you want to call it.

7 EXAMINER JONES: Okay. And as far as those high
8 perm, did you notice that on the sidewall core?

9 THE WITNESS: Uh-huh.

10 EXAMINER JONES: A little high perm sample from a
11 sidewall core?

12 THE WITNESS: Well, they were -- it appeared to be
13 the drilled-type cores. They were in good shape, the
14 sidewall cores.

15 EXAMINER JONES: Okay.

16 THE WITNESS: And the ones that were almost -- there
17 was one that was 880 millidarcy, if I remember correctly, but
18 it was dolomite and hydride that were in that particular
19 sample, and I thought there was a likelihood that the core
20 had been fractured.

21 EXAMINER JONES: Okay. So it's possible that it
22 wasn't the reservoir, actual reservoir perm -- anyway, you
23 threw it out?

24 THE WITNESS: I threw it out for that reason, but if
25 you look at the cores, there are buds through these cores,

1 and I'm sure that you can get some samples that are high, but
2 I don't think they are representative of the -- of the
3 overall permeability of the reservoir. But this well
4 produced well with a small stimulation treatment. It's not a
5 bad well, so I think it will do well with a bigger --
6 especially a frac job.

7 EXAMINER JONES: Does the well -- did this well
8 compare -- are you working on a good well, are you working on
9 a bad well to make it better, or what?

10 THE WITNESS: I think we are working on a good well
11 to make it better.

12 EXAMINER JONES: You believe you're working on the
13 best well?

14 THE WITNESS: Absolutely.

15 EXAMINER JONES: As far as refracs go, is that
16 something that's kind of a trend in this area -- it's not a
17 refrac; it's the first frac.

18 THE WITNESS: Yes, restimulation, maybe, but first
19 frac.

20 EXAMINER JONES: Restimulation, but first frac.
21 It's expense workover, not an IDC workover?

22 THE WITNESS: No.

23 EXAMINER JONES: Okay. So whether that's called
24 drilling for COPAS is -- is -- she says yes.

25 MS. SANDERS: No, no. I'm agreeing with you, where

1 you are going.

2 EXAMINER JONES: Yeah, it was debatable, I guess,
3 but that's probably not for you to talk about, but -- and
4 FracPro has a built in 2D reservoir simulator?

5 THE WITNESS: Yes. They also have a 3D simulator,
6 but we didn't have the data to put into that.

7 EXAMINER JONES: Are you going to watch this
8 remotely, or one of your people will, or are you going to do
9 it on the side?

10 THE WITNESS: Actually, Ely hasn't been asked to be
11 out.

12 EXAMINER JONES: Just design it?

13 THE WITNESS: Yes.

14 EXAMINER JONES: Just design it.

15 THE WITNESS: We would like to, but it's --

16 EXAMINER JONES: But you can watch it remotely, too,
17 right?

18 THE WITNESS: Yes.

19 EXAMINER JONES: If they ask you to.

20 THE WITNESS: Yes.

21 EXAMINER JONES: If you did that, would you do a
22 little shut-down there in the pad to get your rock
23 properties, the closure stress fine tuned?

24 THE WITNESS: An FET analysis, an efficiency test.
25 We do that a lot, and I prefer to do that, but really we

1 haven't -- we make a recommendation to our clients, and then
2 our clients --

3 EXAMINER JONES: Okay.

4 THE WITNESS: They are the operators of the well, so
5 they make --

6 EXAMINER JONES: Okay. Would they use a dead string
7 or bottom hole pressure?

8 THE WITNESS: In this well I assume that we are
9 pumping down the casing without a dead string.

10 EXAMINER JONES: It's a real high rate?

11 THE WITNESS: Yes.

12 EXAMINER JONES: So basically they didn't ask you to
13 do a post frac model, match of what your refrac looks like?

14 THE WITNESS: No. If we go out in the well, we can
15 do that.

16 EXAMINER JONES: You can do that?

17 THE WITNESS: Yes.

18 EXAMINER JONES: I don't have any more questions.

19 EXAMINER BROOKS: Well, I don't have any knowledge,
20 so my questions may sound very -- but I ask you to do the
21 best you can. We talked a little bit about risk.

22 THE WITNESS: Yes, sir.

23 EXAMINER BROOKS: What are some of the things -- we
24 go over this again -- what are the some of the things that
25 could go wrong in this?

1 THE WITNESS: Well, there is any number of things
2 that can go wrong in a frac job where we are dealing with a
3 lot of equipment. You have several pumps, and they are all
4 mechanical that we can have equipment breakdown that changes
5 the job, the way we are pumping it. And we have pumps out
6 there that are designed to pump 80 barrels a minute, and if
7 we have a mechanical problem with the pumps and it went down
8 to 60 or 40 barrels a minute, it increases the chances of
9 screening out on the job and not placing the amount that we
10 want in the formation, so there is --

11 EXAMINER BROOKS: And that would reduce -- that
12 would result in reduced incremental production?

13 THE WITNESS: Yes, sir. Yeah.

14 EXAMINER BROOKS: Okay. Go ahead.

15 THE WITNESS: And the fluid chemistry is really
16 quite complex. We started to talk about it, 25 pound bore
17 cross-link system, it all needs to be handled right. There
18 needs to be a lot of quality control. It's done every day in
19 the business, but also every day there is problems that
20 happen. And what Ely makes their business on is trying to
21 put the quality assurance and quality control into the jobs
22 so those problems don't occur so that we don't have the
23 equipment problems, we don't have the fluid problems so that
24 the jobs can be pumped successfully. And, you know, there
25 could be problems with the casing and the different points in

1 the well, you know, we are -- it's always -- there is always
2 more questions when you are going into an older wellbore than
3 a brand new well, so those things are all risks.

4 EXAMINER BROOKS: Well, I don't know if you can do
5 this, but I'm going to try to get there. I'm trying to get
6 where we have some handle on the distinction between risk in
7 the sense of risk of increased costs and risk in the sense of
8 risk of reduced returns.

9 THE WITNESS: Uh-huh.

10 EXAMINER BROOKS: What kind of things, other than
11 what you told us about, about not getting enough pressure and
12 not getting enough -- was it pressure or fluid that you don't
13 get enough of if you don't do --

14 THE WITNESS: I don't know. It could be either, but
15 your question is what could increase the costs from the --

16 EXAMINER BROOKS: Right now what I'm really trying
17 to focus on is what could reduce the flow -- what could
18 reduce the -- not so much what could increase the cost of the
19 work, but what could reduce the returns that you get in terms
20 of incremental production.

21 THE WITNESS: Oh. Well, we made assumptions based
22 on a limited set of data and what the reservoir rock
23 properties are and the fluid properties are and the pressure
24 distribution in the reservoir, so we are making assumptions
25 over the whole reservoir, over the drainage area from just a

1 small amount of data, and we could be off on those. And we
2 used the best data we had, the available data, but that could
3 be off, and that could change the prediction; it could lower
4 it.

5 EXAMINER BROOKS: And there are proverbs about
6 making assumptions.

7 MR. BRUCE: Not biblical, I take it?

8 EXAMINER BROOKS: Not biblical. So you would say
9 then the biggest risk of diminished returns as compared to
10 your estimates would be that the reservoir properties are
11 actually not what you believe them to be?

12 THE WITNESS: Yes, sir, that's a big risk. The
13 other risk is that we don't get the frac job pumped the way
14 that we -- one set of assumptions is a reservoir. The other
15 set of assumptions is the frac job.

16 EXAMINER BROOKS: So the other risk would be that
17 the frac job doesn't go off as planned?

18 THE WITNESS: Yes, sir.

19 EXAMINER BROOKS: That you don't pump enough
20 fluid --

21 THE WITNESS: Right.

22 EXAMINER BROOKS: -- or pressure into the oil well?

23 THE WITNESS: Yes, sir. What we need to do is place
24 the total amount of sand that we have designed, and there can
25 be a number of reasons that causes the job to go short and we

1 don't get the sand placed. The sand is really what gives you
2 the conductivity and the flow path back into the reservoir --
3 I mean back into the wellbore from the reservoir. So if you
4 don't have that, it doesn't really work in these conventional
5 types of treatments like this.

6 EXAMINER BROOKS: Now, if you did it, and you did a
7 job of this kind and it didn't go well, would it be feasible
8 to do -- to do another frac job on the well to try to improve
9 the results?

10 THE WITNESS: Yes, sir. We would -- we would try to
11 determine why it didn't go as planned.

12 EXAMINER BROOKS: Yeah.

13 THE WITNESS: And then make a determination if it
14 made sense, but we frequently refrac wells.

15 EXAMINER BROOKS: Of course that would cost a lot
16 more money, right?

17 THE WITNESS: Yes, sir.

18 EXAMINER BROOKS: Okay. Now, this chart that you
19 have, the second page of Exhibit 10, this is your forecast of
20 the -- now, is this a forecast of total production from the
21 well after the frac job, or is this a forecast of incremental
22 production from the well as a result of the frac job?

23 THE WITNESS: This is a total oil production from
24 the -- not -- it's not incremental; it's total.

25 EXAMINER BROOKS: It's what you expect the well to

1 produce after the frac job in total, in addition -- including
2 what it would have produced, anyway?

3 THE WITNESS: Yes, sir.

4 EXAMINER BROOKS: Okay. So you haven't furnished us
5 any data on what the incremental production would be?

6 THE WITNESS: No, sir, I haven't.

7 EXAMINER BROOKS: Okay. Have you made any kind of
8 estimate from the length of time that it will take the
9 operator to recover the cost of this frac job from production
10 of the well?

11 THE WITNESS: No, sir, I haven't.

12 EXAMINER BROOKS: Have you made any estimate of what
13 the probability would be that the operator will, in fact,
14 recover the cost of this frac job from the well?

15 THE WITNESS: I haven't done a study, per se, but
16 just looking at the rates going from essentially 22 to about
17 60 barrels a day, tripling, and with the current oil prices,
18 I would invest my money in it.

19 EXAMINER BROOKS: But you don't -- you don't have an
20 idea of what the -- what the percentage or probability would
21 be?

22 THE WITNESS: No, sir. I could, looking at it from
23 my experience, it would be a high rate of return, and it
24 would obviously pay out in a short period of time.

25 EXAMINER BROOKS: Do you think -- do you have an

1 opinion as to whether or not it would pay out 300 percent the
2 cost of the frac job?

3 THE WITNESS: Yes, sir. I think it will.

4 EXAMINER BROOKS: Do you have an opinion as to over
5 what period of time?

6 THE WITNESS: I haven't -- I haven't looked at that,
7 but, I mean, it would be fairly easy to calculate that. I
8 just haven't done it.

9 EXAMINER BROOKS: Okay. Thank you. That's all my
10 questions.

11 MR. HALL: Brief follow-up.

12 EXAMINER BROOKS: Yes. Proceed.

13 RECROSS-EXAMINATION

14 BY MR. HALL:

15 Q. If, as you say, you would invest your own money in
16 this project, is it fair to characterize this procedure as a
17 low-risk procedure?

18 A. I think so.

19 Q. Okay.

20 A. I mean, it's -- yes.

21 Q. Would you agree there is less risk involved in this
22 procedure than the risk associated with a new drill?

23 A. In total, yes. There is risk from different
24 perspectives from a new drill versus re-entry, but overall I
25 would say, yes, there is less risk.

1 Q. All right. Isn't it also fair to say there is no
2 geologic risk here in that we know the reservoir is there.
3 Would you agree?

4 A. I would agree.

5 Q. Okay.

6 EXAMINER BROOKS: Did you pass the witness?

7 MR. HALL: Yes.

8 EXAMINER BROOKS: Mr. Bruce?

9 REDIRECT EXAMINATION

10 BY MR. BRUCE:

11 Q. Mr. McCoy, from what you said, you anticipate the
12 well -- you would hope the well would produce on average 60
13 barrels of oil a day for the first year?

14 A. Yes.

15 Q. And oil, what's the current price, approximately?

16 A. It's approximately \$100 a unit.

17 Q. So you are looking at, this is the total net revenue
18 interest, but \$6,000 a day?

19 A. Yes.

20 Q. So you know, in a couple of months, the cost should
21 be recovered, looking at it that way?

22 A. Yes.

23 Q. The AFE costs?

24 A. Yes.

25 Q. And then I think you got, when Mr. Hall was asking

1 about less risk than a new well, in a new well you wouldn't
2 have that casing risk, would you?

3 A. Right.

4 Q. And the other thing you mentioned, you said you
5 looked at the best data you had, but you don't know what the
6 entire reservoir looks like. In other words, as with almost
7 any reservoir, it's heterogeneous; you don't know the
8 conditions away from the wellbore?

9 A. That's right.

10 Q. And that increases the risk?

11 A. Yes, it does.

12 MR. BRUCE: That's all I have, Mr. Examiner.

13 EXAMINER BROOKS: Very good. The witness may step
14 down. Does that conclude your case?

15 MR. BRUCE: Yes, sir.

16 EXAMINER BROOKS: Mr. Hall?

17 MR. HALL: Take a break so we can get a drink of
18 water?

19 EXAMINER BROOKS: That sounds like a good idea.

20 (Recess taken.)

21 EXAMINER BROOKS: Okay. Is everybody ready? We
22 will go back on the record, then, and, Mr. Hall, you may
23 proceed.

24

25

1 TOM RAGSDALE

2 (Sworn, testified as follows:)

3 DIRECT EXAMINATION

4 BY MR HALL:

5 Q. For the record, please state your name, sir.

6 A. Tom Ragsdale.

7 Q. Mr. Ragsdale, where do you live, and by whom are you
8 employed?

9 A. I live in Midland, Texas, employed by Siana Oil and
10 Gas Company.

11 Q. Could you tell us the relationship between you and
12 Siana?

13 A. Siana is an operating company. Siana Oil and Gas
14 Company is an operating gas company in Texas that I own 100
15 percent, and Siana Operating is our New Mexico entity for the
16 properties we operate in New Mexico.

17 Q. We have already heard testimony here today that the
18 interests in the well we are talking about are owned by you
19 individually. Is that right?

20 A. That's correct.

21 Q. And are those interests managed by Siana for you?

22 A. No, they are not.

23 Q. Have you ever testified before the Division or any
24 of its Examiners and gave your credentials as a matter of
25 record?

1 A. No, sir.

2 Q. Why don't you give the Hearing Examiner a brief
3 summary of your educational background and work experience.

4 A. I attended and I graduated from Texas A and M with a
5 petroleum engineering degree and I went to work for Gray Wolf
6 drilling in South Louisiana. I actually worked on the
7 drilling rigs. It was it a tough time in the industry, hard
8 to find a job. I worked on drilling rigs and went to work
9 for IP Petroleum, which was a wholly-owned sub of
10 International Paper -- it was the old General Crude Oil -- in
11 87 and I worked there until like 90. Then I went to work for
12 Meridian Oil, and after Meridian Oil I went to work for
13 Costilla Petroleum, which I left them in 92 and went off on
14 my own in 92, did some consulting work for a few years, and
15 we drilled our first well in 94, and we established Siana in
16 1994.

17 Q. And you have worked the Permian Basin, is that
18 right?

19 A. We operate properties in the Permian Basin and the
20 Gulf Coast.

21 Q. In New Mexico and Texas?

22 A. Yes, sir. 94 is when we started in Texas, and we
23 started operating in New Mexico in 98.

24 Q. Okay. And what's your formal job title for Siana?

25 A. General manager.

1 Q. Okay. Are you -- are you president?

2 A. Yes, sir.

3 Q. Okay. You own the company?

4 A. Yes, sir.

5 Q. Are you familiar with the application that Mack
6 Energy has filed in this case?

7 A. Yes, sir, I am.

8 Q. And you are familiar with the lands and the Cockburn
9 Well that are the subject of this application?

10 A. Yes, sir.

11 MR. HALL: Mr. Examiner, we offer Mr. Ragsdale as a
12 qualified expert petroleum engineer.

13 MR. BRUCE: No objection.

14 EXAMINER BROOKS: No objection, Mr. Bruce?

15 MR. BRUCE: No objection.

16 EXAMINER BROOKS: So qualified.

17 Q. If you would, please, Mr. Ragsdale, give the Hearing
18 Examiner a brief overview of the history of the ownership of
19 this acreage in the well and how you acquired your interest.

20 A. In 1998 I was attending an auction in Dallas, and I
21 bought another property. And a friend of mine that I was
22 attending the auction with said, "You ought to look at this
23 property."

24 So we looked at it, and it was a non-producing
25 property. It was HPP. So he said he thought it would be --

1 it was in the middle of a field, it would be a good
2 investment for us. So we bid on it, and, low and behold, we
3 were the low bidder, so we bought it from the auction. There
4 were three of us that bought the property, three entities,
5 Siana -- Siana Operating actually brought it because it was
6 an operating property. We had to be licensed and bonded,
7 which we were. Then we -- the friend that was with me, and
8 there was a third party, we all agreed to take a third of the
9 deal, so we bought the property in 1998.

10 Q. All right. Look at the exhibit marked Exhibit 2,
11 the packet before you there. Can you identify that, please?

12 A. It's identified as the assignment of oil and gas
13 leases.

14 Q. Okay. Is this the assignment by Siana to CAZA
15 Energy?

16 A. Yes, sir.

17 Q. And is this for all the right, title, and interest
18 in the acreage?

19 A. That's basically correct. I think it was a real
20 high -- a real high -- I'm sorry -- I should say a real low
21 royalty burden, and the -- we all -- we retained an
22 overriding -- each one of us retained an equal overriding
23 royalty interest, and we conveyed 100 percent to Mack Energy
24 -- or CAZA Energy, I'm sorry -- and I think we -- we
25 probably -- it was -- it was an 85 or an 86, and we passed

1 them on 81 or 82.

2 Q. Let's look at Exhibit 3. Identify that, please.

3 A. The assignment of oil and gas leases.

4 Q. And what's the date of this one?

5 A. The effective date?

6 Q. Well, executed date, first of all.

7 A. It was acknowledged by a notary on May 13 of 2004.

8 Q. Okay. So this assignment was subsequent to the
9 assignment that's Exhibit Number 2?

10 A. Yes, that's correct.

11 Q. All right. So was this the assignment back to you
12 of your current interest in the well?

13 A. Yes, sir, that's correct.

14 Q. So your interest in the well is at 6.25 percent. Is
15 that correct?

16 A. Yes, sir, that's correct.

17 Q. Okay. Can you tell the Hearing Examiner a little
18 bit of history of the operations? Who first drilled the
19 Cockburn Well? What happened to it?

20 A. The Cockburn Well was drilled in 1976 by American
21 Quasar. It was drilled as a deeper Morrow-Strawn, a TOGA
22 test -- I think it was drilled at 13-7, and it was
23 basically -- it was drilled and abandoned, plugged and
24 abandoned. They did not -- they did not attempt a
25 completion, that I recall, in the deeper zones.

1 Q. At the time you and your partners acquired the lease
2 acreage in the well, what was the status of the well?

3 A. It was plugged and abandoned.

4 Q. Okay.

5 A. I'm sorry, it was actually -- it was temporarily
6 abandoned from Oxy, from Occidental. It was TA'd.

7 Q. Do you know if at the time you acquired it
8 Occidental owned 100 percent of the interest in the well and
9 the property?

10 A. I believe that was correct. When we bought the
11 property in 98, we acquired 100 percent from Oxy.

12 Q. Was there a producing well elsewhere that was
13 holding this acreage?

14 A. Yes, sir. There was, outside of these, this
15 160-acre tract that we purchased, there were producing wells
16 that were holding this acreage.

17 Q. Okay. Let's talk about your dealings with Mack
18 Energy in the context of the proposed fracture stimulation.
19 In the course of that, has it been your understanding that
20 Mack Energy agrees that there has been no operating agreement
21 in place for this well, this acreage?

22 A. I think there was a lot of uncertainty for a fairly
23 long time, whether there was or was not, and actually they
24 sent us a JOA, or they sent us an agreement back in May of
25 last year, 2011, sent us an agreement that they were

1 asserting was the governing -- the governing instrument of
2 the property.

3 Q. What vintage was that agreement?

4 A. It was the older vintage. I believe it was like
5 1960 or so, something of that nature, between Carver Drilling
6 and another entity.

7 Q. Did you determine that that old agreement was no
8 longer applicable?

9 A. No, sir. We had attorneys looking at it.

10 Q. All right.

11 A. And they -- after they reviewed the instrument,
12 there was still a great deal of uncertainty.

13 Q. Was Mack Energy in agreement with you that it was
14 uncertain whether it applied?

15 A. They had sent it to us. They had sent the document
16 to us at that time with the assertion that it was the
17 governing instrument, and I don't recall after that fact.
18 Again, that was pretty well in -- in May of last year.

19 Q. All right. Is it your understanding now that it's
20 Mack Energy's understanding that that old 1960 vintage
21 agreement no longer applies?

22 A. Yes, sir.

23 Q. And that's why we are here at a force pooling
24 proceeding, correct?

25 A. Basically, yes, sir.

1 Q. Are you -- do you have some familiarity with OCD's
2 requirements that interests in a spacing unit be
3 consolidated?

4 A. Somewhat familiar.

5 Q. Okay. Is there currently any formal document that
6 dedicates your interest in the spacing unit to the well?

7 A. Not that I'm aware, no, sir.

8 Q. Okay. Are you aware of any efforts from the time
9 that Mack Energy acquired the interests in the well in
10 2004 -- of CAZA, I should say -- of any efforts by CAZA or
11 Mack to consolidate the interests under any form of contract
12 at all?

13 A. No, sir.

14 Q. And you are aware of no previous forced pooling
15 proceedings affecting this property?

16 A. No, sir, that's correct. I'm not aware of any
17 forced pooling hearings.

18 Q. Without an agreement in place between the
19 non-operators and the operators, tell us how the 2004
20 re-entry was handled?

21 A. In 2004 Mack Energy was drilling, had quite a --
22 quite a bit of drilling activity in the area, and they had
23 actually drilled up to our lease line. And I met Mr. Chase,
24 and he and I started some discussions, and then we took
25 some -- he took me on a couple of trips, and he just showed a

1 keener and keener interest in the lease that we had, and he
2 finally came out and said, you know, he wanted to see the
3 schematics, wanted to look at some of the paperwork we had.

4 Again, he specifically asked me for schematics on
5 the old wellbores. There were numerous wells on that piece
6 of property that had been either shut in, TA'd, or
7 non-producing wellbores.

8 I took him -- I took him those schematics, and then
9 eventually he said, when they drilled up to our lease line,
10 he said, "It's time. I want to make a deal with you. I want
11 to buy your lease."

12 And that's when negotiations started on a price and
13 what -- what net, you know, what net revenue interest that we
14 would return to him and how much money he would pay us for
15 the acreage.

16 Q. All right. And how did the relationship progress
17 from there? In the 2004 re-entry, was there any formal
18 documentation of that?

19 A. No, sir. Mr. Chase would call me and say, "Come on
20 over to Artesia" -- I'm sorry. He would say, he would ask me
21 to come to Artesia or come to Maljamar, usually it was
22 Maljamar, that he wanted to have lunch. We would ride around
23 and visit about various things. We had a lot of activity
24 that he was involved in, so there was a lot of reporting that
25 I was doing, reporting back to him. On this particular one

1 he mentioned re-entering one well, so it was kind of a very
2 simple -- it's going to sound pretty simple.

3 He said, "We will buy the lease for 75-, \$100,000,"
4 you know, one of those numbers.

5 And I said, "Okay. We will take the 100,000 on
6 behalf of my two other partners." And so obviously my third
7 of it would have been about \$33,000 that Mrs. Sanders
8 mentioned earlier. And he had a keen interest in re-entering
9 that Cockburn Well. And I asked him how much it would cost,
10 and he said that it would cost about 600-, \$700,000 to
11 re-enter it.

12 I thought, my goodness, that's like drilling a well.

13 He said, "Don't worry about the cost. You just take
14 an interest."

15 And I said, "Well, I don't need the cash. Just keep
16 my money, keep my one-third and make it fit about whatever my
17 cost will be in the well."

18 So that's how the math, if you take -- if you take
19 1/16, 6.25 percent of 600 some thousand dollars, that was --
20 that's how -- that's the truth on -- that's how we agreed on
21 that interest is how much I retained in the lease.

22 Q. Okay.

23 A. And then that was from the first well, which was the
24 Cockburn, the well in question was the first well, the first
25 of three wells.

1 Q. Okay. Did you receive monthly JIB statements from
2 Mack?

3 A. When you say JIB statements, that's joint interest
4 billings?

5 Q. Yes.

6 A. I don't recall receiving an AFE. Generally what we
7 do on a major capital expenditure, JIBs are for producing
8 properties.

9 Q. Right.

10 A. It was not producing, so no, sir, I did not receive
11 the JIB, nor did I receive the AFE for the, you know, the
12 re-entering of the well and establishing production on the
13 Cockburn Well.

14 Q. All right. Let's move forward in time to 2011 and
15 talk about this fracture stimulation proposal. If you would
16 turn to Exhibit 4. You have seen this before today. Could
17 you identify that, please?

18 A. It's the -- it's an AFE to recomplete, is what it's
19 labeled as, dated August 30.

20 Q. Can you tell us what communications between you as a
21 non-operator and Mack as the operator preceded this
22 particular August 30, 2011 AFE?

23 A. Nothing that I can recall. Nothing that I'm aware
24 of.

25 Q. Okay. It just arrived in the mail without

1 explanation?

2 A. Yes, sir.

3 Q. Were you provided with any sort of technical
4 support, technical data to support the AFE?

5 A. No, sir, only this exhibit, these two pages. It was
6 the AFE and the letter proposal.

7 Q. Okay. And what was the next communication you
8 received from Mack after the August AFE?

9 A. That we received from them was probably just the
10 phone calls, maybe a phone call asking us to go ahead, and,
11 you know, "Can we have it signed? Can we come back by and
12 pick it up?" I think it was a series of phone calls.

13 Q. What was the next written document that you received
14 from --

15 A. It was the -- the notice of the forced pooling
16 hearing.

17 Q. All right. And that was when? Do you recall
18 when?

19 A. No, sir, I don't recall the exact date.

20 Q. Does November 7, 2011, sound correct?

21 A. I'm sorry?

22 Q. November 7, 2011, does that sound correct?

23 A. I don't know the exact date. Somewhere in there.

24 Q. Okay.

25 A. Somewhere prior to Thanksgiving.

1 Q. Okay. So you had an AFE in hand. If you wanted to
2 go non-consent on the AFE, what were the terms that would
3 govern your non-consent participation? Do you know?

4 A. No, sir, I don't know. And that's probably our
5 number one problem. There is no JOA in place. If there is
6 no JOA, if you are non-consent, what are the penalties? It's
7 just -- it's just out there. Mr. Chase didn't call me, he
8 didn't ask me to come over, just sent paperwork. I have no
9 idea what my -- what my penalties would be if I
10 non-consent.

11 Q. Well, then let's turn to Exhibit 5. Could you
12 identify that? We have seen this before today.

13 A. Yes, sir. It's the proposed operator agreement that
14 Ms. Sanders sent on behalf of Mack Energy to us.

15 Q. And did you receive that after you received the
16 notice of the compulsory pooling application?

17 A. I -- I'm sorry, I don't have it. But we have -- we
18 stamp everything that comes in, and I can't answer that
19 question. I believe so, but I don't have it, you know, I
20 don't have that notice of the hearing in front of me where I
21 can tell you the exact date. This was our received date
22 right here. We received this December 8 --

23 Q. Okay.

24 A. -- the proposed JOA.

25 Q. And the second page of that, is that the cover page

1 for the JOA?

2 A. Yes, sir.

3 Q. And we have briefed, we have excerpted the JOA for
4 the Hearing Examiner's record, have we not?

5 A. Yes, sir, we have.

6 Q. And the JOA covers more than the 40 acres that are
7 the subject of this application, correct?

8 A. Let me see. Without taking too much time, I believe
9 it does, but we had a 160-acre tract. I would have to look
10 at all of these quarters that are referenced here in this
11 contract area, but I believe it does.

12 Q. When you receive a proposal for an operation from an
13 operator, is it your expectation as a petroleum engineer that
14 you receive some technical data to support the proposal, some
15 explanation for the proposal?

16 A. Yes, sir. Usually you have a well written letter as
17 to the history of the well, what's going on, and then you
18 have some economics. I mean, if you are going to go risk
19 some money, spend some dollars, especially asking -- because
20 I'm just an individual, we like to see economics. And then
21 we see procedures, you know, well procedures, I mean, how is
22 this operation going to take place? Yes, sir, that's
23 correct.

24 Q. And did you receive that from Mack Energy?

25 A. No, sir.

1 Q. Can you tell us about any other efforts that Mack
2 Energy made to try to obtain your voluntary participation in
3 the procedure and then also your commitment of an interest --
4 of your interest -- excuse me -- under an operating
5 agreement?

6 A. Your first question about signing an AFE, Ms.
7 Sanders called -- I'm sorry, that's not correct. Someone in
8 their office, and I believe it was the engineer that our
9 engineer had contacted had mentioned, "Has he signed the AFE?
10 We want to come by and pick it up."

11 And they kept pushing real hard there for us to go
12 ahead and sign the AFE. That's regarding the AFE. As far as
13 the, you know, avoiding a forced pooling hearing, as Ms.
14 Sanders testified earlier, she's correct. I think she called
15 me Wednesday after Thanksgiving on the 28th, and she called
16 me. I was on vacation, and I called her back the following
17 week, and that was the first communication I had from them
18 regarding, to my knowledge, regarding the forced pooling.

19 Q. Okay. And, to your knowledge, this conversation
20 took place after the compulsory pooling application was
21 filed?

22 A. Oh, sure. Sure. Absolutely.

23 Q. Okay. Any other efforts that Mack made to obtain
24 your joinder in the well by way of a formal operating
25 agreement, any other instrument?

1 A. No, sir.

2 Q. In your opinion, has Mack Energy made a good-faith
3 effort to obtain your voluntary participation in the well, in
4 the procedure?

5 A. No, sir.

6 Q. All right. In your opinion, has Mack Energy
7 provided with you enough information to evaluate the need for
8 the proposed fracture stimulation in the terms of your
9 participation in that?

10 A. No, sir.

11 Q. Okay. Can you tell us, has the operator ever called
12 a working interest owners' meeting to discuss operations and
13 procedures?

14 A. No, sir.

15 Q. Tell us about some of the efforts that you have made
16 to try to obtain information from Mack Energy about the well
17 in general, operations, costs.

18 A. Years ago I -- four or five years ago, 06, 07, we
19 had asked them numerous times for a copy of the crude oil
20 contracts. We had asked for copies of natural gas contracts.
21 We have asked Carol Dennis, the accounting lady, who was
22 usually the point person that we would call, and, to no
23 avail, no response, they just refused to give it to us. We
24 also asked to be paid directly from the crude oil purchaser.
25 We asked to be paid directly from the gas purchaser, and,

1 once again, to no avail. They were not willing to do that.

2 Q. Why would you want to be paid directly by the
3 purchasers?

4 A. Because there was a mystery of not having a joint
5 operating agreement, and we thought they were charging us a
6 lot of charges that were too high, and they didn't seem to
7 care about it or answer the questions, and we were afraid
8 they were going to start netting us if we kept protesting
9 their charges.

10 Q. Okay. In Mack Energy's direct case, we heard some
11 testimony about Mack Energy's Exhibit 5, which is a summary
12 of the invoices sent to you and your payments on the
13 invoices. And we heard you stopped paying on invoices in
14 November of 2010. Does that sound about right?

15 A. Somewhere in there, yes, sir.

16 Q. Why did you stop paying?

17 A. On the advice of legal counsel.

18 Q. Okay. Why didn't you sign the JOA that was offered
19 to you in December?

20 A. Oh, for one thing, it was just -- that's less than a
21 month ago, and when we first received it, we forwarded it
22 on to our attorney for review.

23 Q. All right.

24 A. And this is, you know, a rough time of year during
25 the Christmas holidays to be -- he just didn't have enough

1 time to look at it.

2 Q. Did you, in evaluating the JOA, did you try to make
3 the determination what effect execution of the JOA might have
4 had with respect to any past charges that you might wish to
5 challenge?

6 A. That would probably prevent us from challenging
7 those past charges. And that's based on advice of legal
8 counsel.

9 Q. Okay. Do you ask that Mack's application for
10 compulsory pooling be denied?

11 A. Absolutely.

12 Q. Are you asking the Division to order Mack to account
13 and pay for past production to Siana and Ragsdale as if the
14 interest had never been consolidated and without deduction
15 for monthly expenses and overhead charges?

16 A. Yes, sir.

17 Q. And is that for the reason that the interests in the
18 well have never been consolidated?

19 A. Yes, sir, that's correct.

20 Q. Let's talk about Mack's request for a 200 percent
21 risk penalty. In your opinion, is 200 percent justified?

22 A. No, sir, it really doesn't in this particular
23 situation.

24 Q. Tell us why not.

25 A. There -- without looking at the risk involved, rate

1 of return, the return on investment, it just doesn't seem to
2 have any relative meaning. We have a good producing well
3 right now. We may drain the reserves over time with the --
4 with the completion that we have in place right now. And
5 it's got some -- it's got a fair amount of risk to the frac
6 job itself. I just don't see that a 300 percent -- the
7 recovery cost plus 2, which is 300 percent, I don't see that
8 as fair.

9 Q. What's -- can you estimate the current production
10 rate?

11 A. The well is making about 20, 25 barrels a day of
12 oil.

13 Q. How would you characterize the decline curve on the
14 wells?

15 A. It's a very nice, flat, long -- it's a very typical
16 Abo well producing for a long time.

17 Q. Is there some risk that the fracture stimulation job
18 could adversely affect current production rate?

19 A. We can always frac into a water zone, so
20 certainly -- I mean, we can lose the well. There's always
21 that risk. I mean, if there was no risk, we would be
22 fracking everything.

23 Q. Do you believe that the operator ought to be
24 compensated for a risk that actually reduces recoveries from
25 the well?

1 A. No, sir.

2 Q. In your opinion, is there any geologic risk involved
3 here?

4 A. The only geologic risk would be fracking into a
5 water zone that's, you know, above the formation of interest
6 or below the formation of interest.

7 Q. In your opinion as a petroleum engineer, is there
8 the same mechanical risk involved in fracture stimulation as
9 is involved with a new drill?

10 A. When you -- that's a difficult question, and I think
11 that's difficult question for anybody to answer. But when
12 you are drilling a well, you are looking for oil and gas, so
13 a dry hole is a complete loss, and that's a higher risk. I
14 wouldn't quantify this as high risk as a new drill where you
15 are searching for oil and gas, in overall terms.

16 Q. All right. In your opinion, is the current -- is
17 the well producing at an efficient -- an economic recovery
18 rate?

19 A. Yes, sir, it's very economic.

20 Q. And do you wish to avoid disturbing the current rate
21 of production?

22 A. Yes, sir.

23 Q. Okay. Thank you, Mr. Ragsdale. Mr. Ragsdale, were
24 Exhibits 2, 3, 4 and 5 copies of the assignments and
25 correspondence received from Mack that are maintained in your

1 files in your office in Midland?

2 A. I believe so, yes, sir.

3 MR. HALL: We would move the admission of Exhibits
4 2, 3, 4 and 5, and that concludes our direct of Mr. Ragsdale.

5 EXAMINER BROOKS: Mr. Bruce?

6 MR. BRUCE: No objection.

7 EXAMINER BROOKS: Exhibits 2 through 5 are admitted.

8 CROSS-EXAMINATION

9 BY MR. BRUCE:

10 Q. Mr. Ragsdale, have you or Siana ever been force
11 pooled in New Mexico?

12 A. No, sir.

13 Q. So you are not familiar with the procedures, are
14 you?

15 A. No, sir, I'm not.

16 Q. And I don't want to ask you any attorney/client
17 communications, but if I'm encroaching on them, just let me
18 know. But I still don't understand why you stopped paying
19 JIBs after paying them for about six years.

20 A. As I stated earlier, under legal advise.

21 Q. And I don't want to breach the attorney/client
22 privilege.

23 MR. HALL: I think he's asked and answered that
24 question.

25 EXAMINER BROOKS: Unless you have anything further

1 to say, other than it was based on your attorney's advice,
2 then I would believe Mr. Hall is correct.

3 Q. Okay. But you -- you have been receiving joint
4 interest billings on a monthly basis?

5 A. Yes, sir. I believe so.

6 Q. Now, who is Matt Doffer?

7 A. He is our operations manager.

8 Q. Okay. And he did have conversations with
9 Mr. Livingston about the AFE?

10 A. Yes, sir.

11 Q. On your behalf?

12 A. Yes, sir.

13 Q. So there was more than just the August 30 letter
14 from Mack Energy?

15 A. More?

16 Q. More communications than just the August 30 letter
17 from Mack Energy. There were follow-up conversations, were
18 there not?

19 A. Regarding the AFE?

20 Q. Yeah.

21 A. Between Mr. Doffer and Mr. Livingston, yes, sir.

22 Q. Who was acting on your behalf?

23 A. That's correct.

24 Q. And did you ever, or Mr. Doffer or you, ever submit,
25 whether verbally or in writing, any backup for the AFE costs,

1 any -- you said you wanted information about production, rate
2 of return, who was -- who was going to do the frac job, did
3 you ever request any of that data?

4 A. I believe Mr. Doffer spoke with Mr. Livingston and
5 asked him a few questions about the overall operation about
6 the proposed frac job itself and about the, you know, the
7 purpose in doing it.

8 Q. But you never told Mack that you objected to the
9 cost of the AFE, did you?

10 A. I'm sorry, Mack or Matt?

11 Q. Mack. Mack.

12 A. I did not, no, sir.

13 Q. And now, in response to one of Mr. Hall's questions,
14 you asked about rate of return, things like that, isn't that
15 generally internal to each company, to each working interest
16 owner?

17 A. No, sir. I mean, we share that with all of our
18 working interest partners, and other companies have shared
19 that with us.

20 Q. You said that your company operates a number of
21 wells in New Mexico and Texas, and, I think, elsewhere, one
22 other state, maybe. Has your company drilled wells or
23 re-entered wells?

24 A. Yes, sir.

25 Q. And you have -- and your company has conducted frac

1 jobs?

2 A. Yes, sir.

3 Q. So you're familiar with them. You're not -- you're
4 not me, just a useless attorney who has never done one.

5 A. I mean, that's correct, no.

6 EXAMINER JONES: That's on the record.

7 MR. BRUCE: I tell everyone.

8 A. I'm not saying that -- but, yes, sir, we have -- I
9 have designed and overseen a number of frac jobs.

10 Q. So if you wanted to ask specific data from Mack, you
11 would know what type of data to request from Mack about the
12 frac procedure?

13 A. Right. Yes, sir.

14 Q. And, as an operator, you and the working interest
15 owner, you have either received or prepared, probably, or had
16 prepared on your behalf a number of joint operating
17 agreements?

18 A. Yes, sir.

19 Q. And you've had to look at those. And you said you
20 refer them to your attorney, but I presume you also look at
21 those?

22 A. I do, I look them over, yes, sir.

23 Q. And what type of non-consent penalties do JOAs
24 usually have?

25 A. 300 percent.

1 Q. Which is exactly what Mack is proposing in this
2 forced pooling procedure, is it not?

3 A. That's correct.

4 Q. In getting back to the AFE, generally an AFE sets
5 forth the cost; it doesn't state which service company is
6 going to be doing a certain portion of the work or where the
7 casing -- which company is going to be selling the casing to
8 the operator, et cetera, et cetera.

9 A. Most of them do not. Some of them do list
10 Halliburton, B. J. Services, but most --

11 Q. That's just a line item of estimated cost.

12 A. That's correct.

13 Q. And it is an estimated cost.

14 A. That's correct.

15 Q. They are not always right.

16 A. They are usually not right.

17 Q. That's right. And then you mentioned -- and with
18 respect to the JOA that Mack submitted to you, you have not
19 requested any changes in it or given Mack any feedback on the
20 proposed JOA?

21 A. No, sir, for that reason I stated earlier.

22 Q. Now, as a JOA, you could ask to be paid or take your
23 share of production or be paid directly by the purchaser,
24 could you not?

25 A. You can ask. That's correct; you can ask.

1 Q. And have you, since 2004, have you ever requested
2 Mack to submit a JOA for this well?

3 A. Yes, we have asked them to provide a JOA to
4 substantiate the overhead charges and the pumper charges, we
5 have asked that, yes, sir, on numerous occasions.

6 Q. In writing? Do you have anything in writing?

7 A. We have e-mails, I believe. When you say writing,
8 probably not pen or typed out, but in e-mails to Carol
9 Dennis, there should be a few of those.

10 Q. But you don't have those with you here today?

11 A. No, sir.

12 Q. But a JOA isn't necessary for overhead rates, is it?

13 A. Oh, I think it is. How do you figure out what rate
14 you charge on a --

15 Q. Okay. Okay.

16 MR. HALL: Go ahead and answer the question.

17 Q. Go ahead and answer.

18 A. I'm sorry.

19 Q. I'm not cutting in.

20 A. No, no, I'm sorry. I need to listen to you rephrase
21 the question.

22 Q. That's okay.

23 MR. HALL: Were you finished with your answer?

24 A. I probably ran over his question, I'm sorry.

25 Q. But you are an operator, so you know the elements

1 that go into the overhead rates, do you not?

2 A. I'm familiar with them, yes, sir.

3 Q. Now, if you -- will you join voluntarily and pay
4 your proportion of the share of the cost for re-entry?

5 A. I'm not certain of that at this time.

6 Q. Approximately what would be your cost to join in the
7 re-entry?

8 A. I believe it's about \$17,000.

9 Q. Have you ever requested, with respect to this entry,
10 a pair of -- take a step back. As an operator, whether you
11 as a working interest owner or an operator -- and I'm
12 including you with Siana -- when somebody proposes a well or
13 re-entry, do you have a requirement sheet for geologic data,
14 engineering data, land data?

15 A. We do not.

16 Q. You do not?

17 A. No, sir.

18 Q. Do other working interest owners?

19 A. You see that about half the time. You see large
20 corporations, companies do that most of the time.

21 Q. But you haven't submitted one to Mack in this -- in
22 this -- for this well?

23 A. No, sir.

24 Q. And you have -- I think you stated -- I just want to
25 make sure I was hearing you right -- you said there is a fair

1 amount of risk in this re --

2 A. I did say that, yes, sir, in this frac job.

3 Q. In the frac job.

4 MR. BRUCE: That's all I have, Mr. Examiner.

5 EXAMINER BROOKS: Okay. Well, in the interest of
6 time, I'm not going to ask any questions.

7 EXAMINER JONES: No questions.

8 EXAMINER BROOKS: Very good. If the parties -- does
9 that conclude your presentation?

10 MR. BRUCE: Yes, it does.

11 EXAMINER BROOKS: Did you have follow up, either of
12 you?

13 MR. HALL: No more witnesses, just brief closing.

14 EXAMINER BROOKS: Okay. Go ahead.

15 MR. HALL: I will let Mr. Bruce go first, since he
16 is the applicant.

17 MR. BRUCE: Mr. Examiner, I will try to be brief.
18 I've got a bunch of notes. Mack did what every other
19 operator in this state who has to force pool someone did and
20 that was send out a well proposal, a re-entry proposal with
21 an AFE. That's basically what the OCD requires.

22 Subsequently there were several conversations
23 between the engineers from the two companies. Mack could
24 never get a response. It wants to do the work. Oil is \$100
25 a barrel. It has to get some agreement in place. Mr.

1 Ragsdale, on the one hand, is complaining that there is no
2 JOA, and on the other hand he is saying, "Don't grant the
3 force pooling." That's contradictory.

4 I would state that -- if I can approach the Bench --
5 Mack has done everything that's legally proper in this case.
6 I'm handing you a case from the New Mexico Supreme Court,
7 Phillip versus Greinburg, the infamous Jack Greinburg.

8 If you turn back to the fourth page, this was a case
9 where there was some wells like this, 40-acre oil wells.
10 There was no JOA in place, and the New Mexico Supreme Court
11 said that, in such an instance, they adopted the Texas rule,
12 which means that they are essentially operating and
13 non-operating co-tenants. And the Court held that, in the
14 absence of an operating agreement, an operating co-tenant has
15 the right to proportionate reimbursement when he spends money
16 that is reasonable and necessary to preserve the common
17 estate.

18 And that is what has happened in the past; we don't
19 wish to continue this way. What I would note is that -- and
20 then on the final page it says, "Our resolution of this issue
21 attempts to protect operating co-tenants, the operating --
22 the non-operating co-tenants and the public's need for oil,
23 and it's to encourage exploration of oil and gas
24 development."

25 But just because there was not an operating

1 agreement on this well until now, when we either get a JOA,
2 or if Mr. Ragsdale would voluntarily sign one, or we get a
3 forced pooling order, Mack has not violated the law. It has
4 complied with the law of the state of New Mexico.

5 As you know, when a pooling order is entered, a new
6 AFE has to be sent out to the parties. If there is any
7 question about the cost, the cost can be challenged at that
8 time that protects Mr. Ragsdale, and we think that Mack has
9 done everything that's necessary and proper for the
10 production of this well and for proposing a re-entry of this
11 order.

12 Mr. Hall's prehearing order indicates that they do
13 not have a proper allowable, however the documents submitted
14 show there is a form C-104 for this well. Under the
15 Greinburg case, what Mack has been doing is legal. They have
16 dedicated a standard unit to the well. We think there is
17 risk involved in the well, and the penalty should be asserted
18 or granted in this case.

19 And, frankly, insofar as an accounting, all they
20 have to do is get ahold of Ms. Sanders. If they are asking
21 for data, we will give it to them. We don't think it's
22 proper in an order at this point to order an accounting.

23 The case that Mr. Hall cites justifying an
24 accounting was one where there had been the forced pooling
25 order in effect for 40 or 45 years, and so it is not on point

1 with this case. We are not asking for any past costs, unpaid
2 JIBs. We are not asking for retroactive force pooling. We
3 are just asking to force pool now so that future operations
4 will be conducted either under a forced pooling order or
5 something equivalent to a JOA. Thank you.

6 EXAMINER BROOKS: Doesn't the statute provide that
7 the forced pool, where a well has already been drilled, it's
8 retroactive to the date of the first production?

9 MR. BRUCE: I don't know that it's retro -- I think
10 you can ask for it to be retroactive, but I know orders
11 can -- there is case law for various states that -- that
12 forced pooling a well -- as you all know, Mr. Examiner,
13 forced pooling orders can be granted before, during, or after
14 a well is drilled.

15 EXAMINER BROOKS: Yeah, and I'm aware of that.

16 MR. BRUCE: But if it's not made retroactive, then I
17 don't think it pertains to costs and expenses in the past.

18 EXAMINER BROOKS: Mr. Hall?

19 MR. HALL: Mr. Examiner, it's obvious from the
20 testimony here today that the relationship between the
21 operator and non-operator is unorthodox. It's also obvious
22 that it's dysfunctional. There is a question, I think a
23 reasonable question about the propriety of past operations,
24 past charges, current charges, and the charge for the
25 proposed operation here.

1 The parties are operating without consolidation of
2 interest, I think, in violation of the Oil and Gas Act, and,
3 I think, in violation of the Division's rules and
4 regulations. Technically the well is entitled to an
5 allowable.

6 No one is asking for cancellation of the allowable
7 in this case, but I think the answer to that situation is in
8 the compulsory pooling statute. If you will look at Section
9 70-2-18B, it provides the answer to that question, what you
10 do when there has not been consolidation of interest.

11 And it says that the operator is to pay the owner of
12 the unconsolidated interest as if there had been no
13 consolidation. That tells me that there is no authorization
14 for the operator to recoup monthly charges and expenses until
15 interests are consolidated. That's why we have asked for the
16 relief we have for an accounting and order directing Mack to
17 pay back to Mr. Ragsdale and Siana what they are entitled to
18 in view of the lack of consolidation. The precedent order we
19 have cited for that is Order Number R-1960B, where, Mr. Bruce
20 is correct, it's a different situation having to do with a
21 gas balancing situation.

22 EXAMINER BROOKS: I remember that case. Is that
23 order number in your --

24 MR. HALL: It's in our prehearing statement.

25 EXAMINER BROOKS: Okay.

1 MR. HALL: But it does provide that the Commission
2 views it has the authority to provide for an accounting and
3 payment and relief, that's why we cited it. In addition, I
4 think the evidence will also show that the efforts of Mack to
5 negotiate in good faith to obtain Mr. Ragsdale's voluntarily
6 participation have fallen short of the standards that this
7 Division employs for compulsory pooling.

8 So what I propose to do is, today, filing a motion
9 to dismiss, and I think Mr. Bruce should certainly have the
10 opportunity to respond to the motion, and I'm citing there to
11 you in the motion what I believe are the applicable standards
12 for good-faith negotiations and compulsory pooling
13 application. We just don't have those here, especially in
14 the case where the evidence shows that all the operator had
15 done was to send an AFE, and then the next piece of mail
16 received by the non-operator is a compulsory pooling
17 application. And only after the fact, some month or so after
18 the fact of the filing is a joint operating agreement
19 proposed at all. That violates several of the orders that
20 the Division has entered on that very subject, so I think,
21 for that reason, the application ought to be denied.

22 EXAMINER BROOKS: Okay. Well, I'm going to take
23 Case Number -- well, let's see. Where are we, the file
24 here -- Case Number 14763 will be taken under advisement, and
25 the motion to dismiss will also be taken under advisement.

1 And, Mr. Bruce, how long would you like to respond -- have to
2 respond to it?

3 MR. BRUCE: It will have to be sometime next week.
4 I have findings and conclusions.

5 EXAMINER BROOKS: Well, I'll give you two weeks,
6 then, two weeks from today. Okay. Very good. We stand
7 adjourned. Thank you very much.

8 (Adjourned 11:55 a.m.)
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I do hereby certify that the foregoing is
a complete record of the proceedings in
the Examiner hearing of Case No. 14763
heard by me on Jan 5, 2012

David K. Brooks
Oil Conservation Division

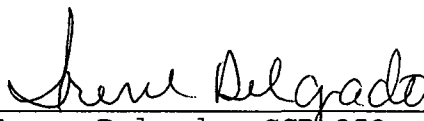
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REPORTER'S CERTIFICATE

I, IRENE DELGADO, New Mexico CCR 253, DO HEREBY CERTIFY THAT ON January 5, 2012, proceedings in the above-captioned case were taken before me and that I did report in stenographic shorthand the proceedings set forth herein, and the foregoing pages are a true and correct transcription to the best of my ability.

I FURTHER CERTIFY that I am neither employed by nor related to nor contracted with any of the parties or attorneys in this case and that I have no interest whatsoever in the final disposition of this case in any court.

WITNESS MY HAND this _____ day of January 2012.


Irene Delgado, CCR 253
Expires: 12-31-2012