

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

IN THE MATTER OF THE HEARING CALLED BY)	
THE OIL CONSERVATION DIVISION FOR THE)	
PURPOSE OF CONSIDERING:)	
)	
APPLICATION OF BURLINGTON RESOURCES)	CASE NOS. 11,808
OIL AND GAS COMPANY FOR COMPULSORY)	
POOLING AND A NONSTANDARD GAS PRORATION)	
AND SPACING UNIT, SAN JUAN COUNTY,)	
NEW MEXICO)	
)	
APPLICATION OF BURLINGTON RESOURCES OIL)	and 11,809
AND GAS COMPANY FOR COMPULSORY POOLING,)	
AN UNORTHODOX GAS WELL LOCATION AND A)	
NONSTANDARD PRORATION UNIT, SAN JUAN)	
COUNTY, NEW MEXICO)	
)	(Consolidated)

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS (Volume II)

EXAMINER HEARING

RECEIVED

BEFORE: DAVID R. CATANACH, Hearing Examiner JUL 24 1997

July 11th, 1997

Oil Conservation Division

Santa Fe, New Mexico

This matter came on for hearing before the New Mexico Oil Conservation Division, DAVID R. CATANACH, Hearing Examiner, on Thursday and Friday, July 10th and 11th, 1997, at the New Mexico Energy, Minerals and Natural Resources Department, Porter Hall, 2040 South Pacheco, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

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* * *

ALSO PRESENT:

BERT HARRIS, representing Mary Maude Harris

* * *

1 WHEREUPON, the following proceedings were had at
2 8:15 a.m.:

3 EXAMINER CATANACH: We'll reconvene the hearing
4 at this time in Case 11,080 and 11,809, and I believe
5 yesterday we were concluded with Burlington, but you've
6 informed me that you do have another witness at this time,
7 Mr. Kellahin?

8 MR. KELLAHIN: Mr. Examiner, I've asked the
9 professional land survey who is knowledgeable about the
10 surface use limitations in Section 8, as well as being the
11 surveyor who staked the Marcotte well, to come down this
12 morning, and he's en route from Farmington. I expect him
13 to be here by ten o'clock this morning.

14 If you'll grant me permission to conclude my
15 presentation at this time with the opportunity to present
16 the surveyor plus present to you the documents that I have
17 compiled last night that address the issue of the
18 unorthodox nature of the Marcotte well, including
19 compliance with the offset notice requirements.

20 With that understanding, then, we're prepared to
21 rest our case.

22 EXAMINER CATANACH: Okay. Mr. Gallegos?

23 MR. GALLEGOS: Well, we -- Burlington's case is
24 completed, we have certain motions.

25 But I'd like to point out that the prehearing

1 statement filed by Burlington stated that there would be a
2 geologist available to testify, and if I remember
3 correctly, part of the rationale for the opposition to our
4 subpoena to the geophysicist, Mr. Schoderbeck, was because
5 it would be unnecessary, because the geologist would be
6 here to present similar evidence. Now that's not going to
7 be presented.

8 The matter of the surveyor, of course, is a
9 surprise. We've had no advance warning of that. It seems
10 like we're sort of switching theories in midstream here.

11 Can we know some further reason for what this
12 keeping the case open is about? I thought we heard
13 yesterday that the location was a matter of convenience,
14 and I think we've already heard unequivocal testimony that
15 the location of the Marcotte well was dictated by the
16 geologist, but we're not going to have the geologist.

17 So what is the purpose of this delay and further
18 witness? Either the case is closed, it seems to me, or --
19 and we need to see whether they've met the statutory
20 standard of proof, or we're not, or we're going to have
21 geological testimony.

22 EXAMINER CATANACH: Well, I had some questions
23 with regards to the location, and I think that we still
24 need to get this witness probably on to answer my questions
25 about the necessity of the unorthodox location.

1 And if the location is based on topography and
2 archaeology, as has been testified -- I'm still not sure of
3 the answer to that question. If it's just based on that,
4 we can -- I'm not sure that a geologist is going to be
5 necessary to address the unorthodox location.

6 MR. GALLEGOS: There's some pretty clear
7 evidentiary rules. You can't contradict your own witness.
8 Are you calling a witness to rebut the testimony of Mr.
9 Shipley, who says the location was dictated by the
10 geologist? Whether -- They're calling a witness now to
11 rebut their own testimony and contradict it? Is that what
12 we're doing?

13 MR. KELLAHIN: That was not Mr. Shipley's
14 testimony, Mr. Catanach.

15 MR. GALLEGOS: Yes, it was.

16 MR. KELLAHIN: I've represented to you the
17 unorthodox location is based upon topographic reasons.
18 You've asked to have information on that item, I've
19 responded to your request, we're bringing the surveyor
20 down, and you can examine him, and he will tell you that
21 the location was based upon topographics.

22 MR. GALLEGOS: Mr. Kellahin is not under oath,
23 and Mr. Shipley was, and he testified unequivocally in
24 addressing the AFE that that's where he got the location,
25 that's what dictated the geologist. And I think it was

1 clear, even in Mr. Strickler's testimony.

2 So I object to them -- to this tactic of not
3 having a geologist opposing our subpoena of the
4 geophysicist on the basis they would have the geologist,
5 their own testimony establishing how the Marcotte was
6 located, and then we're going to have a witness to come in
7 and show something to the contrary.

8 MR. KELLAHIN: Mr. Gallegos continues to want to
9 explore the geologic background on this case. I've advised
10 you yesterday repeatedly that we're seeking the maximum
11 risk factor penalty based upon the absence of proven
12 production in the San Juan Basin and the deep gas. It's
13 not necessary to put a geologist on to prove that point.

14 The prehearing statement was filed last week
15 before you ruled on the motions. Once you quashed the
16 motions and denied the subpoenas and quashed the motions,
17 it was not necessary for me to bring a geologist, because
18 geology was no longer a topic.

19 MR. CARROLL: Well, I think you read a little too
20 much into our ruling to quash the subpoena. You did list a
21 geologist, a Mr. Mike Dawson, who wasn't Mr. Schoderbeck.

22 MR. KELLAHIN: That's right.

23 MR. CARROLL: And we thought another geologist,
24 particularly a geophysicist, was unnecessary, since you
25 already had a geologist, and then you show up without a

1 geologist. I'd like to hear your explanation as to why Mr.
2 Dawson was dropped from your list of witnesses.

3 MR. KELLAHIN: I felt it unnecessary to prove the
4 200-percent risk factor penalty, in fact --

5 MR. CARROLL: That was the sole purpose for Mr.
6 Dawson's testimony?

7 MR. KELLAHIN: Yes, sir. Mr. Dawson has access
8 to the seismic information. His conclusions with regards
9 to geology are influenced by that information, and I don't
10 want to provide a witness for Mr. Gallegos to get
11 indirectly what you have not allowed him to have directly.

12 MR. CARROLL: And we'll look at the transcript,
13 but it's my understanding that the geologist picked the two
14 sections they were going to drill wells in, and then it was
15 up to the permitting specialist to get it in the unorthodox
16 window or in a suitable location within that section?

17 MR. KELLAHIN: Yes, sir, that's my recollection.

18 MR. CARROLL: But we'll review the transcript to
19 see if that's what Mr. Strickler testified to.

20 MR. KELLAHIN: Mr. Shipley testified that the
21 information on the location was given to him by the
22 geologist. That does not conclude that it's a geologic
23 location as to that pick.

24 MR. CARROLL: Yeah, the exact location within a
25 section.

1 MR. KELLAHIN: That's right.

2 EXAMINER CATANACH: If we're going to put the
3 surveyor, whoever was responsible for picking the location,
4 I think we can get some clear and definitive answers on
5 how, exactly, the location was picked.

6 MR. KELLAHIN: Yes, sir.

7 EXAMINER CATANACH: If we determine at that time
8 that there was any geologic influence, we can continue the
9 case and make him bring a geologist down.

10 MR. GALLEGOS: Well, on the representation that
11 the only further testimony will be from the surveyor, we
12 move to dismiss the Application, both Applications.

13 The statutory standard, in spite of Mr.
14 Kellahin's view that all you have to do is talk about risk
15 factor -- the statutory standard that allows the Division
16 to enter a force-pooling order is that it has been shown
17 that by force pooling there will be the avoidance of
18 drilling of unnecessary wells, the prevention of waste and
19 the protection of correlative rights.

20 And without the geological testimony, there is
21 not anything in this record on the Applicant's case that
22 goes to those standards whatsoever. All we've heard about
23 is land, try to get agreement, risk factor. Completely
24 ignored the standard that must be met in order to have a
25 force pooling.

1 And I think both -- I understand that all that's
2 left is the surveyor, that the Applications are done,
3 should be dismissed.

4 MR. CARROLL: Well, my understanding of your
5 argument, Mr. Gallegos, we'd never have a wildcat well
6 drilled, because you couldn't justify a well because the
7 odds of it hitting any oil and gas were so slight.

8 MR. GALLEGOS: Not at all, no, you could come in
9 and show, here's what we've done, here is our study, we've
10 got good science that says we have a prospect, and we
11 should drill this, it's going to protect correlative rights
12 and -- yeah. No, you can show that, you can make a showing
13 anytime.

14 Otherwise all you're doing is coming in and
15 saying, I want to drill the well, I'm the operator, that's
16 it. That's not what the statute's talking about.

17 MR. CARROLL: Under the statute, if you have the
18 right to drill a well, you have the right to drill a well.
19 And nonconsenting owners can't hold up the drilling of a
20 well by saying, We object to it. You have the right either
21 to pay your costs up front or participate. So you don't
22 have to pay your money up front. You're subject to a 200-
23 percent -- up to a 200-percent penalty -- if you don't
24 consent.

25 MR. GALLEGOS: The first paragraph of -- I beg to

1 differ, Mr. Carroll. The first paragraph of 70-2-17C, the
2 last sentence, provides a standard that has to be met.
3 Just because you have the right to drill -- An operator may
4 have the right to drill a well, but they drill it at their
5 own risk under the rules of tenancy in common.

6 We're talking about force pooling, we're talking
7 about forcing somebody into the unit.

8 MR. CARROLL: Well, I beg to differ with your
9 interpretation. To avoid the drilling of unnecessary wells
10 is to avoid four wells on this 640-acre unit. To avoid
11 that -- or --

12 MR. GALLEGOS: How do you --

13 MR. CARROLL: -- it could be 20 wells if there's
14 if there's 20 different --

15 MR. GALLEGOS: How do you --

16 MR. CARROLL: -- acreage --

17 MR. GALLEGOS: -- show they're necessary if you
18 don't have any geology?

19 MR. CARROLL: If the spacing is 640 acres,
20 there's one well. And if you pool it you only have to
21 drill one well, rather than more than more than one well.

22 MR. GALLEGOS: Maybe one well is unnecessary. We
23 don't know that it's necessary yet.

24 MR. KELLAHIN: Mr. Gallegos is collaterally
25 attacking the spacing order, Mr. Examiner.

1 EXAMINER CATANACH: We're going to deny the
2 motions to dismiss again at this time, and proceed with the
3 case, Mr. Gallegos.

4 MR. GALLEGOS: Okay, we call Gail Cotton.

5 Mr. Catanach and Carroll, do you have our
6 exhibits? They were --

7 EXAMINER CATANACH: Yes.

8 MR. GALLEGOS: -- exhibits that we provided?

9 GAIL COTTON,
10 the witness herein, after having been first duly sworn upon
11 her oath, was examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. GALLEGOS:

14 Q. State your name, please.

15 A. Gail Cotton.

16 Q. Where do you live, Ms. Cotton?

17 A. In Dallas.

18 Q. What is your employment?

19 A. I am a vice president at the First National Bank
20 of Chicago, and I manage their mineral management unit in
21 Dallas.

22 Q. What is your education after high school?

23 A. I got a BA from National Louis University, and I
24 have my MBA at SMU.

25 Q. Just generally -- We'll go into more detail a

1 little bit later, but just generally, what are your duties
2 as vice president, management of mineral properties?

3 A. We -- Most of our clients are trust clients, and
4 we review all the account when they come in, procure title
5 when necessary, negotiate leases, determine participation
6 in AFEs, all tax and accounting reports, collect income,
7 pay expenses.

8 Q. Would you review for the Examiner your work
9 experience in the oil and gas industry?

10 A. Yes, I started in 1981 as a field landman, and
11 after that time I worked at various companies as Division
12 order analyst, lease analyst, landman.

13 In 1989 I started working at the Northern Trust
14 Company, managing their mineral department. I was there
15 about four and a half years. And since that time I've been
16 at First Chicago.

17 Q. What were some of the businesses you worked for
18 before you went to work for Northern Trust?

19 A. General American Oil Company, NRM Petroleum,
20 Thompson Monteith, Mobil Oil.

21 Q. Were your duties and responsibilities at Northern
22 Trust much the same as the are at First Chicago?

23 A. Yes.

24 Q. Okay. And how long have you been Vice President
25 of Mineral Management at First Chicago?

1 A. Four and a half years.

2 Q. Now, does First -- First Chicago, but in Dallas,
3 in a Dallas facility?

4 A. Yes.

5 Q. Would you explain that relationship and how the
6 mineral management for that bank comes to be there?

7 A. We're headquartered in Chicago, but they have an
8 oil and gas office in Dallas. And we handle all the
9 minerals for the corporation.

10 Q. Okay. What are the types of oil and gas
11 ownership that you're responsible for?

12 A. Working interest, overrides, minerals, royalties,
13 all over the United States and in Canada.

14 Q. Okay. Approximately what are the annual revenues
15 from these properties that you're responsible --

16 A. About \$8 million --

17 Q. Okay.

18 A. -- a year.

19 Q. And in your capacity personally and in your
20 department, are you a fiduciary? Fiduciary
21 responsibilities?

22 A. Yes, I am.

23 Q. Are some of the properties held in trust?

24 A. Yes, most of them are held in trust, but we do
25 have individual clients we manage for as agent or

1 custodian.

2 Q. Okay. And how do you go about making decisions?
3 What do you understand are the legal obligations on your
4 part in terms of making decisions concerning these
5 properties?

6 A. It depends on the type of interest. For
7 instance, with a royalty or a mineral we negotiate oil and
8 gas leases and find out what's going on in the area, what
9 the plans are, what the going rate of the bonus and delay
10 rentals, whatever that is.

11 And then on working interest, we talk to the
12 operator, the geologist, engineer, gather information and
13 make a recommendation to the administrator as to whether to
14 participate or not.

15 Q. Are you familiar with what is called in law the
16 prudent man rule?

17 A. Yes.

18 Q. And what is that? What do you understand that to
19 be?

20 A. Do all the due diligence, gather information to
21 the best of your knowledge, to make a decision.

22 Q. Okay. And if you fail to follow that rule, what
23 is your understanding of the potential liability for you
24 and your bank?

25 A. The bank could be sued.

1 Q. What procedures do you usually follow? Let's
2 concentrate on a proposal that would involve commitment of
3 a working interest under your charge to participation in
4 drilling, rework or some proposal of that nature. What
5 steps do you typically follow?

6 A. When the AFE comes in we make sure we have
7 appropriate title, look at the amount of money involved.
8 If it's very small, like many of ours are, then sometimes
9 it only costs the trust about \$500 to participate, so we
10 don't do as much work in that event.

11 But if it's anything over \$1000 or \$2000 to
12 participate, I always call the operator, regardless of the
13 site, and find out what his plans are, find out all about
14 the information on the surrounding production. And if it's
15 of any size we hire an engineer to look at all the data.

16 Q. Do you request things such as logs, seismic
17 data --

18 A. Yes.

19 Q. -- that type of thing?

20 A. Yes, we do.

21 Q. And what has been your experience as to the
22 response that you typically received to those requests?

23 A. They're usually cooperative with supplying
24 information.

25 Q. If the matter does involve sizeable expenditures

1 and it complicated, then you say you bring in --

2 A. An outside --

3 Q. evaluation --

4 A. An engineer.

5 Q. Then at what level can you make a decision, you
6 personally, whether to commit properties under your charge
7 to a drilling proposal?

8 A. We review all the information and get a report
9 from the engineer and make a recommendation to the
10 administrator, and then we have to take it to the trust
11 real estate subcommittee for approval.

12 Q. Okay. Have you had some recent experiences in
13 New Mexico where wells have been drilled that you --
14 properties that you're in charge of?

15 A. Yes. In fact, in the past year we've had a trust
16 or an account that had two wells drilled by Enron. They
17 had a small working interest ownership.

18 Q. Okay. Did you agree to participate on a
19 voluntary basis?

20 A. Yes, we did.

21 Q. And do you frequently do that with working
22 interests under your charge?

23 A. Yes.

24 Q. We've heard mention previously, Ms. Cotton, of
25 GLA-66. Do you know what that is?

1 A. Yes, I do.

2 Q. And what is it, generally?

3 A. Gas lease agreement, and the Lucerne interest
4 owners are under that agreement.

5 Q. Does that agreement cover Federal Lease SF-078-
6 -- let's see, -78,389?

7 A. Yes.

8 Q. 2480 acres in Township 31 North, Range 10 West?

9 A. Yes.

10 Q. Okay. Is the coverage of that gas lease sale
11 agreement from the surface to the base of the Mesaverde
12 formation?

13 A. Yes, it is.

14 Q. Okay, and is the Exhibit A a copy of that
15 agreement?

16 A. Yes, it is.

17 Q. Okay. Are there trusts that you administer which
18 are interest holders in GLA-66 and also in the underlying
19 lease, which would be inclusive of unleased depths below
20 the Mesaverde?

21 A. Yes, I have four trusts.

22 Q. Okay. Is Exhibit B a copy of the federal lease
23 itself?

24 A. Yes, it is.

25 Q. Turn to Exhibit C, then, and if you would explain

1 to the Examiner and the counsel what this shows.

2 A. The area in red, it says "Lucerne Corp", and
3 that's the Lucerne Corp. owner interest under that lease,
4 SF-78,389.

5 Q. Okay. Lucerne was a predecessor in interest to
6 the 761 present owners of that lease?

7 A. Yes.

8 Q. Okay. And even though it says "miscellaneous
9 owners" over in the left-hand side there, is, in fact, all
10 of the area shown in red the lease in which your trusts
11 have an interest?

12 A. Yes, it is.

13 Q. And if you'll give your attention over to Section
14 9, where the Scott 24 well is proposed, does this reflect
15 that the east half and the southwest quarter of that
16 section are owned to the extent of the GLA-66 owners' --

17 A. Yes, it is.

18 Q. -- lease? All right.

19 Do you know the source of this map?

20 A. Is this the one, the Arch Rock prospect?

21 Q. Arch prospect? In any event, all I want is, as
22 far as the ownership shown, other than the GLA-66 lease,
23 that's not your work, is it?

24 A. No.

25 Q. Okay. Has there been litigation between El Paso

1 and its successor, Meridian, now Burlington, concerning
2 GLA-66 over the years?

3 A. Yes, for many years, probably 13 or 14 years.

4 Q. And presently is there a lawsuit ongoing in San
5 Juan County, New Mexico between --

6 A. Yes.

7 Q. -- you and the other GLA-66 owners and --

8 A. Yes.

9 Q. -- Burlington? Okay.

10 Is Exhibit D a copy of a settlement agreement
11 that was entered into during the course of some of the
12 prior litigation?

13 A. Yes, it is.

14 Q. And is Exhibit E a copy of the amended complaint
15 that's on file in the pending case in San Juan County?

16 A. Yes, it is.

17 Q. And Exhibit F, the Answer of El Paso and
18 Meridian, Meridian now known as Burlington Resources?

19 A. Yes, sir.

20 Q. What is Exhibit G?

21 A. It's the working interest ownership in Section 9,
22 showing our ownership and then in the upper quarter where
23 we don't own it, and that's the proposed Scott 24 well.

24 Q. Okay. Now, Burlington itself does have a small
25 interest in the east half and the southwest quarter. Are

1 you aware of that?

2 A. Yes.

3 Q. And are you aware of how Burlington came to
4 obtain that ownership?

5 A. Do you mean from El Paso, previously?

6 Q. No, I meant from the northern trust. Was
7 there --

8 A. Oh, yes. Yes, when I was at Northern Trust we
9 sold the interest to Burlington.

10 Q. Okay.

11 A. Actually El Paso.

12 Q. Which was a carve-out of some of the interest
13 that had been part of the GLA-66 --

14 A. Right.

15 Q. -- property? Okay.

16 And then does the Exhibit G serve to show that
17 the -- in the one -- in the northwest quarter where the
18 Scott 24 well is to be drilled, the relative ownership
19 interest of the parties there?

20 A. Yes.

21 Q. What does Exhibit H tell us?

22 A. It reflects our trust ownership where we're the
23 trustee, and also it shows the costs, completion costs and
24 dryhole costs of the well.

25 Q. Okay. Does Exhibit H at the top show the four

1 trusts that First Chicago administers that are interest
2 owners in this proceeding?

3 A. Yes, it does.

4 Q. Okay, their relative interests --

5 A. Yes.

6 Q. -- shown over at the right hand --

7 A. Yes, it does.

8 Q. -- total? Okay.

9 And then does it then illustrate the amount of
10 money that would be involved if you were to agree to
11 participate voluntarily the well, as proposed under the AFE
12 of Burlington?

13 A. Yes, it does.

14 Q. Okay. You would be committing, then, to a
15 completion cost of approximately \$69,000?

16 A. Correct.

17 Q. And if you go nonconsent, is this nonconsent
18 illustration based on the penalty being applied only to the
19 drilling cost?

20 A. Yes, the dryhole cost.

21 Q. Okay. Then on top of that there would be a
22 sharing -- do you understand there would be a sharing in
23 the completion cost, surface facilities and that type of
24 thing?

25 A. Yes.

1 Q. Okay. And then at the bottom does Exhibit H show
2 the relative expense commitment to the well of Burlington,
3 as compared to these four trusts that you administer?

4 A. Yes, it does.

5 Q. Is there a group or a committee that advises
6 and -- in a way represents the some 61 GLA-66 owners?

7 A. Yes, there's a committee of eight people, and
8 they represent various trusts and interests.

9 Q. And in what regard do they provide that
10 representation? I mean, what calls on the committee to
11 function?

12 A. We have -- anything -- something like this comes
13 up, and AFE or a lawsuit, we have regular conference calls
14 and investigate everything.

15 Q. Are you a member of that committee?

16 A. Yes, I am.

17 Q. Okay. So -- And are you familiar with all of the
18 other interest owners and have information generally on
19 what their interests are?

20 A. Yes.

21 Q. In the booklet that was provided -- and I don't
22 know that you've seen it, but you've been provided with
23 various mailings for Burlington on the proposed Scott
24 well --

25 A. Yes.

1 Q. -- that list those ownerships and the interests,
2 and does that appear to be a complete listing?

3 A. It looks like it is.

4 Q. Okay. Now, what does Exhibit I serve to show?

5 A. This reflects the whole group ownership, where we
6 own almost 64 percent. It's similar to the one prior to
7 this where it reflects the dryhole cost, completion cost,
8 and then it reflects Burlington's ownership and cost again.

9 Q. So does this show that on a voluntary
10 participation basis, the GLA-66 group would be committing
11 to roughly a million and a half dollars for the drilling of
12 the Scott 24 well, compared to \$238,000 for Burlington?

13 A. Yes, it does.

14 Q. Now, have there been any communications from
15 Burlington about deep Penn test that has sought purchase of
16 the interests that you administer or agreement of those
17 interests in the drilling of this well?

18 A. Yes, we got a letter from them on June 18th, also
19 on September 10th, 1996.

20 Q. Okay, let's take those one at a time, quickly,
21 and just go through.

22 Let me ask you first, have you received anything
23 from Burlington in the nature of communication, other than
24 just something coming to you in the mail?

25 A. No.

1 Q. Has Mr. Strickler ever phoned you, visited you or
2 contacted you in any way other than just sending something
3 in the mail?

4 A. No, sir.

5 Q. Has anybody else from Burlington ever made any
6 attempt to talk to you about this matter?

7 A. No.

8 Q. All right. So the first thing you received was
9 this letter of June 18, 1996?

10 A. Yes.

11 Q. Okay. Now, just by way of explanation here, the
12 mailings you received would have been one for each of the
13 four trusts?

14 A. Yes, that's correct.

15 Q. But the exhibits that we're presenting here will
16 just be one as a sample?

17 A. Right.

18 Q. All right. So the first thing you received
19 offered what?

20 A. They offered to buy our non-producing interest
21 for a hundred dollars.

22 Q. What did you do in regard to considering that
23 offer?

24 A. I just threw it to the side.

25 Q. Why?

1 A. It was very low, and I wasn't interested in
2 selling.

3 Q. Okay. That was Exhibit J?

4 A. Yes, it was.

5 Q. Okay, what is Exhibit K?

6 A. Another offer to purchase. In this particular
7 instance we had almost 20 net acres, and they wanted to buy
8 our nonproducing interest for twenty dollars a net acre.

9 Q. Okay, and what did you think of that offer?

10 A. I put it to the side also.

11 Q. Okay. Considered it worth not any further
12 deliberation?

13 A. Right.

14 Q. And what's Exhibit L?

15 A. This is another offer where they've offered to
16 purchase our interests below the Mesaverde for \$50 a net
17 acre, where we would retain the two-percent override.

18 Q. Okay. Let me call your attention to -- This
19 letter is from a Walter Parks?

20 A. Yes, it is.

21 Q. Okay. Let me call your attention to the last
22 sentence of the first paragraph, which reads, "This well is
23 very high risk (10% success probability) and very expensive
24 (Estimated 1.2 Million dry hole cost; \$1.7 Million through
25 completion)."

1 What did that language convey to you?

2 A. It looked to me like they were trying to
3 discourage us from entering into this.

4 Q. Does the letter also say in the second paragraph
5 that there will be an "...Operating Agreement providing for
6 a 400% non-consent penalty...with the preferential right to
7 purchase provision deleted"?

8 A. Yes, it does.

9 Q. What did you think of that?

10 A. I thought that was pretty outrageous, for 400-
11 percent nonconsent.

12 Q. Okay. And then as an alternative is there
13 another offer that if you don't accept that proposal,
14 there's an alternative?

15 A. Well, they sent the letter on April 29th. You
16 know, they gave us some options to participate.

17 Q. But on this one --

18 A. Oh, you could either sell or join them.

19 Q. Okay. And now the amount per acre on a sale
20 basis has been increased?

21 A. Yes, \$50 a net acre, and retain a two-percent
22 override.

23 Q. Okay. Did you consider this proposal one that
24 deserved any kind of serious consideration?

25 A. No.

1 Q. Ms. Cotton, is it unusual for you in your
2 capacity to get offers sort of out of the blue that just
3 say, you know, We'll buy the interest, here's --

4 A. Yes, we --

5 Q. -- a few dollars for it?

6 A. -- we receive them often. Sometimes they're very
7 low, and sometimes they're a decent offer. And when it is
8 decent, we'll look into it. When it's not, we usually just
9 put it to the side.

10 Q. Okay. Then from November, 1996, was there
11 nothing more that came to you until late April of 1997?

12 A. Right.

13 Q. Okay. And is that demonstrated by Exhibit M?

14 A. Yes, it is.

15 Q. Okay. And what does Exhibit M consist of?

16 A. They're telling us that they're proposing the
17 well in Section 9, and they're asking us if we want to
18 participate. They enclosed a copy of the AFE and the
19 operating agreement.

20 Q. Have you since learned that in March there was a
21 hearing before the Oil Conservation Commission of New
22 Mexico in which Burlington sought a change in the spacing
23 rule that would apply to this well?

24 A. Yes.

25 Q. So what did you do when you received Exhibit M,

1 the April 29, 1997, letter?

2 A. Well, I discussed it with a few other people, and
3 we wanted technical information to decide whether or not we
4 should participate.

5 Q. Okay. And what steps did you take to try and
6 obtain the technical information?

7 A. I talked to Watson LaForce and Bill Shaw, and
8 then we had a conference call to discuss it.

9 Q. Is Mr. LaForce a member of that eight-person
10 committee?

11 A. Yes, he is.

12 Q. And Mr. Shaw?

13 A. Yes.

14 Q. Okay. And then were some steps taken -- Are you
15 aware of steps taken to communicate to Burlington that
16 information would be needed in order to make a decision on
17 this proposal?

18 A. Yes, I knew they were trying to gather
19 information.

20 Q. Okay. Were you also aware and represented by
21 Exhibit N that in May, as your attorney, I wrote to Mr.
22 Strickler and requested that information?

23 A. Yes, you did.

24 Q. And did we advise whenever the information was
25 sought from Burlington that we were willing to keep it

1 confidential and use it only for the purposes of
2 considering their offer?

3 A. Yes, which I thought was a normal procedure.

4 Q. Was the proposal of April 29, 1997, acceptable as
5 is, without any further information?

6 A. Definitely not. I have a fiduciary
7 responsibility, and there would be no way I could make a
8 decision without any information.

9 Q. Have you -- Did you go over the operating
10 agreement that was proposed?

11 A. Yes, I did.

12 Q. Okay. I don't want to go into detail, take the
13 time, but in your experience, you're familiar with joint
14 operating agreement forms, are you not?

15 A. Yes, I am.

16 Q. And there are various standard provisions in
17 those agreements and provisions that are often added at the
18 end of the printed form to add other terms and conditions?

19 A. Yes.

20 Q. Okay. And were there a number of stricken
21 standard provisions and added terms and conditions --

22 A. Yes.

23 Q. -- that you consider to be extraordinary, not
24 customary in the industry practice?

25 A. Correct.

1 Q. Let me ask if you were able to obtain the
2 information that's necessary to make the decision on behalf
3 of your trust, or are you and is First Chicago open to
4 attempting to negotiate a satisfactory agreement for
5 participation in the well, or for farmout or --

6 A. Yes.

7 Q. -- other arrangement?

8 A. Yes, we would be.

9 Q. And then there's one more exhibit, Exhibit O, and
10 what is that?

11 A. This is from Burlington where they're advising us
12 that they haven't heard from us and that we need to either
13 participate, elect to go nonconsent, farm out, or they're
14 going to pool us.

15 Q. All right. Now, even though the proposed well is
16 on -- in Section 9, which involves 480 acres of the GLA-66
17 properties, was the farmout proposal confined to the
18 Section 9 properties?

19 A. No, it included all of our acreage.

20 Q. Okay. And what was your reaction to that?

21 A. I actually thought that was kind of sneaky,
22 because we kept talking about just Section 9, and then when
23 I realized, after I read the farmout agreement the first
24 time I didn't notice, and then the second time I noticed it
25 had all of our acreage.

1 Q. Okay. Do you consider that to be a reasonable
2 offer to obtain your participation in the Scott 24 well?

3 A. No.

4 Q. In your experience, for an operator to make a
5 reasonable effort to obtain voluntary participation of one
6 of the interests that you manage, do you believe that the
7 terms and conditions should be such that they're mutually
8 acceptable?

9 A. Yes, I do.

10 Q. Has Burlington Resources attempted in any way to
11 arrive at that kind of an agreement?

12 A. No.

13 Q. Has there been any indication to you whatsoever
14 that Burlington, other than you heard yesterday, but before
15 yesterday, any indication that Burlington is interested in
16 negotiating any of the terms?

17 A. No, that's the first I heard.

18 Q. Okay. Is it essential, for you to make a
19 decision, and has it been your experience in the practice
20 that you've observed in the industry, that an operator
21 seeking voluntary participation of a working interest that
22 you administer will provide technical data concerning and
23 supporting the drilling of the prospect?

24 A. Yes. And even if we just asked for the raw data,
25 which is uninterpreted, and then we make our own decision

1 based on that.

2 Q. Okay. And of course, Burlington has not done
3 that in this case --

4 A. No.

5 Q. -- true?

6 Are you, as a member of the committee,
7 representing all of the uncommitted interests of the GLA-66
8 owners?

9 A. Yes.

10 Q. Okay. And are they opposing the Application for
11 force pool?

12 A. Yes.

13 Q. Okay. And would you state to the Examiner
14 basically in summary why the Application is opposed?

15 A. We feel like we didn't receive the information we
16 requested, so we couldn't make a decision based on no
17 information.

18 Q. In your view, has Burlington made a genuine good-
19 faith effort to obtain voluntary participation of these
20 interests?

21 A. They notified us, but we felt like it's, Here,
22 take it or leave it.

23 Q. Okay.

24 A. And the bank is very leery of being sued, so we
25 couldn't make a decision without any information.

1 Q. And is that -- Of all the members of the
2 committee you talked to, whether they're banks or
3 individuals or trustees or whatever, has that likewise been
4 their position that they cannot make a decision in the dark
5 or on the basis of take-it-or-leave-it non-negotiable
6 offers?

7 A. Yes.

8 MR. GALLEGOS: Okay. Pass the witness and move
9 the admission of Exhibits A through O.

10 MR. KELLAHIN: For the record, Mr. Examiner, we
11 would object to the litigation documents being admitted.
12 We believe they're not relevant. They're Exhibits D, E and
13 F. With those exceptions, we have no objection to the
14 other documents.

15 MR. GALLEGOS: They bear on the question of the
16 good faith and the approach of Burlington to negotiate, or
17 rather lack of good-faith effort to deal with these parties
18 and as a matter of background.

19 MR. CARROLL: What's the nature of this
20 litigation, Mr. Gallegos?

21 MR. GALLEGOS: This particular one is where
22 Burlington is not following the terms of the 1986 amendment
23 that calls for the payment of the overriding royalty, under
24 GLA-66.

25 EXAMINER CATANACH: I believe we'll go ahead and

1 admit these as evidence, Mr. Kellahin.

2 Exhibits A through O will be admitted as
3 evidence.

4 Mr. Kellahin?

5 MR. KELLAHIN: Thank you, Mr. Examiner.

6 CROSS-EXAMINATION

7 BY MR. KELLAHIN:

8 Q. Ms. Cotton, if you'll turn to the display that
9 you've added, the convenient locator map -- it's marked as
10 Exhibit C -- am I correct in understanding that for the
11 Marcotte well in Section 8, the GLA-66 group has no
12 interest?

13 A. That's correct.

14 Q. The plat shows a portion of Section 9 for the
15 Scott well in which the GLA-66 group has an interest in the
16 deep gas; is that not true?

17 A. Right.

18 Q. All right. One of your concerns is having
19 Burlington's seismic information to evaluate your
20 participation in Section 9 --

21 A. Yes.

22 Q. -- is that what you're seeking to have?

23 A. All the raw data, technical information.

24 Q. Specifically focused on the seismic information?

25 A. Right.

1 Q. In order to discharge your fiduciary obligations,
2 does that suggest to you that you should have hired your
3 own geologists and engineers to make a study of the deep
4 gas in the San Juan Basin?

5 A. Normally what we do is receive the information
6 from the company and then hire our engineer to look over it
7 and make his own interpretation.

8 Q. I realize that you have been involved with Enron.
9 I assume that was in southeastern New Mexico?

10 A. Yes.

11 Q. Have you been involved with any other proposals
12 concerning the development of the deep gas in the San Juan
13 Basin?

14 A. No.

15 Q. You recognize, as we all recognize, that there is
16 simply no production yet established in the deep gas in the
17 San Juan Basin?

18 A. Right.

19 Q. Without conducting an evaluation on your own,
20 through your own technical people, how are you able to
21 determine that the offers made to you on behalf of
22 Burlington were too low?

23 A. Well, I thought the nonconsent penalty was high,
24 and also it's normally our policy not to sell minerals or
25 royalty. And unless it's, you know, quite a bit higher, we

1 just usually -- especially in a case where the interest is
2 nonproducing, we really don't have a way to evaluate it,
3 and we could be sued over that if we sell it, and it is too
4 low. It's safer to keep it, I would think, than to sell
5 it.

6 Q. Have you attempted to establish a market price
7 for the deep gas in the San Juan Basin that's under your
8 control?

9 A. No.

10 Q. Virtually impossible to establish one, isn't it,
11 in the absence of production?

12 A. I think if we hired an engineer he would put some
13 value on it.

14 Q. But you have not yet done that?

15 A. No.

16 Q. When we look at the seismic information -- and
17 let's explore your proposition that we hold that
18 information confidential with regards to participation in
19 Section 9. Having that information to disclose to you
20 gives you information with regards to participation in deep
21 gas with regards to all the rest of the property that you
22 control under GLA-66 that's outside Section 9?

23 A. Right.

24 MR. KELLAHIN: I have no further questions.

25 Thank you.

1 MR. HALL: I have no questions.

2 EXAMINER CATANACH: I've got a couple. You can
3 go ahead.

4 EXAMINATION

5 BY MR. CARROLL:

6 Q. Ms. Cotton, if you'd refer to your exhibits H and
7 I. I don't see a box here for -- What would be the trust
8 well-cost contribution if the well is a dry hole and you go
9 nonconsent? I mean, if you don't join in the well, and you
10 go nonconsent and it's a dry hole, what is your cost
11 responsibility?

12 A. If it's a dry hole, then nothing if we're
13 nonconsent.

14 Q. That's correct.

15 And Exhibit I, if the if the trust goes
16 nonconsent what would Burlington's cost responsibility be
17 on a dry hole?

18 A. \$176,000.

19 Q. No, they'd have to pick up your 65 percent too;
20 isn't that correct?

21 A. Oh, that's true, that's true.

22 Q. So they'd bear the cost of 75 percent of the
23 dryhole?

24 A. That's true.

25 Q. Ms. Cotton, I notice a lot of letters from

1 Burlington to you in this package. I don't see any letters
2 from you to Burlington. Do they exist? And if so, where
3 are they?

4 A. No, I didn't send any. I relied on Gene and Wat
5 because I knew they were handling it, and --

6 Q. Since June of last year?

7 A. Yes.

8 Q. Are you aware of any letters from Mr. Gallegos to
9 Burlington, prior to the -- the May 9th letter of this
10 year?

11 A. I think that was his first one after we received
12 the April 29th letter.

13 Q. So it's in response to the April 29th letter?

14 A. Yes --

15 Q. Did you ever call --

16 A. -- requesting information --

17 Q. Did you call Burlington and tell them their
18 offers were unacceptable, or did you just --

19 A. No.

20 Q. -- put their letters to the side?

21 A. I put them to the side and talked to Gene and
22 Wat.

23 Q. Were you aware of Mr. Gallegos calling in
24 response to any of these letters, or do you think his first
25 -- The trust's first response to Burlington was dated May

1 9th.

2 A. I think Wat called down. I don't have it in my
3 notes, but I think he talked to them.

4 Q. So when you testified that you received no phone
5 calls from Burlington, other than these letters, with no
6 response did Burlington know who to call?

7 A. They had our address, and they pay us on a
8 regular basis on other trusts, so if they called our office
9 -- I don't know if they have my name, but if they called
10 our office they would certainly talk to --

11 Q. But if you would have replied to them and said,
12 Please contact me, you would have been the person they
13 would have --

14 A. Right.

15 Q. -- been called?

16 You state that this 400-percent nonconsent
17 penalty is outrageous. What's the normal nonconsent
18 penalty you see in operating agreements?

19 A. Two to three hundred.

20 Q. You also testified that Burlington had given you
21 an offer on a take-it-or-leave-it basis. It appears to me
22 that their offer continually increased through this course
23 of correspondence. So do you consider their last offer a
24 take-it-or-leave-it basis or the first offer a take-it-or-
25 leave-it basis?

1 A. It appeared to me they said, you know,
2 participate, farm out or sell your interest. And we wanted
3 more technical information and didn't feel that we could
4 make a decision without it.

5 Q. Have you hired a geologist to review the
6 available public information regarding the deep San Juan
7 gas wells that have been drilled?

8 A. No, but the executive committee had reviewed some
9 information and we've all shared what we know, not
10 specifically on this well.

11 Q. You also testified that -- let's see, I think it
12 was the -- Exhibit L, the November 20th, 1996, letter from
13 Burlington, the last sentence of the first paragraph:
14 "This well is very high risk...and very expensive..." And
15 you considered that to be a discouragement in joining the
16 well?

17 A. Yes.

18 Q. How would you like to have seen that worded?
19 Would you like to have seen, Even though this well is very
20 expensive, we hope to hit a prolific oil and gas well and
21 get ten times back our money; that's what we hope for?
22 That would have been encouraging? I don't -- I don't
23 understand what you wanted in the letter.

24 A. Well, it just seems like they're saying that, you
25 know, the probability is very low, it's probably not going

1 to make a well, and it's going to be very expensive, so
2 you'd be better to go nonconsent. And we'd be bearing most
3 of the cost if we joined them.

4 Q. If that's, in fact, Burlington's opinion,
5 wouldn't you consider that to be, you know, disclosure or
6 honest disclosure?

7 A. Well, on one hand, I think by them continuing to
8 offer to buy our interest that they knew something we
9 didn't, so they're trying to buy our interest. And then
10 they come back and say, Well, it's very high risk and very
11 expensive, but we'll buy you out.

12 Q. Yeah, I was trying to think here of an analogous
13 situation. You're a trust officer, correct?

14 A. Yes.

15 Q. Do you deal in real estate?

16 A. No.

17 Q. Well, let me pose this question to you: Let's
18 say the trust owned a piece of real estate that was -- and
19 you were offered \$100,000. The potential buyer has spent
20 \$50,000 lining up another buyer for the property, and he
21 has a price, and that buyer will buy it at \$200,000.

22 Now, is the buyer from you that's lined up the
23 next transaction -- is he obligated to tell you he has this
24 buyer for \$200,000?

25 A. No.

1 Q. Why not? That would be full disclosure of all
2 available information, wouldn't it?

3 A. Yes.

4 Q. And if he did disclose that second buyer, then he
5 just wasted \$50,000 developing that prospect, didn't he?

6 A. Right.

7 MR. GALLEGOS: Mr. Examiner, I'd like to
8 interpose that since we're talking about the law, the law
9 requires that if you disclose anything, you have to make
10 full and complete disclosure. So if you undertake to say
11 something is blah-blah-blah, very expensive, high risk,
12 then you have to disclose everything. Once you've
13 undertaken to say something --

14 MR. CARROLL: If you want to brief that issue --

15 MR. GALLEGOS: I'd like --

16 MR. CARROLL: -- regarding oil and gas law, I'd
17 love to see it.

18 MR. GALLEGOS: Well, you seem to be arguing the
19 law with the witness, and I just want to say that's what --

20 MR. CARROLL: I'm not arguing the law with the
21 witness, I'm posing a business scenario to her --

22 MR. GALLEGOS: And then --

23 MR. CARROLL: -- which seems pretty --

24 MR. GALLEGOS: -- argue, if you represent in your
25 example, if you represent to somebody, you say, Well, the

1 property is only worth \$100,000 because X, and you know
2 it's \$200,000, you've got a obligation -- once you've
3 undertaken to say something, you've got an obligation to
4 say the whole thing truthfully, and that has to be the
5 context of this letter.

6 MR. CARROLL: Well, if you make an offer for
7 \$100,000, you're saying that the property is worth the
8 \$100,000? Is that what you're telling me, Mr. Gallegos?

9 MR. GALLEGOS: In this case we have somebody
10 making an offer who then makes a representation about the
11 circumstances surrounding it. And I'm saying in that case
12 or in the case of the real estate transaction that you've
13 proposed, the law puts an obligation on you that once you
14 start speaking about it, then you have a duty to tell the
15 complete story. You can't just give a part of it.

16 And they've undertaken here to --

17 MR. CARROLL: So if that person says, I've found
18 a buyer for this property, I'll offer you \$100,000, you
19 have to tell that person --

20 MR. GALLEGOS: No.

21 MR. CARROLL: -- that I have a buyer for
22 \$200,000?

23 MR. GALLEGOS: No, if that's all you've said,
24 that's -- you don't have to. But if you start
25 undertaking --

1 MR. CARROLL: Brief this issue for me on oil and
2 gas law. If you offer to buy a property and say the odds
3 of a well -- or of a well's success are low, that you have
4 an obligation to supply them all the seismic information
5 you've developed.

6 MR. GALLEGOS: We'll be happy to brief the law on
7 disclosure and representation and misrepresentation, sure.

8 MR. CARROLL: Yeah, ten pages, max.

9 Q. (By Mr. Carroll) Ms. Cotton, you're aware that
10 Amoco and Cross Timbers have farmed out their acreage?

11 A. Yes.

12 Q. And are you aware that the acreage they farmed
13 out includes all their acreage in the prospect area, rather
14 than in Section 9?

15 A. Yes.

16 Q. Why do you think they did that, rather than
17 participating in the well?

18 A. They had a mutually agreeable agreement, or they
19 were satisfied with what Burlington negotiated with them.

20 Q. Could it be that they thought this well was high
21 risk and it was too high risk for them, so they'd rather
22 farm out then put the money up front?

23 A. I don't know what they were thinking.

24 Q. You've testified, in your due diligence, if
25 there's a lot of property involved and there are a lot of

1 wells, you hire your own engineer?

2 A. Yes.

3 Q. But you haven't hired your own geologist here?

4 A. No, in this case I basically rely on the
5 executive committee. And when necessary, I'll go to the
6 outside, but usually we have engineers on the executive
7 committee, and I usually rely on them.

8 MR. CARROLL: That's all I have.

9 EXAMINATION

10 BY EXAMINER CATANACH:

11 Q. Ms. Cotton, in your normal course of duties are
12 you able to negotiate with parties?

13 A. Yes.

14 Q. And did you make any attempt, after you received
15 the first two letters with Meridian, to contact them and
16 negotiate with them?

17 A. No, because I was talking to Wat and our
18 attorney, and I thought it was best to let them handle it,
19 rather than all of us calling them.

20 Q. So from the very beginning, from June of 1996,
21 you had other people involved in this besides you?

22 A. Yes, the executive committee.

23 Q. Do you know if they were in contact with Meridian
24 or --

25 A. Yes, they were.

1 Q. -- attempting -- ?

2 Do you know what date that first contact
3 occurred?

4 A. I know Wat contacted them by phone. I know Gene
5 sent a letter after we received their April 29th. It
6 seemed to me that I remember hearing, you know, Wat talk to
7 them pretty often. George Daly may have called them. I
8 don't remember. I just remember hearing people say they've
9 to them, and I didn't make a note of the date.

10 Q. Ms. Cotton, have you been involved, in your
11 course of duty, in a situation where somebody was trying to
12 drill a rank wildcat such as is being proposed in this
13 case?

14 A. The last two recent ones in which we
15 participated, there was production all around, so they were
16 not classified as wildcat. I can't remember a wildcat.

17 EXAMINER CATANACH: I have nothing further. This
18 witness may be excused, if you have --

19 MR. HALL: One follow-up, since we opened up a
20 new area.

21 EXAMINATION

22 BY MR. HALL:

23 Q. Ms. Cotton, Mr. Carroll asked you about your
24 knowledge of the Amoco farmout. It's true, isn't it, if
25 you know, that Amoco's farmout calls for their

1 participation on a well-by-well basis, if you know?

2 A. Okay, I didn't know.

3 Q. Do you know?

4 A. No.

5 MR. GALLEGOS: We call Tom Moore.

6 THOMAS E. MOORE,

7 the witness herein, after having been first duly sworn upon
8 his oath, was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. GALLEGOS:

11 Q. State your name, please.

12 A. Thomas Edward Moore.

13 Q. Where do you live, Mr. Moore?

14 A. Midland, Texas.

15 Q. What is your business?

16 A. Oil and gas production, development, drilling,
17 and ranching.

18 Q. Okay, and what is your post-secondary education?

19 A. I graduated from Phillips University with a
20 bachelor of science degree, a major in geology and a major
21 in business.

22 Q. Okay. What is your experience in the oil and gas
23 business prior to the -- prior to your present --

24 A. After graduation from college, I joined Dow Well,
25 which is a division of Dow Chemical, in 1959 and stayed

1 with them through 1979.

2 Q. What is the business of Dow Well?

3 A. It's an oil-well-service firm, stimulation,
4 fracturing, cementing, this type operation.

5 Q. Okay. And you were with Dow well for some 20
6 years?

7 A. That's correct.

8 Q. Just give us an overview of the work that you did
9 for Dow well.

10 A. Well, I started in the field working with them,
11 in engineering, I was in sales, additional engineering and
12 in management throughout my career with them.

13 Q. Okay, what was your final post?

14 A. I was regional manager for the West Coast and
15 Alaska.

16 Q. In that capacity, what were your
17 responsibilities?

18 A. Overall, the entire operation was my
19 responsibility, ranging from personnel to technology, the
20 entire ball of wax.

21 Q. All right. You left Dow Well in 1979?

22 A. Yes, that's correct.

23 Q. And what did you do then?

24 A. I bought a small production company in Midland,
25 Texas, and have been -- have had it since.

1 Q. Okay. Where is the production of that company?

2 A. At the time I bought it, we had production in New
3 Mexico and Texas and Wyoming. We've since added production
4 in Oklahoma and North Dakota.

5 Q. Okay.

6 A. And I also am operations manager for the Moore
7 entities.

8 Q. Okay. On the Burlington proposals here for the
9 two wells in question, there's a listing of Lee Wayne Moore
10 and JoAnne Montgomery Moore, Trustees.

11 A. That's correct.

12 Q. Who are those people?

13 A. Trustees -- Wayne Moore is the only one living;
14 JoAnne Montgomery Moore is deceased. But -- and -- What do
15 you mean by, Who are they?

16 Q. Well, what relationship do you have to them,
17 business relationship?

18 A. Business relationship, I am operations manager
19 for their properties and investments and trusts and this
20 sort of thing, trustee on all of the trusts.

21 Q. Okay. JoAnn Montgomery Moore is deceased?

22 A. That's correct.

23 Q. And what is the age of Wayne Moore?

24 A. Eighty-three.

25 Q. Okay. And is there also a family relationship

1 between you --

2 A. Yes --

3 Q. -- and Mr. Moore?

4 A. -- Wayne Moore is my uncle.

5 Q. Okay. And are you authorized to appear and
6 represent --

7 A. Yes --

8 Q. -- their interests?

9 A. -- in all capacities.

10 Q. Are you fully acquainted with their properties?

11 A. Yes.

12 Q. And are you also fully acquainted with the
13 various communications that have gone on between Burlington
14 and the Wayne Moore interests concerning the Marcotte 2 and
15 the Scott 24 well?

16 A. Yes, I am.

17 Q. Okay. What is your general business experience
18 of this production company in the State of New Mexico?
19 Would you give us some idea of that?

20 A. Oh, we have drilled wells in the State of New
21 Mexico, in the southeast portion. We have put together
22 drilling blocks and put together units and sold them.
23 We've formed our own units, drilling units, have operated
24 them, from my business experiences from putting it together
25 on through the completion and production of it.

1 Q. Have you frequently been a participant as a
2 nonoperator in wells that are proposed by other parties?

3 A. Oh, yes, yes.

4 Q. Have those included wells that are proposed and
5 operated by Burlington Resources?

6 A. That's correct.

7 Q. Conoco?

8 A. Burlington, Conoco, Texaco, Amoco, Tenneco when
9 they were there, Cross Timbers, Crown Central.

10 Q. Would it be fair to say that generally your
11 approach is to be a consent participant, paying your share
12 in wells that are being drilled?

13 A. I cannot remember a time in the San Juan Basin
14 that we have not been a working interest operator -- I mean
15 a working interest owner -- that we have not taken a part
16 in the well.

17 Q. Okay. And about how many wells do the Moore
18 interests have interest in in the San Juan Basin, just the
19 San Juan Basin?

20 A. Oh, including overriding royalties and royalties,
21 probably close to 300 wells, scattered throughout.

22 Q. Okay. Now, what has been the common practice
23 that you have followed, and what has been your experience
24 in following that practice, in regard to being able to
25 obtain information from the proponent of the well in order

1 for you to make a decision whether or not to participate?

2 A. Well, normally we receive structural maps, cross-
3 sections, seismic information, this sort of thing, prior,
4 so we'll know what we're doing. This is the industry norm,
5 whether it be in New Mexico or whether it be in Oklahoma or
6 Texas.

7 And I've been on both sides of this fence,
8 selling units and taking part in them, and wells, so I know
9 what the norm is on both sides on it. If we put together a
10 drilling block and try to sell it, we furnish all the
11 information we have on it.

12 Q. All right. Does the Wayne Moore ownership
13 include interest in both Section 8 and Section 9?

14 A. That's correct.

15 Q. Okay, and is that interest the extent that was
16 previously represented by Mr. Strickler in his testimony,
17 presented --

18 A. Yes, that's correct.

19 Q. Okay. Let me just quickly ask you about a few of
20 the exhibits you have here. Is Exhibit P a title takeoff
21 that illustrates the ownership in what's called the Arch
22 Rock prospect?

23 A. Yes.

24 Q. It would be the two sections in question?

25 A. I have Section 8 here; is this the one --

1 Q. Okay, just Section 8?

2 A. Yes.

3 Q. All right. Why was this obtained?

4 A. I asked Mr. Strickler to send me the information,
5 and he kindly did so, sent it to me.

6 Q. Okay, he provided this to you?

7 A. Yes, that's correct.

8 Q. Okay. And is the nomenclature of prospect Arch
9 Rock something that --

10 A. I had no idea what Arch Rock represented, but I
11 knew they were going by the deep Penn test.

12 Q. Okay. When did you first find out about the deep
13 Penn test or anything Burlington was doing that involved
14 your acreage?

15 A. I think it was the April 22nd information; I
16 think that was the first information we had on it.

17 Q. All right. You did not have any overture from
18 Burlington, communication or anything prior to April of
19 this year?

20 A. Not concerning a deep Peen test.

21 Q. Well, anything else with them concerning other
22 wells?

23 A. In what respect?

24 Q. Well, you said not concerning the deep Penn
25 test --

1 A. No. Well, we receive daily reports when they're
2 drilling a well or they're working over a well or what
3 they're going to do, unit development or drilling. Of
4 course, we receive that information on other wells, but not
5 on the deep Penn test.

6 Q. Okay, that's what I was trying -- The purpose of
7 my question, I'm asking only concerning the ownerships in
8 Section 8 and Section 9. And your testimony would be,
9 this --

10 A. Yes.

11 Q. -- in April was the first --

12 A. Yes.

13 Q. All right. Was this an unacceptable proposal, in
14 your opinion?

15 A. Well, really, it was unacceptable, but there was
16 not a -- You know, we had no information. All it said is,
17 We're going to drill this well. Either join, farm out, or
18 we'll force-pool you.

19 So we tried to get some additional information,
20 and nothing relevant or pertinent to what we needed did we
21 obtain.

22 Q. How did you try and get additional information?

23 A. We called Mr. Strickler.

24 Q. Okay, and what was his response?

25 A. Well, number one, I asked for the seismic and he

1 said, We can't send you the seismic.

2 And I said, Wait a minute, we own the property,
3 number one. I'm not sure we -- that it isn't seismic
4 trespass. We were never told that there was a 3-D shooting
5 going on through there, and this very well could represent
6 seismic trespass. It would in Texas.

7 And he said it was proprietary and we could not
8 have that information.

9 And I felt like it was a necessity to have it.

10 Q. Okay. And have you received seismic before from
11 others --

12 A. Oh, sure.

13 Q. -- who have drilled wells?

14 A. That's the industry norm, is -- Other wells,
15 sure, when you're going to -- when there's, you know, we
16 see some reason for drilling the well.

17 This well was just stuck out there and said,
18 We're going to drill it. The information we received was
19 not really pertinent when you look at something 20 or 30 or
20 80 miles away.

21 Q. Exhibit R is also dated April 22, 1997, and it's
22 referenced as a farmout letter of intent.

23 A. Okay.

24 Q. Did this farmout proposal involve only the
25 property in Section 8 and Section 9?

1 A. No, that was really the ludicrous part about it,
2 the one well in Section 8 and one in Section 9, and they're
3 talking about wanting it all, and if you turn over to
4 paragraph 3 in this, it says -- no, paragraph 4 -- that
5 "Burlington shall have the right and option to earn the
6 remainder of Farmor's leasehold in the Farmout Lands, on a
7 unit by unit basis, under the same terms..." That's 22
8 sections they're talking about.

9 Q. Okay. Now, let me ask you this: If you obtained
10 seismic information or other technical data concerning
11 Section 8 and Section 9, is there any way for you to know,
12 with what's been imparted to you from Burlington, whether
13 that has any Application beyond those two sections?

14 A. No, because I -- You'd have to have the entire
15 overlay of all their seismic to know anything about
16 anything other than these two sections. You know, you'd
17 have to have all of it.

18 Q. Okay. But do you know whether having all of it,
19 whether it has a significance beyond those sections?

20 A. Well, the interpretation of the seismic would
21 point out where there were pinnacle reefs or highs or where
22 they might be, but a lot would depend on, after these two
23 wells were drilled, how accurate their seismic was. I
24 understand from another source that they said their data is
25 such that they're not even sure they can interpret it

1 correctly.

2 Q. Have you talked to anybody else at Burlington
3 besides Mr. Strickler?

4 A. I talked briefly to Dawson, the geologist, who
5 then talked to Wayne Moore.

6 And as a footnote, you -- Something came up about
7 geologists earlier. Wayne Moore went up in this country in
8 19- -- late Forties, early Fifties, did a great deal of
9 seismic work all over, at one time had 40,000 acres, in the
10 Cedar Hill area lease. So very well qualified to do
11 interpretations of the geological area --

12 Q. Did you learn any- --

13 A. -- with the proper information.

14 Q. Yes, sir. Did you learn anything from Mr.
15 Dawson?

16 A. No, not that would help us.

17 Q. Okay. If you were to obtain the information from
18 Burlington so that you could make a decision concerning
19 your interest, are you willing to consider that
20 confidential and not share it with any other party?

21 A. Certainly. I think we told Ms. Strickler that we
22 would consider it confidential.

23 Q. Okay.

24 A. But at no time did he make any suggestion that we
25 could see out there, just -- That was it, period.

1 Q. And what would this farmout on 30 sections offer
2 you in return for tying up that much acreage for potential
3 drilling by Burlington? What would you get in return,
4 under their offer?

5 A. Oh, minimal. If we farmed it out, we got five
6 percent, proportionately reduced. And we have 87.5-percent
7 leases in the area. So, you know, we're down to less than
8 .2 of a percent interest. I believe that's correct.

9 So no, it isn't feasible at all --

10 Q. Or a -- down to a 2.5-percent override --

11 A. No, we're --

12 Q. -- wouldn't that be?

13 A. No, we're down to less than two percent -- two-
14 tenths of a percent, two-tenths.

15 In other words, we have -- If we took a five
16 percent, proportionately reduced, our interest is nine-
17 point-some-odd percent in Section 8.

18 Q. Oh, okay. And then is Exhibit S also dated April
19 22, and that was a mailing received by you?

20 A. Yes.

21 Q. Okay.

22 A. We have a 2.2517-percent interest in the
23 Marcotte.

24 Q. Okay. What is Exhibit 10?

25 A. Exhibit 10 -- I'm --

1 Q. I'm sorry, T.

2 A. T.

3 Q. Excuse me, threw you off.

4 A. This is another alter- -- or a working interest
5 owner letter from Burlington, with the proposal to drill,
6 and they're asking for our prompt agreement to this, and
7 with an operating agreement attached. And they've sent us
8 an AFE attached also, I believe.

9 Q. Okay.

10 A. And this is an offer for us to participate in the
11 well, is what I'm trying to say, yes, sir.

12 Q. Okay. How many conversations have you had with
13 Mr. Strickler around the time in April that you began
14 receiving these?

15 A. Oh, I suspect we've talked a dozen times on the
16 phone.

17 Q. Okay. Has there been any indication to negotiate
18 or to make an agreement that would be acceptable to you?

19 A. We have had nothing that was acceptable to us.

20 Q. Okay. What is Exhibit U?

21 A. This refers back to the letter of April 22nd
22 regarding the Marcotte, and if we don't do something in a
23 hurry they're going to compulsory force pool us.

24 Q. Okay. Now, is Exhibit V --

25 A. Exhibit what?

1 Q. -- V, a July 1, 1997, letter from you to Mr.
2 Strickler on this matter --

3 A. That's correct.

4 Q. -- of the Marcotte Number 2 well?

5 A. That's correct, we did make a counteroffer.

6 Q. Okay. Now, let me ask you this: Were you aware
7 by July 1, 1997, that the Marcotte well was already being
8 drilled?

9 A. No, I don't believe I was. Somewhere along in
10 there, I found out it was being drilled, and I don't
11 remember exactly when it was, to be honest. I could look
12 at my daybook and tell you, and I don't have that with me
13 here.

14 Q. Okay.

15 A. And I have not received any reply back from Mr.
16 Strickler on our counterproposal.

17 Q. That you sent on July 1 --

18 A. That's correct.

19 Q. -- 1997?

20 A. Uh-huh.

21 Q. So was the first information you received
22 concerning the reaction of Burlington to this proposal the
23 rejection that Mr. Strickler stated on the stand here
24 yesterday, July the 10th?

25 A. That's true.

1 Q. Okay. Will you explain what Exhibit W shows, Mr.
2 Moore?

3 A. Well, it shows Moore's interest in Section 8,
4 what the dryhole cost would be, what the completion cost
5 would be, his total cost.

6 And then it shows well cost contribution on a
7 nonconsent basis. Moore's interest is 2.25 percent. And
8 it also shows Burlington's interest, which is 9.31 percent.

9 Q. Okay. Are you, in fact, quite interested in
10 participating in this prospect if you're provided
11 sufficient information --

12 A. Yes.

13 Q. -- on which you can make a decision?

14 A. Yes, as I previously said, I don't think we've
15 ever turned down the opportunity to participate in a well
16 in the San Juan Basin that we've had a working interest in.

17 Q. How would you characterize the conduct of
18 Burlington toward this Moore interest, in regard to
19 obtaining agreement?

20 A. Somewhat like we're ribbon clerks and we're going
21 to do what we want to you. You know, just to say, Here's a
22 well, we're going to drill it, good luck -- That's not the
23 industry norm, that's not the way it's done.

24 Q. Have the representations constantly been, This is
25 high risk, basically discourage voluntary participation?

1 A. Their letters have stated it's high risk. The
2 initial letter, I think, offered -- wanted us to
3 participate in it, and since then we've had the other
4 options to farm out or go nonconsent. But yes, it has been
5 as a high-risk prospect.

6 MR. GALLEGOS: That's all the questions I have.
7 I pass the witness and move the admission of Exhibits P
8 through W.

9 MR. KELLAHIN: No objection.

10 EXAMINER CATANACH: Exhibits P through W will be
11 admitted as evidence.

12 Mr. Kellahin?

13 MR. KELLAHIN: Thank you, Mr. Examiner.

14 CROSS-EXAMINATION

15 BY MR. KELLAHIN:

16 Q. Mr. Moore, when you look at the San Juan Basin,
17 how many deep gas penetrations have there been?

18 A. How many successful or tries?

19 Q. Attempts.

20 A. Gosh, I don't know. Someone gave the figures
21 yesterday on how many attempts there have been.

22 Q. My recollection is about 28.

23 A. Okay.

24 Q. Do you know of any successful deep gas
25 penetrations in the San Juan Basin?

1 A. No, I know of none.

2 Q. What is the industry norm in the San Juan Basin
3 for deep gas exploration in terms of sharing information?

4 A. Pardon me?

5 Q. Yes, sir. The deep gas in the San Juan Basin --

6 A. Well, if there has not been any successful, I
7 don't know that there's any industry norm there.

8 Q. So how --

9 A. When was the last well drilled -- And let me ask
10 you this: When was the last well drilled in the San Juan
11 Basin?

12 Q. Well, have you explored that?

13 A. Deep well?

14 Q. Have you explored that?

15 A. Oh, 14 or 15 years ago, I suspect.

16 Q. You're a geologist. Have you looked at the
17 publicly available data on the existing deep gas
18 penetration?

19 A. I've glanced at some of it. Wayne Moore has done
20 most of the geology on it.

21 Q. Have you --

22 A. Let me go a little farther. I don't know what
23 the norm was 14 years ago, but I -- in the -- Well, I won't
24 go into it. Go ahead.

25 Q. All right, sir. How do you conclude it's the

1 norm to share proprietary seismic data for deep gas San
2 Juan attempts if there is not norm ever established for
3 those interests?

4 A. I said an industry norm; I did not say the San
5 Juan Basin norm. I said the industry norm is to --

6 Q. Let's look at the San Juan Basin. Have you
7 attempted to construct any cross-sections with regards to
8 the Pennsylvanian in the San Juan Basin?

9 A. No, I have not.

10 Q. Have you attempted to construct a structure map?

11 A. No, I have not. I was certain that Burlington
12 had, and knew what they had, is the reason they decided to
13 drill the well. They didn't pull it out of a hat
14 someplace. So they had this information, and we'd expect
15 to receive it from them.

16 Q. Did you offer to pay Burlington for any portion
17 of the seismic work in order to have access for that
18 information?

19 A. This was never an option.

20 Q. In terms of your -- Have you attempted at all to
21 make any analysis of the valuation or the market value of
22 your deep gas properties in the San Juan Basin?

23 A. It's an impossibility to put a market value on it
24 at this point.

25 Q. Why is that?

1 A. Because there is no deep gas in the San Juan
2 Basin.

3 However, Burlington must have done so themselves.

4 Q. Your last offer letter of July 1st, it's Exhibit
5 V --

6 A. Uh-huh.

7 Q. -- am I correct in understanding that your best
8 offer to Burlington is that you want to retain an
9 overriding royalty of 27.5 percent? Is that --

10 A. That's the offer I made in it.

11 Q. All right, sir.

12 A. We're willing to talk to them about another
13 offer.

14 Q. Well, let's talk about this offer.

15 A. Okay.

16 Q. The 27.5 percent, is that net to Moore, or are
17 there other overrides that you have to --

18 A. No, net to Moore.

19 Q. -- subtract from that?

20 You want to keep 27.5 percent. How did you
21 establish that as a fair --

22 A. Because I think there are some 60-percent leases
23 in the Basin. I've been told that there were.

24 Q. So you want to deliver a 60-percent NRI lease and
25 keep 27.5 percent overriding royalties?

1 A. That's correct.

2 Q. And how did you ever establish that was a
3 reasonable market position for you to take for the deep gas
4 in the San Juan Basin?

5 A. I guess the same way that Burlington thought that
6 a five-percent was a reasonable step to take.

7 Q. Have you had experience with seismic data?

8 A. Yes.

9 Q. Is it reasonable to conclude that seismic data
10 often is very subjective and interpretive and can be highly
11 speculative?

12 A. Yes, it is.

13 Q. When you said you have participation or interest
14 in perhaps 300 wells in the San Juan Basin on behalf of the
15 Moore interests --

16 A. Uh-huh.

17 Q. -- is any of that production below the base of
18 the Dakota in the San Juan Basin?

19 A. I don't believe so.

20 Q. This is all --

21 A. -- Dakota, Mesaverde, Pictured Cliffs, Fruitland
22 Coal.

23 Q. When you look at the Moore interest position in
24 terms of acreage in the San Juan Basin for the deep gas,
25 what is your acreage position?

1 A. I don't have an idea at all what the entire thing
2 is.

3 Q. Your proposition is that you need to see the
4 seismic data; is that not true?

5 A. That's right.

6 Q. You do not want the seismic disclosure limited
7 just to Sections 8 and 9; is that also true?

8 A. No, I didn't -- That's not true. We need to see
9 it on 8 and 9 to decide what we're going to do there --

10 Q. And I understood you --

11 A. -- to be able to enough additional information to
12 interpret that area.

13 Q. That's what --

14 A. I would -- Excuse me, go ahead.

15 Q. All right. What I'm asking you is, in order to
16 make a judgment about 8 and 9, the disclosure of that
17 seismic information to you is insufficient because you told
18 us you need to see all of the seismic data that Burlington
19 has in the San Juan Basin to come to some conclusion about
20 8 and 9?

21 A. No, I told you I had to see it all to evaluate
22 all of Moore's properties in the San Juan Basin, as far as
23 deep gas production.

24 Q. So if we disclose this to you and you sign a
25 confidentiality agreement, despite the confidentiality

1 agreement, you can use that to evaluate your other property
2 in the San Juan Basin?

3 A. Yes.

4 Q. And you want to do that without paying for the
5 seismic?

6 A. Yes.

7 Q. When we look at the Marcotte well, the Moore
8 interest is 2.25 percent?

9 A. That's correct.

10 Q. You would cut a check for about \$52,000 to
11 participate?

12 A. If we participated, yes.

13 Q. If you don't participate, then Burlington pays
14 your share and you don't have any exposure about a cost
15 expense to you?

16 A. Repeat that, please.

17 Q. Yes, sir. If you don't pay and you go
18 nonconsent, \$52,000 is paid by Burlington, and they recover
19 that out of future production, if there is any?

20 A. Or if -- like the Phillips well that's made into
21 the disposal well, the recover that from disposal moneys.

22 Q. All right, sir. And if we look at the Scott
23 well, your interest is 0.295 percent, and you would have to
24 cut a check for \$6800?

25 A. That's correct.

1 Q. And if you do so, for about \$60,000 you get
2 drilling information with regards to this well, you'll know
3 what happens with this well, and that information would
4 help you analyze and evaluate and put a market price on the
5 rest of your deep gas properties in the San Juan Basin?

6 A. That's correct.

7 Q. Why don't you participate?

8 A. Because we don't have sufficient information to
9 make a decision.

10 Q. And have you attempted to utilize public
11 information to assist you in making your own independent
12 judgment about participation?

13 A. Qualify "public information".

14 Q. Yes, sir. The Oil Conservation Division records,
15 including, but not limited to, the 28 deep gas attempts.

16 A. We have that information.

17 Q. And have you attempted to use it?

18 A. We've looked at it, but they're not relevant to
19 this.

20 Q. Why not?

21 A. Because this is a different area.

22 Q. This is an absolutely rank exploratory wildcat
23 venture in the deep gas?

24 A. That's correct.

25 MR. KELLAHIN: No further questions.

EXAMINATION

BY MR. CARROLL:

Q. Mr. Moore, are you aware of any higher offers than have been made to you --

A. No.

Q. -- regarding your interest?

A. No. You mean by Burlington?

Q. Yeah.

A. No.

Q. And you're a geologist --

A. Uh-huh.

Q. -- by profession?

What do you consider just the information that you're aware of? Is this high risk?

A. Yes.

Q. Oh, I never heard the expression regarding ribbon clerks. Will you explain that, please?

A. In a TG&Y a ribbon clerk, you know, makes a dime an hour, whatever it happens to be. And that's somewhat the way we feel we're treated; we don't make enough or are big enough to be players in the thing.

Okay?

MR. CARROLL: Thanks.

THE WITNESS: Okay.

EXAMINER CATANACH: Mr. Moore --

1 THE WITNESS: That might be an Oklahoma
2 terminology.

3 EXAMINATION

4 BY EXAMINER CATANACH:

5 Q. -- with regards to your statements that it's
6 industry norm to provide this information, have you been in
7 this kind of situation before where you've got a wildcat
8 such as this?

9 A. Yes.

10 Q. And you --

11 A. We've drilled wildcats.

12 Q. Have you, in fact, done seismic work in an area
13 and provided that free of charge --

14 A. We've bought seismic work other people have done
15 and provided it, yes.

16 Q. And you did provide that free of charge to the
17 other --

18 A. When we show the prospect, yes, we do.

19 EXAMINER CATANACH: Okay, I have nothing further
20 of this witness.

21 MR. GALLEGOS: We have nothing further. That
22 constitutes our witnesses, Mr. Examiner.

23 EXAMINER CATANACH: Okay, let's take a break
24 here, a few minutes.

25 (Thereupon, a recess was taken at 9:41 a.m.)

1 (The following proceedings had at 9:58 a.m.)

2 EXAMINER CATANACH: All right, we'll call the
3 hearing back to order at this time and turn it over to Mr.
4 Hall.

5 MR. HALL: Thank you, Mr. Catanach.

6 Call Mr. Norman now.

7 NORMAN INMAN,
8 the witness herein, after having been first duly sworn upon
9 his oath, was examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. HALL:

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

13 A. Norman Inman.

14 Q. Where do you live and by whom are you employed
15 and in what capacity?

16 A. I live in Houston, Texas, employed by Total
17 Minatome Corporation, and I'm an attorney.

18 Q. In your capacity as attorney for Total Minatome
19 Corporation, are you familiar with your company's
20 understanding of the GLA-46 agreement?

21 A. Yes, sir.

22 Q. And you have reviewed the GLA-46 agreement and
23 are familiar with its terms?

24 A. Yes, sir.

25 Q. Do you have a copy of GLA-46?

1 A. I do.

2 MR. KELLAHIN: Mr. Kellahin, so that I don't have
3 to interrupt Mr. Hall, would you note my continuing
4 objection to litigating this contract before the Division.

5 EXAMINER CATANACH: We'll note that continuing
6 objection, Mr. Kellahin.

7 Q. (By Mr. Hall) By the way, in view of that, Mr.
8 Inman, let me ask you something quickly. I'm going to
9 repeat to you a statement that Mr. Kellahin made in his
10 opening arguments, and I'd like to see if you agree with
11 it. When we started this case yesterday, Mr. Kellahin said
12 the following: 1951 operating agreement is not ambiguous.

13 Do you agree with that?

14 A. No, sir.

15 Q. Do you not agree with that?

16 A. I do not agree with that.

17 Q. All right. Let's look at GLA-46, please, sir.
18 Let's review some of the terms of the GLA-46 for the
19 Hearing Examiner so we all get a good understanding of its
20 operation.

21 If you would identify the first portion of that,
22 that is the farmout agreement?

23 A. That is a farmout agreement --

24 Q. What's the --

25 A. -- two pages.

1 Q. What's the operation of the farmout agreement
2 here?

3 A. The farmout agreement purports to be an
4 assignment of operating rights in the properties that are
5 described on Exhibit A.

6 Q. All right. And if you would identify Exhibit B
7 to the GLA-46 agreement?

8 A. That is the operating agreement.

9 Q. All right. Let's look at some of the terms of
10 the operating agreement. On page 1, paragraph 1,
11 "Assignment of Operating Rights", what is the operation of
12 that provision?

13 A. Excuse me?

14 Q. What is the operation of page 1, paragraph 1?

15 A. Oh, it transfers the operating rights to San
16 Juan.

17 Q. All right. And San Juan, just so we are clear,
18 is predecessor now to Burlington Resources?

19 A. Yes, I believe it's been an affiliate of El Paso
20 Natural Gas.

21 Q. All right. Let's look at page 3, paragraph 4b.
22 If you would look at that particular provision, what is its
23 operation?

24 A. Well, it provides for a minimum of four Mesaverde
25 wells during the first twelve months, but if you complete

1 wells above or below the Mesaverde they will count as one
2 full well for that twelve-month period.

3 Q. All right. Now, let's look at paragraph 4b. If
4 the wells are not drilled to the Mesaverde or formations
5 above or below, what happens?

6 A. Well, they come back to San Juan.

7 Q. I see.

8 Q. Now, let's refer to page 5, paragraph 4f there.
9 Again, what is the operation of that provision, "In the
10 event..."?

11 A. It says if San Juan fails to drill any of the
12 wells required by the agreement, then they're not excused,
13 there's -- under other provisions, that San Juan will
14 reassign or relinquish to Brookhaven.

15 Q. All right. To your knowledge, has San Juan or
16 any of its successors ever reassigned the operating rights
17 to Total or its predecessors?

18 A. Not to my knowledge.

19 Q. All right. Let's look at page 7 now, paragraph
20 5d. Is that the so-called carried interest provision?

21 A. Yes, it is.

22 Q. And how does that work, generally?

23 A. Well, the agreement provides that San Juan will
24 provide the rig and the equipment and the material and the
25 labor to drill these wells.

1 Q. All right.

2 A. And then it defines also the net working
3 interest, and 5d says that out of the net working interest
4 that -- the sale of the proceeds, that San Juan would
5 recoup those costs out of one-half of Brookhaven's net
6 working interest.

7 Q. And that's the provision that you now understand
8 Burlington to find objectionable; is that correct?

9 A. Yes.

10 Q. Turn the page now to page 8, paragraph 5d2, that
11 same carried interest provision. That applies to wells
12 drilled at greater or lesser depths than this Mesaverde; is
13 that correct?

14 A. Yes, it does.

15 Q. In your review of GLA-46, do you see any depth
16 limitation whatsoever?

17 A. There is no depth limitation expressed or set
18 forth in this agreement.

19 Q. All right. Let's refer now to Exhibit 3, BLM
20 decision.

21 A. All right, sir.

22 Q. Would you identify that for the record, please,
23 sir?

24 A. That is a letter to Brookhaven Oil Company and El
25 Paso Natural Gas, and it's entitled "Supplement to

1 Operating Agreement of November 27, 1951 Approved". And
2 the final paragraph, "The supplement is hereby accepted and
3 approved..." is the crux of it, and "...shall continue in
4 full force and effect."

5 Q. All right. If you look at the middle paragraph
6 there, the last sentence of that paragraph, why don't you
7 just read that? It starts, "Brookhaven acknowledges..."

8 A. Okay. The last sentence of the second paragraph?

9 Q. Yes -- I'm sorry, the third paragraph.

10 A. "The purpose of this..."

11 Q. I'm sorry, I've misdirected you.

12 A. Okay. "Brookhaven acknowledges El Paso's
13 operating rights as provided by said agreement in and to
14 the above described land and designates El Paso as operator
15 thereof, and El Paso assumes the obligations prescribed by
16 the operating agreement as to the above land."

17 Q. Now, in Exhibit 3, recognition of the operation
18 of GLA-46 by BLM in essence, correct?

19 A. That's correct.

20 Q. Do you see any reference to a depth limitation in
21 there?

22 A. There is no depth limitation mentioned.

23 Q. And it's further evidence of El Paso's, now
24 Burlington's, ownership of operating rights, all depths,
25 correct?

1 A. That's correct.

2 Q. Was Exhibit 3 contained in Total's lease files
3 for the GLA-46?

4 A. Yes, it is.

5 Q. Mr. Inman, in your capacity as attorney for
6 Total, from your review of the GLA-46 documents in the
7 company's files, based on your experience with this
8 particular agreement, would you explain how Burlington,
9 Total and their predecessors have treated the GLA-46 over
10 the years when the operator proposed a well in any
11 formation, above or below the Mesaverde?

12 A. Well, that's true, like Mr. Strickler testified,
13 for a long period of time those matters were handled by
14 supplements or amendments to the operating agreement. I do
15 not believe in the ten years that Total Minatome has been
16 working under this agreement that there have been any
17 supplements or amendments.

18 Normal practice would be to receive from Meridian
19 or whoever an AFE for a proposed drilling operation, and we
20 would, I guess, agree to the cost, and we would write back
21 to Meridian and say, Yes, we would like to participate on
22 this cost basis, pursuant to this 1951 agreement.

23 Q. All right, let's look at Exhibit 4, if you have
24 that before you there. It's the September 27, 1962, letter
25 from El Paso to Brookhaven. Do you have that in front of

1 you?

2 A. Yes, sir.

3 Q. Does that letter come from Total's land files
4 concerning the GLA-46?

5 A. It did.

6 Q. And why don't you explain this document? What's
7 this all about?

8 A. Mr. Thomas B. Scott, I guess, was Brookhaven Oil
9 Company, and he references the November 26, 1951,
10 agreement. And it's addressed to him from El Paso Natural
11 Gas Company.

12

13 "El Paso Natural Gas...would like to schedule the
14 drilling of a Dakota in the east half of Section 26, T
15 31 North, Range 11 West, San Juan County, New Mexico.
16 However, before we can proceed with any Dakota
17 development on acreage subject to the captioned
18 agreement, we will have to reach an agreement on the
19 allocation of costs as required by Section 5-d (2) of
20 Operating Agreement...1951."

21

22 Q. So when Total and its predecessors received a
23 solicitation letter like this from Burlington or its
24 predecessors, how would it respond?

25 A. Well, it would respond in that fashion. It would

1 advise them that they were going to drill a well under that
2 agreement.

3 Q. All right.

4 A. They were going to participate in a well under
5 that agreement.

6 Q. They would negotiate the cost of the well?

7 A. Yes, sir.

8 Q. And that's about it?

9 A. That's about it.

10 Q. Let's look at Exhibit 5, please, sir, if you'd
11 identify that.

12 A. That's the June 14, 1991, letter from Jean-Pierre
13 Donnet, President and Chief Executive Officer of Total
14 Minatome Corporation, to Meridian Oil, Farmington:
15 "Gentlemen: Please be advised that TOTAL Minatome
16 Corporation elects to participate in the drilling of the
17 above captioned wells under the terms of the..." 1951
18 agreement between Brookhaven and San Juan.

19 That was the Scott 1R and the Scott 5R wells and
20 the Atlantic Com "A" Number 7R, Brookhaven Com "B" Number
21 3R, San Juan County, New Mexico.

22 Q. So Exhibit 5, was it contained within Total's
23 land files pertaining to --

24 A. Yes, it was.

25 Q. -- GLA-46?

1 Now, so at least through June, 1991, anyway,
2 course of performance, course of dealing --

3 A. Yes.

4 Q. -- between the parties for commitment of Total's
5 interest in the GLA-46 are really quite simple?

6 A. I think it is.

7 Can I ask you a question, Mr. Hall? Did you ask
8 me early on if I thought this agreement was ambiguous or
9 unambiguous?

10 Q. I asked you if you agreed with Mr. Kellahin's
11 statement. Mr. Kellahin stated that the 1951 agreement was
12 unambiguous.

13 A. Yes, I agree that it's unambiguous.

14 Q. All right.

15 A. I misunderstood you. I thought you said
16 ambiguous.

17 Q. Thank you for clarifying.

18 A. I apologize.

19 Q. Now, as a course of performance we've established
20 between Total and Burlington, their predecessors, with
21 regards to participation under GLA-46, has it been carried
22 through to Total's agreement to participate in Scott and
23 Marcotte wells here?

24 A. Yes.

25 Q. And what is the present position interpretation

1 of Total with respect to its voluntary commitment to those
2 two wells? In other words, do you believe that your
3 interests are committed?

4 A. Yes, we believe that we have agreed to
5 participate in those two wells.

6 MR. HALL: That concludes my direct of this
7 witness.

8 I would move the admission of Exhibits 3, 4 and
9 5.

10 EXAMINER CATANACH: Exhibits 3, 4 and 5 will be
11 admitted as evidence.

12 Mr. Kellahin, do you have any questions?

13 MR. KELLAHIN: I'm going to save my questions for
14 the District Court litigation, Mr. Examiner.

15 MR. CARROLL: I have no questions.

16 EXAMINER CATANACH: I have no questions of the
17 witness. He may be excused.

18 DEBORAH GILCHRIST,
19 the witness herein, after having been first duly sworn upon
20 her oath, was examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. HALL:

23 Q. For the record state your name, please.

24 A. My name is Deborah Gilchrist.

25 Q. Ms. Gilchrist, where do you live, by whom are you

1 employed and in what capacity?

2 A. I live in Houston, Texas. I'm employed by Total
3 Minatome Corporation. I hold two positions. I'm manager
4 of land administration, and I'm also the New Mexico-west
5 Texas landman.

6 Q. All right. Have you previously testified before
7 the New Mexico Oil Conservation Division and had your
8 credentials accepted as a matter of record?

9 A. No, I have not.

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

12 A. Okay. I have some junior college experience and
13 numerous oil and gas seminars. I have 22 years land, land
14 administration, acquisition, divestment experience at
15 various oil companies.

16 Q. All right. Have you Texas Railroad Commission
17 previously?

18 A. No, I have at the North Dakota.

19 MR. HALL: North Dakota, that's correct.

20 Mr. Examiner, we would tender Ms. Gilchrist as an
21 expert petroleum landman.

22 EXAMINER CATANACH: Any objection?

23 MR. KELLAHIN: No objection.

24 EXAMINER CATANACH: Ms. Gilchrist is so
25 qualified.

1 Q. (By Mr. Hall) Ms. Gilchrist, you're familiar
2 with Burlington's proposed wells in this case and their
3 Applications, correct?

4 A. Yes, I am.

5 Q. And you're also familiar with Total's interest in
6 the land, subject to the two well-pooling Applications?

7 A. Yes, I am.

8 Q. Have you been responsible for handling the
9 contacts from Burlington soliciting Total's voluntary
10 participation for these two wells?

11 A. Yes, I have.

12 Q. And who have you communicated with, primarily?

13 A. James Strickler.

14 Q. All right. Ms. Gilchrist, has Total agreed to
15 commit its interest in the subject lands to the Scott and
16 Marcotte wells?

17 A. Yes.

18 Q. If you would, please, let's look at Exhibits 6
19 and 7. Would you identify those for the record, please?

20 A. Yes, this is my letter to Burlington electing to
21 participate in the well for -- subject to the terms of the
22 1951 farmout and operating agreement.

23 Q. All right, let's identify both of those. Exhibit
24 6 is your commitment letter for the Marcotte Number 2?

25 A. Marcotte, dated May 23rd, and the Scott 24, dated

1 May 30th.

2 Q. All right. And attached to those, to each of
3 those, are what?

4 A. This is their participation letter that they send
5 with their AFEs. And as in the case of these two wells,
6 like we have in the past with all the other wells, we
7 strike out language to pay its proportionate, we do not
8 execute the AFE, and we agree to participate under the
9 terms of the 1951 agreement.

10 Q. And that's reflected on your execution page, page
11 2 of the attached --

12 A. Yes, page 2 of the letters.

13 Q. -- letters?

14 And based on your understanding and your review
15 of GLA-46 files and your past experience dealing with the
16 agreement, is this typical of the way that Total has
17 committed to drill wells?

18 A. Yes.

19 Q. And that's inclusive of wells above and below the
20 Mesaverde formation?

21 A. Yes.

22 Q. If you would, please, Ms. Gilchrist, would you
23 provide us with an overview of the efforts of Burlington to
24 obtain Total's voluntary joinder to the two wells?

25 A. Yes, in July, 1996, we received an unsolicited

1 offer of ten dollars an acre on our undeveloped acreage
2 below the producing formations. I did not respond to that
3 offer. It was extremely low, and it's the practice that we
4 don't sell undeveloped acreage.

5 John Zendt called me, and we discussed a little
6 bit that we weren't interested in the offer, and that was
7 the last I heard of anything until I received a proposal in
8 February of 1997 from Mr. Strickler which set out a farmout
9 proposal, sell our interest, farmout or execute a new
10 operating agreement, Model 1989-610 form.

11 From there I called Mr. Strickler. We
12 discussed -- numerous times, we've had many, many
13 conversations.

14 At that particular time I told him we felt like
15 the acreage was subject to the 1951 agreement, the farmout
16 terms were unacceptable, the -- We do not farm out blanket
17 2200 acres. We would -- that he needed to revise his
18 proposals to just cover the sections that he was proposing
19 the well in.

20 After that, then, we did have some additional
21 conversation. He called and asked if we would -- that --
22 informed me -- we got notice of the 640 spacing, and Mr.
23 Strickler and I discussed whether Total Minatome would
24 support the 640 spacing.

25 I contacted my geologist, and the fact that we

1 didn't have enough geology to support or oppose -- We did
2 nothing in that case.

3 The geologist on the February proposal requested
4 me to try and obtain for Mr. Strickler, as is customary
5 with any exploratory proposed well, to get some seismic
6 geology, anything that we could.

7 After many conversations during the month of
8 March, then we did receive a 4-1 proposal which did allow
9 Total Minatome to review the geology, only if we amended
10 the GLA-46 as to all depths, which was unacceptable at that
11 time.

12 Q. Let me ask you about that particular matter.
13 I'll provide you with what's been marked as Exhibit 9.

14 A. Right.

15 Q. Would you identify that for the record, please?

16 A. Exhibit 9 is the April 1st proposal whereby Total
17 Minatome would be allowed to see the 2-D and 3-D seismic by
18 amending the November 27, 1951, operating agreement and
19 that they would set out a mutually agreeable time to show
20 us the Arch Rock project.

21 Q. So Burlington did acknowledge the applicability
22 of GLA-46 to the deep rights; is that correct?

23 A. Yes. I mean, that's -- That's what this was
24 saying to us.

25 The second page also talks about Total agreeing

1 to amend the operating agreement by deleting paragraphs 5
2 through 14 on the accounting procedure and the August 8th
3 amendment, gas balancing agreement, and replacing it with
4 the new operating agreement with the 400-percent nonconsent
5 penalty, \$25,000 limited expenditure, 1984 COPAS,
6 preferential right stricken, gas balancing agreement, and
7 effective date April 1.

8 In my communications with Mr. Strickler, I told
9 him that we would not -- this was not acceptable, we would
10 not be amending that agreement --

11 Q. What did you find --

12 A. -- and that I understood his position.

13 Q. I understand. What did you find objectionable to
14 their proposal, of all those terms you discussed?

15 A. Primarily that it covered all of our acreage in
16 that particular area, being 2200 acres, and the other was
17 the 400-percent nonconsent penalty. We don't see consent
18 penalties that high anywhere except offshore.

19 Q. All right. Has Total participated in some deep
20 wildcat wells elsewhere, where you've been asked to
21 participate?

22 A. Yes, where just -- We operate and are partners in
23 deep gas exploratory high-risk wells in south Louisiana,
24 and they're nonconsent provisions from between 300, 350.

25 Q. I see. So as far as you're aware of, 400 percent

1 is not industry custom and practice in the San Juan Basin?

2 A. No, offshore only, is the only place we've seen
3 that. And we do own properties throughout many
4 geographical areas.

5 After the 4-1 letter and other conversations I
6 had with Mr. Strickler whereby he informed me that if I
7 didn't participate under a new operating agreement or farm
8 out, that we were just holding out because we were
9 selling -- we were negotiating with Burlington to sell all
10 of our New Mexico properties.

11 That came as a surprise to me. I'm on the
12 divestment team, and I was not aware of any negotiations.

13 I checked with my vice president of
14 acquisitions/divestment, and he informed me that we were in
15 no negotiations with Burlington to sell out our San Juan
16 Basin properties.

17 Q. So that was not true. You're not selling your
18 New Mexico interests?

19 A. No, no.

20 Q. All right.

21 A. Another conversation I had with Mr. Strickler, he
22 indicated to me that we should participate because we had
23 deep pockets.

24 And another conversation I had with Mr.
25 Strickler, he indicated to me that we should participate or

1 this would hurt future deals that Burlington and Total
2 Minatome may have in the Gulf of Mexico.

3 Q. Really? Let's look at Exhibit Number 8. Do you
4 have that in front of you there? It's your May 22nd letter
5 from Burlington.

6 A. Right here. Yes, I have it.

7 Q. Would you explain that? What was the thrust of
8 that letter?

9 A. This is where I told him verbally that our
10 position was, we were going to be participating under the
11 terms of the GLA-46.

12 And in his response he sent this letter
13 requesting us to either participate under their proposed
14 JOA submitted 4-1 or to farm out our interest in the Arch
15 Rock prospect, which is, in our case, 2200 acres, set out
16 in Exhibit A, and then goes further to talk about
17 historically how the agreement had been amended 30 -- and
18 it's actually amended and supplemented -- 30-plus times.

19 Q. Let me ask you, did you understand as a result of
20 the May 22nd letter from Mr. Strickler that it was
21 Burlington's position now that the GLA-46 was inapplicable
22 to the deep rights at all?

23 A. That is correct. Prior to that our conversation
24 had been that it was an old agreement, it was difficult to
25 operate under, things of that nature.

1 I did tell him that I could not guarantee him,
2 but I would try to have my management amend the GLA-46 as
3 to the gas-balancing accounting procedures, the consent-to-
4 assign provision, insurance, things of -- limited
5 expenditures, things of that nature that we could possibly
6 get more current and up to date.

7 I made no guarantees. I did, in fact, send a
8 memo to every manager responsible for those areas,
9 requesting that they review the proposal from Burlington,
10 and could we possibly amend the GLA-46 as to the deep Penn
11 only, for these particular issues in the operating
12 agreement.

13 Q. All right. By the way, let me ask you about this
14 consent-to-assign provision. What is that?

15 A. There is a consent-to-assign provision in the
16 GLA-46, and Burlington -- numerous times Mr. Strickler's
17 correspondence requested that we amend the consent-to-
18 assign to everyone except Conoco. They wanted to amend
19 that.

20 And I told him it wasn't necessary to amend the
21 provision, that we never unreasonably withhold consent-to-
22 assign to anybody for -- that I've ever been aware of.

23 Q. Refer you back to Exhibit 8, the May 22nd letter.

24 A. Yes.

25 Q. Look at the fifth paragraph there.

1 A. Yes.

2 Q. The first sentence, there's some comment about
3 you bringing down the project.

4 A. Yes, it says, "Burlington does not agree with
5 your interpretation of the agreement which allows you to be
6 carried or effectively bring down the project on the
7 subject well."

8 Q. What was your understanding of that --

9 A. I asked Mr. Strickler, you know, did he feel like
10 Total Minatome's four percent was going to bring down this
11 well, and he said -- told me that it may not be drilled.
12 And this was in May -- on May 22nd.

13 I told him that I found that very hard to believe
14 since I was aware -- I was in communication with Amoco's
15 landman, and I was aware that he had just entered into a
16 farmout obtaining their 68 percent in this well and that my
17 four percent was not going to stop the drilling of this
18 well.

19 Q. Was it always represented to you that the well
20 would be drilled on a 640-acre basis?

21 A. Originally we calculated -- On the first proposal
22 in February, we calculated our interest on a 160. And it
23 was later when received notice of the 640 spacing that we
24 then went in and did the recalculations based on 640, and,
25 in fact, that was the interest that we were AFE'd on.

1 Q. Right.

2 A. After the May 22nd letter -- And during this time
3 we received AFEs for the Marcotte and the Scott 24, which
4 we did, as per the exhibits we're already discussed about,
5 elect to participate under the terms of the agreement.

6 Then I -- Burlington was attempting -- Mr.
7 Strickler was attempting to communicate with our upper
8 management, the vice president of exploration, vice
9 president of land. Bobby Kennedy with Burlington -- I
10 believe he's a land manager -- had a discussion with Kirby
11 Berry, and -- which precipitated the June 16th letter,
12 which revised the terms, came in with more favorable
13 farmout terms as to the before-payout retained override and
14 the back-in, however still contained the 400 nonconsent on
15 the JOA and things of that nature.

16 Q. Was that done with your knowledge?

17 A. I knew they had a conversation, but I didn't -- I
18 was carbon-copied on the letter, I believe.

19 Q. I see.

20 A. I didn't know that a letter was going to be
21 forthcoming.

22 Now, James and I had discussed several times,
23 You've got to give me more favorable terms, these are
24 unacceptable. And they did try -- We were not going to
25 farm out 2200 acres. And in the June 16th, the acreage was

1 reduced in half to approximately 1200 acres, and the
2 override was increased, and so was the back-in.

3 At that time I prepared a memo to my upper
4 management giving them the previous terms and the new
5 terms, advising them, of course, we could still -- we still
6 take the position we are participating under that 1951
7 agreement, did we want to talk?

8 At the very -- day or two later, I received
9 notice that we were being force-pooled and that Total
10 Minatome was shown as not participating, and at that time
11 we went no further in house with the June 16th proposal.

12 Q. So the pooling application had a killing effect
13 on negotiations?

14 A. Absolutely, absolutely. I called Mr. Strickler
15 because I'd had a conversation with him on the 19th, and he
16 did not tell me he was force-pooling us and showing us as
17 not participating. I called him and let him know that I
18 was not very happy about that and that negotiations at this
19 time were now at a standstill.

20 Q. How many AFEs, well proposals, do you receive a
21 year?

22 A. In San Juan Basin?

23 Q. Yes.

24 A. We generally get between 20, 25 AFEs for all
25 types of workovers, recompletions, facilities, new drills.

1 Q. And what do you usually do with those? Do you
2 consent to those?

3 A. We have never nonconsented any operation in the
4 San Juan Basin since Total Minatome Corporation has owned
5 these properties.

6 Q. And in approximately how many wells does Total
7 have an interest in, in New Mexico?

8 A. We have royalty, override and working interests
9 in approximately 1800 wells in the San Juan Basin.

10 Q. You are familiar with the industry customs and
11 practices in New Mexico and the San Juan Basin?

12 A. Yes.

13 Q. Ms. Gilchrist, based on your experience as a
14 professional landman, do you believe that Burlington has
15 sought Total's voluntary participation in the two wells in
16 a good-faith manner?

17 A. No, I do not.

18 Q. And why not?

19 A. I'm not accustomed to dealing with landmen that
20 do threaten you with Gulf of Mexico, you're trying to get
21 too much for your properties and we're negotiating to buy
22 all your properties in San Juan Basin. You're not a good
23 partner; I was told that several times. I've never had
24 anybody tell me that I should participate strictly because
25 I have deep pockets. Those are just things that don't

1 normally occur.

2 Q. Did you ever have any discussions with Mr.
3 Strickler about why they were rushing to drill the
4 Marcotte, what the hurry was all about?

5 A. He made reference to a drilling window as to some
6 weather conditions. And since we are not an operator in
7 New Mexico, we're nonoperator, I couldn't dispute that at
8 the time. And I figured he knew what he was talking about,
9 since they are one of the major operators in this state.

10 Q. Was it your impression from what Mr. Strickler
11 had told you that the BLM had imposed some sort of time
12 limitation --

13 A. Some type of drilling -- BLM drilling window that
14 had something to do with weather conditions.

15 Q. All right.

16 A. I would like to add that we were informed when
17 the well was spud from Mr. Hall. I called Mr. Strickler
18 and asked for drilling reports. I was denied drilling
19 reports because I was told they were not acknowledging us
20 as participating in the well.

21 Q. Let's look at what's been marked at Total Exhibit
22 11, a Notice of Staking from the BLM well files from the
23 Farmington office. Did you review that?

24 A. Yes, I did.

25 Q. This is, in essence, the version of the APD

1 application Burlington has in with BLM.

2 A. Okay.

3 Q. In that fourth page of that document, attachment,
4 it's called "BLM Conditions of Approval". Do you see that
5 there?

6 A. On the fourth page? Oh, conditions. Okay, here
7 it is.

8 Q. Did you review those conditions?

9 A. Yes, I did.

10 Q. And did you see anywhere in there or anywhere
11 else in this document any sort of time limitation based on
12 weather or any other reason?

13 A. No.

14 Q. These APDs BLM has used are good for a year,
15 aren't they?

16 A. That's what I am told, yes.

17 Q. And extensions are easily had?

18 A. That's what I'm also told.

19 Q. Ms. Gilchrist, the other GLA-46 interest owners
20 have been discussed here the past two days. Are you
21 somewhat familiar with them?

22 A. Yes, we refer to them as the White and Steele
23 group.

24 Q. All right. I think someone earlier called them
25 widows or orphans, something like that. Let me ask you, do

1 you know if these individuals are industry types? Are they
2 operators?

3 A. No, the White and Steele group are primarily
4 elderly individuals, with the exception of the Umbachs have
5 -- and Mr. Steele who is elderly but is an attorney. None
6 of them have any oil and gas experience, and for many years
7 at Lear Petroleum and then from 1986 to 1990 we were their
8 agent acting on their behalf, and so I have spoke with
9 every one of those individuals and know them pretty well.

10 MR. HALL: All right. That concludes my direct
11 of Ms. Gilchrist.

12 We would move the admissions of Exhibits 6, 7, 8,
13 9 and 11, and I'd ask the Examiner to take administrative
14 notice of the BLM's Notice of Staking APD document we've
15 introduced as 11. It's an official document.

16 MR. KELLAHIN: Mr. Catanach, I have not verified
17 the staking document. I will rely on Mr. Hall's assertion
18 that it's an accurate duplication. I have no objection to
19 the introduction of his exhibits.

20 EXAMINER CATANACH: Exhibits 6, 7, 8, 9, 10 and
21 11 and the notice of staking --

22 MR. HALL: That's 11.

23 EXAMINER CATANACH: That's 11?

24 MR. HALL: Yes.

25 EXAMINER CATANACH: -- will be admitted as

1 evidence.

2 Mr. Kellahin?

3 MR. KELLAHIN: I have no questions for this
4 witness Mr. Examiner.

5 MR. HALL: That concludes our case, Mr. Examiner.

6 EXAMINER CATANACH: I've got a couple questions.

7 EXAMINATION

8 BY EXAMINER CATANACH:

9 Q. Ms. Gilchrist, under -- As I understand it, the
10 sequence of events, you elected to participate in the
11 drilling of the wells under the terms of the GLA-46
12 agreement?

13 A. That is correct.

14 Q. Was it afterwards that you entered into further
15 negotiations with Burlington?

16 A. After Bobby Kennedy talked to our vice president,
17 he asked that -- Burlington asked, could they, you know,
18 revise the terms of the farmout proposal? And our vice
19 president said yes, and that's what precipitated the June
20 16th, 1997 --

21 Q. Okay, so you were willing to change some of the
22 terms of the operating agreement?

23 A. Yes, I actually prepared memos, as I testified a
24 while ago, to amend certain portions of it, not as to the
25 carried interest, but without the geology, our senior

1 geologist, Brad Watts, could not make a determination to
2 farm out at that time without seeing any geology, which is
3 customary.

4 But on the 4-1-97 letter, we were offered to see
5 the geology if we amended the GLA-46 agreement as to all
6 depths, and that was unacceptable to my management.

7 Q. Why did you cease negotiations when you got the
8 news of the compulsory pooling application?

9 A. Because in our position, we were participating in
10 the well. That is our position. And we were shown as not
11 participating for this force-pooling hearing.

12 Q. So you chose just to discontinue negotiations?

13 A. On June 23rd. We then contacted Mr. Hall and
14 decided we needed some legal representation for this
15 hearing.

16 Q. You testified something to the effect about a
17 threat that Mr. Strickler -- something about -- I'm sorry,
18 could you go into that?

19 A. The first threat in a conversation was that if we
20 did not farm out, amend the agreement or participate under
21 the new agreement, this would impact the negotiations.
22 Someone at his office had talked to corporate -- I don't
23 know who that would be -- and that this was -- we were just
24 doing this to get more money for a deal we were working on
25 to sell all our San Juan Basin properties to Burlington.

1 As I stated, I'm on the divestment team, and I
2 was unaware of any negotiations. So I asked -- the case
3 may be -- upper management is often in discussions before
4 it gets down to my level. I contacted our vice president
5 of acquisitions/divestment, and he was in no negotiations
6 with Burlington to sell our San Juan Basin.

7 The second threat came when if I did not
8 participate under the new JOA, amend the agreement or farm
9 out, that this was going to impact any dealings we had with
10 Burlington in the future in the Gulf of Mexico.

11 Q. Explain to me, under the terms of the GLA-46, by
12 electing to participate in the well under the terms of that
13 agreement, what do you do at this point? If you were going
14 to participate and Burlington agreed that you were subject
15 to that --

16 A. We would do --

17 Q. -- would you not pay your share of well costs?

18 A. We would do like we have done in all the wells
19 that we have participated in --

20 Q. Which is what?

21 A. -- under the GLA-46.

22 Q. Which is what?

23 A. The well is drilled, and then we receive --

24 Q. Just --

25 A. And we pay no cost.

1 Q. You pay no well costs?

2 A. Down to the well being drilled. After the well
3 is completed and a producer, we receive a Division order
4 for half our revenue, and then -- which calls for being
5 recouped out of one-half of production, and we are then
6 billed for our working interest at the full interest.

7 Upon payout of those drilling costs, we receive
8 another Division order from Burlington, and our net revenue
9 is then increased to the full amount, and then -- and
10 during that time we are paying our cost on completions, and
11 there are facilities and there -- they might even have done
12 a workover and we are paying our cost. It is just the
13 drilling, just the drilling cost.

14 MR. CARROLL: Drilling and completing?

15 THE WITNESS: Not completing.

16 Q. (By Examiner Catanach) So you put up no money,
17 and if the well is completed as a producer, you start
18 realizing --

19 A. We get paid half our revenue, and then they
20 recoup out of one-half of our revenue.

21 Q. So you're not assessed any risk penalty
22 whatsoever?

23 A. That would be correct. And if it's a dry hole,
24 then we had no risk at that time. And that's the way we
25 have participated and our predecessors-in-title have

1 participated in all wells AFE'd.

2 Q. Do you see any agreements like that anymore?

3 A. No. I understand from the landman in Amoco that
4 they're subject to more than one like the GLA-46, that they
5 have some other agreements that are old.

6 EXAMINER CATANACH: I have no further questions
7 of this witness. You may be excused.

8 MR. GALLEGOS: I have no questions.

9 EXAMINER CATANACH: Mr. Hall, does that --

10 MR. HALL: That concludes our case, Mr. Catanach.

11 EXAMINER CATANACH: I believe we have -- Mr.
12 Kellahin, is your last witness here?

13 MR. KELLAHIN: Yes, sir, he is.

14 EXAMINER CATANACH: Okay, do you want to so that
15 at this time?

16 EXAMINER CATANACH: Let's do it.

17 MR. KELLAHIN: If you please. We'll call Mr.
18 Neal Edwards.

19 Mr. Carroll, we'll need to have Mr. Edwards
20 sworn.

21 (Thereupon, the witness was sworn.)

22 MR. KELLAHIN: Before I begin my examination of
23 Mr. Edwards, Mr. Catanach, I have submitted to you
24 Burlington's Exhibit 8. This was copied by me from the OCD
25 well files downstairs. It is a reproduction of the

1 documents on file for the Marcotte well.

2 You'll note the confidentiality stamp.

3 Burlington waives the confidentiality insofar as the
4 information you're about to see on these pages. They
5 maintain a confidentiality of APDs with regards to some of
6 the information contained in the BLM files. I've excluded
7 that from the next exhibit. Exhibit 8 is what's in the OCD
8 files.

9 Exhibit 9 is part of the BLM file. It's the BLM
10 letter of June 5th, 1997. It again is followed by an
11 approved APD, first page, which is identical to the OCD
12 file, and then there's a C-102 attached to that. We're
13 waiving the confidentiality as to those three pages and
14 still maintaining the confidentiality of the rest of the
15 filing made with the BLM.

16 The purpose of this is to demonstrate the staking
17 and the surveying that Mr. Edwards did. He is the
18 professional land surveyor that's attested to the C-102.
19 My purpose is to have a discussion with him about the
20 location of the well.

21 We would move, with your permission, the
22 introduction of Exhibits 8 and 9.

23 MR. GALLEGOS: Can we have a few moments to
24 digest these?

25 EXAMINER CATANACH: Yes.

1 MR. HALL: We'd appreciate that.

2 EXAMINER CATANACH: Yeah, let's take a five-
3 minute break here.

4 (Thereupon, a recess was taken at 10:46 a.m.)

5 (The following proceedings had at 10:51 a.m.)

6 MR. KELLAHIN: We are pending the introduction of
7 my two exhibits.

8 EXAMINER CATANACH: Is there any objection to
9 that, Mr. Gallegos?

10 MR. GALLEGOS: We would ask you withhold ruling
11 until we can determine whether Mr. Edwards can qualify
12 these documents.

13 EXAMINER CATANACH: Let's do that.

14 MR. KELLAHIN: Mr. Examiner, it's not my
15 intention to have Mr. Edwards qualify the documents.
16 They've been submitted to you as public documents on file
17 with the BLM and the OCD. If it's necessary, I'll get a
18 certificate from the BLM and the OCD as to their
19 authenticity, and I've proposed their admission in that
20 fashion.

21 MR. GALLEGOS: We're not -- We don't have any
22 objection to authenticity, but we've got to have some
23 relevancy and materiality established by somebody, so why
24 doesn't the witness testify and -- I'm not going to object
25 to him testifying to contents if he needs to use it in some

1 ways, but that doesn't mean that there's a foundation for
2 admission.

3 MR. KELLAHIN: The relevance, Mr. Examiner, is,
4 this is the APD for the Marcotte Number 2 and their C-102s.

5 MR. GALLEGOS: Well, that appears to be the case
6 with 8. Nine is a letter addressed to Burlington from
7 somebody at BLM. I don't think there's anything yet that
8 -- in the way of foundation for that.

9 MR. CARROLL: Well, we'll defer --

10 MR. GALLEGOS: I don't have any --

11 MR. CARROLL: We'll defer ruling till after the
12 testimony.

13 MR. GALLEGOS: Okay.

14 NEAL EDWARDS,

15 the witness herein, after having been first duly sworn upon
16 his oath, was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. KELLAHIN:

19 Q. Mr. Edwards, sir, would you please state your
20 name and occupation?

21 A. My name is Neal Edwards and I'm a registered land
22 surveyor in the State of New Mexico.

23 Q. Where do you reside, sir?

24 A. I have an office in Farmington, New Mexico, and I
25 live in Durango, Colorado.

1 Q. Do you primarily practice your profession in the
2 San Juan Basin?

3 A. Yes --

4 Q. And is --

5 A. -- just about all my work is in the San Juan
6 Basin.

7 Q. And is a portion of your work devoted to staking
8 wells for Burlington?

9 A. Yes, I staked several wells for Burlington.

10 Q. Were you responsible for staking the Marcotte
11 well in Section 8?

12 A. Yes, I staked the Marcotte Number 2.

13 Q. As part of that service you provide to
14 Burlington, have you over the course of your profession
15 become experienced in the staking and well-location
16 requirements of the Bureau of Land Management?

17 A. Yes, I work real close with the agencies in the
18 San Juan Basin.

19 Q. In addition, for purposes of the Marcotte well,
20 at the time you staked this well, were you familiar with
21 the applicable well setback requirements under the then-
22 existing 160-acre spacing?

23 A. Yeah, we were looking for a 160 spacing when this
24 first come out, and to keep in mind the possibility of a
25 640-acre spacing.

1 Q. At the time you staked this well, you knew of the
2 possibility of 640-acre spacing?

3 A. Yes, just the -- and at that time it was probably
4 a different ruling than it is now.

5 Q. Did you make any judgments or considerations when
6 you staked this well in terms of satisfying what eventually
7 became the side boundary setback for 640 spacing of -- What
8 is it? 1200 feet?

9 A. Yes, it is now. There's a 1200-foot setback in
10 there.

11 Q. All right. As part of your work for Burlington,
12 are you also familiar with the surface of all four quarter
13 sections in Section 8?

14 A. Yes, I am.

15 MR. KELLAHIN: We tender Mr. Edwards as an expert
16 professional land surveyor.

17 MR. HALL: No objection.

18 MR. GALLEGOS: No objection.

19 EXAMINER CATANACH: Mr. Edwards is so qualified.

20 Q. (By Mr. Kellahin) Let's turn your attention to
21 the Marcotte exhibit book, Mr. Edwards. It's exhibit book
22 11,809. And if you turn behind Exhibit Tab Number 2,
23 you're going to come to a colored display. There's a
24 locator map. Let me direct your attention to Section 8 and
25 into the southeast quarter of Section 8. There's a very

1 large red dot that says "Marcotte 2".

2 Apart from the dot, there appears to be two other
3 well symbols within that quarter section; do you see that?

4 A. Yes, I do.

5 Q. Can you identify for us what those symbols are
6 intended to mean in terms of which wells they are?

7 A. Yes, the Marcotte 2, this dot, kind of covers up
8 the Scott 14. We're offsetting that pad. And to the
9 southwest that's the Marcotte -- I believe it's the 1A.
10 There's a --

11 Q. All right, sir. If you'll turn to what has been
12 tendered as Burlington Exhibit 8, if you'll turn to the
13 third page, there's a Form C-102, the surveyor's
14 certification. It's dated February 16th of 1997. Do you
15 see the certification?

16 A. Yes.

17 Q. Does this represent your certification?

18 A. Yes, this is when we staked the location.

19 Q. At the time you staked this location, within the
20 southeast quarter of Section 8 was there available to you a
21 standard location that met the pad-size requirements for a
22 well like the Marcotte 2 and which would comply both with
23 the then-existing 160-acre spacing setback rules and what
24 you had understood would be the possibility of the side
25 boundary setbacks if 640 acres was adopted for this type of

1 well?

2 A. No, there wasn't. We tried to stake it in those
3 windows and -- utilizing the locations and so on that were
4 there, and we finally got down, and this where we ended up.

5 Q. Why did you eventually stake the well, then, 935
6 feet from the east line and 1540 feet from the south line?

7 A. Well, to fit the other windows, that's as close
8 as we could get and keep the location as close as we could
9 to the 640-acre and the 160-acre window, which would have
10 been roughly 1650 to 1850 window we were working in.

11 Q. When you were asked to stake the well in the
12 southeast quarter, were you asked to find a particular
13 unorthodox location?

14 A. No. We were instructed to try to use the
15 facilities there as much as we could to keep down the
16 impact and so on.

17 Q. Let's look at the Marcotte exhibit book, 11,809,
18 and turn behind Exhibit Tab Number 3. There's a
19 topographic map.

20 A. Yes.

21 Q. Are you familiar with this map?

22 A. Yes, I am.

23 Q. Can you attest to whether or not this topographic
24 map is a reasonably accurate depiction of the topography in
25 Section 8?

1 A. Yes, it is.

2 Q. And have you been out on Section 8 and do you
3 know the general character of the construction and
4 topography of all four quarter sections of 8?

5 A. Yes, I do.

6 Q. As recently as last night, did you refresh your
7 recollection and again review the area of Section 8,
8 including all four quarter sections?

9 A. Yes, I did.

10 Q. Let's start with the northwest quarter. Let's
11 assume at this point in time that you're free to stake the
12 well anywhere in Section, and you're looking for a standard
13 location in the northwest quarter. In order --

14 MR. ALEXANDER: Section 8.

15 Q. (By Mr. Kellahin) Section 8 in the northwest
16 quarter. Is there available to you, in your opinion, a
17 standard location that meets the requirements for a well
18 like this?

19 A. No, those houses down there are -- They're spaced
20 roughly about 500 foot apart. They're small, little --
21 what you'd call ranch sites, I guess. And the river runs
22 through the northwest quarter on the west side, and the
23 highway's there, and to stay away from the houses with any
24 reasonable distance at all it's a very residential
25 clustered area.

1 Q. If you look at the southwest quarter of 8, would
2 there have been available to you a suitable well pad for
3 drilling a well of the type that the Marcotte well is
4 within that quarter section?

5 A. No, we have the same case down there. It's very,
6 very residential and put together real close-knit with the
7 residences. And anything back in the southeast corner, to
8 try to get up on top of that ridge, falls outside of that
9 1200-foot setback.

10 Q. Finally, as you look at the northwest quarter of
11 8, would there have been available in the northwest quarter
12 a well location at a standard position that would have been
13 preferable to the location that you found in the southeast
14 of 8?

15 A. No, the northeast quarter in the -- oh, say, the
16 north half of the northeast quarter is a little more open.
17 There's hayfields up in there, but in order to get 1200
18 foot, you set back on that road that runs east and westerly
19 through there, and we'd have to offset it anyway and slide
20 it north to get off that road.

21 But as you come south, you come back into the
22 houses laying on the highway, and even in the back where it
23 says "snow drift fence" there -- you can see that arrow
24 pointed down there -- there's a residence that sets in
25 there also that covers up that corner of the window right

1 there.

2 And a little further east where the Marcotte 1
3 sits, you can see a small circle there. That wash coming
4 down through there at Miller Canyon is -- between it and
5 the pipelines that exist running up that road, I couldn't
6 get a location the size that we built for that.

7 Q. In terms of a preferable quarter section, is
8 there a risk management issue concerning potential sour
9 gas?

10 A. Yes, that's one of the things we look for all
11 along, is the positioning of this possibility of sour gas,
12 the positioning of the rig, and also the positioning of it
13 on the surface with the residential houses down below and
14 everything else. That was discussed with Chuck Smith and
15 myself before I ever went there, to stay out of the
16 residential, because it is very clustered down in the
17 bottom.

18 Q. Does the unorthodox location in the southeast of
19 8 represent the optimum location in order to meet the
20 necessary limitations of all the surface-use components of
21 Section 8?

22 A. Yes, that is the best location we felt we could
23 get and get our permits and stay up, keep from re-routing
24 pipelines and everything else. That is my professional
25 opinion, that that is the best location available for that

1 size of a pad in the southeast of 8.

2 Q. On this particular occasion, Mr. Edwards, did you
3 have occasion to work with any representatives of the
4 Bureau of Land Management in terms of staking and locating
5 the well?

6 A. Well, we did after we got it staked, we had to
7 take the BLM and different -- I worked directly with the
8 archaeologists as we staked it, but the BLM was brought in
9 after we found a suitable spot.

10 Q. Did you obtain the necessary approvals from the
11 Bureau of Land Management with regards to the proposed
12 staking that you had for this well?

13 A. Yes.

14 Q. And was it, to the best of your knowledge,
15 subsequently satisfactory for the BLM and their various
16 levels of approval for well locations?

17 A. Yes, it was approved through the surface agencies
18 that I work with, for surface impact.

19 MR. KELLAHIN: That concludes my examination of
20 Mr. Edwards, Mr. Catanach.

21 We would again move the introduction of Exhibits
22 8 and 9.

23 EXAMINER CATANACH: Any objection at this point,
24 Mr. Gallegos?

25 MR. GALLEGOS: Yeah, if ruling could be withheld,

1 please, Mr. Examiner.

2 EXAMINER CATANACH: Pardon me?

3 MR. GALLEGOS: If ruling could be withheld until
4 cross-examination.

5 EXAMINER CATANACH: Okay.

6 MR. GALLEGOS: May we proceed?

7 EXAMINER CATANACH: Yes, please.

8 MR. GALLEGOS: Thank you.

9 CROSS-EXAMINATION

10 BY MR. GALLEGOS:

11 Q. Mr. Edwards, you say that you frequently stake
12 wells for Burlington Resources. With about what frequency
13 do you have assignments to do that?

14 A. I work with them weekly. Approximately this year
15 I've approximately done 200 locations for them.

16 Q. Who is it at Burlington Resources that you
17 typically receive the request from?

18 A. Charles Smith, Chuck Smith.

19 Q. And what department is he in?

20 A. He's in the drilling/construction, construction
21 for the drilling department.

22 Q. On this well in particular in Section 8, the
23 Marcotte Number 2, who contacted you or requested your work
24 on this well?

25 A. Chuck Smith.

1 Q. Okay. About when -- Can you tell us, with
2 reference to your certification of February 16th, about
3 when were you given the orders to do this particular
4 survey?

5 A. Approximately a couple days before, because as
6 it's marked, I was instructed it was confidential, and they
7 wanted to go out there and look at it and come back with
8 what was out there, and then we went back out to stake it.

9 And it was -- Usually it isn't that quick of a
10 turnover, but this one they wanted to get right on, so we
11 -- and I don't know if it's because of the confidentiality
12 or what, but I was told to keep it quiet, and we looked at
13 it, and I worked with Chuck.

14 Q. Okay. And you were also told that this was a
15 matter to be expedited?

16 A. Yes.

17 Q. Okay. Now, were you instructed that the location
18 would be in the southeast quarter?

19 A. Yes, I was asked to look for a location in the
20 southeast quarter that would meet the possibilities of a
21 160- or a 640-acre spacing, which give us a real small
22 window. And we discussed all that, and I went out and
23 looked.

24 And that's when I come back and told them what
25 all we had, and they told me to give them the best location

1 I could, that would get the closest to meeting those
2 requirements.

3 Q. Okay, what did you understand the requirements
4 would be for a 160?

5 A. 790 to 1190, or the 1450 to 1850 window. It's a
6 160 gas in the San Juan Basin.

7 Q. Okay. And you've staked many wells on standard
8 locations on 160-acre spacing, have you not, sir?

9 A. Yes, I have.

10 Q. Okay. What did you understand the standard
11 location spacing would be on a 640-acre proration unit?

12 A. 1650 from the outer boundaries, and I think it
13 was 130 on the quarter-quarter line or the quarter line,
14 but in order to stay in that 160 I had the 1650 to 1850 --

15 Q. Okay.

16 A. -- window.

17 Q. Did you -- 1650 -- 1650 feet from the outer
18 boundary is what you understood would be the --

19 A. Yes.

20 Q. -- the requirements on a 640-acre spacing unit?

21 A. Yes.

22 Q. And where did you get that information?

23 A. Out of a pamphlet I have on -- that showed 640-
24 acre gas spacing for the San Juan Basin.

25 Q. Okay. So the location you eventually staked

1 turned out to be some 700 feet or so off of what you
2 considered to be the spacing, if it were a 640-acre
3 proration unit?

4 A. Yes.

5 Q. Okay. Did you say that you had also some
6 instruction -- I thought you said to use facilities that
7 existed? Was that your testimony?

8 A. Yes, when we got down and looked at the windows
9 we could work in and what we had and we also tried to stay
10 as much as we could with the facilities that were in there
11 because of the size of the pad, one reason being to keep
12 these under five acres in size.

13 Q. Okay, and why was there any constraint on keeping
14 the pad under five acres in size?

15 A. Well, anything over five acres, we need a storm
16 water discharge permit. That's a monthly concern. We have
17 to do a monthly check of the drainages and there's several
18 compliances with it, and if we can keep them under that in
19 size, we do.

20 And to my knowledge, that's probably why we
21 stayed closer to the pads as far as, if I had a choice of
22 staying by a pad or not, instead of using -- in a
23 disturbance.

24 Q. Well, if you go over the five-acre pad size, then
25 there's a rather lengthy process, is there not, to obtain

1 the -- the drilling each permit?

2 A. I just did the field work for it, but I don't
3 know timewise how much it takes. It's just that it's a
4 continuing project; I know that, that part of it, that it's
5 a monthly report that's required from then on. Even on
6 some of the locations we've abandoned we have to keep doing
7 that monthly report until whichever point it's satisfied
8 that they will drop it --

9 Q. All right.

10 A. -- that it's back to complete rehabilitation.

11 Q. How did you know in February, 1997, that you
12 should take into account the spacing for the location of
13 this well, based on 640-acre spacing?

14 A. I was told by Mr. Smith to try to honor those two
15 windows. I didn't, at the time, know which way it was
16 going, and that was my target.

17 Q. Okay. Did he -- What else did he inform you
18 about the 640-acre spacing requirements in February of
19 1997?

20 A. Well, there wasn't much discussion on the 640 as
21 far as the requirements of it, other than I discussed it
22 with them that I had that 1650-foot setback, and that's
23 where I would be, in that window.

24 Q. Okay. Now, you are not testifying, are you, Mr.
25 Edwards, that the topography prohibits this well location

1 being moved, let's say, 300, 400, 500 feet to the west of
2 the location that you've staked?

3 A. Yes, where it exists now, it's approximately a
4 hundred and -- Well, the edge of it is right on the edge of
5 that canyon. There's a canyon runs down through there, and
6 if I try to move it over to the west I'll fall off into
7 that canyon, and I'd have to have 70 foot of fill down
8 there. I would never get a -- get it through the BLM
9 requirements to put it there.

10 Q. Well, what about going on to the base after you
11 go down over the ledge?

12 A. Well, I tried --

13 Q. The topography levels out again to the west, does
14 it not, sir?

15 A. Well, not till it gets in the next half of the
16 section. But down in the southwest there, you'll notice
17 that there's a spot down there. We tried to put it down
18 there where that pipeline goes through. And we couldn't
19 get enough room to fit it in there and satisfy all our
20 requirements to put it there.

21 We did -- that's -- We did try to put it down in
22 the southwest of where it exists, and when we got done with
23 all our possibilities I found a spot up there by the Scott
24 14 and I took it back to them with what I had, and they
25 approved it, and I staked it at that time.

1 Q. Let's look at the map you were directed to
2 earlier by Mr. Kellahin on the Marcotte Number 2 where you
3 have the big red dot.

4 A. Okay.

5 Q. This map, it's the first one.

6 A. Yes.

7 Q. Okay. To the southwest of your Marcotte Number 2
8 location is the indication of an existing well, and I think
9 you said that was the Marcotte Number 1?

10 A. The 1A, I believe it is.

11 Q. 1A?

12 A. Yes.

13 Q. Okay. Can you tell the Examiner what the
14 distances from the section boundary are for the location of
15 that well?

16 A. No, I didn't bring that with me. Just from
17 looking at it there, with -- trying to scope with my eye,
18 I'd say it's probably 990 from the south line and 1500 or
19 so from the east.

20 Q. Okay. Obviously, the topography permits a well
21 location at that site; isn't that true?

22 A. Well, I even looked there in -- right out --

23 Q. Well, would you answer the question first?
24 Obviously there's a well there, so there's topography.

25 A. There's a well there, not the size of a well I

1 was trying to put in at this time, though. This location I
2 staked for the Marcotte 2 is approximately two-thirds
3 bigger than our other locations we staked. This location
4 was staked out 400 foot long by 340 foot wide, and our
5 other locations, even on our Dakotas, which are our bigger
6 ones, we stake them about 320 by -- Well, it was 300 by
7 240.

8 Q. 300 by 240 is what you stake for a Dakota well?

9 A. Yeah, that's what we use for a Dakota-Mesaverde
10 dual completion, and that's been the biggest ones we've
11 been staking --

12 Q. And this is --

13 A. -- other than this. And this particular location
14 was staked 400 by 340.

15 Q. 400 by 340?

16 A. Yes, that was the minimum size.

17 Q. So areal volume, then, is what? An acre and a
18 half?

19 A. No, with amendment they allow us -- the BLM
20 allows us of 50-foot construction zone we have to figure in
21 our acreage, and it comes out -- it's over four and a half
22 acres. Because you're now 500 by 440. I don't have a
23 calculator on me, but it's a large location.

24 Q. Okay. Let me ask you to give us some information
25 about Exhibit A, if you're able to. That's the -- The

1 first page is the BLM Application for Permit to Drill.

2 Have you seen this document before?

3 A. Yes, I have.

4 Q. All right. Do you notice that there are some
5 handwritten entries on it? I think the first one is up
6 under Number 2, and then at 10 and other places?

7 A. Yes.

8 Q. Okay. Are you familiar with the handwritten
9 entries?

10 A. No, I'm not. I don't know where they came from.

11 Q. When you saw the document, was it as typed
12 without the handwriting? The scratching out of the 160
13 acres, for example?

14 A. When I saw the document I didn't examine the
15 front page, because when I go to build these locations I
16 look back in at the BLM stipulations, and I really pretty
17 much look at the front pages as look at the name. I really
18 don't know if the one that came out for final approval, if
19 this is a copy of it or if this is from the office. I
20 don't know.

21 Q. All right. The third page of the document bears
22 your signature, your certification and signature as of
23 February 16, 1997, and you recognize that document --

24 A. Yes.

25 Q. -- do you not?

1 A. Yes, I do.

2 Q. All right. Do you notice again there's some
3 handwritten entries? The first one up by the word
4 "wildcat", was that on there when you signed this document
5 February 16, 1997?

6 A. No, sir.

7 Q. Do you understand particularly what it means? I
8 read "Leadville (G)". Does that have any significance to
9 you?

10 A. Well, not in filling out the plats. But in my
11 staking, if it's a certain zone, I like to know that so
12 that I know which requirement I'm working in.

13 But as far as the plat, when I turn in the plats,
14 starting with the property name there, I start filling it
15 in there and coming down and filling in the surface
16 location information and then the certificate at the
17 bottom, and then where you see in Number 17, where it says
18 "operator certification", Meridian -- or, excuse me,
19 Burlington -- Burlington does that, and they fill in the
20 top as far as the pool and the API number and so on. I
21 just certify to the survey information on the plat.

22 Q. But you also are responsible for item number 10,
23 the -- I don't know if that's a 10 there or not, but anyway
24 the surface location line?

25 A. Yes.

1 Q. Okay. And the dedicated acreage, line item
2 number -- I think that's a 12 -- are you responsible for
3 that?

4 A. No, I did not do the dedication acreage.

5 Q. On 160-acre spacing, this location would be a
6 standard location, correct?

7 A. Yes, it would.

8 Q. Of the -- what you say was -- turns out to be
9 about a 4.5-acre pad, how much of that overlaps or, in
10 effect, uses the existing pad for the Scott 14?

11 A. Now out of that pad we've probably got 100 foot
12 of that pad on the north end, is exact -- was disturbed
13 earlier with the Scott 14 location. It's part of the same
14 pad; we've extended it.

15 Q. In other words, just 100 foot is the utilization
16 of the existing pad?

17 A. Yes, the back end of our new pad sits right off
18 the wellhead of the Scott 14, and that old pad is probably
19 100 foot out there, and then we go on into our new
20 disturbance.

21 MR. GALLEGOS: Thank you, Mr. Edwards, that's all
22 the questions that I have.

23 EXAMINER CATANACH: Mr. Gallegos, do you want to
24 address -- Are you going to object to the admission of
25 these --

1 MR. GALLEGOS: I'm going to object to the
2 admission of Exhibit Number 9. I have no objection to
3 Number 8.

4 MR. CARROLL: Mr. Kellahin, this is from the BLM
5 file?

6 MR. KELLAHIN: Let me see if I can avoid the
7 objection. I have no trouble deleting the first cover
8 sheet if that disturbs Mr. Gallegos.

9 What I'm looking to do is to have you compare the
10 two C-102s. Both of them are surveyed by Mr. Edwards.

11 One is the original filing under 160 acres. It
12 bears a date of March 26th. That is the one in the OCD
13 files.

14 The one that I have here in Exhibit Number 9
15 shows a date of June 30th, 1997, which is after the spacing
16 has changed to 640. The surveyed location stays the same,
17 obviously, and the dedication has been requested to be
18 changed.

19 The information noted on Exhibit 8, either in
20 typing or by hand, accurately reproduces what's in your
21 file, and I simply duplicated that and brought it upstairs.

22 MR. GALLEGOS: What -- excuse me --

23 MR. KELLAHIN: Exhibit 8.

24 MR. GALLEGOS: How does Exhibit 9 show that the
25 dedication is to be changed?

1 MR. KELLAHIN: Certified on June 30th of 1997,
2 you can see the dedication in the blank number 11 now says
3 640 acres.

4 In the OCD files the change was made on that
5 C-102 in handwriting. It was originally 160 acres, and
6 someone -- I don't know who did this -- has changed this to
7 639. It may have been done by Division staff, it may have
8 been done by Burlington personnel. All I'm showing you is,
9 those two documents are in your file.

10 MR. GALLEGOS: And you acknowledge, Mr. Kellahin,
11 that in both, even June 30th, it still depicts on the plat
12 a 160-acre spacing in the southeast quarter

13 MR. KELLAHIN: What I'm showing on those plats is
14 that Mr. Edwards' staking is the same on each plat.

15 MR. GALLEGOS: Well, for that purpose, if it does
16 show that -- I'm not sure what it does show, but for that
17 purpose we'll have no objection. And that -- So the first
18 page --

19 MR. KELLAHIN: I'll just take the first page off.

20 MR. GALLEGOS: Well, it can remain as --

21 MR. KELLAHIN: All right.

22 MR. GALLEGOS: -- part of it.

23 MR. KELLAHIN: We'll just --

24 MR. GALLEGOS: Just be admitted for the purposes
25 of this second and third page.

1 EXAMINER CATANACH: Okay, Exhibits 8 and 9 will
2 be admitted as evidence.

3 Mr. Hall, did you have any questions of this
4 witness?

5 CROSS-EXAMINATION

6 BY MR. HALL:

7 Q. Briefly, Mr. Edwards. I understood you to say
8 that -- Was it you or your firm that submitted the notice
9 of staking, paperwork, to BLM?

10 A. No, no.

11 Q. You didn't have any responsibility for permitting
12 with BLM?

13 A. No, the permitting with the BLM, I was
14 responsible for the on-site inspection with the BLM surface
15 agency, to take them to the field and to show them what I
16 did, why I did it, and to get the field approval.

17 But the permission to stake and so on was done
18 and given to me before I -- When I staked the well, they --

19 Q. I see.

20 A. -- they let me know that they have it, and they
21 filed the paper.

22 Q. So would you be aware of any drilling time frame
23 limitations that the BLM may have imposed on this
24 particular well?

25 A. No, other than -- Sometimes by area, there are

1 certain areas that I'm aware of where we have winter
2 stipulations and so on.

3 Q. But you know of none for this well?

4 A. I wasn't aware of one being right here at the
5 time. There probably is, I don't know.

6 MR. HALL: Okay. Thank you, Mr. Edwards.

7 MR. CARROLL: I have one question.

8 EXAMINATION

9 BY MR. CARROLL:

10 Q. Mr. Edwards what's this residential area named?
11 It's not in a town, is it? Section 8?

12 A. No. No, it's just -- it's called the Cedar Hill
13 community, mostly, is what they refer to it as. It's
14 right --

15 Q. But it's not Cedar Hills town?

16 A. The town of Cedar Hill, no.

17 Q. That's two and a half miles north?

18 A. Well, at the town of Cedar Hill anymore there's a
19 store. Where the old store used to be there's a residence
20 there, there's a fire station there, and that's about it.
21 And the rest is just the same as the rest of the community,
22 just residential areas. There is no town of Cedar Hill
23 anymore.

24 Q. So you would call this residential development in
25 here the Cedar Hills community?

1 A. Yes.

2 MR. CARROLL: That's all I have.

3 EXAMINATION

4 BY EXAMINER CATANACH:

5 Q. Mr. Edwards, have you satisfied yourself that the
6 southeast quarter of Section 8 -- as far as topographic,
7 various surface obstructions, that the southeast quarter of
8 Section 8 is the best quarter section in which to drill
9 this well?

10 A. Yes, especially with the potential of sour gas,
11 what I worked on, it is very clustered in the bottom. It's
12 flatter, but it's just full of residences.

13 Q. This kind of keeps it away from the residences,
14 keeps them out of danger?

15 A. (No response)

16 Q. And within the southeast quarter, you satisfied
17 yourself that this is the best location -- when you're
18 considering the other surface obstructions and various
19 other things, this is the best location in which to drill
20 the well?

21 A. Yes.

22 EXAMINER CATANACH: I have no further questions
23 of this witness.

24 MR. GALLEGOS: May I inquire just one item?

25 EXAMINER CATANACH: Yes.

FURTHER EXAMINATION

BY MR. GALLEGOS:

Q. What gives you to believe that on completion this well is going to emit what I think you referred to as sour gas or H₂S, I guess you're referring to?

A. Oh, just that I was told it was going to be a deep test with the potential of it. I don't -- That's about all I know of it.

And the reason, I guess, they tell me, is because when I situate these locations, if there is a potential of sour gas we work much, much more on wind potential than a location that we don't feel we're going to have it. If it's going to be cheaper or less damage to face it into the wind, we can do that.

Q. Who told you there was a potential of sour gas for this well?

A. Charles Smith.

MR. GALLEGOS: Thank you.

EXAMINER CATANACH: This witness may be excused.

MR. KELLAHIN: That concludes my presentation, Mr. Examiner.

EXAMINER CATANACH: Mr. Kellahin, if I could I'd like to recall James Strickler.

MR. KELLAHIN: Mr. Strickler

I assume, Mr. Catanach, that the discussions now

1 are without the aid of the attorneys and you want to
2 examine the witnesses at this point. Do you expect us to
3 re-examine after you examine? I would hope not.

4 EXAMINER CATANACH: No, I don't think that that's
5 a good idea. I just have a few questions of Mr. Strickler.

6 MR. CARROLL: And I'll remind you, Mr. Strickler,
7 you're still under oath.

8 MR. STRICKLER: Yes, sir.

9 JAMES R.J. STRICKLER (Recalled),
10 the witness herein, having been previously duly sworn upon
11 his oath, was examined and testified as follows:

12 EXAMINATION

13 BY EXAMINER CATANACH:

14 Q. Mr. Strickler, present in the room is a
15 gentleman, I believe by the name of Mr. Harris; is that
16 correct?

17 MR. HARRIS: Yes, sir.

18 Q. (By Examiner Catanach) Do you know, in fact,
19 what Mr. Harris's interest in these units are?

20 A. Mr. Harris is a mineral and royalty owner.

21 Q. Okay, underneath --

22 A. Amoco's -- one of Amoco's leases.

23 Q. In Section --

24 A. In Section 8.

25 Q. Section 8. Is this an interest that Burlington

1 is trying to re-lease at this point?

2 A. No, sir, it's an interest -- He has an ownership
3 under a lease that provides for 320-acre spacing, and so we
4 sent him a letter asking him to consider amending his lease
5 for 640-acre spacing for the deep gas only.

6 He has -- His leases provide for 320-acre spacing
7 for the Mesaverde formation in the west half of 8.

8 Q. So you do have an offer at this point to Mr.
9 Harris to re-lease -- or amend his lease?

10 A. To amend his lease, yes, sir. We sent him an
11 amendment to his lease, amendment to the oil and gas lease,
12 to provide for 640-acre spacing.

13 EXAMINATION

14 BY MR. CARROLL:

15 Q. And his lease is with Amoco?

16 A. Yes, sir.

17 Q. Okay. And in Exhibit 4 to Case 11,809, where is
18 Mr. Harris's interest listed?

19 A. Mr. Harris must represent one of these owners on
20 this list.

21 Q. I guess Exhibit 1 would be a better --

22 EXAMINER CATANACH: Is that, in fact, correct,
23 Mr. Harris?

24 MR. HARRIS: Yes, sir, it's underneath Mary
25 Harris.

1 THE WITNESS: Mary Harris.

2 MR. HARRIS: And the lease is the original
3 lease --

4 THE WITNESS: Mary Maude --

5 MR. HARRIS: -- lease, signed in 1951.

6 THE WITNESS: Mary Maude Harris.

7 MR. CARROLL: And that's the only interest you
8 represent?

9 MR. HARRIS: It encompasses a total 37 acres in
10 Section 8, and there was also an additional 79 acres in
11 Section 8 which Amoco Production Company has not made
12 payment on for over 20 years.

13 MR. CARROLL: That's not our concern, Mr. Harris,
14 regarding a payment of royalties. So you're just on behalf
15 of the Mary Maude Harris interest?

16 MR. HARRIS: Yes, sir, I'm on behalf of the
17 simple fact of wanting to pool, compulsory pooling of her
18 acreage in Section 8 into a 640-acre unit.

19 MR. CARROLL: Yeah, we understand that.

20 MR. HARRIS: We are strictly against that, due to
21 the fact the royalty has not been paid properly on the
22 original 320 acres in that unit.

23 MR. CARROLL: We understand you have a quarrel
24 with them regarding payment of royalty. But nonpayment of
25 royalty won't affect our decision in this case; are you

1 aware of that?

2 MR. HARRIS: Yes, I'm aware of that, that it
3 don't affect -- Are you also telling me, then --

4 MR. CARROLL: And it doesn't affect your right
5 against --

6 MR. HARRIS: Does it affect our acreage going
7 into the 640-acre pooling?

8 MR. CARROLL: It sure will.

9 MR. HARRIS: Yeah.

10 MR. CARROLL: But it won't affect your right to
11 recover royalties in any litigation you may have against
12 your lessee.

13 EXAMINER CATANACH: That litigation is probably
14 with Amoco; is that your --

15 MR. HARRIS: Yeah, from what I understand, that
16 deep-hole minerals were never leased. Therefore, how can
17 they be going down there to get that mineral if they don't
18 hold title to it?

19 EXAMINER CATANACH: Mr. Strickler, do you want to
20 respond to this?

21 THE WITNESS: Mr. Harris has a dispute with
22 Amoco. Amoco has a valid oil and gas lease. Apparently
23 there's been some royalty payment issues affecting the
24 Harris interest. These leases have been held by production
25 since the early 1950s by two Mesaverde wells and two PC

1 wells.

2 I don't really know what else to do, other than
3 state that, and that Amoco will assist Mr. Harris in
4 researching his complaints, as far as royalties.

5 MR. HARRIS: They ain't assisted in the past two
6 years on it yet. They've just ignored me, they've blown me
7 off until this meeting come up. And the man I'm in contact
8 with contacts me on his vacation when he finds out that I
9 am coming here. He pleads with me not to come to the
10 Commission, for the simple fact they know they don't hold
11 title to anything below the Mesaverde formation.

12 Therefore, if you farmed it out from Amoco, you
13 hold title to that neither.

14 THE WITNESS: We disagree.

15 MR. HARRIS: So how can you rule on something
16 like that until it's settled in the district court on who
17 actually does hold title to it?

18 EXAMINER CATANACH: Well --

19 MR. HARRIS: Unleased mineral rights is unleased
20 mineral rights.

21 MR. CARROLL: Well, we have the authority here to
22 pool unleased mineral rights.

23 MR. HARRIS: You have the authority to just about
24 do what you want to do; I understand that.

25 EXAMINER CATANACH: I suspect that a lot of this

1 is going to end up in district court. I don't know what to
2 do at this point but just proceed. And I'm not sure any
3 kind of continuance is going to solve any of these land
4 issues.

5 I believe you had a request, Mr. Harris, to
6 continue the case. I don't think it's going to serve any
7 purpose to continue it.

8 MR. HARRIS: Okay, can I ask a question here? We
9 were sent an amendment to the original lease. Why did they
10 send that amendment to the original lease out?

11 THE WITNESS: Mr. Harris --

12 MR. KELLAHIN: Do you want him to answer?

13 MR. CARROLL: Go ahead, Mr. Strickler.

14 MR. KELLAHIN: Go ahead and answer.

15 THE WITNESS: We -- As a courtesy to the
16 landowners, we wanted to offer an amendment to your leases.
17 We put you on notice that this Marcotte Number 2 well is
18 going to be drilled on 640-acre spacing and that your
19 leases provide for 320-acre spacing, and so it's -- as a
20 courtesy to the landowners, we notified you and offered you
21 an amendment to amend your lease. In the absence of that
22 amendment, the NMOCDC will pool those interests
23 administratively.

24 MR. HARRIS: Well, I was notified of the location
25 and the drilling going on by a man from Conoco who come out

1 to the farm and sit down with us and discussed this issue
2 with us. This was last fall. And he informed us that they
3 wanted a right of way to do a seismograph on our property
4 to find the edge of a pool.

5 We did not consent to that because of the simple
6 fact that Amoco is in breach of the original contract.

7 Well, at that time you told me on the phone after
8 speaking that you guys proceeded to do that anyway, which
9 took place at midnight. You threw our walkways off, a
10 major headgate on a large ditch, irrigation ditch, on the
11 river, where we couldn't get down there to it, and you went
12 through there at night, disrupted everything, and went
13 ahead and did your seismograph.

14 This man from Conoco tells us that, You don't
15 have to worry about no drilling in the valley anyway,
16 because everything's going to be done up on the BLM, but
17 they are going to be drilling in the zone.

18 So from that point on, I get nothing from nobody.
19 And you know what? When it comes right down to it, we own
20 the minerals, not you. We do. You lease them, point
21 blank. We own them. And if it has to go into a court of
22 law, if we have to take everybody, then we can do that,
23 because we do got the paperwork to state what we got there.
24 We do got the lawyers that will do it.

25 So all I'm here for, before you come here, to

1 clear this up with Amoco, okay? So I'm against the
2 compulsory pooling on it, the fact that till things are
3 straightened out you guys are going to agree and do just
4 exactly what your paperwork from Amoco says. That's what
5 you're basing it all on.

6 MR. CARROLL: Mr. Harris, I just have a couple
7 questions.

8 You received notice of this hearing? I take it
9 that's why you're here.

10 MR. HARRIS: Yes, sir.

11 MR. CARROLL: And have you received proposals to
12 purchase your interest or to have it farmed out or -- No,
13 for amendment of the lease?

14 MR. HARRIS: Just for amendment of the lease.
15 And they didn't send all the proper paperwork at the time.
16 They had to reissue it. And when they reissued it, we
17 received that about June 28th, I believe.

18 EXAMINER CATANACH: We'll note your objection,
19 Mr. Harris, and take your comments into consideration --

20 MR. HARRIS: Thank you.

21 EXAMINER CATANACH: -- in writing this order.

22 MR. HARRIS: Appreciate it.

23 FURTHER EXAMINATION

24 BY EXAMINER CATANACH:

25 Q. Mr. Strickler, we had a witness from Total

1 earlier who characterized Meridian's -- or Burlington's
2 negotiation with them as not in good faith. Can you
3 summarize what you believe to be your position was in those
4 negotiations?

5 A. Yes, sir. As Deborah Gilchrist mentioned, we've
6 had many conversations over the phone discussing the GLA-46
7 and their participation in this well. Correspondence began
8 in July, and it got serious in February, April and again in
9 June.

10 Deborah -- very nice lady -- was dealing in -- or
11 she informed me that Total Minatome is a -- is a strong
12 company, that they like wildcat wells, that they like the
13 opportunity to participate in wildcat wells, they've
14 drilled a lot of wells in south Louisiana that are high-
15 risk and very expensive, and that this is intriguing to
16 them. So we had some real positive visits over the phone
17 and -- and very amicable visits.

18 We sent out these letters to get the ball rolling
19 on their participation, farmout or participate or sell.

20 They -- Their geologist was real interested in
21 the play since he's worked it before, and he expressed an
22 interest in reviewing our proprietary information. I told
23 him that we weren't able to. We talked back and forth, and
24 they suggested -- I suggested, Well, if we show you a
25 presentation would you be amenable to pre- -- you know,

1 pre-agree on the terms and conditions? And they said
2 they'd entertain it.

3 We've had -- Deborah also said that the least
4 they would do is farm out their interest to us; they
5 wouldn't hold us up. I took that very sincerely.

6 I asked Deborah what happened when negotiations
7 started to falter. And to Deborah's credit, she proposed,
8 recommended to her management, to work out an acceptable
9 deal with us. And she was shot down by her upper
10 management. Nothing she could do about it. Very
11 disappointing. She tried her best.

12 We have a disagreement on the handling of this
13 agreement, and I apologize to Deborah right here in front
14 of everybody if I was threatening in any way. I didn't
15 think I was, but she obviously felt that way.

16 But that's how these negotiations went, went very
17 positive. And then all of a sudden they turned out not so
18 positive.

19 Q. Well, Mr. Strickler, do you recall making a
20 statement to this lady that the results of this negotiation
21 may affect future negotiations in other areas?

22 A. I may have -- I may have said that this damages
23 our relationship, because I've told my management that
24 Total Minatome is going to support our well, and never was
25 it mentioned, reliance under an old provision that referred

1 to a carry on 18 Mesaverde wells. I mean, that was just
2 quite a surprise. So our management was real surprised.

3 So naturally, that about-face in her good-faith
4 negotiations -- And again, it's not her fault; it's her top
5 management's decision. She reports to higher-ups. Those
6 statements were made to get the point across to her
7 management, please work with us.

8 I think I was very reconciliatory, having a
9 setback like that, because we thought we were really on our
10 way to making an acceptable trade.

11 Q. You don't consider your comments to be
12 threatening or intimidating?

13 A. No, sir, I don't. I really don't. And I -- I'm
14 offended by it, but I'll -- You know, I'm a big boy, I'll
15 take it.

16 EXAMINER CATANACH: I have no further questions
17 of this witness. This witness may be excused.

18 I suspect that concludes your presentation, Mr.
19 Kellahin?

20 MR. KELLAHIN: Yes, sir, I'm done.

21 EXAMINER CATANACH: And we're done with yours?

22 MR. HALL: Yes, sir.

23 EXAMINER CATANACH: What other business do we
24 need to take care of now?

25 MR. KELLAHIN: I would like permission to submit

1 a draft order that summarizes my case for you. I think
2 that will be the best use of my time. We've spent two days
3 doing the case. I'm not sure there's anything I can tell
4 you in closing that you haven't already perceived in the
5 last two days, and I would simply waive closing and give us
6 the opportunity for all counsel to put our thoughts in
7 writing and let you think about what you would like to do.

8 MR. CARROLL: Mr. Kellahin, I asked Mr. Gallegos
9 for a memoranda on the obligation of one -- of a party
10 proposing a well to supply all available seismic/geological
11 information to the other interest owners in that well.
12 Could you also provide me a memorandum?

13 MR. KELLAHIN: Yes, sir, I'll do that.

14 MR. CARROLL: I'd like that, and I guess in two
15 weeks.

16 MR. KELLAHIN: All right, sir.

17 EXAMINER CATANACH: Mr. Hall and Mr. Gallegos,
18 would you also care to submit draft orders in this case?

19 MR. GALLEGOS: Yes, Mr. Examiner, I agree it
20 probably doesn't benefit anybody to go into a lengthy
21 closing argument.

22 I would just like to renew both the motions that
23 we made at the close of the Applicant's case, or the
24 partial close of their case, when we were informed there
25 would be no geological testimony, and renew the motions

1 that were made before the matter was heard, and we'd be
2 happy to submit a proposed form of order.

3 EXAMINER CATANACH: Okay.

4 MR. GALLEGOS: Should that be also in -- What
5 time schedule? Two weeks?

6 EXAMINER CATANACH: No, I suspect -- Well, Mr.
7 Kellahin, do you have a thought on that?

8 MR. KELLAHIN: Yes, sir, I can do it within 10
9 days.

10 EXAMINER CATANACH: Let's say that that needs --
11 that should be in by three weeks.

12 MR. GALLEGOS: Three weeks.

13 EXAMINER CATANACH: From today.

14 And your motions, the motion for continuance and
15 dismissal --

16 MR. GALLEGOS: Dismissal and continuance. And
17 dismissal also during the case on the basis of the failure
18 to prove.

19 EXAMINER CATANACH: I guess we would again rule
20 that -- to deny your motion to continue the case and the
21 motion the dismiss the case. The Division is going to be
22 in a position to determine whether there have been good-
23 faith negotiations. We have the evidence, the testimony to
24 make that determination, I think. If we determine that's
25 not been the case they may, in fact, be dismissed or

1 denied. So with that...

2 MR. HALL: Mr. Catanach, for the record I would
3 concur with Mr. Gallegos's motions, the understanding of
4 your ruling's applicability.

5 Also point out one other flaw I see with the
6 Application, is that based on Mr. Harris's comments the
7 last two days I have a better understanding of his
8 situation. It is not unlike Total Minatome's where
9 apparently there are some existing -- pre-existing land
10 contracts in place that, I understand it, Mr. Kellahin's
11 Application, he's asking the Division to rewrite, to
12 redraft for him.

13 The Application submitted to you is, under
14 Section 70-2-17C, pooling statute. I wonder whether
15 anywhere in there, there is really the authority for the
16 Division to issue such an order, changing the private
17 agreements between parties based on that Application.
18 There may be under 70-2-17E, and I know it's a question.

19 At the very least, notice and advertisement in
20 this case was under Subsection C only, where Applicant
21 comes before you asking that leases with 320-acre pooling
22 provisions, the matter of contract terms be modified by
23 administrative order. That's something else, other than a
24 pooling application.

25 And that is similar to Total's situation. We

1 have pre-existing land agreements that, again, the
 2 Applicant is asking the Division to rewrite. It's far
 3 beyond the province of 17C application.

4 We would move to dismiss on those additional
 5 grounds.

6 MR. KELLAHIN: May I respond, just very briefly?

7 Mr. Hall is re-arguing his Motion to Dismiss he
 8 filed on the 8th, and we've filed our response, and you
 9 have that response, and you have denied his Motion to
 10 Dismiss on the grounds that he just articulated.

11 EXAMINER CATANACH: We will renew our denial of
 12 Mr. Hall's motion at this time.

13 MR. HALL: For the record, so there's an
 14 understanding, I also direct the Division's attention to
 15 the notice and advertisement of this case.

16 EXAMINER CATANACH: We'll take notice of that.
 17 Anything else?

18 There being nothing further in these cases, we
 19 will take Case 11,808 and 11,809 under advisement.

20 MR. KELLAHIN: Thank you.

21 (Thereupon, these proceedings were concluded at
 22 11:52 a.m.)

23 I do hereby certify that the foregoing is
 24 a complete record of the proceedings in
 25 the Examiner hearing of Case No. 11808 & 11809
 heard by me on Feb 10 1997.
David R. Catanach, Examiner
 Oil Conservation Division

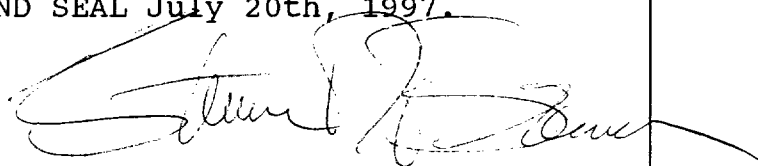
CERTIFICATE OF REPORTER

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

I, Steven T. Brenner, Certified Court Reporter and Notary Public, HEREBY CERTIFY that the foregoing transcript of proceedings (Volume II) before the Oil Conservation Division was reported by me; that I transcribed my notes; and that the foregoing is a true and accurate record of the proceedings.

I FURTHER CERTIFY that I am not a relative or employee of any of the parties or attorneys involved in this matter and that I have no personal interest in the final disposition of this matter.

WITNESS MY HAND AND SEAL July 20th, 1997.

A handwritten signature in dark ink, appearing to read 'Steven T. Brenner', is written over a horizontal line.

STEVEN T. BRENNER
CCR No. 7

My commission expires: October 14, 1998