

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

5 APPLICATION OF GEORGE ROSS  
6 RANCH, LLC TO REVOKE ADMINISTRATIVE  
7 ORDER NO. SWD-380, EDDY COUNTY,  
8 NEW MEXICO.

CASE NO. 14888

ORIGINAL

10 REPORTER'S TRANSCRIPT OF PROCEEDINGS  
11 EXAMINER HEARING  
12

13 BEFORE: DAVID K. BROOKS, CHIEF EXAMINER  
14 RICHARD EZEANYIM, TECHNICAL EXAMINER  
15 PHILLIP GOETZE, TECHNICAL EXAMINER

16 March 7, 2013

17 Santa Fe, New Mexico

18 This matter came on for hearing before the  
19 New Mexico Oil Conservation Division, David K. Brooks,  
20 Chief Examiner, Richard Ezeanyim, Technical Examiner and  
21 Phillip Goetze, Technical Examiner, on Thursday, March  
22 7, 2013, at the New Mexico Energy, Minerals and Natural  
23 Resources Department, 1220 South St. Francis Drive,  
24 Porter Hall, Room 102, Santa Fe, New Mexico.

25 REPORTED BY: Mary C. Hankins, CCR, RPR  
New Mexico CCR #20  
Paul Baca Professional Court Reporters  
500 4th Street, Northwest, Suite 105  
Albuquerque, New Mexico 87102

2013 APR - 1 P 12:56  
RECEIVED OGD

1 APPEARANCES

2 FOR APPLICANT GEORGE ROSS RANCH, LLC:

3 W. T. MARTIN, JR., ESQ.  
 4 MARTIN, DUGAN & MARTIN  
 5 509 West Pierce Street  
 6 Carlsbad, New Mexico 88221  
 (575) 887-3528  
 lanemartinlaw@yahoo.com

7 FOR CIMAREX ENERGY COMPANY OF COLORADO:

8 JAMES G. BRUCE, ESQ.  
 9 Post Office Box 1056  
 10 Santa Fe, New Mexico 87504  
 (505) 982-2043  
 jamesbruc@aol.com

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

|    |  |      |
|----|--|------|
| 1  | INDEX  |      |
| 2  |  | PAGE |
| 3  | Case Number 14888 Called                             | 4    |
| 4  | Stipulated Facts by Mr. Martin                       | 7    |
| 5  | Stipulation Accepted                                 | 12   |
| 6  | Mr. Martin Rests                                     | 13   |
| 7  | Cimarex Energy's Case-in-Chief:                      |      |
| 8  | Nash Dowdle:   |      |
| 9  | Direct Examination by Mr. Bruce                      | 23   |
| 10 | Scott Gengler:                                       |      |
| 11 | Direct Examination by Mr. Bruce                      | 27   |
| 12 | David Pearcy:  |      |
| 13 | Direct Examination by Mr. Bruce                      | 31   |
| 14 | Proceedings Conclude                                 | 36   |
| 15 | Certificate of Court Reporter                        | 37   |
| 16 |  |      |
| 17 | EXHIBITS OFFERED AND ADMITTED                        |      |
| 18 | George Ross Ranch Exhibit Numbers 1 through 13       | 7    |
| 19 | Cimarex Energy Exhibit Numbers 1 through 5           | 26   |
| 20 | Cimarex Energy Exhibit Numbers 7 and 8               | 30   |
| 21 | Cimarex Energy Exhibit Numbers 9, 10 and 11          | 33   |
| 22 |  |      |
| 23 | REPORTER'S NOTE: Cimarex Exhibit Number 6 is not     |      |
| 24 | included in the exhibit packet provided to the court |      |
| 25 | reporter and is not attached with this record.       |      |

1 (11:19 a.m.)

2 EXAMINER BROOKS: At this time, call Case  
3 Number 14888, application of George Ross Ranch, LLC to  
4 invoke -- to revoke Administrative Order SWD-380, Eddy  
5 County, New Mexico.

6 Call for appearances.

7 MR. MARTIN: W. T. Martin, Jr., with  
8 Martin, Dugan & Martin in Carlsbad, on behalf of George  
9 Ross Ranch.

10 MR. BRUCE: Mr. Examiner, Jim Bruce in  
11 Santa Fe on behalf of Cimarex Energy of Colorado, and I  
12 have three witnesses, Mr. Examiner.

13 MR. MARTIN: And I will call one, but in  
14 all likelihood, he will not be used. But he is present.

15 EXAMINER BROOKS: Well, I have some doubt,  
16 with this many witnesses, we're going to get through in  
17 45 minutes.

18 MR. BRUCE: I think we will, believe it or  
19 not.

20 EXAMINER BROOKS: Would the witnesses  
21 please stand and identify yourselves?

22 MR. MYER: David Myer [phonetic] with  
23 George Ross Ranch.

24 MR. PEARCY: David Percy, geologist,  
25 Cimarex.

1 MR. GENGLER: Scott Gengler, Cimarex.

2 MR. DOWDLE: Nash Dowdle, landman.

3 EXAMINER BROOKS: Okay. You may swear the  
4 witnesses.

5 (Mr. Myer, Mr. Gengler, Mr. Pearcy and  
6 Mr. Dowdle sworn.)

7 MR. MARTIN: If I may before we start, some  
8 preliminary matters which will speed this up  
9 substantially.

10 EXAMINER BROOKS: Okay.

11 MR. MARTIN: I do need to present this.  
12 The Carlsbad Current-Argus was quite slow in sending us  
13 their Affidavit of Publication for the last ones. I do  
14 need to tender that, that came in late.

15 We have stipulated to the facts in this  
16 case, and this is a signed set of stipulated facts.  
17 That's going to result in lessening the need for  
18 testimony on, particularly, my side. Let me give each  
19 of you a set here.

20 A great deal of testimony that I would have  
21 elicited and would have taken up the time has been dealt  
22 with in the stipulated facts. The stipulated facts are  
23 supported by a series of exhibits, which I have  
24 previously submitted a set of seven, and because they  
25 are the basis for the stipulated facts, I would move at

1 this point the introduction of our Exhibit 1 through 13,  
2 which have already been submitted.

3 MR. BRUCE: I have no objection to those  
4 exhibits, Mr. Examiner.

5 EXAMINER BROOKS: Okay. Which exhibits was  
6 that?

7 MR. MARTIN: It is the George Ross Exhibits  
8 1 through 13.

9 EXAMINER BROOKS: We don't have copies of  
10 those exhibits.

11 MR. MARTIN: We sent in seven sets of  
12 those.

13 EXAMINER BROOKS: And I believe I have one  
14 set in the file.

15 MR. BRUCE: Mr. Examiner, I can hand over  
16 my set.

17 MR. MARTIN: I can hand over my set, also.

18 EXAMINER BROOKS: Well, I don't know that  
19 we're going to need them, but we're accustomed to having  
20 them because of the way some things are done around  
21 here.

22 MR. MARTIN: May I proceed?

23 EXAMINER BROOKS: You may proceed.

24 I'm sorry. I don't believe I said 1  
25 through 13 are admitted.

1 (George Ross Ranch Exhibit Numbers 1  
2 through 13 were offered and admitted into  
3 evidence.)

4 MR. MARTIN: Thank you.

5 Mr. Hearing Examiner, the issue before you  
6 today is a question of whether or not an order that was  
7 entered a number of years ago in favor of Mallon Oil for  
8 a saltwater disposal well in south Eddy County should be  
9 revoked.

10 The basis of the George Ross application is  
11 that Mallon Oil did not comply with the requirements of  
12 notice. Mallon Oil never sent written notice to the  
13 surface landowner of the application. Based on the  
14 stipulated set of facts -- and I've also, of course,  
15 looked at Mr. Bruce's prehearing statement -- that is  
16 not in dispute. There was never any notice sent.

17 That particular criteria is critical to the  
18 Oil Conservation Division having the jurisdiction and  
19 authority to proceed. If you do not have jurisdiction  
20 over -- well, let me back up. Obviously, you can't  
21 proceed and enter an order that's valid if you don't  
22 have subject matter jurisdiction, but you, likewise,  
23 cannot proceed and enter an order if you do not have  
24 proper service or proper notice where you acquire  
25 jurisdiction over the parties. In this instance, that

1     never occurred.

2                   If you look at the law that has developed  
3     in New Mexico and, frankly, in every other state in the  
4     United States where you have a situation where notice or  
5     service of process is required and that has not been  
6     accomplished, then the Court or the hearing agency did  
7     not have the jurisdiction to proceed and you lack  
8     jurisdiction. And if any order is entered as against  
9     that individual who has never received notice or never  
10    received service of process, it is void. A void  
11    judgment is subject to attack at any time. That is  
12    fundamental law in New Mexico. It is fundamental law  
13    throughout the country.

14                  I have brought a series of cases and some  
15    general authority, which I will submit to you that  
16    reflects this general law, if I may.

17                  EXAMINER BROOKS: You may.

18                  MR. MARTIN: I have tried to give some  
19    highlight in that. Hopefully, all of the highlighted  
20    material shows up. I don't have any more than three  
21    here.

22                  If you go through those materials and if  
23    you look at other cases and general treatises on this  
24    subject, you will find that what I have just recited is,  
25    in fact, the law as the law in New Mexico. And you find



1 it reflected in a number of cases. By way of example,  
2 suit to quiet title, failure to serve two of the parties  
3 that might have an interest. The court went ahead and  
4 entered an order quieting title. The New Mexico  
5 appellate courts ruled that that order was void as to  
6 those individuals that did not get proper service or  
7 notice.

8           There is an interesting case that really  
9 deals with the State Engineer, but since it deals with  
10 an agency, I found it to be interesting, and some  
11 language in that, in particular. And it is in your  
12 packet. Some language in that, in particular, is  
13 interesting. First, they note that a judgment which is  
14 void is subject to direct or collateral attack at any  
15 time, and they cite beyond this particular case, which  
16 is In the Matter of the Estate of Baca, is actually the  
17 one I'm looking at right now, and it is in your packet.

18           But the point is, in that case and in the  
19 other one I'm going to, where you do not give the  
20 required notice as is required, then you have not  
21 acquired jurisdiction over that individual, and,  
22 frankly, you have no authority to proceed. Where an  
23 agency or a court does proceed under those  
24 circumstances, as I said earlier, that judgment or that  
25 order is void.

1           What we have here is a situation where no  
2   notice was ever given. That's undisputed. And it  
3   happened to be no notice to the surface landowner. And  
4   as we know, that is a very specific requirement on an  
5   application for what would be a saltwater disposal well.  
6   If you look at the Mallon Oil documents, which are part  
7   of the exhibits that I have submitted and part of,  
8   actually, a record that the OCD has, you will note that  
9   Mallon doesn't in any way, shape or form show any kind  
10   of service of written notice, certified mail return  
11   receipt to George Ross, Sr. the estate of George Ross or  
12   anybody that would be in that chain of title.

13           The other thing that is interesting about  
14   the Mallon Oil representations that were made to the OCD  
15   at that time is that they had given proper notice to all  
16   of the parties that were required. That's absolutely  
17   untrue based upon the facts. So at that time, when this  
18   particular order was entered, the OCD was operating on  
19   representations made by Mallon Oil that were, in fact,  
20   not true. So you have a misrepresentation of facts that  
21   the OCD relied upon to issue that order. That raises  
22   the further issue of the order being void.

23           So once you don't have jurisdiction, once  
24   you have a void order, the only thing that can be done  
25   is to say that we did not have jurisdiction, this is

1 void, and that particular order was improvidently  
2 entered and is withdrawn or revoked. And that is really  
3 where we are today. And that's why I said earlier, I  
4 think this is -- we're really down to a very simple,  
5 narrow legal issue here.

6 My position is that there is absolutely --  
7 it is irrelevant to the issue before us as to whether  
8 the application of Mallon Oil was or was not technically  
9 correct. It is immaterial about any of the other things  
10 that Mallon Oil might have done. The bottom-line point  
11 is, due process was violated. The ability for the  
12 surface owner to come forward, if he so chose, to oppose  
13 and present his case was never there, resulting in this  
14 void order and, frankly, lack of jurisdiction. So, very  
15 simply.

16 What we're asking to be done is to follow  
17 what is well-established law in the state of New Mexico  
18 and enter an order that says that this particular order  
19 that was entered a number of years ago was improvidently  
20 entered, that we have no jurisdiction, that the order  
21 was void, and the order is revoked.

22 Now, in reality, if some other entity wants  
23 to come in and say, Okay, we need to apply in relation  
24 to this well, that's certainly within their statutory  
25 rights. But I would submit to you and I believe you're

1 going to hear argument today of something like no harm,  
2 no foul, and that is, well, it was technically correct,  
3 even though we didn't give the notice.

4 I would argue to you -- and I will probably  
5 raise this a couple more times as Mr. Bruce presents his  
6 argument -- that that's not the issue; it's not  
7 relevant. And you have to make this decision, and then  
8 whatever Cimarex chooses to do down the road within the  
9 law, Cimarex can choose to do down the road. And  
10 Cimarex is the successor to Mallon Oil. Cimarex stands  
11 in the shoes of Mallon Oil in that context. I don't  
12 think there is any argument about that.

13 Gentlemen, for these reasons, I do not plan  
14 on putting a witness on. It is not necessary. You have  
15 the stipulated set of facts; you've got the admitted  
16 exhibits, and, frankly, the law is the law. As we  
17 sometimes say, it is what it is. And that's where we  
18 are with this one. And with that, I'll rest my portion  
19 of the case.

20 EXAMINER BROOKS: I believe there is no  
21 objection to the Court -- we're not a court (laughter).  
22 There is no objection to the OCD considering the  
23 stipulation, correct?

24 MR. BRUCE: Correct.

25 EXAMINER BROOKS: The stipulation will be

1     accepted.

2                     And you've rested?

3                     MR. MARTIN:   Yes.

4                     EXAMINER BROOKS:   And, Mr. Bruce, it's your  
5     turn.

6                     MR. BRUCE:   I would state, Mr. Examiner,  
7     Mallon Oil filed the application -- if you go to the  
8     OCD's Web site and check online, the SWD application was  
9     never given to the surface owner.   I looked at that.  
10    You can't tell from the record that notice was given.

11                    EXAMINER BROOKS:   Let me ask both of you,  
12    then, at this point:   Has there been -- because we have  
13    a lot of old rules, and it's often hard to trace it.  
14    Does any party contend that there's been any change in  
15    the rules or with the rules as applicable to this case?  
16    Are they the same then as they are now?

17                    MR. BRUCE:   I think if you look at the old  
18    Form C-108, it has the same notice-to-surface-owner  
19    requirement --

20                    MR. MARTIN:   Yes.

21                    MR. BRUCE:   -- that the current Form C-108  
22    does.

23                    EXAMINER BROOKS:   Okay.   Go ahead.

24                    MR. BRUCE:   Mr. Examiner, notice of an  
25    administrative application is necessary so that if a

1 party objects to the application, it can come in and  
2 protect its interest or object to the technical  
3 qualifications -- or the technical case that is either  
4 presented administratively or at a hearing.

5 EXAMINER BROOKS: Yeah.

6 MR. BRUCE: Ross Ranch is here before you  
7 today, and they are not presenting any objection  
8 whatsoever to the technical merits of the original  
9 application where it could show that there is any  
10 problem with the injection well at this point. And  
11 there is no problem with the injection well, and I have  
12 witnesses available to testify about that.

13 The third thing I'll say is that there are  
14 not due process concerns in this case. I've handed you  
15 a case of Unden versus the OCC, which I think you,  
16 Mr. Examiner, are aware of.

17 EXAMINER BROOKS: I am.

18 MR. BRUCE: And the key part is this: This  
19 case was -- the final decision by the Supreme Court was  
20 entered in 1991, and the key part is on page 3,  
21 where -- of course, in this case, Virginia Unden had  
22 applied at the OCD and pursued an appeal up to the  
23 Supreme Court challenging on due process concerns, lack  
24 of notice of a special pool rules application, which  
25 increased spacing. And she lost until she got up to the

1 Supreme Court, when the Division [sic] said, Yup, her  
2 due process rights were violated because she did not  
3 receive written notice of the application that was filed  
4 by Amoco in the Cedar Lake Fruitland [phonetic] Pool.

5 The key part is three -- page 3, which I've  
6 just highlighted very basically in yellow, where the  
7 Supreme Court found that the increase in spacing, in  
8 this case, from 596 [sic] to 320 acres was effective to  
9 Mrs. Unden as of May 11th, 1988, which was, I think, the  
10 date -- I can't remember exactly -- the date she filed  
11 her application to rescind or not be subject to these  
12 pool rules. But they did make the application, the  
13 increase in spacing, effective retroactively. And more  
14 importantly, it says: "Finally, the principles set  
15 forth in this opinion are applicable to Unden and to the  
16 Commission cases affected after the filing date of this  
17 opinion."

18 Well, the Mallon SWD application was filed  
19 before the date of this opinion, so there is no due  
20 process concerns. And what Cimarex is here today to  
21 do -- and if it needs to file a separate application, it  
22 can, but its witnesses are here today to show that the  
23 application was technically correct when filed, and it  
24 should be continued in effect because the application  
25 was proper when entered.

1                   And as my opponent stated, they're the  
2   second operator after Mallon Oil and certainly weren't  
3   aware of this until after the notification from the Ross  
4   Ranch, of the lack of notice. But we think it would  
5   adversely affect the correlative rights of the interest  
6   owners of the lease involved and it will not prevent  
7   waste if the order is rescinded, and then Cimarex would  
8   simply have to come back and put on evidence of this SWD  
9   application, which there is no technical objection.

10                  EXAMINER BROOKS: Okay. Mr. Bruce, how do  
11   you want to proceed in this matter? Do you want to put  
12   on evidence in support of your contention that granting  
13   of this application would result in some kind of waste  
14   or impairment of correlative rights, or do you want to  
15   first -- because I'm not in a position to make a ruling  
16   from the bench on that matter, both because I haven't  
17   studied these cases, and I don't even have that  
18   authority, because only the Director has the authority  
19   to make orders. All I can do is make recommendations.  
20   So what do you want me -- where do you want to go with  
21   this?

22                  MR. BRUCE: And I'll let -- if I can answer  
23   first.

24                  MR. MARTIN: Sure. Sure.

25                  MR. BRUCE: If a subsequent application --



1 I didn't think one was necessary, but if the Division  
2 would like a subsequent application, at which point if  
3 Ross Ranch has a technical objection to the application,  
4 it could come forward. Even though I have witnesses and  
5 I'd hate to haul them back again, we could do that, or  
6 we could put on the evidence now.

7 EXAMINER BROOKS: Well, the thing is, I  
8 haven't determined whether any of this evidence is  
9 relevant to the determination of this application  
10 and --

11 I'm sorry. I forgot your name.

12 MR. MARTIN: I'm Tom Martin.

13 EXAMINER BROOKS: -- Mr. Martin contends  
14 that it's not, then --

15 MR. BRUCE: It would be very short, very  
16 brief.

17 EXAMINER BROOKS: Okay. Very good. If you  
18 want to put it on, I will allow you to put it on,  
19 because otherwise I'd have to continue the case, and if  
20 I subsequently determined the evidence was relevant,  
21 you'd have to bring your witnesses back. So that makes  
22 sense.

23 MR. MARTIN: May I make a comment on his  
24 argument?

25 EXAMINER BROOKS: You may. You certainly

1 will be given a chance to respond to it, but if you have  
2 something you want to say before he puts on his  
3 evidence, go ahead.

4 MR. MARTIN: Yes. I think what I want to  
5 say is relevant to what his argument is.

6 What has been done here by Ross Ranch is  
7 equivalent to what one does in a courtroom where you  
8 have an issue of no service of process; judgment is  
9 entered against someone who was not served. You  
10 certainly have the right to come in and challenge that.  
11 By coming in and challenging that judgment or that  
12 order, you are not submitting yourself to any further  
13 action. You're not acquiescing.

14 If I may use an example: When I was a much  
15 younger lawyer, I saw a lawyer in Carlsbad, New Mexico  
16 named Dick Blenden get himself into a switch on this  
17 subject, and I think it's relevant.

18 As you know, when one does a summary  
19 judgment proceeding, the theory is that we have  
20 undisputed facts, which we have here, and the Court is  
21 to rule upon those undisputed controlling facts as a  
22 matter of law. In that particular situation -- and I've  
23 seen it happen a couple of times -- through inadvertence  
24 or circumstance, the lawyers allow testimony to be taken  
25 at the summary judgment hearing. And the appellate

1 court in a case many, many, many years ago took the  
2 position that they inadvertently allowed this to be  
3 converted to a trial on the merits, which none of them  
4 had the intention to do, but they did it.

5 I am in a position today where I'm kind of  
6 like the guy with the summary judgment. We have  
7 presented a set of stipulated facts, so we have no  
8 disputed facts on the issue that has been raised. The  
9 application to revoke is equivalent to challenging a  
10 void judgment, and that's what we are here for today. I  
11 do not want to get in a situation where we go through a  
12 hearing on evidentiary matters and find that we somehow  
13 have, quote, "acquiesced" in allowing this to be heard  
14 today. The reason is obvious. Ross Ranch did not have  
15 notice. Ross Ranch has never had the opportunity to  
16 really look at the technical side of this to determine  
17 whether they should or should not challenge, and, very  
18 frankly, Ross Ranch is not in a position today to do  
19 that.

20 And that's the situation that we have, and  
21 I do stand by what I think, in this set of  
22 circumstances, is the applicable law on this subject.  
23 So those are my additional comments.

24 And just so we don't stand up and object  
25 every five minutes, I will, at this point, place an

1 objection in the record as to any testimony from any of  
2 the Cimarex people today on the grounds of relevancy.

3 EXAMINER BROOKS: Okay. And I appreciate  
4 that. We are in a little bit different situation than  
5 we would be in court, because if the Director makes a  
6 ruling on mine and Mr. Ezeanyim's recommendation, and if  
7 you disagree with that, we make a ruling that you don't  
8 like, instead of taking it to a higher authority, which  
9 would rule on the law based on our record, you'll be  
10 taking it to the Commission, in which we'll have a  
11 de novo position, where you'll start over as if this  
12 proceeding had never been held.

13 MR. MARTIN: I understand.

14 EXAMINER BROOKS: With that being the case,  
15 I'm going to overrule your objection and allow Mr. Bruce  
16 to put on his evidence.

17 However, I'm going to say this: Because of  
18 the timing, it's obvious we're not going to get through  
19 before lunch, I think.

20 MR. BRUCE: If I could start with the  
21 witnesses and run through them.

22 EXAMINER BROOKS: Well, I'll let you go to  
23 12:00, and then I'm going to take a recess at 12:00.

24 EXAMINER EZEANYIM: Can I make a comment?

25 EXAMINER BROOKS: You may make a comment.

1                   EXAMINER EZEANYIM: I'm not an attorney,  
2     but I'm listening. And Mr. Martin stated that -- he  
3     talked about not having jurisdiction, so I don't know  
4     because I'm -- if we issue an order and we have no  
5     jurisdiction to issue an order, how did that happen? He  
6     mentioned about us not having jurisdiction. What was he  
7     talking about?

8                   EXAMINER BROOKS: Well, Mr. Ezeanyim, I  
9     have not studied the authorities that have been cited to  
10    me, so I don't want to make a ruling.

11                  I admit that my initial reaction to this is  
12    that concepts of personal jurisdiction are not  
13    necessarily irrelevant, because my belief is that a  
14    permitting action by the OCD is very likely an in rem  
15    proceeding, but -- what we call an in rem proceeding in  
16    law, which we have all these categories that, you know,  
17    the law basically works on the principle you decide  
18    whether it's a bleep or a blop. And if it's a bleep,  
19    you do one thing, and if it's a blop, you do something  
20    else. And then the distinction is, it may not make a  
21    difference, but it ends up controlling the result.

22                  In this case, I don't know that it controls  
23    the result, because there are a number of cases on  
24    notice in New Mexico. And it seems to me that this case  
25    is going to be controlled on whether or not somebody had

1 a right, constitutional, statutory or administrative, to  
2 notice, and if they did not, what the consequences of  
3 that are. So that would be my -- tentatively my  
4 thinking and approach.

5 It's not a question of jurisdiction, but  
6 it's a question of notice and what the effect -- what  
7 the courts have held. And there are at least two  
8 decisions -- Unden is one and the Johnson case is the  
9 other -- that are OCD-specific on the question of  
10 failure to give required notices and what the effect of  
11 that failure is. I've read both of those cases. I've  
12 read both of those cases more than once, but it's been  
13 awhile.

14 MR. BRUCE: If I could start, I might be  
15 able to get through two witnesses.

16 EXAMINER BROOKS: Sorry I took so much of  
17 your time.

18 MR. BRUCE: If you could turn to Exhibit 4,  
19 Mr. Examiner, because the others are really just -- just  
20 backup material.

21 NASH DOWDLE,  
22 after having been previously sworn under oath, was  
23 questioned and testified as follows:

24

25

1 DIRECT EXAMINATION

2 BY MR. BRUCE:

3 Q. Could you state your name and city of  
4 residence?

5 A. My name is Nash Dowdle. I'm from Midland,  
6 Texas.

7 Q. And who do you work for and in what capacity?

8 A. I'm with Cimarex Energy as a landman.

9 Q. Have you previously testified before the  
10 Division as a landman?

11 A. Yes, I have.

12 Q. And were your credentials as an expert landman  
13 accepted and made a part of the record?

14 A. Yes, they were.

15 Q. And are you familiar with the land matters in  
16 this case?

17 A. Yes, I am.

18 MR. BRUCE: Mr. Examiner, I tender  
19 Mr. Dowdle as an expert petroleum landman.

20 MR. MARTIN: No objection.

21 Q. (BY MR. BRUCE) Mr. Dowdle, could you identify  
22 Exhibit 4 and briefly describe its contents?

23 A. Certainly. Exhibit 4 is a land plat which  
24 outlines the boundaries of Federal Oil and Gas Lease  
25 NM 38636, in the blue, and outlines the Ross Ranch in

1 red, and identifies, in crosshatching in the yellow, oil  
2 and gas leases Cimarex operates. All of Cimarex acreage  
3 is within the Lease NM 38636. The SWD operated by  
4 Cimarex is in the green dot in the far southeast  
5 quarter. The black dots within the crosshatched areas  
6 are wells operated by Cimarex.

7 Q. And which wells dispose of produced salt water  
8 into the SWD well?

9 A. That would be the Amoco -- all the wells that  
10 are in the crosshatch.

11 Q. And only in the crosshatch?

12 A. Correct.

13 Q. And very briefly, what is Exhibit 1?

14 A. Exhibit 1 is an assignment and bill of sale  
15 from Mallon Oil Company to Magnum Hunter, and it was --  
16 the date was effective July 1st, 2001.

17 Q. Did Magnum Hunter operate these wells for  
18 several years?

19 A. I believe they did for about four years, until  
20 we acquired them.

21 Q. And was that before Cimarex Energy Company  
22 existed?

23 A. That's correct.

24 Q. What happened to Magnum Hunter?

25 A. They were acquired by Cimarex Energy.



1 Q. And is Cimarex Energy -- are the properties  
2 still in the name of Magnum Hunter, Inc.?

3 A. Yes, they are.

4 Q. And who operates on their behalf?

5 A. That would be Cimarex Energy. Magnum Hunter is  
6 a wholly owned subsidiary of Cimarex Energy.

7 Q. And what is Exhibit 2?

8 A. Exhibit 2 is the specific oil and gas lease,  
9 NM 38636.

10 Q. And what is Exhibit 3?

11 A. Exhibit 3 is the copy of the federal lease --  
12 I'm sorry. Yes. Exhibit 3 is a copy of the federal oil  
13 and gas leases.

14 Q. No. Exhibit 2 is a copy of the lease.

15 A. I'm sorry. That's correct.

16 Q. And Exhibit 3 is -- what do they call it? The  
17 Serial Register Page?

18 A. That's correct. Yes, sir.

19 Q. That's from the federal records?

20 A. That's right.

21 Q. For this --

22 A. Correct.

23 Q. And finally, what is Exhibit 5?

24 A. Exhibit 5 would be the picture of the oil  
25 and -- of the actual well site that is the Amoco Federal

1 Number 1.

2 Q. In looking at this sign, it looks like you can  
3 see "Mallon Oil Company" on the label underneath the  
4 Cimarex sign.

5 A. That's correct.

6 Q. So that sign has been out there for over 23  
7 years?

8 A. Probably, yes, sir.

9 Q. And does the sign contain all of the pertinent  
10 well information required by federal BLM records?

11 A. Yes, it does.

12 Q. I mean federal and state records.

13 A. Yes, it does.

14 Q. And were Exhibits 1 through 5 prepared by you  
15 or compiled from the company's business records?

16 A. Yes, they were.

17 MR. BRUCE: Mr. Examiner, I'd move the  
18 admission of Exhibits 1 through 5.

19 MR. MARTIN: My objection is the objection  
20 I raised earlier, as to relevancy in the context of what  
21 we contend is the limited scope of this hearing.

22 EXAMINER BROOKS: Okay. I'll overrule the  
23 objection.

24 (Cimarex Energy Exhibit Numbers 1 through  
25 5 were offered and admitted into evidence.)

1 MR. BRUCE: No further questions of the  
2 witness.

3 MR. MARTIN: No questions.

4 EXAMINER BROOKS: The witness may stand  
5 down.

6 You may call your next witness.

7 SCOTT GENGLER,  
8 after having been previously sworn under oath, was  
9 questioned and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. BRUCE:

12 Q. Would you please state your name and city of  
13 residence?

14 A. Scott Gengler, Midland, Texas.

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

16 A. I work for Cimarex Energy Company, and I'm a  
17 petroleum engineer.

18 Q. Have you previously testified before the  
19 Division?

20 A. Yes, I have.

21 Q. And have your credentials as an expert  
22 petroleum engineer been accepted as a matter of record?

23 A. Yes, they were.

24 Q. And are you familiar with the engineering  
25 matters related to the SWD well?

1           A.    Yes, I am.

2                   MR. BRUCE:  Mr. Examiner, I tender  
3   Mr. Gengler as an expert petroleum engineer.

4                   EXAMINER BROOKS:  No objection?

5                   MR. MARTIN:  I have no objection to his  
6   qualifications.

7                   EXAMINER BROOKS:  So qualified.

8           Q.    (BY MR. BRUCE) And, again, to be brief,  
9   Mr. Gengler, what is Exhibit 7?

10          A.    Exhibit 7 is a copy of the OCD's file,  
11   including a C-108, of the Amoco Federal Number 1  
12   Saltwater Disposal application.

13          Q.    And this application goes back to '88 or '89;  
14   does it not?

15          A.    1989.

16          Q.    Have you reviewed the data in Exhibit 7 and the  
17   OCD's file on this well?

18          A.    Yes, I have.

19          Q.    From an engineering standpoint, is the  
20   application technically correct?

21          A.    Yes, it is.

22                   MR. MARTIN:  Let me pose an objection based  
23   on relevancy.

24                   EXAMINER BROOKS:  Okay.  The objection is  
25   overruled.

1 Q. (BY MR. BRUCE) Assuming proper notice was given  
2 in 1989 of this application, Mr. Gengler, in your  
3 opinion, should the application have been approved,  
4 approving injection into the Amoco Federal Well Number  
5 1?

6 A. Yes, it should.

7 Q. And just very briefly, what is the well zone in  
8 this well?

9 A. The injection zone is the Delaware Formation.

10 Q. And where does the -- what is the source of the  
11 injected water?

12 A. The source is Delaware-produced water from  
13 wells that Cimarex operates on this issue [sic].

14 Q. And have you conducted any tests to verify that  
15 only allowance [sic] water is injected?

16 A. Yes. We shut down the system for several days  
17 to monitor, to make sure that no other lines were put in  
18 there that we didn't know about, and no water was put  
19 into the system during those days.

20 Q. So no third-party water is coming into this  
21 well?

22 A. Not to our knowledge.

23 Q. What is Exhibit 8?

24 A. Exhibit 8 is a wellbore diagram of this well.

25 Q. And was the well completed as it was proposed

1 to be completed in the SWD application?

2 A. Yes, it is.

3 Q. And is the well completed so as to prevent  
4 movement of fluid between zones?

5 A. Yes, it is.

6 Q. In your opinion, is the denial of Ross Ranch's  
7 application in the interest of conservation and in the  
8 prevention of waste?

9 MR. MARTIN: Objection, relevancy.

10 EXAMINER BROOKS: Overruled.

11 A. Yes.

12 Q. (BY MR. BRUCE) Would Cimarex and other interest  
13 owners in the well be adversely affected if the SWD well  
14 was shut in?

15 A. Yes, they would.

16 Q. Were Exhibits 7 and 8 prepared by you or  
17 compiled from company business records?

18 A. Yes, they were.

19 MR. BRUCE: I'd move the admission of  
20 Exhibits 7 and 8, Mr. Examiner.

21 MR. MARTIN: I raise the same objection I  
22 raised before on the basis of relevancy and limited  
23 scope of this hearing.

24 EXAMINER BROOKS: Very good. Your  
25 objection is overruled, and Exhibits 7 and 8 are

1 admitted.

2 (Cimarex Energy Exhibit Numbers 7 and 8  
3 were offered and admitted into evidence.)

4 MR. BRUCE: Pass the witness.

5 MR. MARTIN: No questions.

6 DAVID PEARCY,

7 after having been previously sworn under oath, was  
8 questioned and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. BRUCE:

11 Q. Would you please state your name and city  
12 you're located in?

13 A. I'm David Percy, Midland, Texas.

14 Q. Who do you work for?

15 A. I work for Cimarex as a senior geologist.

16 Q. Have you previously testified before the  
17 Division?

18 A. Yes, I have.

19 Q. And were your credentials as an expert  
20 petroleum geologist accepted as a matter of record?

21 A. Yes.

22 Q. And does your area of responsibility at Cimarex  
23 include this area of southeast New Mexico?

24 A. Yes.

25 MR. BRUCE: Mr. Examiner, I tender Mr.

1     Pearcy as an expert petroleum geologist.

2                     MR. MARTIN: No objection as to him being  
3     an expert.

4                     EXAMINER BROOKS: He's so qualified.

5             Q.     (BY MR. BRUCE) Mr. Percy, what is Exhibit 9?

6             A.     Exhibit 9 is a structure map of the Cherry  
7     Canyon marker within the Delaware Formation. You can  
8     see part of our lease. The eastern part of the lease is  
9     shaded in yellow; the uniform structure dipping about  
10    100 feet per mile to the east.

11            Q.     And what are Exhibits 9 and 10 [sic]?

12            A.     Exhibits 9 and 10 [sic] are structure -- I'm  
13    sorry -- structural cross sections going through all the  
14    adjacent wells to the Amoco Federal, and I've included  
15    all seven of those on these two cross sections. Point  
16    out the mapping horizon there at the top of Cherry  
17    Canyon and also the zone it has been injected into and  
18    the SWD, which is sometimes called the Ross Sand, at  
19    about 40 -- 4,000 feet, down to about 4,200 feet. So  
20    Exhibits 10 and 11 are similar cross sections showing  
21    continuity of this Delaware zone that we're injecting  
22    into, which is not connected to the producing zone,  
23    which is about 4,900 feet.

24            Q.     Are there barriers above and below the  
25    injection zone which would prevent the flow of fluids?



1           A.    Yes, there are. The logs show that there are  
2   tight intervals both above the injection zone, and we  
3   have about 700 feet of there intermingled sands and  
4   shales down to the producing zone.

5           Q.    And is there any evidence of open faults or any  
6   other hydrologic connection between the disposal zone  
7   and any underground source of drinking water?

8           A.    There is not.

9           Q.    Were Exhibits 9, 10 and 11 prepared by you?

10          A.    Yes.

11          Q.    In your opinion, is the denial of Ross Ranch's  
12   application in the interest of the prevention of waste  
13   and the protection of correlative rights?

14          A.    Yes, sir.

15                   MR. BRUCE: Mr. Examiner, move the  
16   admission of Exhibits 9, 10 and 11.

17                   MR. MARTIN: Raise the same objection as to  
18   relevancy that I have raised as to the other exhibits.

19                   EXAMINER BROOKS: Objection overruled.  
20   Exhibits 9, 10 and 11 will be admitted.

21                   (Cimarex Energy Exhibit Numbers 9, 10 and  
22                   11 were offered and admitted into  
23                   evidence.)

24                   MR. BRUCE: Pass the witness.

25                   MR. MARTIN: No questions.

1 EXAMINER BROOKS: Okay. Are y'all  
2 satisfied with your arguments?

3 MR. MARTIN: I'd like to make one  
4 additional argument, if I may.

5 EXAMINER BROOKS: Go ahead.

6 MR. MARTIN: I'll be very quick.

7 I want to again restate the concept here,  
8 that the reason for notice is to give a party the  
9 opportunity to (A) know something is going on; (B) the  
10 opportunity to respond; and (C) obviously have time to  
11 look at an application or whatever, if it's a complaint  
12 or an application or whatever, and put together a  
13 response after they've had time to investigate and make  
14 their own determination. That is not the case that has  
15 occurred here at all. There has not been that  
16 opportunity, and that opportunity has not presented  
17 today by simply putting these gentlemen on.

18 Last comment, the Uden case. I submit to  
19 you that the Uden case supports our position, and when  
20 you read the Uden case closely and you see what they  
21 have to say, the parties' identity and whereabouts are  
22 known or could be ascertained, and due process requires  
23 notice. And if it's not done, there are serious  
24 constitutional problems, and that is stated in this  
25 case. But there was absolutely no evidence showing that

1 they didn't know where to find the surface owner, and  
2 there is nothing in the record showing that to be an  
3 issue.

4 And the other way that this lady managed to  
5 get into a situation where -- the ruling was that she  
6 somehow participated, and so we're going to have the  
7 spacing ruling entered against her, is she allowed  
8 herself to do exactly what I was talking about. And  
9 that is to get into a situation where she allowed  
10 testimony factual issues to be heard. Now, I didn't  
11 attend the hearing, but I think I can read between the  
12 lines what took place here. That is exactly the reason  
13 I've taken the position I've taken and the objections  
14 that I have taken.

15 EXAMINER BROOKS: Okay.

16 MR. BRUCE: And I would simply say that, as  
17 the attorney for one side of that case, Mrs. Unden did  
18 come forward asserting notice requirements and  
19 challenging the technical propriety of the original  
20 Division order increasing spacing, and this application  
21 has been pending for a number of months now, and Ross  
22 Ranch could have come forward with evidence.

23 EXAMINER BROOKS: Okay. Thank you very  
24 much, gentlemen.

25 Case Number 14888 will be taken under

1 advisement.

2 MR. BRUCE: Mr. Examiner, we should  
3 probably encourage Mr. Martin to come up here more  
4 often, because that's the shortest contested case I've  
5 had in my life.

6 (Laughter.)

7 (Case Number 14888 concludes, 12:01 p.m.)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

I do hereby certify that the foregoing is  
a complete record of the proceedings in  
the Examiner hearing of Case No. 14888,  
heard by me on 3-7-13  
Daniel K. Brock, Examiner  
Oil Conservation Division

1 STATE OF NEW MEXICO  
2 COUNTY OF BERNALILLO

3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CERTIFICATE OF COURT REPORTER

I, MARY C. HANKINS, New Mexico Certified  
Court Reporter No. 20, and Registered Professional  
Reporter, do hereby certify that I reported the  
foregoing proceedings in stenographic shorthand and that  
the foregoing pages are a true and correct transcript of  
those proceedings that were reduced to printed form by  
me to the best of my ability.

I FURTHER CERTIFY that the Reporter's  
Record of the proceedings truly and accurately reflects  
the exhibits, if any, offered by the respective parties.

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



MARY C. HANKINS, CCR, RPR  
Paul Baca Court Reporters  
New Mexico CCR No. 20  
Date of CCR Expiration: 12/31/2013