

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

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

REOPENED APPLICATION OF WILLIAMS Case No. 14521
PRODUCTION CO., LLC, FOR APPROVAL OF
A CLOSED-LOOP SYSTEM FOR THE ROSA SALTWATER
DISPOSAL WELL NO. 2 AND FOR IN-PLACE BURIAL
OF DRILLING WASTES AT ANOTHER WELL LOCATION,
RIO ARRIBA COUNTY, NEW MEXICO

DE NOVO APPLICATION OF CIMAREX ENERGY Case No. ~~14418~~
COMPANY FOR A NONSTANDARD OIL SPACING AND
PRORATION UNIT AND COMPULSORY POOLING,
EDDY COUNTY, NEW MEXICO

REOPENED APPLICATION OF CIMAREX ENERGY Case No. ~~14480~~
COMPANY FOR A NONSTANDARD OIL SPACING AND
PRORATION UNIT AND COMPULSORY POOLING,
EDDY COUNTY, NEW MEXICO

APPLICATION OF AGUA SUCIA, LLC, TO Case No. 14411
REINSTATE DIVISION ADMINISTRATIVE ORDER
SWD-559 FOR A SALTWATER DISPOSAL WELL,
LEA COUNTY, NEW MEXICO

Case No. 10693; Case No. 11724; Case No. 11954; Case No.
11987; and Case No. 13048: Dismissed

Case No. 12276 and Case No. 12277, continued to
December 9, 2010

REPORTER'S TRANSCRIPT OF PROCEEDINGS
COMMISSIONER HEARING

BEFORE: MARK E. FESMIRE, Chairman
JAMI BAILEY, Commissioner
WILLIAM C. OLSON, Commissioner

November 4, 2010
Santa Fe, New Mexico

1 This matter came on for hearing before the New
2 Mexico Oil Conservation Commission, MARK E. FESMIRE,
3 Chairman, on Thursday, November 4, 2010, at the New
4 Mexico Energy, Minerals and Natural Resources Department,
5 1220 South Saint Francis Drive, Room 102, Santa Fe, New
6 Mexico.

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1 ALSO PRESENT:

2 Florene Davidson

3

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1 CHAIRMAN FESMIRE: At this time let's go
2 on the record. The record should reflect that this is
3 the Thursday, November 4th, 2010, regularly-scheduled
4 meeting of the New Mexico Oil Conservation Commission.
5 It's 9:00 a.m. We're meeting in Porter Hall.

6 The first order of business before the
7 Commission today is the adoption of the minutes of the
8 October 7th, 2010, meeting. Have the Commissioners had a
9 chance to review the minutes as presented by the
10 secretary?

11 COMMISSIONER BAILEY: Yes, I have, and I
12 move that we adopt them.

13 COMMISSIONER OLSON: Second.

14 CHAIRMAN FESMIRE: All those in favor,
15 signify by saying aye.

16 Let the record reflect that the minutes were
17 unanimously adopted, signed by the Chairman, and conveyed
18 to the secretary.

19 The second order of business before the
20 Commission is reopening Case Number 14521. That was the
21 Application of Williams Production Co., LLC, for approval
22 of a closed-loop system for the Rosa Saltwater Disposal
23 Well Number 2, and for in-place burial of drilling wastes
24 at another well location, Rio Arriba County. At this
25 time, the case is being reopened for the purpose of

1 adopting a substitute order.

2 Counsel Smith, would you convey to the
3 Commission the conditions and the requirements for the
4 order or why we're doing it? Surprised?

5 MR. SMITH: Yeah. It's been a while. Oh,
6 yes. I remember. I don't have a red line in front of
7 me, but we had some incorrect dates in here on
8 applications, and it was more an administerial revision
9 than anything else. We just corrected the dates to the
10 applications. Everything else remained exactly the same.

11 CHAIRMAN FESMIRE: Given that, the order
12 was circulated to the Commissioners. Have the
13 Commissioners had a chance to review the amended order?

14 COMMISSIONER BAILEY: Yes, I have. I move
15 that we adopt it.

16 COMMISSIONER OLSON: I'll second that.

17 CHAIRMAN FESMIRE: All those in favor,
18 signify by saying aye.

19 Let the record reflect that the amended order
20 was unanimously adopted by the Commission, signed by the
21 Commissioners and conveyed to the secretary.

22 The next item on the docket is Case Number
23 14418, the De Novo Application of Cimarex Energy Company
24 for a nonstandard oil spacing and proration unit and
25 compulsory pooling in Eddy County.

1 I understand the attorneys are present. Would
2 you please make your appearance on the record?

3 MR. LARSON: Good morning, Mr. Chairman,
4 Commissioners. Gary Larson of Hinkle, Hensley, Shanor &
5 Martin, for Cimarex Energy Company.

6 MS. MUNDS-DRY: Good morning,
7 Mr. Chairman, Commissioners. Ocean Munds-Dry with the
8 lawfirm of Holland & Hart, LLP, here representing Lynx
9 Petroleum Consultants, Incorporated, and I have one
10 witness.

11 CHAIRMAN FESMIRE: Mr. Larson, do you have
12 an opening statement?

13 MR. LARSON: I'll waive the opening
14 statement.

15 CHAIRMAN FESMIRE: Ms. Munds-Dry, would
16 you like to have an opening statement now or reserve it
17 for later?

18 MS. MUNDS-DRY: I'll reserve it for later.

19 CHAIRMAN FESMIRE: Mr. Larson, do you have
20 any witnesses in this case?

21 MR. LARSON: I have three witnesses

22 MS. MUNDS-DRY: Mr. Chairman, I believe
23 you've already covered this in an order, but Case Numbers
24 14418 and 14480 I believe have been consolidated under
25 order.

1 CHAIRMAN FESMIRE: You're right. And the
2 record should reflect this is the consolidated Cases
3 14418 and 14480. Thank you, Ms. Munds-Dry.

4 Mr. Larson, are your witnesses present?

5 MR. LARSON: Yes, they are.

6 CHAIRMAN FESMIRE: Would you ask them to
7 stand and be sworn, please?

8 MR. LARSON: Gentlemen.

9 (Three witnesses were sworn.)

10 CHAIRMAN FESMIRE: Mr. Larson, would you
11 call your first witness, please?

12 MR. LARSON: Certainly. Mr. Compton.

13 CHAIRMAN FESMIRE: Mr. Larson, you can
14 begin when you're ready.

15 MARK COMPTON

16 Having been first duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. LARSON:

19 Q. Please state your full name for the record.

20 A. Mark Compton.

21 Q. Where do you reside, Mr. Compton?

22 A. Midland, Texas.

23 Q. By whom are you employed and in what capacity?

24 A. I'm a Landman for Cimarex Energy Company.

25 Q. Could you briefly summarize your education and

1 employment history in oil and gas?

2 A. Bachelor of science degree and finance from
3 the University of Tennessee. I was an independent field
4 landman for four years. For last three years, I've been
5 a staff landman for Cimarex, and I work exclusively in
6 Southeastern New Mexico.

7 Q. Are you a registered professional landman?

8 A. Yes.

9 Q. What is the primary focus of your
10 responsibilities as a landman for Cimarex?

11 A. I direct brokers in the field who formulate
12 ownership reports for us. I work with attorneys who do
13 title opinions for us. I propose wells and put together
14 acreage positions for those wells and draft the documents
15 associated with that acreage.

16 Q. Is your focus Southeastern New Mexico?

17 A. Yes.

18 Q. Are you familiar with the land matters
19 pertaining to the application in this case?

20 A. Yes.

21 Q. And did you testify at the Division hearing in
22 this case?

23 A. Yes.

24 Q. And have you previously testified before this
25 Commission or in a Division hearing in another case?

1 A. Yes.

2 Q. And in those Division hearings, were you
3 qualified by the Examiners as an expert in land matters?

4 A. I was.

5 MR. LARSON: Mr. Chairman, I move that Mr.
6 Compton be qualified as an expert in land matters.

7 MS. MUNDS-DRY: No objection.

8 CHAIRMAN FESMIRE: Seeing no objection,
9 Mr. Compton will be so qualified for the record.

10 Q. (By Mr. Larson) Could you briefly describe
11 the well that Cimarex identified in its application?

12 A. It's the Penny Pincher 21 Fed. Com. Number 1,
13 with a surface hole in the northwest of the northwest
14 quarter and a bottomhole in the southwest of the
15 southwest quarter. It's a horizontal Bone Spring well.

16 Q. And could you identify Cimarex Exhibit Number
17 1?

18 A. It's a C-102 showing the plat of the Penny
19 Pincher 21 Fed. Com. No. 1H.

20 Q. And it depicts the location of the horizontal
21 well?

22 A. Yes.

23 Q. Does it also depict the surface and bottomhole
24 locations of the well?

25 A. Yes.

1 Q. Are those both in orthodox locations?

2 A. Yes, they are.

3 Q. What approvals has Cimarex requested in its
4 application?

5 A. We seek an order creating a standard 40-acre
6 unit in the northwest of the northwest of Section 21 from
7 2,500 feet subsurface to the base of the Bone Spring
8 formation and a 160-acre nonstandard oil spacing and
9 proration unit in the west half of the west half of
10 Section 21, and a pooling of all mineral interests from
11 2,500 feet subsurface to the base of the Bone Spring.

12 Q. At the time they filed it's application, what
13 other interests did it have within the proposed
14 nonstandard 160-acre proration unit that I'll refer to as
15 the project area?

16 A. We owned 81 percent of the north half, 40 1/2
17 percent in the spacing unit.

18 Q. At that time, you did not have an interest in
19 the south half of the project area?

20 A. No, we did not.

21 Q. Were you responsible for identifying all the
22 other interest owners in the project area?

23 A. Yes.

24 Q. How did you accomplish that?

25 A. We retained a brokerage company in Midland,

1 Shaw Interest, to do that for us.

2 Q. And did Shaw Interest perform its work under
3 your direction?

4 A. They did.

5 Q. I'll ask you to identify Exhibit Number 2.

6 A. That is a list of interest owners in that
7 spacing unit.

8 Q. And who prepared this exhibit?

9 A. I did, based on the information I received
10 from Shaw Interest.

11 Q. And does Exhibit 2 also identify the oil and
12 gas leases in the project area?

13 A. Yes, it does.

14 Q. And are you aware of any unresolved title
15 issues?

16 A. No. There are none.

17 Q. And at least 30 days prior to the filing of
18 Cimarex's application, did you attempt to obtain the
19 voluntary joinder of all the interest owners listed on
20 Exhibit 2?

21 A. Yes.

22 Q. And I'd ask you to identify Exhibit Number 3.

23 A. That is a proposal letter that was sent to all
24 of the interest owners.

25 Q. Did all of them personally receive the letter?

1 A. They did.

2 Q. And did you enclose any documents with your
3 proposal letter?

4 A. I included an authorization for expenditure
5 and a proposed operating agreement.

6 Q. If you'd identify Exhibit 4.

7 A. That's the AFE.

8 Q. Who prepared the AFE?

9 A. Mark Audas, a drilling engineer.

10 Q. For Cimarex?

11 A. Yes.

12 Q. And in your experience, would proposing
13 horizontal wells on behalf of Cimarex, are the cost
14 identified in the AFE similar to other horizontal wells
15 that Cimarex has drilled?

16 A. Yes.

17 Q. And I'll direct your attention to the top of
18 page 1 of Exhibit 4, which has a date of November 30,
19 2009. And if you'll look at Exhibit 3, that's dated
20 November 10, 2009.

21 A. That's correct.

22 Q. Can you explain the discrepancy between those
23 two dates?

24 A. We sent out a supplement AFE, which showed the
25 bottomhole. The original AFE did not.

1 Q. Exhibit 4 is the supplemental AFE sent on
2 November 30th?

3 A. Yes.

4 Q. And after sending the proposal letters and
5 enclosures to the interest owners, did you communicate
6 with any of the interest owners about joining in the
7 proposed well?

8 A. Yes.

9 Q. In your opinion, did you make a good-faith
10 effort to obtain the voluntary joinder of the interest
11 owners before Cimarex filed its application?

12 A. Yes.

13 Q. I next ask you to identify Exhibit Number 5.

14 A. That was an affidavit to Jim Bruce --

15 CHAIRMAN FESMIRE: Mr. Larson, now is this
16 a supplemental AFE or a substitute AFE?

17 THE WITNESS: The only difference -- are
18 you asking me or Mr. Larson?

19 CHAIRMAN FESMIRE: Mr. Larson, I'll ask
20 you.

21 Q. (By Mr. Larson) Should we call it a
22 supplement or a substitute AFE?

23 A. I probably need you to define the difference.
24 I will say that the only difference between this AFE and
25 the original is that this included the bottomhole

1 location. The original AFE did not. The actual amount
2 of the AFE did not change.

3 CHAIRMAN FESMIRE: This isn't additional
4 information? This is the AFE?

5 MR. LARSON: It's the second one that was
6 sent to include the bottomhole location. Other than
7 that, there were no changes from the initial.

8 Q. (By Mr. Larson) Did Mr. Bruce initially
9 represent Cimarex in this matter?

10 A. Yes.

11 Q. Did Mr. Bruce prepare and send notice letters
12 of the application in the Division hearing to all of the
13 interest owners?

14 A. Yes, he did.

15 Q. And so all those interest owners received
16 personal notice of the application in the Division
17 hearing?

18 A. Yes.

19 Q. I next ask you to identify Exhibit Number 6.

20 A. It's a list of offset operators or working
21 interest owners.

22 Q. Offset to the project area?

23 A. Offset to the west half/west half.

24 Q. Who prepared this exhibit?

25 A. Mr. Bruce did.

1 Q. Did he prepare it at your direction?

2 A. Yes.

3 Q. And I next ask you to identify Exhibit 7.

4 A. It's an affidavit of notice.

5 Q. Did Mr. Bruce send the notice letters to the

6 offset interest owners and operators at your direction?

7 A. Yes.

8 Q. Did each offset operator and working interest

9 owner receive personal notice of the application in the

10 Division hearing?

11 A. Yes.

12 Q. Does Cimarex have previous experience in

13 drilling and completing horizontal wells in the Bone

14 Spring in this area of Southeastern New Mexico?

15 A. Yes we drilled approximately 24 horizontal

16 Bone Spring wells.

17 Q. Are you currently drilling any wells?

18 A. We currently have six rigs running in

19 Southeast New Mexico.

20 Q. All horizontal?

21 A. All horizontal Bone Spring.

22 Q. And did Cimarex recently receive Division

23 approval for horizontal wells within Section 21, which is

24 the subject of this case?

25 A. Yes. The Penny Pincher 3 and 4 in the west

1 half of the east half and the east half of the east half.

2 Q. Are those both north/south wells?

3 A. Yes.

4 Q. Were you personally involved with the
5 development of the Penny Pincher Number 3 and Number 4?

6 A. Yes.

7 Q. Since the Examiner Hearing conducted in
8 February of this year, has Cimarex obtained additional
9 interests in the project area?

10 A. Yes, we signed an operating agreement with the
11 Bass Group who were 40 percent owners of the south half,
12 covering all of Section 21. We signed or we received
13 term assignments from Marbob and EGL Resources for all of
14 their interest in Section 21, and we signed operating
15 agreements with Seven Rivers for their interest.

16 Q. When you say the Bass Group, is that a group
17 of individual operators?

18 A. It's hard to describe the Bass Group. It's
19 five -- it's a minimum of five different companies, all
20 of which own an interest in Section 21.

21 Q. So as we sit here today, Cimarex now has
22 interest in the south half of the project area?

23 A. Yes, we do.

24 Q. What is the percentage of the total interest
25 in the south half that are now committed to the well?

1 A. 52.2 percent.

2 Q. That's based on your Joint Operating
3 Agreements and assignments that you received?

4 A. Correct.

5 Q. What is the percentage in the north half?

6 A. 81 percent.

7 Q. Has Cimarex drilled and completed the Penny
8 Pincher Federal Com. No. 1 well that's identified in this
9 application?

10 A. Yes, we have.

11 Q. Did Cimarex begin drilling the well
12 immediately after receiving the Division order approving
13 the application?

14 A. Yes.

15 Q. Why did Cimarex drill the well, even though
16 Lynx Petroleum consultant had filed an application for a
17 de novo hearing before this Commission?

18 A. We had to meet a March 31 deadline pursuant to
19 the farmout we received from Devon Energy covering the
20 north half acreage.

21 Q. Did you request an extension of that March 31
22 deadline?

23 A. We originally did before the end of the year,
24 which was the original deadline.

25 Q. So you believe that you may not have received

1 a second extension in time?

2 A. That's correct.

3 Q. What did Cimarex stand to lose if it failed to
4 commence drilling the well before the deadline in the
5 farmout?

6 A. All of our interest in Section 21.

7 Q. You would have lost that interest?

8 A. Correct.

9 Q. And is the well that's completed entirely in
10 an orthodox location?

11 A. Yes.

12 Q. And after receiving the Division order in this
13 case, did you re-propose the well?

14 A. Yes, we did.

15 Q. And did any of the working interest owners
16 voluntarily join after you re-proposed the well?

17 A. Yes. The Bass Group, Seven Rivers, Marbob and
18 EGL.

19 Q. Each of the parties that you testified about
20 previously?

21 A. Yes.

22 Q. Were there any discussions between Mr. Scott
23 on behalf of Lynx and someone at Cimarex?

24 A. Yes.

25 Q. What did those discussions entail?

1 A. I was not a party to those discussions, but I
2 understand there was an offer by Lynx and we declined the
3 offer.

4 Q. And who at Cimarex communicated with
5 Mr. Scott?

6 A. The land manager for the Permian Region.

7 Q. What is his name?

8 A. Jeff Gotcher.

9 Q. And were there differences in the price that
10 Lynx had requested for its acreage?

11 A. I was told that there was.

12 Q. What was that price relative to what you paid
13 for other assignments?

14 A. Double.

15 Q. And is the well currently producing?

16 A. Yes.

17 Q. Does Cimarex consider it to be a successful
18 well?

19 A. Yes.

20 Q. What entities is Cimarex requesting the
21 Commission designate as the operator of the well?

22 A. Cimarex Energy Company of Colorado.

23 Q. What is that entity's relationship to Cimarex
24 Energy Company, the applicant?

25 A. They're a wholly-owned subsidiary.

1 Q. And do you have a recommendation for the
2 amounts that Cimarex should be paid for supervision and
3 administrative expenses?

4 A. Yes. 7,000 a month for drilling and 700 a
5 month for the producing well.

6 Q. Are those amounts substantially equivalent to
7 those previously approved by the Division for similar
8 wells?

9 A. Yes.

10 Q. Are the same amounts approved by the Division
11 for the Penny Pincher Number 3 and 4 wells?

12 A. Yes.

13 Q. Do you request these supervision and
14 administrative expenses be adjusted periodically as
15 provided by the COPAS accounting procedure?

16 A. Yes.

17 Q. Is Cimarex also requesting a risk factor for
18 drilling and completing the well?

19 A. Yes. 200 percent.

20 Q. And to your knowledge, did any of the interest
21 owners in the project area have an approved APD or
22 pending APD to drill a well in the project area when
23 Cimarex filed the application?

24 A. They did not.

25 Q. In your opinion, will the granting of Cimarex

1 application serve the interest of conservation and the
2 preservation of waste?

3 A. Yes.

4 Q. And in your opinion, will Cimarex's
5 correlative rights be negatively impacted if the
6 Commission denies the application?

7 A. They would be.

8 MR. LARSON: Mr. Chairman, I move the
9 admission of Exhibits 1 through 7.

10 MS. MUNDS-DRY: No objection.

11 CHAIRMAN FESMIRE: Cimarex Exhibits 1
12 through 7 will be admitted into the record.

13 (Cimarex Exhibits 1 through 7 were admitted.)

14 MR. LARSON: I pass the witness.

15 CHAIRMAN FESMIRE: Ms. Munds-Dry?

16 MS. MUNDS-DRY: Good morning, Mr. Compton.

17 THE WITNESS: Good morning, Ocean.

18 CROSS-EXAMINATION

19 BY MS. MUNDS-DRY:

20 Q. You testified that Cimarex has approximately
21 81 percent of the interest in the north half of Section
22 21; is that correct?

23 A. Correct.

24 Q. And you also testified that you had a March 31
25 deadline pursuant to your farmout with Devon; is that

1 correct?

2 A. That's correct.

3 Q. Did you ask whether you could get an extension
4 of that deadline?

5 A. No.

6 Q. If you would have drilled an east/west well in
7 the north half section, that would have satisfied the
8 terms of your farmout, would it not?

9 A. Yes.

10 Q. You testified, I believe just a minute ago,
11 that Cimarex considers this a successful well?

12 A. Correct.

13 Q. You're still asking for a 200 percent risk
14 penalty, however?

15 A. Yes. It's standard. We understand that not
16 many hearings are held after a well has been drilled and
17 completed. I would agree that it would seem extraneous,
18 but that's the standard.

19 Q. Okay. But the risk is all gone, wouldn't you
20 agree, now that it's a successful well?

21 A. The risk has been borne by the partners who
22 participated in the well, yes.

23 Q. Mr. Compton, when you were doing your land
24 work for Section 21, I assume you reviewed county records
25 for Section 21?

1 A. I did not personally review them. I had a
2 brokerage review them and I had an attorney do a title
3 opinion. I did not review both of those reports.

4 Q. In those reports did you come across a
5 stipulation of interest that was recorded in the county
6 for the south half of Section 21?

7 A. Again, I did not review -- the only documents
8 I specifically recall reviewing were documents that
9 involved Mr. Bayless, who was originally included on our
10 list of owners who was sent a proposal. I found out, I
11 think from Mr. Scott in the first hearing, that, in fact,
12 that interest has been conveyed back to Lynx. I had the
13 attorney go back and file a supplemental title opinion
14 reflecting that.

15 Q. Are you aware of whether there's an existing
16 operating agreement in the south half of Section 21?

17 A. I'm not.

18 Q. Did any of the interest owners, in particular,
19 the Bass Group, indicate to you that they were already
20 subject to an operating agreement in the south half?

21 A. They did not. No, ma'am.

22 MS. MUNDS-DRY: Thank you. That's all the
23 questions I have.

24 CHAIRMAN FESMIRE: Commissioner Bailey?

25

EXAMINATION

1

2 BY COMMISSIONER BAILEY:

3

Q. The name of the well is the Penny Pincher
4 Federal Com. Well. "Com." tells me there's a
5 communitization involved.

6

A. Yes, ma'am.

7

Q. Can you explain to me --

8

A. The south half is covered under one lease.
9 The north half is covered under 3, I believe. And there
10 are two different leases covered. The west half of the
11 northwest is under one lease, and the west half of the
12 southwest is under another lease.

13

Q. The communitization agreement signed by the
14 lessees of record covers what quarter/quarters here?

15

A. One, we have not filed a com. agreement with
16 the federal government yet, but it will combine those two
17 leases. If I'm understanding your question.

18

Q. Right. Because I am familiar with com.
19 agreements.

20

A. Right.

21

Q. And they're normally based on proration units
22 or spacing units. So I'm just questioning why you are
23 calling it a com. well at this point?

24

A. We will simply communitize two different
25 leases into one spacing unit.

1 Q. With a 160-proration unit?

2 A. Correct.

3 Q. Okay. Do you have experience putting together
4 acreage for units, exploratory units?

5 A. Yes, ma'am. I will say I don't believe this
6 falls under the unitization.

7 Q. Why not?

8 A. -- rules, but -- so that's why we're not
9 treating it as a unit. It's a nonstandard proration
10 unit.

11 Q. Why don't you believe it falls under
12 unitization rules?

13 A. I believe the guidance from our counsel says
14 that it doesn't fall under the statutes, is what I'm led
15 to believe.

16 COMMISSIONER BAILEY: That's all.

17 CHAIRMAN FESMIRE: Commissioner Olson.

18 COMMISSIONER OLSON: No questions.

19 CHAIRMAN FESMIRE: Mr. Compton, just a
20 quick question.

21 EXAMINATION

22 BY CHAIRMAN FESMIRE:

23 Q. The well location, the bottomhole, the
24 horizontal portion, has got an offset to the west --

25 A. Correct.

1 Q. -- towards the 330 foot limit on the line.

2 Why is the surface location not at the corner up there,
3 330/330, and the well drilled due south?

4 A. I'm not an engineer or a geologist, so --

5 Q. It's an engineering question?

6 A. I know it's not a land question.

7 Q. That's a sufficient answer. I was just
8 curious about that.

9 Now, Ms. Munds-Dry asked you about the 200
10 percent risk penalty. Could you explain that to us?

11 A. It's been in every other request from the
12 Division that we've had, so it was included in this one.
13 Again, I would say I don't know of too many hearings that
14 are held after a well has been drilled and completed and
15 producing, so --

16 Q. But it's my understanding that that is the
17 premium paid to the operator for bearing the risk of
18 drilling the well and carrying the interest of a
19 nonparticipating operator.

20 A. Correct.

21 Q. How does the fact that Cimarex has borne that
22 risk in the past -- why should that not be presented in
23 this order? Why should that not be part of this order?

24 A. I think it should be. That's why we had it
25 put in there.

1 CHAIRMAN FESMIRE: I have no further
2 questions. Any redirect, Mr. Larson?

3 MR. LARSON: Just one follow-up question.

4 REDIRECT EXAMINATION

5 BY MR. LARSON:

6 Q. Do you recall that the surface hole location
7 was based on a location previously designated by Marbob?

8 A. It was. There was a permit that Marbob had
9 gotten, and they assigned that permit to us.

10 MR. LARSON: That's all I have.

11 CHAIRMAN FESMIRE: Ms. Munds-Dry, anything
12 on that?

13 MS. MUNDS-DRY: No, sir.

14 CHAIRMAN FESMIRE: Mr. Compton, I
15 appreciate it, and you can step down.

16 Mr. Larson, do you have a next witness?

17 MR. LARSON: I do. Lee Catalano.

18 CHAIRMAN FESMIRE: Can you spell that?

19 MR. LARSON: C-a-t-a-l-a-n-o.

20 LEE CATALANO

21 Having been first duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. LARSON:

24 Q. Good morning, Mr. Catalano. Could you state
25 your full name for the record?

1 A. Lee E. Catalano.

2 Q. And where do you reside?

3 A. Midland, Texas.

4 Q. And by whom are you employed and in what
5 capacity?

6 A. Senior geologist for Cimarex Energy in
7 Midland.

8 Q. Could you briefly summarize your educational
9 background and professional experience in the oil and gas
10 business?

11 A. I received a MS degree from Oklahoma State in
12 '78, and I've been working in the Permian Basin as a
13 geologist for 32-plus years now.

14 Q. And do you have specific experience in oil and
15 gas operations in Southeastern New Mexico?

16 A. Yes. I've been -- most of that 32 years,
17 about 80 percent of the time was spent in Southeastern
18 New Mexico drilling various types of wells.

19 Q. Does that include the drilling of horizontal
20 wells?

21 A. Yeah. The last three years were exclusively
22 horizontal wells.

23 Q. How many wells have you evaluated the
24 prospects for?

25 A. Between the Abo formation and the Bone Spring,

1 probably close to 100 wells.

2 Q. 100 horizontal wells?

3 A. Yes.

4 Q. And did you provide the prognosis for the
5 Penny Pincher Number 1 well?

6 A. Yes.

7 Q. Did you also testify at the Division hearing
8 in this matter?

9 A. Yes.

10 Q. Were you qualified as an expert in petroleum
11 geology by the Examiner?

12 A. Yes.

13 MR. LARSON: Mr. Chairman, I move that
14 Mr. Catalano be qualified as an expert in petroleum
15 geology.

16 MS. MUNDS-DRY: No objection.

17 CHAIRMAN FESMIRE: Seeing no objection,
18 Mr. Catalano's experience will be so admitted into the
19 record.

20 MR. LARSON: Thank you, Mr. Chairman.

21 Q. (By Mr. Larson) Mr. Catalano, I'd ask you to
22 identify Cimarex Exhibit Number 8.

23 A. Exhibit Number 8 is just a simple production
24 map of the different producing zones around the Penny
25 Pincher 21 Federal lease.

1 Q. And did you prepare this exhibit?

2 A. Yes.

3 Q. And what are the lines numbered at the top,
4 Numbers 1, 2, 3, and 4 in the yellow shaded area of the
5 exhibit?

6 A. What those represent are the surface locations
7 for the Number 1, the Number 2, Number 3, and Number 4
8 locations, and then the bottomhole locations in the south
9 half of the section.

10 Q. And based on the data on this map, how did you
11 determine the producing zones?

12 A. Just by searching public data, production
13 data, well logs, et cetera, to determine the producing,
14 which included the Bone Spring formation.

15 Q. Those wells are identified on this production
16 map?

17 A. Yes. Most of the wells you see on that map
18 are from a shallower zone.

19 Q. I next ask you to identify Exhibit 9.

20 A. Exhibit 9 is a structure map on top of the
21 second Bone Spring sand.

22 Q. Did you prepare this exhibit?

23 A. Yes.

24 Q. And why did you pick the second Bone Spring
25 sand as the productive interval?

1 A. That's based upon mapping in this area, as
2 well as a much broader area. And it's part of a second
3 Bone Spring sand development play that we have going
4 right now, and it appeared to be the most prospective
5 formation in this area.

6 Q. How many sections have you mapped in the
7 second Bone Spring?

8 A. Probably close to 40 townships.

9 Q. And specific to Section 21, did you also look
10 at the first and third Bone Spring sand?

11 A. Yes. I mapped those formations, too, they did
12 not appear as prospective in this area.

13 Q. How many horizontal wells has Cimarex
14 completed in the second Bone Spring sand?

15 A. Out of the 24 Bone Spring horizontals, 22 have
16 been completed so far in the second sand.

17 Q. Of the six that Mr. Compton identified, are
18 any of those in the second Bone Spring?

19 A. They're all second Bone Spring sand,
20 horizontal wells.

21 Q. I next ask you to identify Exhibit Number 10.

22 A. Exhibit 10 is a net porosity isopach map of
23 the second Bone Spring sand.

24 Q. Did you prepare this exhibit, as well?

25 A. Yes. Again, it's part of a -- it's a little

1 postage stamp map of a much larger mapped area.

2 Q. And when you proposed this well to Cimarex's
3 management, did you believe that the reservoir was
4 continuous throughout the west half/west half of Section
5 21?

6 A. Yes.

7 Q. Does the data generated since the well began
8 producing confirm that?

9 A. Yes.

10 Q. Has the well shown pay along the entire
11 lateral?

12 A. Yes, it did.

13 Q. And referring back to Exhibit 10, what were
14 the parameters you used to determine porosity in the
15 producing interval?

16 A. The mapping technique that I use is a 10
17 percent density cutoff on a limestone matrix, and that's
18 why I mapped this entire area based upon. All the Bone
19 Spring sands, that's what I map them on.

20 Q. You routinely use a 10 percent density cutoff
21 in the second Bone Spring?

22 A. Yes. And the purpose of that is, I believe
23 that that accurately represents the pay in the sands.

24 Q. Why do you use a 10 percent density cutoff,
25 rather than a cross-plot cutoff to evaluate these Bone

1 Spring wells?

2 A. Again, it just goes back to my experience over
3 the years mapping the sands, and a large part of
4 Southeast New Mexico, the 10 percent density is a very
5 accurate cutoff -- I might add conservative cutoff -- to
6 predict pay from nonpay in the second Bone Spring sand.

7 Q. Why do you say it's a conservative number?

8 A. We've done core work, rotary cores in the
9 second Bone Spring sand, cross-plots with permeability
10 and have determined -- calibrated the core work back to
11 the porosity logs and have determined that actually about
12 a 9 percent density reading on a limestone matrix log is
13 a pay cutoff in the second Bone Spring sands. So by
14 using 10 percent, it's a little bit conservative. Mr.
15 Swain will be testifying about that core data after me.

16 Q. Mr. Swain is a reservoir engineer?

17 A. That works with me, yes.

18 Q. And if you could identify Exhibit 11 for the
19 Commissioners.

20 A. Exhibit 11 is a structural cross-section
21 across the Penny Pincher lease, which shows the target
22 horizontal interval within the second Bone Spring sand.

23 Q. Did you prepare this?

24 A. Yes.

25 Q. What was the purpose of this exhibit?

1 A. Basically, to depict the -- it's a
2 correlation, for one thing, to pick the interval that you
3 want to land your curve to drill your horizontal target.

4 Q. And when you prepared this exhibit and in the
5 process of evaluating the prospects for this well, did
6 you conclude that the reserves throughout the target
7 interval were substantially similar?

8 A. Yes.

9 Q. What was the basis of that conclusion?

10 A. It was based on the mapping that I did at the
11 time and the correlations that I had on the
12 cross-section.

13 Q. Do you know how long Cimarex has been
14 producing the Penny Pincher Fed. Com. Number 1 well?

15 A. Since the first part of August.

16 Q. And has the production data confirmed your
17 conclusion regarding the prospects for production across
18 the entire interval?

19 A. Yes.

20 Q. And in your opinion, will the granting of
21 Cimarex's application serve the interest of conservation
22 and preservation of waste?

23 A. Yes.

24 MR. LARSON: Mr. Chairman, I move the
25 admission of Exhibits 8 through 11.

1 MS. MUNDS-DRY: No objection.

2 CHAIRMAN FESMIRE: Cimarex Exhibits 8
3 through 11 will be admitted into the record.

4 (Cimarex Exhibits 8 through 11 were admitted.)

5 MR. LARSON: I'll pass the witness.

6 CHAIRMAN FESMIRE: Ms. Munds-Dry?

7 MS. MUNDS-DRY: Good morning,
8 Mr. Catalano.

9 THE WITNESS: Good morning.

10 CROSS-EXAMINATION

11 BY MS. MUNDS-DRY:

12 Q. If we could turn back to your Exhibit 10, Mr.
13 Larson asked you if this well has shown pay along the
14 entire lateral, and I believe you answered yes?

15 A. That's correct.

16 Q. What do you base that on?

17 A. That's based upon the mud log of the
18 horizontal well that we drilled.

19 Q. Let me ask you this: Does it show equal pay
20 along the entire lateral?

21 A. It can't do that.

22 Q. Okay. So all you can see off the mud log is
23 whether there is pay?

24 A. The mud log is a qualitative device, not a
25 quantitative measurement.

1 Q. If you could turn to your Exhibit 11?

2 A. Um-hum.

3 CHAIRMAN FESMIRE: In a horizontal well?

4 THE WITNESS: Yes, sir. You could run an
5 open hole log in a horizontal well and get pay picks, but
6 that's quite expensive.

7 CHAIRMAN FESMIRE: If it were a vertical
8 well, you could tell the extent of the pay?

9 THE WITNESS: Yes.

10 Q. (By Ms. Munds-Dry) In Exhibit 11, would you
11 agree with me that the Penny Pincher has a much thinner
12 portion of the second Bone Spring than the two offsets?

13 A. No. The well in Section 20, which is a
14 vertical producer from the second Bone Spring sand, has
15 36 feet at 10 percent, and the Penny Pincher has 32 feet.

16 Q. And what about the well in Section 22?

17 A. I have that as 47 feet.

18 Q. So the Penny Pincher has less pay than the
19 other two wells?

20 A. Just a little bit less at 10 percent density,
21 correct.

22 Q. Okay. And Mr. Catalano, I asked you this
23 before in the Division hearing. You didn't use the
24 Marbob Top Dollar well in your cross-section?

25 A. Um-hum.

1 Q. Why is that?

2 A. It's north of the Penny Pincher lease, and the
3 wells that I keyed on was the vertical producer in
4 Section 20 back to the west, rather than to the north,
5 because we're drilling these wells to the south.

6 Q. The Marbob Top Dollar well was completed in
7 the second Bone Spring sand, was it not?

8 A. Very marginal producer, correct, vertical
9 producer.

10 Q. Did you prepare Exhibit 16? You didn't review
11 that, I understand.

12 A. Let me see which one that is. Sixteen, I did
13 prepare. That was the original map interpretation prior
14 to drilling the well.

15 Q. Now, if we compare that against Exhibit 10,
16 which you just reviewed, there's a significant difference
17 now, isn't there?

18 A. Yes.

19 Q. In fact, it went from 75 feet of pay to 32
20 feet of pay?

21 A. That's correct. That's not uncommon when you
22 drill these second Bone Spring sand wells.

23 MS. MUNDS-DRY: Thank you. I have no
24 further questions.

25 CHAIRMAN FESMIRE: Commissioner Bailey?

1 EXAMINATION

2 BY COMMISSIONER BAILEY:

3 Q. Did you make the recommendation that these
4 wells should be oriented north/south, rather than
5 east/west?

6 A. Yes.

7 Q. Why?

8 A. If you refer to Exhibit Number 10, there is --
9 there's a couple of reasons. One, in Section 20 there,
10 there's a well that, again, I mentioned. It made almost
11 100,000 barrels from a vertical completion in the second
12 Bone Spring sand, which is quite good. In fact, it's
13 exceptional for vertical production.

14 Secondly, the mapping I had at that time was
15 more of a north/south orientation. And again, this was
16 part of a larger map over a larger area. And for the
17 most part, these sands are dumped off the shelf from the
18 north and oriented in a north/south direction. That was
19 the purpose of drilling that well, those two reasons.
20 Drilling north/south to get closer to the good vertical
21 well, and that my original mapping orientation was north
22 to south through this area.

23 Q. So you believe the southern area would have
24 greater production?

25 A. I believed it was equal at the time, but the

1 sand thick was coming through the entire section from
2 north to south.

3 COMMISSIONER BAILEY: That's all I have.

4 CHAIRMAN FESMIRE: Commissioner Olson?

5 COMMISSIONER OLSON: No questions.

6 CHAIRMAN FESMIRE: I've got a couple. But
7 Ms. Munds-Dry, do you want to admit Cimarex 16?

8 MS. MUNDS-DRY: I guess we can do that.
9 I'm assuming Mr. Larson is eventually going to get it
10 through his witness.

11 MR. LARSON: I was going to bring it in
12 through Mr. Swain, but I have no objection to her
13 discussing it.

14 MS. MUNDS-DRY: Thank you.

15 EXAMINATION

16 BY CHAIRMAN FESMIRE:

17 Q. Mr. Catalano, was any thought given to
18 twinning the locations with the existing surface wells
19 out there, the vertical wells to the other horizons, to
20 drilling off the same pad?

21 A. No.

22 Q. Why was that?

23 A. You mean drill four -- maybe I don't
24 understand.

25 Q. There are existing pads out there within a

1 couple hundred feet of the surface location. Was any
2 consideration given to twinning, essentially drilling
3 from existing pads out there?

4 A. On the Number 1 well, I think we mentioned
5 that was a Marbob permit that was already a good permit,
6 and they transferred that over to us. So we took that
7 existing permit and used it, yes.

8 Q. From the exhibit that showed the surface
9 locations, the 2, 3, and 4 are also near existing
10 locations. Has any consideration been given to drilling
11 off existing pads?

12 A. We don't operate those shallow wells out
13 there.

14 Q. That's not a definitive answer to the
15 question.

16 A. I guess the answer is no. We just picked new
17 locations out there.

18 Q. Now, these wells -- the Number 1 well was
19 frac'd wasn't it?

20 A. Yes.

21 Q. Could you describe the frac or should I wait
22 for the engineer?

23 A. Better wait for Michael, for the engineer,
24 yes.

25 Q. You said the second Bone Spring sands were

1 basically deposited on off-shelf flow to the north?

2 A. Yes.

3 Q. Is there any directional permeability in the
4 Bone Spring sand, directional differences?

5 A. Not necessarily. I don't know. I can't
6 answer that question. I don't think so, and that's kind
7 of a --

8 Q. That's sort of a depositional environment.
9 Wouldn't the north/south permeability tend to be better
10 than the east/west permeability?

11 A. When we plan our wells, what we try to do is
12 maximize the amount of pay that we encounter with our
13 lateral. Where the sands appear to be running
14 north/south, that's the orientation that we -- we want to
15 maximize the amount of pay we get in the horizontal well.

16 Q. The question was, in that sort of depositional
17 environment, where the sands are coming off the shelf
18 north to south, wouldn't there be a tendency for the
19 permeability to be better in that flow direction than it
20 would be across the depositional currents?

21 A. I can't say that definitively, but it could
22 be.

23 Q. If the directional permeability were better in
24 that direction, wouldn't it be more advantageous to drill
25 the wells east/west to intercept that -- assuming -- you

1 know, you answered you couldn't tell me. But if it were,
2 wouldn't it be better to drill those wells east/west?

3 A. It really doesn't matter. Because when you
4 frac, you get it. It doesn't matter about any kind of
5 permeability orientation in the sand. The idea is to
6 encounter the maximum amount of sand pay that you can in
7 the horizontal in this direction, and then the frac will
8 get it all when you frac it. It creates the permeability
9 that's going to produce for you to make these economical
10 wells.

11 CHAIRMAN FESMIRE: Mr. Larson, I have no
12 further questions. Do you have any redirect?

13 MR. LARSON: I have no redirect.

14 CHAIRMAN FESMIRE: Thank you very much,
15 sir.

16 Your next witness?

17 MS. MUNDS-DRY: I'm sorry. I just had one
18 follow-up questions based on what you asked.

19 CHAIRMAN FESMIRE: Mr. Larson, do you
20 mind?

21 MR. LARSON: No objection.

22 MS. MUNDS-DRY: Thank you.

23 RECROSS-EXAMINATION

24 BY MS. MUNDS-DRY:

25 Q. Mr. Catalano, I understand you weren't able to

1 give a definitive answer on Mr. Chairman's question, but
2 you mentioned that you drilled 22 horizontal wells in the
3 second Bone Spring sand, I believe?

4 A. Yes.

5 Q. How many of those have you drilled east/west?

6 A. Probably half and half. I couldn't give you
7 an exact number without going back and looking. But
8 we've drilled -- I can't tell you exactly. We've drilled
9 north/south. We've drilled east/west, also.

10 Q. So you think approximately fifty-fifty?

11 A. Close to it.

12 Q. If you can say --

13 A. I can't. Close to that.

14 MS. MUNDS-DRY: Thank you.

15 THE WITNESS: Again, just to reiterate, I
16 always try to maximize the amount of sand that we
17 encounter with the lateral, whether it's east/west or
18 north/south.

19 CHAIRMAN FESMIRE: May I ask a follow-up
20 question to that?

21 MR. LARSON: Certainly.

22 FURTHER EXAMINATION

23 BY CHAIRMAN FESMIRE:

24 Q. Of the 22 wells -- I assume they're all second
25 Bone Spring horizontal wells?

1 A. Yes.

2 Q. What kind of initial potentials are you
3 looking at?

4 A. We are coming in over 1,000 barrels a day.
5 Michael will testify -- he can answer. That he has all
6 those numbers in his head. But we're getting very good
7 potentials, up over 1,000 barrels a day on many of them.

8 Q. You haven't done any research to see whether
9 the east/west or north/south wells are doing better?

10 A. We've got north/south wells and east/west
11 wells that are comparable with those high rates, yes.

12 CHAIRMAN FESMIRE: I have no further
13 questions.

14 Mr. Larson, do you want to follow that.

15 MR. LARSON: I have no follow up.

16 CHAIRMAN FESMIRE: Thank you very much,
17 sir.

18 MICHAEL SWAIN

19 Having been first duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. LARSON:

22 Q. Mr. Swain, could you state your full name for
23 the record?

24 A. Michael Swain.

25 Q. And where do you reside?

1 A. Midland, Texas.

2 Q. By whom are you employed and in what capacity?

3 A. Cimarex Energy as a senior reservoir engineer.

4 Q. Can you briefly summarize your educational
5 background and professional experience?

6 A. Texas Tech University for petroleum
7 engineering, and for the last eight years I've been
8 working as a reservoir engineer in the petroleum
9 business.

10 Q. How long with Cimarex?

11 A. Last six years.

12 Q. And what is the nature of your experience with
13 oil and gas operations in Southeastern New Mexico?

14 A. I've been working exclusively for the past
15 three years drilling and completing horizontal wells.

16 Q. Did you have a role in evaluating the
17 prospects for Penny Pincher Number 1 well?

18 A. Yes.

19 Q. Did you testify at the Division hearing in
20 this matter?

21 A. Yes.

22 Q. Have you testified at any other Division
23 hearings?

24 A. Yes.

25 Q. Did the Examiner qualify you as an expert in

1 petroleum engineering?

2 A. Yes.

3 MR. LARSON: I move that Mr. Swain be
4 qualified as an expert in petroleum engineering.

5 MS. MUNDS-DRY: No objection.

6 CHAIRMAN FESMIRE: Mr. Swain, are you a
7 licensed professional engineer in either Texas or New
8 Mexico?

9 THE WITNESS: No, sir.

10 CHAIRMAN FESMIRE: We'll go ahead and
11 admit him despite that.

12 MR. LARSON: You wouldn't hold it against
13 him if it was a Texas registration?

14 CHAIRMAN FESMIRE: No. I'm a Texas
15 registration, too, so --

16 Q. (By Mr. Larson) Mr. Swain, could you refer to
17 Exhibit 4?

18 A. Yes. This is the AFE for the Penny Pincher 21
19 Fed. Com. 1H.

20 Q. Did you have a hand in the preparation of the
21 AFE?

22 A. It was prepared under my supervision.

23 Q. And in your experience in developing
24 horizontal wells for Cimarex, are the costs stated in the
25 AFE similar to the cost of other wells Cimarex has

1 drilled?

2 A. Yes.

3 Q. Do you know the actual cost for drilling and
4 completing the Penny Pincher Number 1?

5 A. To date, we've spent about \$3.9 million.

6 Q. And I next ask you to identify Exhibit Number
7 13.

8 A. That is the Weatherford mud log from the
9 vertical portion of the Penny Pincher 1H.

10 Q. And did Weatherford run this log at your
11 direction?

12 A. Yes.

13 Q. And what does this document depict?

14 A. It depicts the oil shows encountered while
15 drilling the vertical portion of the well. As you can
16 see, we had oil shows the entire second Bone Spring
17 interval.

18 Q. What do you base that statement on that you
19 had shows along the entire interval?

20 A. You have fluorescents in cut the entire length
21 of the second Bone Spring interval here.

22 Q. For the record, could you point to the line
23 you're speaking about?

24 A. Yes. That's the black curves here on the log
25 track on the fourth line here in the well log.

1 Q. And in your opinion, that shows that the pays
2 are continuous along the interval?

3 A. Yes.

4 Q. And I next ask you to identify Exhibit Number
5 12.

6 A. That is the Halliburton Spectral Density Dual
7 Spaced Neutron Log from the Penny Pincher 1H.

8 Q. And who prepared this exhibit?

9 A. My geologist, Lee Catalano.

10 Q. What are Exhibits 12 and 13 intended to
11 depict?

12 A. They are used to depict a productive interval
13 in which to drill a horizontal well.

14 Q. When you were evaluating this well to propose
15 it to Cimarex's management, did you believe the reserves
16 were continuous throughout the target interval?

17 A. Yes.

18 Q. What was your belief at that time based on?

19 A. Prior second Bone Spring horizontal wells we
20 previously drilled in Southeast New Mexico.

21 Q. Was it also based on Mr. Catalano's mapping?

22 A. Yes.

23 Q. At that time, did you believe that the pay to
24 be encountered throughout the lateral would be
25 substantially similar?

1 A. Yes, I did.

2 Q. What did you base that belief on?

3 A. On prior horizontal wells we drilled in the
4 second Bone Spring sand.

5 Q. I next ask you to identify Exhibit Number 15.

6 A. That is a cross-plot of porosity and
7 permeability of core measurements we've taken from other
8 Cimarex second Bone Spring horizontal wells.

9 Q. Did you prepare this exhibit?

10 A. Yes, I did.

11 Q. What is it intended to depict?

12 A. It's intended to take core porosity and relate
13 it back to log porosity, to come up with a porosity
14 cutoff for the second Bone Spring sand.

15 Q. This is a document you used when you were
16 evaluating the well?

17 A. This actually came after we drilled the well.

18 Q. So it's based on actual production data?

19 A. It's based on actual core measurements we've
20 taken in other second Bone Spring wells.

21 CHAIRMAN FESMIRE: Mr. Larson, may I ask a
22 quick question?

23 MR. LARSON: Certainly.

24 CHAIRMAN FESMIRE: Are these horizontal
25 cores of the second Bone Spring?

1 THE WITNESS: These are side-wall cores
2 from the vertical wells.

3 CHAIRMAN FESMIRE: Okay.

4 Q. (By Mr. Larson) And referring to Exhibit 15,
5 how much pay was encountered in the pilot hole?

6 A. For the Penny Pincher 1H, we had around 66
7 feet of pay at 9 percent porosity.

8 CHAIRMAN FESMIRE: 66 horizontal feet?

9 THE WITNESS: 66 net porosity feet in the
10 vertical.

11 CHAIRMAN FESMIRE: Through the vertical
12 section?

13 THE WITNESS: Yes, sir.

14 MR. LARSON: Thank you for that
15 clarification.

16 Q. (By Mr. Larson) Could you identify Cimarex
17 Exhibit 14?

18 A. This is a horizontal mud log display from the
19 Penny Pincher 1H. Briefly, the gas shows are shaded in
20 red, the fluorescents are shaded in green, and the cut is
21 shaded in black.

22 Q. This is based on actual production data?

23 A. This is based on the actual mud log ran during
24 the drilling of the well.

25 Q. Did you prepare this exhibit?

1 A. Yes.

2 Q. Do you believe that it supports your initial
3 prognosis that there wouldn't be significant differences
4 in quality throughout the lateral?

5 A. Yes, I do.

6 Q. Do you agree with Mr. Catalano that a mud log
7 such as this doesn't tell you the quantity of reserves of
8 the lateral?

9 A. No. It's just a positive indicator of
10 hydrocarbons along the length of the wellbore.

11 Q. Could you identify Exhibit 16?

12 A. This is the net porosity isopach that was done
13 by Mr. Catalano prior to drilling the horizontal well.

14 Q. And what are the numbers in the green shaded
15 area in the west half/west half of Section 21?

16 A. Those were my pre-application estimates for
17 recoverable reserves for each 40-acre tract along the
18 wellbore.

19 Q. What was the purpose of your volumetric
20 analysis that reflects these numbers here?

21 A. We wanted to know if there was enough
22 recoverable reserves to make this an economic project.

23 Q. Now that Cimarex has actual production, has
24 your volumetric analysis changed?

25 A. It's changed a little bit, yes.

1 Q. In what way?

2 A. It's actually gone up a little bit, around
3 10,000 more barrels per 40-acre tract along the wellbore.

4 Q. Has the production data changed your initial
5 prognosis that the pay would be substantially similar in
6 each quarter/quarter?

7 A. No.

8 Q. Could you identify Exhibit 17?

9 A. That is the production plot from the Penny
10 Pincher 1H. You can see a high base production there,
11 over 1,000 barrels a day. You can see the wells
12 currently producing around 190 barrels a day. You can
13 see from the decline analysis, my estimated ultimate
14 reserves for the Penny Pincher 1H is 325,000 barrels.

15 Q. What was the initial production for the well
16 when you first began producing it?

17 A. It had a couple of days over 1,000 barrels of
18 oil per day.

19 Q. How confident are you of the decline rate
20 depicted in this exhibit?

21 A. Based on other second Bone Spring horizontal
22 wells with this amount of data, the decline analysis is
23 pretty accurate, within 5 percent probably.

24 Q. Could you identify our final exhibit, Exhibit
25 18?

1 A. That is the calculation of oil in place for
2 the Penny Pincher 1H. This was done post completion of
3 the well.

4 Q. Can you briefly describe your calculation of
5 the oil in place?

6 A. This is taking the log parameters from the
7 vertical well and attributing those over the entire
8 160-acre spacing unit. Using standard volumetric
9 calculations, you can come up with a recoverable amount
10 of reserves for the entire spacing unit.

11 Q. I believe you heard Mr. Compton's testimony
12 about the proposed administrative and supervision costs?

13 A. Yes.

14 Q. In your opinion, are those proposed costs
15 reasonable?

16 A. Yes, they are.

17 Q. Are they in line with costs approved for other
18 Cimarex horizontal wells?

19 A. Yes.

20 Q. And you're aware that Mr. Scott, of Lynx
21 Petroleum Consultants, proposed at the Division hearing
22 that Cimarex should be required to complete and test the
23 Penny Pincher Federal Com. Number well in each
24 quarter/quarter section of the project?

25 A. Yes, sir.

1 Q. Did you evaluate the feasibility of
2 Mr. Scott's proposal?

3 A. Yes, I have.

4 Q. In terms of time, how much longer would it
5 take to complete the well in each 40-acre section?

6 A. It would add approximately a year to get each
7 40-acre spacing unit to production.

8 Q. And what effect would his proposal have on the
9 cost of the well?

10 A. It would add approximately a million dollars
11 to the well cost.

12 Q. In your opinion as a reservoir engineer, does
13 the horizontal drilling technique yield higher economics
14 than the drilling of the vertical well?

15 A. Yes, it does.

16 Q. And will the horizontal drilling technique
17 employed by Cimarex in the west half of the west half of
18 Section 21, recover oil that would not have otherwise
19 been recovered?

20 A. Yes, it will.

21 Q. In your opinion, will the granting of
22 Cimarex's application serve the interest of conservation
23 and the preservation of waste?

24 A. Yes, it will.

25 MR. LARSON: At this point, I move the

1 admission of Exhibits 12 through 18.

2 MS. MUNDS-DRY: No objection.

3 CHAIRMAN FESMIRE: Exhibits 12 through 18
4 will be admitted into the record.

5 (Cimarex Exhibits 12 through 18 were admitted.)

6 MR. LARSON: I pass the witness.

7 CHAIRMAN FESMIRE: Ms. Munds-Dry?

8 MS. MUNDS-DRY: Thank you. Good morning,
9 Mr. Swain.

10 CROSS-EXAMINATION

11 BY MS. MUNDS-DRY:

12 Q. Let's turn back to your Exhibit 13 first, if
13 you would, please. I believe you testified that you see
14 oil shows encountered all throughout this vertical
15 section in the second Bone Spring sand?

16 A. Yes.

17 Q. What about shows in the first Bone Spring
18 carbonate?

19 A. Those aren't depicted in this mud log.

20 Q. Did you log the first Bone Spring carbonate?

21 A. Yes.

22 Q. What were the shows in that?

23 A. I don't recall offhand.

24 Q. You testified that at the time you proposed
25 the well, you believed the pay was similar throughout --

1 would be similar throughout the entire project area?

2 A. Yes.

3 Q. You don't believe that now, do you?

4 A. Yes, I do.

5 Q. Do you believe that each quarter/quarter
6 section will fully contribute to the project area?

7 A. There's going to be differences between each
8 quarter/quarter, small differences between each
9 quarter/quarter. But looking at the production of the
10 well, you're definitely getting contribution from every
11 quarter/quarter of the well.

12 Q. My question was, will they equally contribute?

13 A. That's impossible to tell.

14 Q. Do you recall that I asked you that question
15 in Case 14480, in the Division hearing, for Penny Pincher
16 Number 2?

17 A. I don't recall, but I bet you did.

18 Q. Do you recall that you gave me some numbers,
19 what you thought each quarter/quarter section would
20 contribute?

21 A. Yes, I did.

22 Q. And do you recall what those numbers were for
23 each quarter/quarter section?

24 A. I think they were around 31,000 barrels.

25 Q. Do you recall that we broke that down by

1 quarter/quarter section?

2 A. Yes, we did.

3 Q. In the northeast quarter of the northwest
4 quarter, do you recall how much feet of pay you thought
5 would contribute to the project area?

6 A. At that time, 31 feet of pay.

7 Q. In the southwest quarter of the northwest
8 quarter, do you recall?

9 A. It was around 60 feet of pay.

10 Q. When we move down into the south half, do you
11 recall how much you pay you thought --

12 A. They were both 60 feet of pay.

13 Q. So the difference between 32 feet and
14 approximately 60 feet from the north half to the south
15 half?

16 A. Yes, at that time.

17 Q. If we could move on to Exhibit 14, please,
18 your mud log interpretation.

19 A. Yes.

20 Q. What criteria do you use to determine shows?

21 A. Cut and fluorescents.

22 Q. Anything else?

23 A. No. Strictly cut and fluorescents have been
24 shown in our horizontal wells to be the best indicator of
25 hydrocarbons.

1 CHAIRMAN FESMIRE: Surely you're going to
2 do hot water.

3 THE WITNESS: Red is the hot water gas.
4 The problem with the hot water gas is you're influenced
5 by mud weight -- there's a lot of factors that influence
6 hot water gas.

7 CHAIRMAN FESMIRE: But you use cut
8 fluorescents and response to the hot water?

9 THE WITNESS: Yes, sir.

10 Q. (By Ms. Munds-Dry) If you could turn to your
11 Exhibit 16, please, Mr. Swain.

12 A. Which one?

13 Q. Exhibit 16.

14 A. Yes.

15 Q. You show these volume calculations per
16 quarter/quarter section. Did you do new volumetrics
17 based on revised isopach done by Mr. Catalano?

18 A. Yes, I have.

19 Q. Did you share those with us today?

20 A. I have a volumetric calculation of oil in
21 place for the entire 160-acre spacing unit.

22 Q. Have you broken that down by spacing unit?

23 A. I have not. I don't have a well log of every
24 spacing unit, so it's hard to break it down per spacing
25 unit.

1 MS. MUNDS-DRY: That's all the questions I
2 have. Thank you

3 CHAIRMAN FESMIRE: Commissioner Bailey?

4 EXAMINATION

5 BY COMMISSIONER BAILEY:

6 Q. On Exhibit 14, what is the distance of that
7 lateral display?

8 A. That's approximately 4,300 feet of VS.

9 CHAIRMAN FESMIRE: VS?

10 THE WITNESS: Vertical section.

11 Q. (By Commissioner Bailey) So the lateral
12 distance is about 4,300?

13 A. Approximately 4,300 feet.

14 Q. If the proration unit is denied and this well
15 is produced as a vertical well, how long will it take to
16 pay out?

17 A. As a vertical well? In my opinion, its
18 probably going to take -- that depends if we have to pay
19 all the costs incurred to drill the horizontal well. The
20 well, as a vertical well, will never pay out.

21 COMMISSIONER BAILEY: That's all I have.

22 CHAIRMAN FESMIRE: Commissioner Olson?

23 COMMISSIONER OLSON: No questions.

24

25

1 EXAMINATION

2 BY CHAIRMAN FESMIRE:

3 Q. Mr. Swain, going back to a point that I tried
4 to make with the previous witness, you said that the AFE,
5 which I think is Exhibit 1 --

6 MR. LARSON: Four.

7 Q. Exhibit 4 -- that that was prepared under your
8 direction?

9 A. Yes, sir, it was.

10 Q. How much would they save if they hadn't had to
11 build the location?

12 A. Approximately \$20,000.

13 Q. 20,000 is all?

14 A. Yes, sir.

15 Q. I need you to educate me for a minute on
16 fracturing in a horizontal well. What is the theoretical
17 orientation of the fracture in a horizontal well?

18 A. Fracture orientation in a horizontal well is
19 very similar to orientation in a vertical well.
20 Actually, it's been shown to be almost identical to the
21 vertical.

22 Q. How many stages are these fracs running?

23 A. The Penny Pincher 1H had approximately 10
24 stages.

25 Q. So we're looking at 10 different fractures

1 that theoretically are straight up and down at that
2 depth; right?

3 A. Yes, sir.

4 Q. Okay. And with a calculated height and a
5 calculated extent?

6 A. Yes, sir. That's the theory.

7 Q. What would the orientation be to the well?

8 A. In the second Bone Spring sand, specifically I
9 have a lot of data that shows a strong fracture
10 orientation at about 46 degrees northeast to southwest.

11 Q. Okay. Would that be different in an east/west
12 drilled well?

13 A. No.

14 Q. You think the fracture direction would be the
15 same?

16 A. Yes, sir.

17 Q. And, essentially, splitting the difference
18 between the two?

19 A. Yes, sir. That is the one good thing about
20 this second Bone Spring sand, is you can orient your
21 wells east/west and north/south. A lot of horizontal
22 wells, you can't do that. Specifically to the second
23 Bone Spring sand in this interval, all the data I have
24 suggests that orientation is almost 45 degrees.

25 Q. Have you seen any difference between the

1 east/west and north/south wells?

2 A. No. We have equally good wells north/south
3 and east/west.

4 Q. So that would kind of tend to support your
5 fracture direction calculation, wouldn't it?

6 A. Yes, sir.

7 CHAIRMAN FESMIRE: I have no further
8 questions. Mr. Larson?

9 MR. LARSON: I would just like to follow
10 up on a line of questioning by Ms. Munds-Dry.

11 REDIRECT EXAMINATION

12 BY MR. LARSON:

13 Q. Is it possible to calculate the net pay in
14 each quarter/quarter section of the project area?

15 A. Yes. If you drilled vertical wells
16 approximately every 200 feet along the lateral wellbore,
17 you probably could, or, you know, possibly one in every
18 quarter section. If you drilled vertical wells and ran a
19 log in every quarter/quarter, you could get a pretty good
20 idea.

21 Q. That's not something that you do when you're
22 drilling a horizontal?

23 A. No, sir. That's sub-economic.

24 MR. LARSON: That's all I have.

25 CHAIRMAN FESMIRE: Anything on that,

1 Ms. Munds-Dry?

2 MS. MUNDS-DRY: No, sir.

3 CHAIRMAN FESMIRE: Thank you, Mr. Swain.

4 Mr. Larson, is that the end of your witnesses?

5

6 MR. LARSON: Yes, it is.

7 CHAIRMAN FESMIRE: Would anybody object to
8 a 10-minute break?

9 MS. MUNDS-DRY: I would not.

10 CHAIRMAN FESMIRE: Why don't we take a 10
11 minute break?

12 (A recess was taken.)

13 CHAIRMAN FESMIRE: At this time we will go
14 back on the record. The record should reflect that it's
15 10:25 on Thursday, November 4th, 2010, the regularly
16 scheduled meeting of New Mexico Oil Conservation
17 Commission.

18 The record should also reflect all three
19 Commissioners are present. We, therefore, have a quorum.

20 Mr. Larson, I believe you have finished your
21 case?

22 MR. LARSON: A point of clarification.

23 Ms. Munds-Dry mentioned to me on the break that there may
24 be a question as to whether I was to present cases on
25 both of the wells.

1 So at this point, I've completed my
2 presentation on Case 14418, which is the Number 1 well.
3 But I also have a separate presentation on Case 14480.
4 On the docket they were listed as separate cases, so I
5 assumed we'd probably deal with them separately. That's
6 up to you.

7 CHAIRMAN FESMIRE: Are you prepared to do
8 that at this time?

9 MR. LARSON: Yes, I am.

10 CHAIRMAN FESMIRE: Ms. Munds-Dry, do you
11 have any objection to that?

12 MS. MUNDS-DRY: No objection. Only that
13 we ask that Mr. Scott just go once.

14 CHAIRMAN FESMIRE: I think we can arrange
15 that.

16 MR. LARSON: I have no objection to that.

17 CHAIRMAN FESMIRE: Mr. Larson, continue
18 with your case.

19 MR. LARSON: Okay. We call Mr. Compton.

20 CHAIRMAN FESMIRE: Before we continue, I
21 need the record to reflect that these cases are
22 consolidated. Therefore, we won't need to readmit the
23 exhibits.

24 MR. LARSON: I have separate exhibits.

25 CHAIRMAN FESMIRE: You have additional

1 exhibits?

2 MR. LARSON: I do, yes. I actually filed
3 separate prehearing statements, and I have copies.

4 CHAIRMAN FESMIRE: Oh, yes. Okay.

5 MR. LARSON: Mr. Compton, you've been
6 sworn and identified yourself for the record.

7 Mr. Chairman, for purposes of brevity, I move
8 that Mr. Compton be qualified as an expert in land
9 matters for purposes of Case 14480.

10 CHAIRMAN FESMIRE: These cases are
11 consolidated, so he's been admitted. Let me rephrase
12 that. His qualifications have been admitted.

13 MR. LARSON: Thank you.

14 MARK COMPTON

15 Having been first duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. LARSON:

18 Q. With regard to the Penny Pincher Number 2
19 well, Mr. Compton, what approvals is Cimarex seeking?

20 A. We seek an order creating a standard 40-acre
21 unit in the northeast of northwest of Section 21 from
22 2,500 feet subsurface to the base of the Bone Spring, a
23 160-acre nonstandard proration unit in the east half of
24 the west half of Section 21, and the pooling of all
25 mineral interests from 2,500 feet subsurface to the base

1 of the Bone Spring in the east half of the west half of
2 Section 21.

3 Q. And is this directly to the east of the
4 project area we discussed with respect to the Penny
5 Pincher Number 1?

6 A. It's a direct offset to the east, yes.

7 Q. And who owns the surface in the proposed
8 160-acre proration unit?

9 A. The BLM.

10 Q. Are you aware of any unresolved title issues?

11 A. No.

12 Q. And at the time Cimarex filed its application,
13 what was the extent of Cimarex's interest in the project
14 area?

15 A. We owned 81 percent of the north half and zero
16 in the south half.

17 Q. Have there been any subsequent changes in the
18 scope of Cimarex's interest in the project area?

19 A. Yes. We signed an operating agreement with
20 the Bass Group, also an operating agreement with Seven
21 Rivers, and we got assignment from Marbob and EGL
22 Resources.

23 Q. So Cimarex now has an interest in each
24 quarter/quarter section of the project area?

25 A. Yes, we do.

1 Q. What is the percentage interest held in the
2 south half of the project area?

3 A. 52.2.

4 Q. It's identical to the Penny Pincher Number 1?

5 A. Yes.

6 Q. And could you briefly describe the well that
7 Cimarex proposes in its application?

8 A. It also is a horizontal Bone Spring in the
9 second Bone Spring sandstone, with a surface location in
10 the northeast of the northwest and a bottomhole location
11 in the southeast of the southwest.

12 Q. Could you identify Exhibit Number 1?

13 A. I'm assuming it's the same exhibits. I'm
14 assuming it's probably a C-102. It, in fact, is a C-102.

15 Q. And does Exhibit 1 accurately identify the
16 surface and bottomhole locations of the proposed well?

17 A. Yes.

18 Q. And Mr. Swain would be the appropriate person
19 to ask about how those locations were determined?

20 A. Yes.

21 Q. To your knowledge are they both orthodox
22 locations?

23 A. Yes.

24 Q. Will the entirety of the horizontal well be in
25 an orthodox location?

1 A. Yes, it will.

2 Q. Were you responsible for identifying all
3 interest owners in the project area?

4 A. Yes.

5 Q. And how did you accomplish that
6 identification?

7 A. We retained the services of Shaw Interest in
8 Midland to do that.

9 Q. Did they perform its work under your
10 direction?

11 A. Yes.

12 Q. Could you identify Exhibit 2?

13 A. That's a list of the interest owners.

14 Q. And who prepared that list?

15 A. I did, with the information from Shaw
16 Interest.

17 Q. And are all of the companies and individuals
18 listed on Exhibit 2 working interest owners?

19 A. Yes.

20 Q. Would you identify Exhibit 3?

21 A. That's a proposal letter.

22 Q. Did you send this same letter to all of the
23 interest owners identified on Exhibit 2?

24 A. We did.

25 Q. Did they all receive them?

1 A. Yes.

2 Q. Did you enclose any documents with your
3 proposal letter?

4 A. Yes. We included an AFE and a proposed
5 operating agreement.

6 Q. Could you identify Exhibit 4?

7 A. That is the AFE.

8 Q. Who prepared the AFE?

9 A. Michael Swain.

10 Q. Of Cimarex?

11 A. Yes.

12 Q. In your experience, are the costs reflected in
13 the AFE substantially similar to the costs for other
14 horizontal wells Cimarex has drilled?

15 A. Yes.

16 Q. In your opinion, did Cimarex make a good-faith
17 effort to obtain the voluntary joinder of all interest
18 owners in the proposed well before the application was
19 filed?

20 A. Yes.

21 Q. Could you identify Exhibit Number 5?

22 A. That's a notice -- sample notice letter.

23 Q. And it bears my signature?

24 A. Yes.

25 Q. And I sent those out pursuant to your

1 direction?

2 A. Yes.

3 Q. And did each of the interest owners identified
4 in Exhibit 2 receive personal notice of the application
5 and the Division hearing in this matter?

6 A. Yes, they did.

7 Q. Would you identify Exhibit Number 6?

8 A. That's a list of offset operators and interest
9 owners.

10 Q. Who prepared this list?

11 A. The Hinkle firm.

12 Q. It was prepared at your direction?

13 A. Yes.

14 Q. Would you identify Exhibit 7?

15 A. That is the notice letter to offset operators
16 and working interest owners.

17 Q. Were these notice letters sent pursuant to
18 your direction?

19 A. Yes.

20 Q. Did each and every one of the companies listed
21 on Exhibit 6 receive written notice of the application in
22 the Division hearing?

23 A. They did.

24 Q. What entity is Cimarex requesting the Division
25 to designate as the operator of the proposed Penny

1 Pincher Number 2 well?

2 A. Cimarex Energy Company of Colorado.

3 Q. And their relationship is a wholly-owned
4 subsidiary of Cimarex Energy?

5 A. They are.

6 Q. And is your recommendation to the Commission
7 regarding supervision and administrative cost any
8 different from the one you recommend for Penny Pincher 1?

9 A. No. It's identical.

10 Q. And are you again requesting that these
11 administrative expenses be adjusted periodically as
12 provided by COPAS?

13 A. Yes.

14 Q. And are you seeking a 200 percent risk factor
15 for the drilling and completion of the Penny Pincher
16 Number 2?

17 A. Yes, we are.

18 Q. That well has not been drilled at this point;
19 correct?

20 A. No, it hasn't.

21 Q. And to your knowledge, did any interest owner
22 in the project area have an approved or pending APD at
23 the time you proposed the well?

24 A. No, they did not.

25 Q. And in your opinion, will Cimarex's

1 correlative rights be negatively impacted if the
2 Commission denies its application?

3 A. Yes.

4 Q. Mr. Chairman, I move the admission of Exhibits
5 1 through 7.

6 MS. MUNDS-DRY: No objection.

7 CHAIRMAN FESMIRE: Cimarex Exhibits 1
8 through 7 are admitted into the record.

9 (Cimarex Exhibits 1 through 7 were admitted.)

10 MR. LARSON: Pass the witness.

11 MS. MUNDS-DRY: I have no questions for
12 Mr. Compton.

13 CHAIRMAN FESMIRE: Commissioner Bailey?

14 EXAMINATION

15 BY COMMISSIONER BAILEY:

16 Q. The Penny Pincher Federal Com. Number 2 has
17 not been drilled?

18 A. No, ma'am.

19 Q. Has a unit agreement been put forth for any of
20 these lessees of record or interest owners?

21 A. Like the Number 1, we don't believe that it
22 falls under that statute. We believe it's a nonstandard
23 spacing and proration unit.

24 Q. Is there a communitization agreement in place?

25 A. There is not. There will be by the time that

1 well is drilled, because -- I'm just going on
2 recollection. I believe the Number 2 in the east half of
3 the west half is a separate federal lease than in the
4 west half of the northwest. So we will file a com.
5 agreement with that.

6 Q. Who are the lessees of record for the Number 2
7 well?

8 A. The same as the Number 1. The Number 1 and
9 the Number 2 are identical.

10 Q. I'm still asking, who are the lessees of
11 record?

12 A. I don't know that I've got that with me. I do
13 not have that with me, so I cannot tell you.

14 Q. Can you tell me which portions of this 160
15 acreage is held by which lease?

16 A. The north half is held -- if I could get the
17 exhibits for the Penny Pincher 1, which has the Exhibit
18 A, it does have the leases on there.

19 MR. LARSON: Any objection to me showing
20 him that?

21 MS. MUNDS-DRY: Of course not.

22 CHAIRMAN FESMIRE: You may approach the
23 witness.

24 MR. LARSON: Thank you.

25 CHAIRMAN FESMIRE: The record should

1 reflect that Mr. Bruce has entered the chambers.

2 MR. CARR: May I leave?

3 MR. LARSON: Mr. Chairman, I'm handing Mr.
4 Compton Exhibit 2 in Case 14418.

5 A. And this does not, either. This only includes
6 the west half of the west half, ma'am. I don't have that
7 information with me.

8 Q. (By Commissioner Bailey) So we don't know
9 which portions are held by which leases or who the
10 lessees of record are?

11 A. I know the east half of the northwest is under
12 one federal lease, and the entire south half is under one
13 lease.

14 Q. Okay.

15 A. But who the lessees of record are, I don't
16 have that information with me.

17 Q. But we have no com. agreement or no unit
18 agreement for either of these two wells?

19 A. Not yet, no, ma'am.

20 Q. But the Penny Pincher Com. Number 1 has been
21 drilled?

22 A. Yes, ma'am.

23 COMMISSIONER BAILEY: Do I dare use the
24 "T" word?

25 CHAIRMAN FESMIRE: We're going to have to

1 face the issue one day.

2 Q. (By Commissioner Bailey) Is it trespassing?

3 A. We do not believe so. We completed the Number
4 1 the first week of August. We typically get those filed
5 no later because we start getting nasty emails within 90
6 days, and we've never had an issue. I do know that com.
7 agreement has been drafted. It is at our office, and it
8 is being circulated for signatures.

9 COMMISSIONER BAILEY: That's all.

10 COMMISSIONER OLSON: No questions.

11 EXAMINATION

12 BY CHAIRMAN FESMIRE:

13 Q. Mr. Compton, I do have a question. I think I
14 finally -- the issues here have finally dawned on me.

15 You're saying that by using nonstandard
16 location rules, that you can get around the requirement
17 that you unitize or communitize these horizontal drain
18 holes; is that correct?

19 A. No. We file communitization agreements with
20 all of our horizontal wells that combine two or more
21 federal leases --

22 Q. Okay. So --

23 A. -- and state leases.

24 Q. So why would these individual leases not be
25 treated the same way?

1 A. They would be. These leases will have com.
2 agreements filed with them, the same as all of our other
3 wells.

4 Q. Prior to drilling?

5 A. We attempt to circulate them for signatures,
6 but a lot of people do not see the priority in getting
7 them turned in, as others do. We get all them filed I
8 will say in a relatively timely fashion, because the
9 emails we get saying, "Get them turned in," or face more
10 ugly emails is not something we do as a normal course of
11 business.

12 COMMISSIONER BAILEY: Emails from who?

13 Q. Emails from whom?

14 A. We get them from -- our regulatory analyst,
15 Zeno Farris gets them and says, "It doesn't matter if you
16 don't have all the signatures. Start getting signatures
17 as you get them and get them filed."

18 Q. From whom?

19 A. I'm not sure who he gets -- I'm assuming he
20 gets them from the State Land Department.

21 Q. Let's go back to a basic question. Why was
22 the Number 1 well drilled without an agreement to unitize
23 or functionally unitize the interests in that west half
24 of the west half?

25 A. A communitization agreement? I don't know if

1 we're different from a lot of other companies. We
2 typically will file those around the time that the
3 drilling is completed because it normally takes us that
4 long to get all the paperwork back from the people of
5 record.

6 Q. So you would drill a horizontal well on a
7 fractionized proration unit without all those interests
8 in your -- or without force pooling those interests?

9 A. I'm sorry?

10 Q. Would you drill a horizontal well in say a
11 40-acre proration unit without either an agreement or a
12 force pooling order accumulating those interests?

13 A. No. We had a force pooling order when we
14 commenced drilling.

15 Q. This was a hypothetical question. Would you
16 drill a vertical well without having all the interests in
17 that proration unit either in an agreement or force
18 pooled?

19 A. I cannot imagine a situation where we would do
20 that.

21 Q. Isn't that essentially what you've done here?

22 A. No. We had a force pooling order when we
23 commenced drilling of the Penny Pincher 1.

24 Q. For the 40-acre -- what was the force pooling
25 order?

1 A. In the entire west half of the west half.

2 Q. So you had all the interests in the west half
3 of the west half?

4 A. Under an order.

5 Q. Under an order?

6 A. And it was re-proposed to all those operating
7 rights owners under that order.

8 Q. So all of the interests in the 160-acre
9 section drained by this vertical well are, for lack of a
10 better word, unitized or accumulated in this well?

11 A. By this -- you're talking about the Number 2
12 or the Number 1?

13 Q. The Number 1.

14 A. The Number 1 was pooled under an order, and I
15 don't remember what the order number is.

16 Q. The 160 acres were pooled under an order?

17 A. Yes, they were. And each operating order was
18 sent a copy of that order, along with a new proposal
19 under that order immediately after it came out.

20 COMMISSIONER BAILEY: But that was not
21 given to us.

22 CHAIRMAN FESMIRE: Do you need to ask the
23 question?

24 COMMISSIONER BAILEY: Could you give us a
25 supplementary a copy of that order, or at least the order

1 number, so that we have that in our records?

2 THE WITNESS: Certainly.

3 MR. LARSON: Commissioner Bailey, it's
4 somewhere in this pile of papers. I have a copy of the
5 Division order.

6 CHAIRMAN FESMIRE: We can get it at lunch.

7 Q. (By Chairman Fesmire) But that order does
8 exist?

9 A. Yes.

10 Q. So production from this well is not trespass?

11 A. We re-proposed that well under an order that
12 granted Cimarex all of the relief we asked for.

13 Q. You re-proposed the well?

14 A. Yes.

15 Q. I guess I don't understand. Does the
16 unitization order -- force pooling order include this
17 well? Is it this well, or is it another well we're
18 talking about? When I say, "this well," I'm talking
19 about the Number 1.

20 A. The order was specifically and only for the
21 Number 1.

22 Q. It force pools all the interests in that 160
23 acres?

24 A. Yes, from 2,500 feet to the base of the Bone
25 Spring. And the only reason we re-proposed it is because

1 it specifically says that every working interest owner
2 has 30 days to participate in that well from the date
3 that they receive a proposal under that order.

4 So the very next day a proposal letter,
5 roughly identical to the original proposal letter, but
6 also made reference to the order number and had a copy of
7 the order included with that proposal letter.

8 CHAIRMAN FESMIRE: Mr. Larson, I don't
9 have further questions. Do you have any redirect?

10 MR. LARSON: Just a couple of questions,
11 Mr. Chairman.

12 REDIRECT EXAMINATION

13 BY MR. LARSON:

14 Q. So the record is clear, when Cimarex drilled
15 the Number 1, it had a Division order force pooling all
16 the interests in the west half/west half of Section 21?

17 A. That's correct.

18 Q. Has Cimarex commenced drilling the Number 2
19 well?

20 A. No.

21 Q. Is Cimarex going to wait to drill that well
22 until the Commissions has decided the application in Case
23 14480?

24 A. Yes

25 MR. LARSON: That's all.

1 CHAIRMAN FESMIRE: Anything on that,
2 Ms. Munds-Dry?

3 MS. MUNDS-DRY: Maybe one question.

4 CHAIRMAN FESMIRE: On this subject?

5 MS. MUNDS-DRY: On this subject, yes.
6 Maybe this will help clear up some confusion.

7 CROSS-EXAMINATION

8 BY MS. MUNDS-DRY:

9 Q. Mr. Compton, you drilled the 1H pursuant to a
10 Division order, as Mr. Larson just asked you?

11 A. Yes.

12 Q. And that order is what was appealed by Lynx in
13 Case 14418; correct?

14 A. That's correct.

15 MS. MUNDS-DRY: Does that help?

16 CHAIRMAN FESMIRE: Yes. So they've got an
17 appealed order -- they drilled it under an appealed but
18 valid order?

19 MS. MUNDS-DRY: We could quibble about
20 valid. But yes.

21 MR. LARSON: I have one follow-up
22 question.

23 CHAIRMAN FESMIRE: Ms. Munds-Dry, do you
24 mind?

25 MS. MUNDS-DRY: Not at all.

1 FURTHER REDIRECT EXAMINATION

2 BY MR. LARSON:

3 Q. Did Lynx Petroleum Consultants file a motion
4 to stay the Division order?

5 A. Yes.

6 Q. Was that motion denied?

7 A. It was.

8 MR. LARSON: That's all.

9 Commissioner Bailey, I found that order. It's
10 Number R-13228. It was entered on March 18th of this
11 year.

12 COMMISSIONER BAILEY: Thank you.

13 CHAIRMAN FESMIRE: The Commission will
14 take administrative notice of the order for the record.

15 MR. SMITH: What was the date?

16 MR. LARSON: March the 18th.

17 Mr. Catalano?

18 LEE CATALANO

19 Having been first duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. LARSON:

22 Q. Mr. Catalano, did you have a hand --

23 CHAIRMAN FESMIRE: Hang on just a second.

24 Mr. Catalano, you've been previously sworn in
25 this case?

1 THE WITNESS: Yes, sir

2 CHAIRMAN FESMIRE: And you understand that
3 you're still under oath?

4 THE WITNESS: I do.

5 MR. LARSON: And he's been qualified as an
6 expert in petroleum geology. Thank you.

7 Q. (By Mr. Larson) Did you have a hand in the
8 evaluation of the Penny Pincher Number 2 well from
9 Cimarex's management?

10 A. Yes.

11 Q. And is this well also targeting the second
12 Bone Spring sand?

13 A. Yes, it is.

14 Q. And you picked that as the target interval
15 based on the evaluation discussed earlier in this
16 hearing?

17 A. Yes. All the maps and other testimony that I
18 gave previously, it's based upon that same data.

19 Q. And I have some separate exhibits in Case
20 14480. Can we go through those real quickly?

21 A. Yes.

22 Q. Exhibit 8, is that the same production map
23 that you addressed in relation to Case 14418?

24 A. Yes.

25 Q. And how about Exhibit 9?

1 A. It's the same map, same structure map, yes.

2 Q. And Exhibit Number 10, is that the same 10
3 percent density cutoff?

4 A. Yes.

5 Q. And Exhibit Number 11, is that the same
6 cross-section?

7 A. Yes.

8 Q. And in relation to the Penny Pincher Number 2
9 well, is there any testimony that you would have be
10 different than your previous testimony in relation to
11 these four exhibits?

12 A. No.

13 Q. So you could adopt that testimony in terms of
14 your evaluation of the Number 2 well?

15 A. Yes.

16 Q. And if you look at Exhibit Number 12, could
17 you identify that for the record?

18 A. That is the lateral mud log display that was
19 previously entered into evidence.

20 Q. And when you initially evaluated the prospects
21 for this well, did you believe that there would be shows
22 throughout the entire lateral for the horizontal well?

23 A. Yes, overall.

24 Q. And do you believe that Exhibit 12 supports
25 that conclusion?

1 A. Yes.

2 Q. Did you use the same 10 percent density cutoff
3 for the Number 2 well?

4 A. Yes.

5 Q. In your opinion, is the target interval in the
6 second Bone Spring sand homogeneous?

7 A. The overall target interval is, yes,
8 continuous through there.

9 Q. Is there any significant difference between
10 your analysis of the target interval for the Number 2
11 than for the Number 1 well?

12 A. No. I think it should be very similar. The
13 results should be very similar to the Number 1 well.

14 Q. And in your opinion, will the granting of
15 Cimarex's application serve the interest of conservation
16 and the preservation of waste?

17 A. Yes.

18 MR. LARSON: At this point I move the
19 admission of Exhibits 1 through 11.

20 MS. MUNDS-DRY: No objection.

21 CHAIRMAN FESMIRE: Exhibits 1 through 11
22 will be admitted into the record.

23 (Cimarex Exhibits 1 through 11 were admitted.)

24 MR. LARSON: I will pass the witness.

25 CHAIRMAN FESMIRE: Ms. Munds-Dry?

1 MS. MUNDS-DRY: No questions.

2 CHAIRMAN FESMIRE: Commissioner Bailey?

3 COMMISSIONER BAILEY: No questions.

4 CHAIRMAN FESMIRE: Commissioner Olson?

5 COMMISSIONER OLSON: No questions.

6 CHAIRMAN FESMIRE: I have a real quick
7 question.

8 EXAMINATION

9 BY CHAIRMAN FESMIRE:

10 Q. The well Number 1, instead of running parallel
11 on the edge of the window, it's got an offset to the west
12 between the surface and bottomhole locations.

13 A. Yes, sir.

14 Q. Why is that?

15 A. That location was the old Marbob permitted
16 location.

17 Q. So you just went from that location?

18 A. And we took it, yes. It was permitted as a
19 Morrow well originally.

20 Q. Your proposed Well Number 4 --

21 A. Yes.

22 Q. -- has an offset to the east. Why is that?

23 A. The Number 4?

24 Q. At least on the map it looks like it has an
25 offset to the east.

1 A. I believe the location on that is -- what we
2 generally shoot for is a standard 330/660 type, but there
3 may have been a surface issue out there where we have to
4 move them due to sand dunes or arch or something like
5 that.

6 Q. So it's not a development plan issue. It's
7 just the way those wells --

8 A. Subsurface issue, probably.

9 Q. One of the factors -- and this may be a
10 question for your reservoir engineer. One of the factors
11 in the recovery and the rates on the horizontal wells is
12 going to be the length of the lateral through the pay.

13 A. Correct.

14 Q. Why don't you design those corner to corner,
15 instead of straight up, north to south?

16 A. I don't know if you could adequately drain a
17 section. You'd be limited. Then you get into -- I think
18 it's more efficient probably to do four wells. I think
19 you might be missing pay.

20 Q. I mean in the 160 from the 330/330 to the
21 330/330 up here, why would you -- if directional
22 permeability doesn't seem to be an issue in the second
23 Bone Spring, why wouldn't you maximize the length of the
24 potential lateral in that 160?

25 A. I see. Gain a little bit of vertical section

1 but putting it at a little bit of an angle?

2 Q. Right.

3 A. You could do that, I suppose. I'm not sure
4 what the incremental additional production would be. It
5 would be easy enough to do something like that.

6 Sometimes -- a number of wells that we
7 drilled, we had to move them because of surface issues,
8 and we effectively have done that. But I don't know if
9 it's made a whole lot of difference or not.

10 Q. That's the kind of thing reservoir engineers
11 will be doing as this field matures; right?

12 A. Right.

13 CHAIRMAN FESMIRE: I have no further
14 questions.

15 MR. LARSON: I have nothing further.

16 CHAIRMAN FESMIRE: Thank you very much.

17 Mr. Larson, your next witness.

18 MR. LARSON: Mr. Swain.

19 MICHAEL SWAIN

20 Having been first duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. LARSON:

23 Q. Mr. Swain you were previously sworn in and you
24 realize you're still under oath?

25 A. Yes.

1 Q. When you evaluated the prospects for the Penny
2 Pincher Number 2 well, did you believe at that time that
3 there would be pay throughout the targeted interval?

4 A. Yes, I do.

5 Q. Did you believe that it would be substantially
6 homogeneous?

7 A. Yes.

8 Q. For purposes of brevity, could we just adopt
9 your analysis with regard to the Number 1 for the Number
10 2?

11 A. Yes.

12 Q. There wouldn't be any significant differences
13 in terms of your evaluation of the prospects for that
14 well?

15 A. It would be the same.

16 Q. And I refer you to Exhibit Number 4.

17 A. It's the AFE associated with the Penny Pincher
18 2H.

19 Q. Did you prepare that?

20 A. Yes.

21 Q. Are those costs substantially similar to the
22 costs for drilling and completing other horizontal wells
23 in the Bone Spring sand?

24 A. Yes, they are.

25 Q. I briefly refer you to Exhibit Number 12.

1 A. That's the horizontal mud log.

2 Q. You prepared that exhibit?

3 A. Yes.

4 Q. In your opinion, does the mud log for the
5 Penny Pincher Number 1 support the conclusion that the
6 Penny Pincher Number 2 will show pays throughout the
7 targeted interval?

8 A. Yes.

9 Q. Why do you believe that?

10 A. You have shows along the entire lateral in the
11 1H, which indicates reservoir rock capable of producing
12 producible hydrocarbons along the length of the lateral.
13 And the 2H should be real similar to the 1H.

14 Q. Could you identify Exhibit 13?

15 A. That's the drilling prognosis for the Penny
16 Pincher 2H.

17 Q. Did you prepare this exhibit?

18 A. Yes.

19 Q. Could you briefly describe for the
20 Commissioners the drilling program for the proposed
21 horizontal well?

22 A. For the Penny Pincher 2H, we plan on drilling
23 a vertical well down through the second Bone Spring
24 sandstone, logging the well, plugging back and exiting
25 the casing shoe and drilling approximately a 4,500 foot

1 lateral in the second Bone Spring sandstone, and then
2 running an open hole, 15-stage liner assembly for
3 completion.

4 Q. And you'll be doing fracturing?

5 A. Yes.

6 Q. Could you identify Exhibit 14?

7 A. That's the planned wellbore path for the Penny
8 Pincher 2H.

9 Q. Who prepared that exhibit?

10 A. Baker Inteq.

11 Q. Did they prepare it at your direction?

12 A. Yes, they did.

13 Q. In your opinion, will the proposed horizontal
14 drilling technique yield higher economics than drilling
15 vertical wells in each quarter/quarter section of the
16 project area?

17 A. Yes, it will.

18 Q. Why is that?

19 A. You have to spend about half the capital costs
20 to recover the same reserves plus a little bit more
21 reserves from each quarter/quarter of the planned spacing
22 unit.

23 Q. In your opinion, will the horizontal drilling
24 technique recover oil in the project area that would not
25 otherwise be recovered?

1 A. Yes. Horizontal wells in the second Bone
2 Spring are showing to have higher recovery factors than
3 vertical wells in the same proration unit.

4 Q. Is this based on your experience drilling
5 other horizontal wells in the --

6 A. Yes, based off 22 or so horizontal --

7 Q. How many horizontal wells have you personally
8 been involved in in Southeastern New Mexico?

9 A. Over 50.

10 Q. All those wells were completed?

11 A. Yes, they were.

12 Q. In your opinion, will the granting of
13 Cimarex's application serve the interest of conservation
14 and prevention of waste?

15 A. Yes, it will.

16 Q. In your opinion, would the denial of the
17 application negatively impact Cimarex's correlative
18 rights?

19 A. Yes.

20 MR. LARSON: We move the admission of
21 Exhibits 12 through 14.

22 MS. MUNDS-DRY: No objection.

23 CHAIRMAN FESMIRE: Exhibits 12 through 14
24 are admitted into the record.

25 (Cimarex Exhibits 12 through 14 were admitted.)

1 MR. LARSON: I pass the witness.

2 CHAIRMAN FESMIRE: Ms. Munds-Dry?

3 MS. MUNDS-DRY: No questions.

4 CHAIRMAN FESMIRE: Commissioner Bailey?

5 COMMISSIONER BAILEY: No questions.

6 CHAIRMAN FESMIRE: Commissioner Olson?

7 COMMISSIONER OLSON: No questions.

8 EXAMINATION

9 BY CHAIRMAN FESMIRE:

10 Q. On the subject we were talking about, why are
11 these wells proposed true north and south, instead of
12 maximize the lateral length within that 160 acres?

13 A. To maximize the oil production from the wells,
14 you would try to get as much vertical section as you can
15 in the second Bone Spring sand. You could drill 330 to
16 330 corner to corner and gain a couple hundred feet more
17 VS in the second Bone Spring sand.

18 A lot of operators in the second Bone Spring
19 are actually doing that. They're actually placing their
20 wells off lease, penetrating at a legal 330 location and
21 really maximizing the vertical section in the second Bone
22 Spring.

23 The problem with that is your vertical well is
24 illegal to the lease line. You can't produce anything
25 that you find up the hole. So we try to do every one of

1 our wells at a standard location, just in case you
2 have -- in case you lose the lateral. And you are legal,
3 so you can produce anything you find as you drill down.

4 CHAIRMAN FESMIRE: Thank you very much.
5 Anything further, Mr. Larson?

6 MR. LARSON: Nothing further,

7 CHAIRMAN FESMIRE: May this witness be
8 dismissed?

9 MR. LARSON: Certainly.

10 CHAIRMAN FESMIRE: Thank you very much,
11 sir.

12 CHAIRMAN FESMIRE: Mr. Larson, is that the
13 end of your case?

14 MR. LARSON: Yes, it is

15 CHAIRMAN FESMIRE: Ms. Munds-Dry, you
16 reserved your opening. Would you like to give it at this
17 point?

18 MS. MUNDS-DRY: Yes, please, I would.
19 Lynx Petroleum Consultants, Incorporated, is a working
20 interest owner in the east half/west half of Section 21.

21 Lynx opposes this application because it
22 believes, and it will show here today, there are
23 significant differences in reservoir quality between each
24 of the 40-acre spacing units Cimarex proposed to combine
25 in both of the applications.

1 Accordingly, its correlative rights will be
2 violated by denying Lynx its just and equitable share of
3 the production. It is the duty of this Commission to
4 protect correlative rights. Section 70-2-17 of the Oil
5 and Gas Act in fact requires all orders, as far as
6 practicable to do so, to afford each owner the
7 opportunity to produce his just and equitable share of
8 the oil and gas.

9 The pooling statutes and rules address pooling
10 to form a spacing or proration unit. Horizontal wells
11 and project areas and those ideas, of course, came after
12 the Oil and Gas Act applicable rules, and, frankly, do
13 not contemplate the issues that we're seeing with
14 horizontal wells.

15 To allow an operator to force pool under the
16 statute, when it proposes a horizontal well, the Division
17 has been requiring an operator to form a nonstandard
18 spacing unit so that it may utilize the pooling statute.
19 The problem is, and you will hear testimony today, that
20 this leads to a violation of correlative rights in
21 certain cases. Not every case, but in this case,
22 certainly.

23 There's no ability when there are disparate
24 interests for parties to negotiate a just and equitable
25 share of the allocation.

1 Now, you do have a model for this under the
2 unitization rules, under, particularly, the Statutory
3 Unitization Act. Of course, this isn't for secondary
4 recovery and doesn't apply. But there is at least a
5 model we can look to where you can see the parties, when
6 you start to string together multiple spacing units or
7 large areas of land, are allowed to negotiate, and the
8 Division can step in and ensure a fair and reasonable
9 participation formula.

10 Now, the pooling statute only allows all
11 location on a straight acreage basis, but pooling should
12 only be granted if it prevents waste and protects
13 correlative rights. Since correlative rights will be
14 harmed here, these applications should be denied. Thank
15 you. And I have one witness.

16 CHAIRMAN FESMIRE: Mr. Scott, would you
17 stand and be sworn?

18 (One witness was sworn.)

19 LARRY SCOTT

20 Having been first duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MS. MUNDS-DRY:

23 Q. Please state your name for the record.

24 A. Larry Scott.

25 Q. And where do you reside, Mr. Scott?

1 A. Hobbs, New Mexico.

2 Q. And by whom are you employed?

3 A. Lynx Petroleum Consultants, Incorporated.

4 Q. What is your position with Lynx?

5 A. I currently serve as its president, chief
6 geologist, chief engineer, occasional landman, and when
7 absolutely required, regulatory clerk.

8 Q. Do you fax your own documents?

9 A. Yes, I do.

10 Q. Have you previously testified before the
11 Commission?

12 A. I've not previously testified before the
13 Commission, but I have before the Division Examiners on
14 multiple occasions.

15 Q. And when you testified before the Division,
16 were your credentials as a practical oil man and
17 petroleum engineer accepted?

18 A. Yes.

19 Q. Because you haven't testified before the
20 Commission, could you give us a brief review of your
21 working history and experience? You mentioned you wear
22 multiple hats, but particularly, I'm interested in your
23 engineering experience.

24 A. I have a Bachelor of Science in electrical
25 engineering from the University of Texas. I have five

1 years of experience in various engineering capacities
2 with Conoco, finishing my career there as a supervising
3 production engineer. I was a forming partner for Lynx
4 Petroleum in 1981. I served as its vice president, and
5 for the last few years, president. We've been in
6 business 29 years.

7 Q. Have you made an engineering study of these
8 pertinent sections of Section 21?

9 A. Absolutely. We consider this one of our core
10 areas.

11 MS. MUNDS-DRY: Mr. Chairman, we tender
12 Mr. Scott as a practical oil man and as a petroleum
13 engineer.

14 CHAIRMAN FESMIRE: Any objection?

15 MR. LARSON: No objection.

16 CHAIRMAN FESMIRE: Can you define
17 "practical oil man"?

18 MS. MUNDS-DRY: It's something that I
19 understand our friend, Mr. Ray Miller, created. Because
20 in his situation, he wore so many hats, so he was
21 familiar and dabbled in some geology, in some land and
22 some engineering. So he became sort of a "practical oil
23 man."

24 CHAIRMAN FESMIRE: Okay. I think we can
25 accept Mr. Scott's qualifications as an engineer. Is any

1 of his testimony outside that area of expertise?

2 MS. MUNDS-DRY: I think he'll be giving
3 some testimony as it relates to geology. But really it's
4 engineering testimony. If you're more comfortable with
5 limiting it to engineering, I think we're okay there.

6 CHAIRMAN FESMIRE: He's probably going to
7 give some testimony concerning land issues and things
8 like that?

9 MS. MUNDS-DRY: He will to the extent that
10 Lynx and its partners has an interest.

11 CHAIRMAN FESMIRE: To the extent that
12 there is a precedent, we will go ahead and accept his
13 qualifications as a practical oil man and engineer.

14 MS. MUNDS-DRY: Thank you.

15 Q. (By Ms. Munds-Dry) What is Lynx's ownership
16 in the proposed project areas for the 1H and the 2H?

17 A. Lynx and the partners that we traditionally
18 represent owned approximately 60 percent of the south
19 half of Section 21.

20 Q. Mr. Scott, without getting into too much
21 detail, if you could, for the Commission, try to frame
22 the issue. In summary, why has Lynx objected to these
23 applications?

24 A. Well, spacing rules, proration units, have
25 traditionally been organized around the radius that a

1 wellbore can drain, a vertical wellbore can drain.
2 Horizontal drilling technology has substantially turned
3 this concept on its head, and now we're driving wellbores
4 horizontally across a path or full sections.

5 And there is the opportunity across these
6 large planned view areas for drastic changes into the
7 lithology that disallow the production of hydrocarbons
8 or, rather, the allocation of those hydrocarbons on a
9 straight acreage basis.

10 It was my opinion that the north half of
11 Section 21 was considerably less prospective than the
12 south half of Section 21, and that is the reason for my
13 objections.

14 Q. Let's walk the Commission then through why
15 combining a nonstandard spacing unit and pooling leads to
16 the inequities we have here. Why are these applications
17 for nonstandard spacing units and pooling?

18 A. In order to have the pooling statutes apply,
19 you have to have a nonstandard proration unit. The Bone
20 Spring in this area has traditionally been developed
21 vertically on 40-acre spacing. Cimarex was required in
22 order to pull the force pooling statute in, to create a
23 160-acre nonstandard proration unit for the pooling
24 statute to be appropriate.

25 Q. And to get to the point, why does this create

1 a problem in these cases?

2 A. In these cases, if the reservoir quality rock
3 is substantially different from north and south, pooling
4 will only allow allocation on the basis of straight
5 acreage, and that's not right.

6 Q. If we could turn to our first exhibit here,
7 Mr. Scott, Lynx Exhibit Number 1, what is this?

8 A. Lynx Exhibit Number 1 is my structure and
9 isopach map of the second Bone Spring sand.

10 Q. Mr. Scott, if I could ask you to pause, I want
11 to make sure the Commission has the exhibits.

12 CHAIRMAN FESMIRE: We do.

13 Q. I'm sorry, Mr. Scott.

14 A. This was based on -- Lynx operates, and has
15 for several years, the HJ 27 No. 1, which is one of the
16 control wells for the mapping of these sand lands. The
17 other control well that we had available to us was over
18 in Section 20.

19 We were of the opinion, based on our
20 participation in the Top Dollar well up in Section 15,
21 just to the north, which is a northeast diagonal offset
22 to the Penny Pincher Number 1, that the test results in
23 the second Bone Spring sand in that wellbore were very
24 discouraging, leading us to believe that the north half
25 was not particularly prospective.

1 Q. If you turn to what's been marked as Lynx
2 Exhibits Number 3 and Number 4. And I believe Exhibit 3
3 is Cimarex's Exhibit 16 in Case 14418.

4 A. This was similar to the isopach map going into
5 the compulsory pooling hearing for the Penny Pincher
6 Number 1. Their testimony was approximately 75 feet of
7 pay would be encountered throughout the north/south range
8 of that well, and that all of the 40-acre proration units
9 would be giving up hydrocarbons approximately on an
10 acreage basis.

11 Q. Let's turn to Exhibit Number 7, Lynx Exhibit
12 Number 7, please. I believe this is the same as Cimarex
13 Exhibit 9 in Case 14480.

14 A. This exhibit is the post isopach map
15 subsequent to the drilling of the Penny Pincher Number 1,
16 which indicates that the pay projections dropped from 75
17 feet to 32 feet, and along that, we lost the north/south
18 orientation of the sand.

19 Q. Let's turn to Lynx Exhibit Number 5 and Number
20 8, if you would, please.

21 Again, I believe our Exhibit 8 is the same as
22 Cimarex Exhibit Number 11 in Case 14480.

23 A. 5 and 8 are just Cimarex cross-sections
24 across -- roughly across the proposed area. They really
25 don't develop any information with regard to the pay

1 quality in the south half of the section.

2 Q. Let's go back to Exhibit Number 2, if we
3 could, Mr. Scott.

4 A. Lynx Exhibit Number 2 is the density neutron
5 log on the Penny Pincher Number 1. And I use a more
6 conservative cross-plot porosity index for my mapping,
7 which required that both the density and the neutron log
8 have more than 10 percent in order to be included in the
9 isopach under -- using that criteria, the Penny Pincher
10 Number 1 log exhibited a total of eight feet of
11 productive pay sand.

12 Now, I have listened to Cimarex and their core
13 and log correlation reports.

14 CHAIRMAN FESMIRE: Since I'm not real
15 experienced with horizontal wells, can I ask a couple of
16 questions here?

17 THE WITNESS: Yes, sir.

18 CHAIRMAN FESMIRE: This is just the
19 horizontal section?

20 THE WITNESS: No. This is the vertical
21 portion of the well that was drilled immediately
22 subsequent to the issuance of the order.

23 CHAIRMAN FESMIRE: And this has no
24 contribution to the vertical section in this log?

25 THE WITNESS: That is exactly correct.

1 Q. (By Ms. Munds-Dry) Mr. Scott, if I could ask
2 you to clarify, you found eight feet of pay. Was that in
3 the north half or the south half?

4 A. That is in this wellbore, which is the Penny
5 Pincher Number 1.

6 CHAIRMAN FESMIRE: If this were a vertical
7 well, it would be the one in the northwest quarter of the
8 northwest quarter?

9 THE WITNESS: That is correct, sir, and
10 would be considered a virtual dry hole because of the
11 poor quality of the porosity development.

12 Q. (By Ms. Munds-Dry) And if we look back at
13 your Exhibit 1, the mapping you've done here, what do you
14 show as the net pay for the south half?

15 A. Well, using neutron density cross-plot
16 porosities, I felt like there could be in excess of 60
17 feet of pay. If we use just density porosities and get
18 back to apples and apples comparison, it could be
19 substantially better than that, but we have no way to
20 know.

21 Q. You mentioned that you based your opinion on
22 the Top Dollar well to the north?

23 A. I participated with Marbob in a completion
24 attempt in the second sand in the Top Dollar in Section
25 15. As I recall, that well had about 29 feet of second

1 sand pay which was tested noncommercial.

2 Q. Since the horizontal portion of the Penny
3 Pincher Number 1 has been drilled, have you been able to
4 review additional data to support your argument that the
5 south half is more prospective than the north half?

6 A. I did. Those rolled up documents there are,
7 in fact, the horizontal portion or vertical section of
8 the Penny Pincher Number 1.

9 MR. LARSON: Mr. Chairman, could I
10 interject here?

11 CHAIRMAN FESMIRE: You may, sir.

12 MR. LARSON: He's getting ready to testify
13 about a document that's been marked confidential by
14 Cimarex. Under the order, it should not be made part of
15 the public record.

16 MS. MUNDS-DRY: I think what we'd like to
17 have happen is that it be made part of the record. We do
18 plan to ask that it be admitted as an exhibit, but that
19 we treat this part of the testimony and the exhibit as
20 confidential, which I believe the order allows us to do.

21 CHAIRMAN FESMIRE: I think you're correct.
22 Has it been stamped confidential?

23 MS. MUNDS-DRY: It has.

24 CHAIRMAN FESMIRE: Can we identify it for
25 the record?

1 MS. MUNDS-DRY: May I approach?

2 CHAIRMAN FESMIRE: You may.

3 MS. MUNDS-DRY: May I distribute these at
4 this time?

5 CHAIRMAN FESMIRE: If it's confidential,
6 do we need -- maybe one for the record --

7 MS. MUNDS-DRY: Yeah, we need one for the
8 record. But does the Commission also want a copy of --
9 the Commission may want to share one, because it's like
10 20 feet long.

11 CHAIRMAN FESMIRE: The Commission will
12 share one. This is a confidential Cimarex document?

13 MR. LARSON: Correct. We marked it as
14 confidential and produced it pursuant to the subpoena,
15 and there's been no objection to the designation.

16 CHAIRMAN FESMIRE: Mr. Larson, would you
17 be responsible for retaining all but the one copy for the
18 record?

19 MR. LARSON: It's not my exhibit.

20 MS. MUNDS-DRY: We can commit to destroy
21 these or return them to Mr. Larson.

22 CHAIRMAN FESMIRE: Since Cimarex is the
23 party requesting confidentiality, they should be
24 responsible for retaining all of them and making sure
25 there's no stray copy that gets out of this meeting.

1 MR. LARSON: Understood. I accept this
2 responsibility.

3 Q. (By Ms. Munds-Dry) If you could, for the
4 record, Mr. Scott, identify what's been mark as Lynx
5 Exhibit Number 9.

6 A. This is a Zia geological mud log that was run
7 on the Penny Pincher Federal 1H.

8 CHAIRMAN FESMIRE: Mr. Larson, since we
9 have limited -- I mean controlled copies, is there any
10 need to clear the room for testimony from this?

11 MR. LARSON: Yes.

12 CHAIRMAN FESMIRE: At this time, the Chair
13 would entertain a motion from the Commission to clear the
14 room for a limited amount of time for the limited purpose
15 of reviewing this single document which we are going to
16 identify as --

17 MS. MUNDS-DRY: Lynx Exhibit Number 9.

18 CHAIRMAN FESMIRE: -- Lynx Exhibit Number
19 9.

20 Would you please leave us alone for a while?

21 MS. MUNDS-DRY: Mr. Chairman, Ms. Randall
22 is from HEYCO, and she's a working interest owner and has
23 signed the acknowledgement of the confidentiality order.
24 If there's no objection from Cimarex, we ask that she be
25 allowed to stay.

1 CHAIRMAN FESMIRE: Mr. Larson, any
2 objection?

3 MR. LARSON: No objection. I would note
4 that I believe Ms. Munds-Dry has at least one more
5 confidential exhibit.

6 MS. MUNDS-DRY: We do. But as I
7 understand it, we don't need to clear the room for that
8 document. Mr. Scott is only going to generally reference
9 it, not speak specifically about it.

10 CHAIRMAN FESMIRE: With that
11 understanding -- ma'am, what is your name?

12 MS. RANDALL: Melissa Randall, with Harvey
13 E. Yates Company.

14 (Whereupon the Commission went into closed session.)

15 (CONFIDENTIAL PORTION REDACTED)

16 (Whereupon the Commission returned to public session.)

17 CHAIRMAN FESMIRE: Let's go back on the
18 record. The record should reflect that we've come out of
19 closed session to deal with a confidential exhibit.
20 Mr. Scott has testified to that confidential exhibit.
21 That is the only thing we covered during the closed
22 session.

23 Ms. Munds-Dry was in the middle of her direct
24 examination of Mr. Scott, I believe.

25 MS. MUNDS-DRY: Thank you, Mr. Chairman.

1 MS. MUNDS-DRY: Next we're going to turn
2 to another document that has been marked as
3 confidential by Cimarex. I won't speak for Mr. Larson,
4 but I believe we are able to generally discuss this
5 document, and Mr. Larson has a copy of it.

6 If I may approach, I can distribute it?

7 CHAIRMAN FESMIRE: You may.

8 CONTINUED DIRECT EXAMINATION

9 BY MS. MUNDS-DRY:

10 Q. Mr. Scott, if you could, for the record,
11 identify what's been marked as Lynx Exhibit Number 10 and
12 just identify generally what each page is.

13 A. This Lynx Exhibit Number 10 is the actual well
14 path report as generated by the directional survey people
15 during the drilling of the Penny Pincher Number 1. All I
16 included it for was to give the Commission a feel for the
17 horizontal offsets from the surface location at every
18 measured depth on the mud log.

19 Q. If you could turn then, please, sir, to the
20 second page of this document and identify that for the
21 Commission. It looks like several pages.

22 A. What that is is the measured depth showing the
23 vertical section, horizontal offset of the wellbore, at
24 very closely spaced intervals throughout the well.

25 Q. And the next several pages are a part of that

1 well path report, I believe?

2 A. Yes. That goes all the way down to their
3 horizontal second Bone Springs stimulation summary.

4 Q. And the next page after the horizontal second
5 Bone Spring stimulation summary?

6 A. That is the peak completion systems wellbore
7 schematic.

8 Q. Thank you. Mr. Scott, after you reviewed this
9 document, what can you conclude in terms of the
10 prospective nature of this south half of the north half?

11 A. All of the technical data pointed in the same
12 direction. According to that completion summary, 9 of
13 the 15 intervals that were completed by Cimarex are
14 located in the south half. 2,603 feet of a total of
15 4,452 feet were located in the south half.

16 In addition, the mud log, if we use one
17 minute -- less than or equal to one minute of drilling
18 time, 845 feet of a total of 1,415 feet were located in
19 the south half. 60 to 70 percent in every yardstick
20 that's available to us is south half.

21 Now, if my mapping is correct, and it has yet
22 to be proven wrong because it did not have to change with
23 the drilling of the Penny Pincher Number 1, 75 percent of
24 the bulk volume of that reservoir is located in the south
25 half, and that presumes that my porosity in the south

1 half is not any better than that minimum 10 percent
2 number that was shown on the Penny Pincher 1 open hole
3 log in the north half.

4 Q. Thank you, Mr. Scott. If we could turn to
5 what's been marked as Exhibit Number 6.

6 CHAIRMAN FESMIRE: Mr. Larson, are we
7 going to need to return this after cross-examination?

8 MR. LARSON: I was going to wait and see
9 if Ms. Munds-Dry was going to move it into evidence, and
10 I was going to object on the basis of confidentiality

11 MS. MUNDS-DRY: I do plan to admit it into
12 evidence, not at this time, but I do.

13 CHAIRMAN FESMIRE: I guess we'll cross
14 that bridge when we come to it.

15 Q. (By Ms. Munds-Dry) Mr. Scott, what is this
16 document?

17 A. Exhibit Number 6 is Cimarex's volumetric
18 calculations of recoverable oil in the west half/west
19 half proration unit. 71,600 barrels is what they came up
20 with.

21 The difficulty in this calculation being any
22 more than an educated guess is that we do not know --
23 have no way of determining what the actual porosity is
24 outside of that vertical wellbore that's got a log. So
25 you know, this determination based on, I assume, this

1 porosity number, is, basically, a wild guess.

2 Now, I ran bulk volume calculations which
3 showed improving bulk volume south to north, where the
4 northwest/northwest had 431 acre feet of productive rock
5 available. The southwest/southwest, 2,145 feet, with
6 progressive improvement coming north to south.

7 Q. Based on those calculations, how much, then,
8 Mr. Scott, in total, would the south half contribute to
9 the project area for the Penny Pincher Number 1?

10 A. A minimum of 75 percent, and that's only
11 presuming that the porosities are all equal.

12 Q. Based on your review of your technical data
13 presented here today, what are your engineering
14 conclusions?

15 A. Every yardstick that we have available to us,
16 if it's consistently applied, indicates that the second
17 Bone Spring pay is significantly better in the south half
18 than it is in the north half.

19 CHAIRMAN FESMIRE: Of this proposed
20 proration unit or of the section itself?

21 THE WITNESS: I would expand that comment
22 to include the section itself.

23 Q. Mr. Scott, you understand that it's the
24 Commission's duty to prevent waste and protect
25 correlative rights?

1 A. Yes, I do.

2 Q. And, in fact, you understand that when the
3 Commission is exercising its power to force pool, it must
4 first ensure the prevention of waste and the protection
5 of correlative rights?

6 A. Yes, I do. And there is a long definition,
7 technical definition of waste that is contained in the
8 statutes. Let me summarize that definition to say, "to
9 use, consume or expend thoughtlessly or carelessly or
10 squander."

11 Now the Division found with their order on the
12 Penny Pincher Number 1 that we were going to be wasting
13 resources if we did not drill the well. But not drilling
14 the well doesn't consume or expand anything, and may, in
15 fact, contribute to significant waste in other ways.

16 And let me offer as an example, our cousins
17 over in Texas have 170 rigs running in a play called the
18 Wolf Bearing. And this play consists of vertically
19 stacking Sprayberry and Dean sands and Wolfcamp shales in
20 seven or eight separate intervals vertically.

21 The analogous rock in New Mexico -- and some feel
22 that this play has the potential to carry across the
23 state line -- would be the Bone Spring sands and the
24 Wolfcamp lime Cisco Canyon shales. My company is in the
25 early stages of testing this concept in Township 18

1 South, 32 East.

2 But this proposal vertically segregates the
3 south half of Section 21, now zero to 2,500, 2,500 to
4 6,500, 6,500 to 9,500, 9,500 to 11,500, 11,500 and down.
5 It will -- the granting of these horizontal pooling
6 orders will virtually guarantee that no other horizon
7 will ever be developed in the south half of 21 because of
8 the vertical segregation.

9 Let's talk about the Bone Spring sands and
10 carbonates by themselves. Cimarex has been awarded 3,500
11 vertical feet of my mineral interests. What they have
12 developed with this second sand horizontal is, at most, a
13 couple hundred feet. The first carb produces elsewhere.
14 The first sand produces in the immediate vicinity, and,
15 in fact, looked a little more prospective in the Penny
16 Pincher Number 1 than the second sand did, and produces
17 to the southeast in my HJ 27.

18 The second carbonate is probably the primary
19 target zone of the multi-million barrel Young Deep field.
20 The third carbonate has produced a half million barrels
21 two miles east of us, and not to mention the Wolfcamp and
22 Strawn, that you would not propose a well to, given no
23 backup zones available to you.

24 So the waste with the granting of this order
25 is by the vertical segregation of those minerals without

1 the development of the minerals.

2 Q. If I understand what you're saying, the
3 granting of the application to drill a horizontal well
4 does not allow for future vertical wells to develop all
5 the other minerals that are not covered by the second
6 Bone Spring sand?

7 A. The likelihood that a vertical well would be
8 staked in the south half of 21, given the segregation and
9 operating agreement issues that are currently in place,
10 is virtually nil.

11 Q. Let's turn to the issue of correlative rights.
12 What impact does forming a nonstandard spacing unit in
13 combination with pooling in these cases have on your
14 correlative rights?

15 A. Where do I start? There was, prior to this
16 Cimarex intrusion, a Joint Operating Agreement -- I am
17 absolutely in agreement that every interest holder in a
18 mineral lease should have the right to develop their
19 minerals. I don't think that's in dispute at all.

20 There was a Joint Operating Agreement that was
21 dated May the 1st, 2003, that covered 2,500 feet to the
22 base of the Strawn that was signed by every interest
23 holder in the south half, including Bass. Now, how we
24 get from that to this, I still don't know. Because Bass
25 now has signed another Joint Operating Agreement covering

1 the entire Section 21, when they already had contractual
2 obligations in the south half. I'm at a loss as to
3 explain how this is ultimately going to work out, but
4 it's ugly.

5 All of the people that I represent -- and
6 Seven Rivers did sign up. EGL called me. Marbob and I
7 had a discussion before. All of those people that I
8 normally represent, either signed up or term assigned at
9 the point of a gun, if you will, after the compulsory
10 pooling order had been issued.

11 But they had that Joint Operating Agreement.
12 If they wanted to develop those minerals, all they had to
13 do was send me a letter, and I'm contractually obligated
14 to forward that proposal to my working interest owners
15 and get the well drilled under the JOA, and the New
16 Mexico Oil Conservation Division never gets involved.

17 Cimarex had that same opportunity with an
18 east/west well, because they already owned substantially
19 all of the north half of Section 21 and there was no
20 technical -- and they've testified to this on several
21 occasions. There was no technical justification in their
22 minds going east to west or north to south.

23 The only conclusion that I can come to is that
24 this is, as a matter of policy, a Cimarex acreage
25 acquisition strategy, or they believed, as I do, that the

1 south half was more prospective than the north half, and
2 they were going to start in goat pasture and drill over
3 into some productive rock.

4 Q. Given your testimony today and the evidence
5 you've shared with us that the south half will contribute
6 more to the project area than the north half, how does
7 this affect your correlative rights?

8 A. Well, I don't have the ability to fair and
9 equitably recover any of my Bone Spring minerals.

10 Q. Why is that?

11 A. It's all been awarded to Cimarex.

12 Q. If you were allowed under the pooling statute
13 to negotiate a fair and reasonable and equitable formula
14 for getting your share of production, do you believe that
15 would serve to protect your correlative rights?

16 A. This project is not a pooling issue. It's a
17 unitization issue. What we're doing is taking four
18 standard 40-acre proration units, combining them to form
19 a 160-acre project area, and then -- well, our only
20 option now is to allocate production on a straight
21 acreage basis.

22 But under unitization, if that were an option,
23 then the parties to the project negotiate the allocation
24 factors that they believe to be fair and equitable, and
25 then statutory unitization if they're unable to come to

1 an agreement. Then the OCD has the ability to step in
2 and referee.

3 CHAIRMAN FESMIRE: In the case of a
4 secondary recovery unit.

5 THE WITNESS: Right now, only in the case
6 of secondary recovery.

7 But I guess the bottom line is, compulsory
8 pooling for these large horizontal intervals is the wrong
9 tool, and it may be that there is no tool in the OCD's
10 toolbox that is currently available to them. But
11 awarding Cimarex 3,500 feet for developing 200 feet,
12 vertically segregating this acreage to make it virtually
13 useless for development in any other horizon, is
14 something that needs to be addressed in a unitization
15 format where I have a little more input other than, "Take
16 your \$400 an acre, or we're going to force pool." I
17 don't have that available.

18 Q. (By Ms. Munds-Dry) Mr. Scott, given the
19 constraints that the Commission has with the language of
20 the pooling statute, what are you requesting of the
21 Commission?

22 A. I want them to deny the application.

23 Q. In your opinion, will the granting of this
24 application be in the best interest of conservation, the
25 prevention of waste, or the protection of correlative

1 rights?

2 A. Not in any form or fashion, no.

3 Q. If the Commission does decide to grant the
4 application for the Penny Pincher Number 1 in Case 14418,
5 what do you request in terms of the 200 percent risk
6 penalty?

7 A. The well is drilled. It's producing. The
8 risk is substantially behind them.

9 As a remedy in one of the previous hearings, I
10 suggested individual well testing, individual proration
11 unit testing, that the Cimarex engineers, kind of on an
12 ad hoc basis, estimated was going to cost a million
13 dollars, and I have no way to dispute that.

14 They do have a well currently producing,
15 though, on an established decline. And one of the
16 remedies that might be available to me is to set a plug
17 at that north/south line and produce the north half for a
18 long enough period of time to establish a decline and
19 find out where that hydrocarbon resource is coming from.

20 Another opportunity for these guys would be to
21 start that next vertical well in the south half of the
22 section, rather than the north half, log it -- and
23 there's no additional cost there. I mean that's what
24 they're going to do anyway -- and let's see whose map is
25 more correct.

1 If I have 200 feet of second sand that is
2 greater than 8 percent density porosity, then we might
3 have to re-visit acreage allocation again.

4 Q. Mr. Scott, were Lynx Exhibits 1 and 2 prepared
5 by you or compiled under your supervision?

6 A. Yes.

7 Q. Were Exhibits 3 through 10 either already
8 presented and admitted by Cimarex -- presented and
9 admitted by Cimarex in the Division cases below? That's
10 not true. Exhibits 3 through 8?

11 A. Ocean, you lost me.

12 Q. 3 through 8 is -- let's go through them so we
13 make sure you understand.

14 CHAIRMAN FESMIRE: Ms. Munds-Dry would an
15 easier way be to take administrative notice of the
16 proceedings below?

17 MS. MUNDS-DRY: Yeah. I move the
18 Commission to take administrative notice of the
19 proceedings in both Division Cases 14418 and 14480.

20 CHAIRMAN FESMIRE: Would you be adverse to
21 that, Mr. Larson?

22 MR. LARSON: No objection.

23 CHAIRMAN FESMIRE: The Commission will
24 take administrative notice of the proceedings below in
25 both cases.

1 MR. LARSON: Thank you.

2 CHAIRMAN FESMIRE: We still need to admit
3 1 and 2?

4 MS. MUNDS-DRY: 1 and 2, and we have to
5 deal with 9 and 10.

6 CHAIRMAN FESMIRE: Let's take 1 and 2
7 first.

8 MS. MUNDS-DRY: We move to admit Exhibits
9 1 and 2 into evidence.

10 MR. LARSON: No objection.

11 CHAIRMAN FESMIRE: Lynx Exhibits 1 and 2
12 are admitted.

13 (Lynx Exhibits 1 and 2 admitted.)

14 Q. Mr. Scott, were Exhibits 9 and 10 produced to
15 us from Cimarex business records?

16 A. That is correct.

17 MS. MUNDS-DRY: We move to admit Exhibits
18 9 and 10 into evidence.

19 CHAIRMAN FESMIRE: Subject to the
20 confidentiality agreement and the provisions set in the
21 record?

22 MS. MUNDS-DRY: Yes.

23 CHAIRMAN FESMIRE: Mr. Larson?

24 MR. LARSON: We agreed to the admission of
25 Exhibit 9 with the confidentiality provisions. Maybe I

1 misunderstood Ms. Munds-Dry. My thought was that we were
2 just looking at 10 for purposes of questioning and it
3 wasn't going to be admitted as an exhibit.

4 MS. MUNDS-DRY: I'm sorry for the
5 misunderstanding. I did mean to offer it as an exhibit.
6 As I understand, the bulk of 10 -- and we can go through
7 it -- is part of the public record and is not
8 confidential anymore. There is one document that they
9 may still hold as confidential.

10 MR. LARSON: On further reflection, I
11 don't object to the admission of 10.

12 CHAIRMAN FESMIRE: We will admit Lynx 9
13 and 10 subject to the confidentiality agreement and the
14 conditions previously stated in the record.

15 MR. LARSON: I think only as to 9.

16 MS. MUNDS-DRY: Nine and 10.

17 MR. LARSON: I agreed to the admission of
18 10 without the confidentiality.

19 CHAIRMAN FESMIRE: Lynx Exhibit 10 will be
20 admitted without condition. Lynx Exhibit 9 will be
21 admitted subject to the confidentiality agreement and
22 conditions previously set forth in the record.

23 (Lynx Exhibits 9 and 10 were admitted.)

24 MR. LARSON: Yes.

25 MS. MUNDS-DRY: That concludes my direct

1 examination of Mr. Scott, pass the witness.

2 MR. LARSON: Can I ask for a short break?

3 CHAIRMAN FESMIRE: Okay. Why don't we
4 take a quick five-minute brake?

5 (A recess was taken.)

6 CHAIRMAN FESMIRE: The record should
7 reflect that we've returned from break in Cases 14418 and
8 14480.

9 And I believe, Mr. Larson, you were about to
10 begin your cross of Mr. Scott.

11 MR. LARSON: Yes, Mr. Chairman.

12

13

14 CROSS-EXAMINATION

15 BY MR. LARSON:

16 Q. Mr. Scott, what interest owners are you
17 representing here today?

18 A. That would be, at this point, everyone on that
19 list, with the exception of Bass, EGL, Marbob and Seven
20 Rivers.

21 Q. I believe you testified that Lynx Petroleum
22 Consultants, you, personally, and those parties hold a 60
23 percent interest in the south half?

24 A. Did have.

25 Q. What do they have as we sit here today?

1 A. Roughly half.

2 Q. Okay. Did you hear Mr. Compton's testimony
3 that Cimarex holds a 52.2 percent interest?

4 A. Yes, I did.

5 Q. So it couldn't be 50 percent, could it?

6 A. It would have to be 47.8 percent.

7 Q. I direct your attention to Cimarex Exhibit
8 Number 14. It's the lateral mud log display.

9 A. Yes.

10 Q. If I remember correctly, you testified that
11 this was an interpretation --

12 A. I believe, that's correct.

13 Q. Would your opinion change if I told you that
14 this is a digital representation of the confidential
15 exhibit that was admitted?

16 A. Then my opinion would change if that was, in
17 fact, the case.

18 Q. Assuming that Cimarex Exhibit 14 is actually a
19 representation of the confidential exhibit, what would
20 your opinion be?

21 A. I believe that the Commission, with the actual
22 mud log in hand and the handwritten notes that I made,
23 would be able to form their own opinion about this. I
24 don't know how your digital representation was developed.
25 I have no knowledge of, you know, the software, the -- I

1 don't know.

2 Q. Let's assume that what you see in Exhibit 14
3 is a pictorial representation digitally created of the
4 exact same data in your Exhibit 9.

5 A. Then my opinion would have to reflect that as
6 being accurate.

7 Q. And what would your opinion be looking at this
8 Exhibit 14 as a digital representation of the larger mud
9 log that's Lynx Exhibit 9?

10 A. It's hard to tell, because there's no vertical
11 section mounted up here. It appears as though a
12 substantial portion of the mud log shows the indications
13 of pay is in the south half.

14 Q. What do you base that opinion on?

15 A. On --

16 Q. Can you explain it to me?

17 A. On the spikes, gas spikes, fluorescents cut,
18 indicated on your representation.

19 Q. So you fundamentally disagree with Mr. Swain
20 about what this digital log represents?

21 A. I don't think I fundamentally disagree, no.

22 Q. I believe his testimony was that this log
23 exhibits pay throughout the lateral.

24 A. Oh, I do disagree with that fundamentally,
25 because there were sections of that lateral where there

1 was no rock fluorescents and no cut and virtually no gas
2 show.

3 Q. But this is that same data.

4 A. My analysis of that mud log reflects that
5 there were barren intervals within that log.

6 Q. Does it support your testimony that 75 percent
7 of the pay is in the south half?

8 A. This supports my testimony that approximately
9 70 percent of the pay -- 66.7 I believe is the actual
10 number. The 75 percent number was from bulk volume
11 calculations based on my structure and isopach map.

12 Q. Just so I'm sure I'm understanding you, you
13 can look at Exhibit 14 and state that 66 percent of the
14 reserves are in the south half?

15 A. No, sir. I looked at the mud log and said
16 that 66.7 percent of the reserves were.

17 Q. I'm asking you to look at 14, which is the
18 same data.

19 A. I really can't tell, Counselor. I can't tell
20 from this, because I can't tell -- I'm not familiar
21 enough with the exhibit to be able to make an informed
22 judgment.

23 Q. But would you agree with me that this is the
24 same data?

25 A. I have to presume that you're representing

1 it's the same data, yes.

2 Q. So you can't look at Number 14 and render an
3 opinion about how the reserves are shown throughout the
4 160-acre interval?

5 MS. MUNDS-DRY: Mr. Chairman, at this
6 point I'm going to object to asked and answered. I think
7 Mr. Scott has tried to answer to the best of his ability
8 on this question.

9 CHAIRMAN FESMIRE: Mr. Larson, I think you
10 need to move on. I think you made your point.

11 MR. LARSON: Will do.

12 Q. (By Mr. Larson) Do you have any reason to
13 disagree with Mr. Compton's testimony that neither Lynx,
14 nor the other interest owners that you represent, had a
15 pending or approved application to drill a well?

16 A. I have no reason to dispute that.

17 Q. If you believe that essentially two-thirds of
18 the reserves are in the south half, why haven't you
19 exploited those reserves?

20 A. Mr. Larson, I'm a small company, and I drill
21 out of cash flow, and I drill between one and perhaps
22 four wells a year. This is an area we are very
23 interested in, but my resources have been expended in
24 other neighborhoods for the last couple of years.

25 Q. And in those other neighborhoods, were those

1 wells more productive in your mind or would be more
2 productive?

3 A. Well, from a gross production standpoint,
4 possibly not. From a barrels per dollar expended, yes.

5 Q. If Cimarex's applications were granted, would
6 there be anything preventing you from drilling a vertical
7 well in the first Bone Spring?

8 A. Cimarex has been awarded the Bone Spring's
9 horizon, so yes, I would be prevented from drilling a
10 well in first Bone Spring.

11 Q. Would you be prevented from drilling a
12 horizontal well in another trend?

13 A. Pardon?

14 Q. Would you be prevented from drilling a
15 horizontal in another formation?

16 A. In the south half of Section 21?

17 Q. Yes.

18 A. Prevented, no.

19 Q. So you could conceivably do a stacked
20 horizontal well in another formation? When I say,
21 "stacked," below the horizontal well that Cimarex has
22 drilled in the Bone Spring second sand.

23 A. I'm not quite sure I understand the concept of
24 stacked, because that's vertical stacking.

25 Q. Let me put it to you another way. If

1 Cimarex's application were granted, would there be
2 anything preventing Lynx from doing a horizontal well
3 elsewhere in the south half?

4 A. Not preventing, no.

5 Q. And I think you testified that Mr. Catalano
6 and Mr. Swain testified there was no technical reason why
7 they didn't do an east to west?

8 A. I believe that is correct.

9 Q. I believe Mr. Catalano testified that they
10 looked at an east/west and decided that a north/south
11 would be more productive based on his mapping.

12 Q. I think that's because there was more pay in
13 the south half.

14 Q. Was that his testimony?

15 A. I believe he did say that the sand was
16 improved going to the south, yes.

17 Q. I think we have a disagreement on that. The
18 record will reflect what his testimony was.

19 A. Okay.

20 Q. Mr. Compton testified that after the Division
21 order was entered, you had conversations with a gentleman
22 named Jeff Gotcher?

23 A. Yes, sir.

24 Q. What was the substance of those discussions?

25 A. This had gotten so ugly that I was willing, at

1 more or less fair market value, to sign all of my
2 interests in representing my partners in the south half
3 of 21 and let you guys take off.

4 Q. Why do you say it got ugly?

5 A. Oh, I say it got ugly because of all of this
6 disagreement, which I presume is still ugly.

7 Q. That's an interesting characterization.
8 Didn't you oppose the application?

9 A. Absolutely. I still do.

10 Q. Why were you and Mr. Gotcher unable to reach
11 an agreement?

12 A. I think Cimarex's approach to this project
13 from the very beginning was, "We will offer you this or
14 we'll take you to force pool." The "this offer" was well
15 below what I considered to be fair market value.

16 Q. And what was the price they paid to the
17 parties who assigned their interests after they
18 re-proposed the well?

19 A. I don't know.

20 Q. Mr. Gotcher didn't tell you?

21 A. I don't recall if he did. It's possible that
22 he did.

23 Q. Does the Number \$400 an acre ring a bell?

24 A. That does.

25 Q. What was your offer?

1 A. I believe my offer was 800 an acre.

2 Q. Why would Cimarex pay double to you what they
3 paid to everybody else?

4 A. I don't know the answer to that question.

5 Q. Are you aware of any provision in the Oil and
6 Gas Act or the Division rules that would allow the
7 Commission to allocate production based on your
8 interpretation of where the reserves are?

9 A. The only statute that might come close to
10 applying is the unitization statute, which is currently,
11 I guess, applicable only to secondary recovery projects.

12 Q. So what you're basically asking the Commission
13 to do is, apply the unitization statute to an application
14 for a nonstandard proration unit and compulsory pooling?

15 A. I'm asking the Commission to deny your
16 application.

17 Q. But isn't that one of the reasons you're
18 putting forward for the denial?

19 A. Well, the reason that I'm putting forward for
20 the denial is that there is an inequitable allocation of
21 that production based on a straight acreage basis.
22 That's why I'm asking that it be denied.

23 Q. I believe we're in agreement that Cimarex owns
24 approximately 52 percent interest in the south half of
25 the project area?

1 A. No. Bass participated, did they not?

2 Q. That includes the JOA they have with Bass.
3 I'm talking about Cimarex's total interest.

4 A. Would be approximately 52 percent.

5 Q. Wouldn't Cimarex correlative rights be
6 violated if --

7 A. Well, Cimarex --

8 Q. Sir, let me finish my question. Wouldn't
9 Cimarex's correlative rights be violated if the
10 applications were denied? Because it has interest
11 throughout the 160-acre project area.

12 A. If Cimarex acquired their interest subject to
13 my existing Joint Operating Agreement, all they got to do
14 is send me a letter and they can get those interests
15 developed.

16 Q. I don't think you're answering my question.
17 The question is, if the Commission denies the two
18 applications that we're talking about today, wouldn't
19 Cimarex's correlative rights be violated?

20 A. I don't think so.

21 Q. Didn't you say every operator has a right to
22 exploit their reserves?

23 A. Even if these applications are denied, they
24 still have that opportunity.

25 MR. LARSON: That's all I have,

1 Mr. Chairman.

2 CHAIRMAN FESMIRE: Commissioner Bailey?

3 EXAMINATION

4 BY COMMISSIONER BAILEY:

5 Q. Are Lynx and the other operators that you
6 represent, were they party to the Division hearing on the
7 west half of the west half?

8 A. I represented all of those folks.

9 COMMISSIONER BAILEY: Why was not a stay
10 requested of the order?

11 MS. MUNDS-DRY: It was, and it was denied.

12 COMMISSIONER BAILEY: Okay. That would be
13 in the record that we are to take notice of?

14 MS. MUNDS-DRY: Yes, ma'am.

15 COMMISSIONER BAILEY: That's all I have.

16 CHAIRMAN FESMIRE: Commissioner Olson?

17 EXAMINATION

18 BY COMMISSIONER OLSON:

19 Q. Mr. Scott, is it your understanding, then,
20 that Cimarex's representing Bass here, as well?

21 A. I don't know. Mr. Olson, my investor group --
22 perhaps by way of explanation, my investor group is
23 substantially a group of small businessmen that I have
24 worked with over many, many years and who rely upon my
25 expertise and counsel for the projects that we do

1 together. They are not professional oil and gas
2 production companies by and large with a few exceptions.
3 Although, in this instance, I had HEYCO as a partner, who
4 is here with me.

5 Q. I guess it's my understanding that in the
6 south half, Cimarex is also representing Bass under this
7 Joint Operating Agreement. So are you saying that you're
8 representing Bass under a prior agreement, or --

9 A. Mr. Olson, I don't know -- I mean Bass signed
10 a Joint Operating Agreement with me covering 2,500 feet
11 to the base of the Strawn in May of 2003. And how they
12 signed another one covering the same contract area, I
13 don't know. I haven't settled in my own mind how that
14 will be resolved, because that JOA is still absolutely in
15 effect. The well that was drilled is still producing,
16 and I'm at a loss as to explain to you today the legal
17 ramifications of that existing JOA. I don't know.

18 Q. So I guess maybe I'm confused. If Cimarex is
19 maintaining that they are representing Bass, you're
20 saying you are representing your partners, are you
21 representing Bass?

22 A. I don't normally consider Bass a part of my
23 group. Bass was in this acreage block prior to my group
24 acquiring it, and they're, in effect, an outside partner.

25 Q. So you're not representing Bass here?

1 A. No, sir, I am not.

2 Q. I guess you were discussing in some questions
3 from Mr. Larson about how you had an interest in
4 producing the south half, but you haven't done that to
5 date. When were you expecting to produce in the south
6 half?

7 A. The only proposal that I'm aware of that is
8 active as we speak is an east half/east half proposal
9 that has come to us from HEYCO in the east half/east half
10 of Section 29, which would be the southwest offset to the
11 acreage in question.

12 Q. But you don't have any --

13 A. I have no immediate plans for a well in the
14 south half of Section 21 for obvious reasons.

15 Q. But it doesn't sound like you had any intent
16 or any ability to do anything here before they filed this
17 application?

18 A. In the near term, probably not. I would not
19 be an early adopter of this horizontal technology,
20 because it's very expensive. But we will get there.

21 COMMISSIONER OLSON: I think that's all I
22 have.

23 EXAMINATION

24 BY CHAIRMAN FESMIRE:

25 Q. How long have you had your interest in the

1 south half?

2 A. Approximately since the year '96, but that's a
3 guess.

4 Q. Is it by assignment of a producing lease? Is
5 it HBP acreage?

6 A. Yes.

7 Q. So it was not about to expire?

8 A. No, sir.

9 Q. And you have no interest in the north half; is
10 that correct?

11 A. Actually, I did. By virtue of my
12 participation in the Top Dollar, I acquired a very small
13 interest in the north half that was without my larger
14 partner group. I believe Lynx had 4 percent, perhaps.

15 Q. So would that be in the north half of the
16 north half, or both halves in the north half, both
17 quarters in the north half laid down that way?

18 A. As I recall, it was in an 80-acre tract in the
19 north half that was a stand-up 80. But I'd have to go
20 back and review records to confirm.

21 Q. So if four horizontal wells were to be drilled
22 in that section east/west, you would still have an
23 interest in all the wells in the section; is that
24 correct?

25 A. I would have a very small interest in the

1 north half wells, and a larger interest in the south half
2 wells.

3 Q. Let's operate on that hypothetical. Assuming
4 the Number 1 hadn't already been drilled, a well in the
5 south half/south half, according to you, would be a
6 pretty phenomenal well, wouldn't it?

7 A. I think it would be a better well, yes, sir.

8 Q. And a well in the north half of the south half
9 would be a pretty phenomenal well?

10 A. Less prospective but still probably a good
11 project.

12 Q. And a well in the south half of the north half
13 would be good but marginal; right?

14 A. I think we're working toward marginal at that
15 point.

16 Q. So a well in the north half of the north half
17 would probably never get drilled; is that correct?

18 A. I believe that's probably close, yes.

19 Q. Under current economic conditions, which are
20 \$80 a barrel; right?

21 A. Yes.

22 Q. There are reserves up there. There is oil and
23 gas up there. It just would not be economically viable
24 if it were developed on east/west wells; is that correct?

25 A. Looking at the log on that Penny Pincher

1 Number 1, Mr. Chairman, it was really weak.

2 Q. Wasn't there a pretty significant show as they
3 drilled out the curvature, the kick-off?

4 A. There was some show developed --

5 Q. Right there --

6 A. -- right as they started turning the corner.
7 That is correct.

8 Q. So there are some reserves up there that
9 probably wouldn't get developed --

10 A. That is a possibility.

11 Q. -- if we were to, for instance, mandate that
12 these be east/west wells?

13 A. That is a possibility.

14 Q. Wouldn't that be wasted resources?

15 A. Cimarex's testimony and mapping indicate that
16 the north half/north half, south half/north half are
17 approximately equally productive as my mapping on the
18 south half.

19 Q. But I --

20 A. Under my interpretation --

21 Q. But for this hypothetical, I'm assuming that
22 your interpretation is correct.

23 A. If mine is correct, there would be resources
24 left undeveloped in the north half.

25 Q. So isn't the north/south development, in terms

1 of preventing the waste, isn't that the more efficient
2 way to develop those resources?

3 A. The more efficient way to develop those
4 resources?

5 Q. The entire section, notwithstanding the
6 difference in interests.

7 A. I suppose you could make that argument.

8 Q. We talked a little bit about a 200 percent
9 risk factor. What exactly does that compensate the
10 operator for?

11 A. The risk involved in drilling and completing a
12 well.

13 Q. Cimarex took that risk, did they not?

14 A. I believe they did, yes.

15 Q. So do you not think that they should recover
16 that, in essence, a payment for carrying the
17 non-consenting operators to that point?

18 A. There probably should be some factor applied
19 to that expenditure, and I don't guess I'm here to
20 advocate any specific number. But I would say that the
21 vast majority of the risk associated with this project is
22 already behind them.

23 Q. But if the OCD does have a force pooling
24 hearing and does allocate the risk factor, gives the
25 operator that risk factor --

1 A. Going in, that's --

2 Q. -- going in, it isn't negated upon completion
3 of a successful well, is it?

4 A. No, it isn't.

5 Q. So even though they've got a successful well
6 at that point, they're allowed to recover their risk.

7 A. That's correct.

8 Q. So the risk isn't paid on a dry hole either
9 way; right?

10 A. I believe that's correct.

11 Q. So hasn't the operator earned some
12 consideration for taking that risk in this case?

13 A. I would have to agree with you.

14 Q. If we did go to that hypothetical east/west
15 scenario, you would operate the well in the south half of
16 the south half?

17 A. Under an existing operating agreement with
18 Lynx.

19 Q. You testified that they may or may not get
20 around to drilling it in the near future because that
21 lease is HBP?

22 A. I believe that is also correct.

23 Q. How long of a delay could we expect if we were
24 to hypothetically develop it that way?

25 A. I think -- we develop our drilling budget

1 about the first of every year. So I mean we would be
2 looking at these issues in January. Although I can't
3 represent to you that it would definitely be on the
4 drilling schedule. It is part of our core holdings and
5 would certainly get evaluated up coming.

6 Q. Subject to that same JOA, you would probably
7 operate the north half of the south half?

8 A. Yes. Our Joint Operating Agreement includes
9 the entire south half of Section 21.

10 Q. You made a valid point. We really don't have
11 information on the sand thickness in the south half.

12 A. No, you don't.

13 Q. If we were to drill a north/south horizontal
14 well from the south half, drilling north, we would be
15 able to acquire that information.

16 A. Absolutely.

17 Q. You were asked an important question. The
18 statutes and rules governing -- well, to the extent they
19 do govern this sort of decision -- allows allocation only
20 on a strict acreage basis; is that correct?

21 A. Yes, sir, that's correct. However, those
22 statutes were developed when you had no other option,
23 there was no other technical data available to you.

24 Q. I understand that. We have 1935 statutes in a
25 2010 environment. I made that point a lot. And you're

1 absolutely right. We do need to develop rules for
2 horizontal wells like this, because we're sort of feeling
3 our way through the dark here.

4 But with this well that's already been drilled
5 subject to a -- and I know you can't answer this
6 question. If, hypothetically, when the Commission
7 rejected the motion for stay, if your attorney could have
8 gone to the District Court and moved for a stay, would
9 you have asked them to do that?

10 A. Mr. Chairman, I don't guess I'm familiar
11 enough with the process to be able to answer that
12 question.

13 Q. That is a legal question. But the part of it
14 that I'm asking you is, if that remedy were available,
15 would you have continued?

16 A. Yes, sir, I think I would have.

17 Q. Because drilling this well is -- once they
18 start north/south, it's awfully difficult to change.

19 A. It's complicated. Correct.

20 CHAIRMAN FESMIRE: No further questions.
21 Do you have any redirect, Ms. Munds-Dry?

22 MS. MUNDS-DRY: I do not.

23 CHAIRMAN FESMIRE: Any objection to
24 releasing this witness?

25 MS. MUNDS-DRY: No. I'm sure he'd be

1 pleased to do it, too.

2 CHAIRMAN FESMIRE: Thank you very much.

3 We have an option at this point. We could
4 either have written closings -- and we're going to ask
5 for proposed findings and conclusions from the attorneys.
6 What's the --

7 MR. SMITH: And a proposed order.

8 CHAIRMAN FESMIRE: And a proposed order
9 from each of the attorneys. We can either give oral
10 closings now, or we can ask for written closings to be
11 part of that filing with the Commission. What's the will
12 of the attorneys?

13 MS. MUNDS-DRY: For me, Mr. Chairman, I
14 have the last hearing of today. That may or may not
15 happen. But for me, I prefer a written closing.

16 CHAIRMAN FESMIRE: Is that satisfactory to
17 you, Mr. Larson?

18 MR. LARSON: Written closing is fine with
19 me. Will they be simultaneously filed?

20 CHAIRMAN FESMIRE: Yes. Which doesn't
21 allow for a rebuttal on your part, but I don't think we
22 need one. I think the issues are pretty straightforward.

23 Normally, I like to give the attorneys two
24 weeks for closing, the proposed findings and conclusions
25 and proposed order. Would that be sufficient?

1 MR. LARSON: Works for me.

2 MS. MUNDS-DRY: That would work for me, as
3 well, Mr. Chairman.

4 CHAIRMAN FESMIRE: Is that satisfactory to
5 the Commission?

6 COMMISSIONER BAILEY: Yes.

7 COMMISSIONER OLSON: Yes.

8 CHAIRMAN FESMIRE: At this time we will go
9 ahead and make that request of the attorneys, set a date,
10 actually two weeks from tomorrow, so that will be, what,
11 the 17th of November? We'll give you the whole week,
12 instead of Thursday.

13 MR. LARSON: Is that the 19th?

14 CHAIRMAN FESMIRE: The 19th? Okay.
15 Unless there's an objection, we will go ahead and recess
16 at this time and reconvene at about 1:45.

17 MR. SMITH: Before you go off the record,
18 what time is -- when is the December Commission meeting?

19 CHAIRMAN FESMIRE: December 19th.

20 MR. SMITH: Okay. Sometime in there,
21 we're going to wind up with Thanksgiving, and it's going
22 to cut some time short. I don't know that I can promise
23 if I'll have that order done --

24 CHAIRMAN FESMIRE: We won't be able to
25 deliver it until the December meeting.

1 MR. SMITH: That's right. Perfect.

2 CHAIRMAN FESMIRE: At this time we will
3 adjourn for lunch and reconvene at 1:45.

4 (A lunch recess was taken)

5 CHAIRMAN FESMIRE: Let's go ahead and go
6 on the record. Right now we have a series of about a
7 half dozen cases that have been on the books for a while.
8 We're going to go ahead and call them and, basically, see
9 if there's any reason to keep them on the books.

10 The first is Cause Number 10693, the
11 application of Pronghorn Saltwater Disposal Systems for
12 saltwater disposal in Section 7, Township 20, Range 33
13 East in Lea County, New Mexico.

14 This case has been called to show cause why
15 the case should not be dismissed, given the lengthy time
16 period that the matter has been pending before the
17 Commission. Is that attorney in that case present?

18 Seeing none, we will go ahead and order Case
19 Number 10693 dismissed for want of prosecution.

20 The next one before the Commission is Case
21 Number 11724. It's the De Novo application of
22 Gillespie-Crow, Inc., for a unit expansion, statutory
23 unitization and qualification of an expanded area for the
24 recovered oil tax rate and certification of a positive
25 production response pursuant to the New Mexico Enhanced

1 Oil Recovery Act in Townships 15 and 16 South, Ranges 35
2 and 36 East, in Lea County, New Mexico.

3 This case has been called to order the
4 applicant to appear and show cause why the case should
5 not be dismissed, given the lengthy time period the
6 matter has been pending before the Commission. Are there
7 any attorneys present in that case?

8 MR. HALL: Mr. Chairman, Scott Hall,
9 Montgomery & Andrews, for Energen Resources Corporation.
10 Energen is the successor unit operator to Gillespie-Crow
11 for the West Lovington Strawn Unit. And I would also
12 recommend that you call the next two cases. All three of
13 them involve the same subject matter, the Lovington
14 Strawn Unit.

15 CHAIRMAN FESMIRE: Okay. And who are you
16 going to represent in the other two?

17 MR. HALL: Energen.

18 CHAIRMAN FESMIRE: At Mr. Hall's request,
19 we'll call Case 11954, the application of Hanley
20 Petroleum, Inc., and Yates Petroleum Corporation for
21 expansion of the West Lovington Strawn Unit, Townships 15
22 and 16 South, Ranges 35 and 36 East in Lea County, New
23 Mexico.

24 This case is also called to allow the
25 applicant to appear and show cause why the case should

1 not be dismissed, given the lengthy time period that the
2 matter has been pending before the Commission.

3 The third is Case Number 11987, the
4 application of EEX Corporation for a unit expansion,
5 statutory unitization and qualification of the expanded
6 unit area for the recovered oil tax rate certification of
7 positive production response pursuant to the New Mexico
8 Enhanced Oil Recovery Act, Township 16 South, Range 36
9 East in Lea County, New Mexico.

10 Mr. Hall, having called all three of those
11 cases, do you have a pertinent statement?

12 MR. HALL: On behalf of the successor unit
13 operator now to the West Lovington Strawn Unit, the unit
14 operator has no objection to dismissal of these cases,
15 provided the record makes clear that the underlying
16 orders approving the unit and subsequent operations
17 within the unit remain intact.

18 CHAIRMAN FESMIRE: They were not issued in
19 these cases, were they?

20 MR. HALL: I can't remember. There were
21 so many of them.

22 MR. BRUCE: Mr. Chairman, I represented
23 Gillespie-Crow, and Mr. Carr represented Yates. This is
24 the only career case I ever had. It started in the
25 mid-'90s and went on for a decade or more.

1 MR. CARR: It's gone on for so long, I
2 might even get fired.

3 MR. BRUCE: I think all matters have
4 finally been resolved in this matter, so I don't see any
5 problems --

6 CHAIRMAN FESMIRE: We want to dismiss the
7 cases without doing damage to an order, apparently in a
8 different case, establishing or expanding the unit.

9 MR. HALL: So long as the record is clear
10 that those orders are unaffected, I don't think it
11 matters if we dismiss the applications. They were
12 separate applications in separate cases where the unit
13 was approved, unit expansions were approved, and modified
14 unit operations for injection.

15 MR. BRUCE: There must have been maybe a
16 dozen and a half hearings at the Division. Maybe only
17 one of them ever made it up to the Commission level, at
18 which time, I think by then, the parties had settled all
19 matters between themselves.

20 CHAIRMAN FESMIRE: You told me this was
21 going to be easy.

22 MR. BRUCE: So I concur with Mr. Hall,
23 even though I'm out of it at this point. But as long as
24 the existing orders, and there were plenty of them, are
25 maintained in effect, I don't think anybody objects.

1 MR. CARR: Since I no longer represent
2 anyone, I don't have a position.

3 CHAIRMAN FESMIRE: Okay. The Chairman
4 will therefore dismiss Cases 11724, 11954, 11987, with
5 the stipulation that that dismissal will not affect any
6 orders currently in place on the West Lovington Strawn
7 Unit. Is that correct?

8 MR. HALL: That's correct.

9 CHAIRMAN FESMIRE: Thank you very much,
10 Mr. Hall, I think.

11 The next case is Case Number 12276, the
12 application of Burlington Resources Oil & Gas Company for
13 compulsory pooling, Section 36, Township 27 North, Range
14 8 West, in San Juan County, New Mexico.

15 This case is being called to give the
16 applicant the opportunity to appear and show cause why
17 the case should not be dismissed, given the lengthy time
18 period that this matter has been pending before the
19 Commission. It's been pending since June 23rd, 2000.

20 Are there any attorneys? Mr. Hall?

21 MR. HALL: Same situation, Mr. Chairman.
22 Scott Hall, Montgomery & Andrews, on behalf of Energen
23 Resources Corporation. I also recommend you call the
24 next case, 12277, as well. They're related.

25 CHAIRMAN FESMIRE: At this time we will

1 call Case Number 12277, the application of Burlington
2 Resources Oil & Gas Company for compulsory pooling in
3 Section 16, Township 31 North, Range 11 West, in San Juan
4 County, New Mexico.

5 This case has also been called to allow the
6 operator to appear and show cause why the application
7 should not be dismissed, given the lengthy time period
8 that the matter has been pending before the Commission.

9 Mr. Hall?

10 MR. HALL: Mr. Chairman, I represented
11 Energen Resources Corporation, among others. Energen and
12 those parties were the de novo applicants involving a
13 contract dispute for compulsory pooling in the San Juan
14 Basin. There was a diversion to the courthouse on this
15 one. It's in litigation, which went away.

16 In the meantime, a lot of the interests of
17 former clients have been transferred. I feel the
18 obligation to try to at least contact them and make sure
19 they have no objection to dismissal. I don't think that
20 will be a problem. I haven't had the time to do that.

21 I would request these cases not be dismissed
22 until I've had that opportunity to contact those
23 successor interest owners.

24 CHAIRMAN FESMIRE: Cases Number 12276 and
25 12277 will be continued to the December 9th docket, at

1 which time Mr. Hall will let us know whether he does have
2 an objection.

3 MR. HALL: I'll try. Yes, sir

4 CHAIRMAN FESMIRE: Thank you, Mr. Hall.

5 Last but not least -- and I notice Mr. Hall is
6 still standing there -- Case Number 13048, the
7 application of Devon Energy Corporation, L.P., for
8 compulsory pooling, Section 4, Township 23 South, Range
9 34 East, in Lea County, New Mexico.

10 This case was also called to allow the
11 applicant to appear and show cause why the case should
12 not be dismissed, given the lengthy time period that this
13 matter has been pending before the Commission. It's been
14 pending since December 9th, 2004.

15 Mr. Hall?

16 MR. HALL: Mr. Chairman, Scott Hall,
17 Montgomery & Andrews, appearing on behalf of EGL
18 Resources and Robert Landrik, both of whom were de novo
19 applicants in this case. I managed to find a letter in
20 my file to the Division at the time asking that these
21 applications be dismissed some time ago. We just never
22 followed up on it. No objection to dismissal.

23 CHAIRMAN FESMIRE: With that, Case Number
24 13048 will be dismissed by the Chairman. That's the end
25 of the list. Thank you very much, Mr. Hall. Cleaned out

REPORTER'S CERTIFICATE

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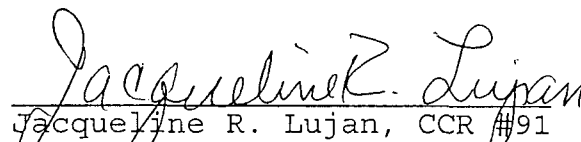
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I, JACQUELINE R. LUJAN, New Mexico CCR #91, DO
HEREBY CERTIFY that on November 4, 2010, proceedings in
the above captioned case were taken before me and that I
did report in stenographic shorthand the proceedings set
forth herein, and the foregoing 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 17th day of November,
2010.


Jacqueline R. Lujan, CCR #91
Expires: 12/31/2010