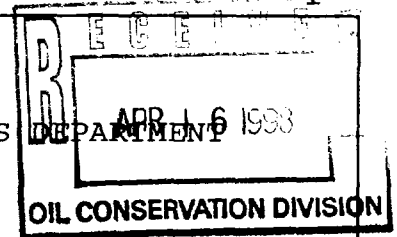


NEW MEXICO OIL CONSERVATION DIVISION

EXAMINER HEARINGSANTA FE, NEW MEXICOHearing Date APRIL 2, 1998 Time 8:15 A.M.

NAME	REPRESENTING	LOCATION
T. CALDER EZZELL, JR.	MIDDLE LAW FIRM	ROSDALE
Richard C. Winchester	Pioneer Natural Resources	Midland, TX
David R. Keller	Pioneer Natural Resources	Midland, TX
John Qualls	Ch i Energy Inc	Midland TX
CRAIG CLARK	Pioneer Natural Resource	Midland, TX
W. Kellerman	Kellerman Kellerman	Santa Fe
JOHN SUTHERLAND	Barrett Resources/ Plains Petroleum	MIDLAND, TX
Jim Blum		Santa Fe
Paul Gallagher	Doyle Henderson	Santa Fe

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:)

CASE NO. 11,932

APPLICATION OF PIONEER NATURAL)
RESOURCES, USA, INC., FOR COMPULSORY)
POOLING, LEA COUNTY, NEW MEXICO)

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: DAVID R. CATANACH, Hearing Examiner

April 2nd, 1998

Santa Fe, New Mexico

This matter came on for hearing before the New Mexico Oil Conservation Division, DAVID R. CATANACH, Hearing Examiner, on Thursday, April 2nd, 1998, 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.

* * *

I N D E X

April 2nd, 1998
 Examiner Hearing
 CASE NO. 11,932

	PAGE
EXHIBITS	3
APPEARANCES	4
APPLICANT'S WITNESSES:	
<u>M. CRAIG CLARK</u> (Landman)	
Direct Examination by Mr. Ezzell	6
Cross-Examination by Mr. Gallegos	15
Redirect Examination by Mr. Ezzell	26
Examination by Examiner Catanach	27
Examination by Mr. Carroll	30
Further Examination by Examiner Catanach	31
Further Examination by Mr. Gallegos	32
Further Examination by Mr. Ezzell	33
<u>DAVID R. KELLER</u> (Geologist)	
Direct Examination by Mr. Ezzell	34
Examination by Examiner Catanach	39
CLOSING STATEMENTS:	
By Mr. Ezzell	42
By Mr. Gallegos	43
REPORTER'S CERTIFICATE	47

* * *

E X H I B I T S

Applicant's	Identified	Admitted
Exhibit 1	7	14
Exhibit 2	9	14
Exhibit 3	9	14
Exhibit 4	35	38
Exhibit 5	36	38
Exhibit 6	10	14

* * *

Hartman	Identified	Admitted
Exhibit 7	22	41
Exhibit 8	25	41

* * *

A P P E A R A N C E S

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By: T. CALDER EZZELL, JR.

FOR INTERVENOR DOYLE HARTMAN:

GALLEGOS LAW FIRM
460 St. Michael's Drive, #300
Santa Fe, New Mexico 87505
By: J.E. GALLEGOS

* * *

1 WHEREUPON, the following proceedings were had at
2 8:18 a.m.:

3
4 EXAMINER CATANACH: At this time we'll call first
5 Case, 11,932.

6 MR. CARROLL: Application of Pioneer Natural
7 Resources, USA, Inc., for compulsory pooling, Lea County,
8 New Mexico.

9 EXAMINER CATANACH: We'll call for appearances in
10 this case at this time.

11 MR. EZZELL: Calder Ezzell with the Hinkle law
12 firm of Roswell, for the Applicant, Pioneer.

13 MR. GALLEGOS: Gene Gallegos, Santa Fe, New
14 Mexico, for Intervenor Doyle Hartman.

15 EXAMINER CATANACH: Any additional appearances?
16 Okay.

17 MR. EZZELL: And I have two witnesses to swear.

18 EXAMINER CATANACH: Do you have any witnesses,
19 Mr. Gallegos?

20 MR. GALLEGOS: No witnesses.

21 EXAMINER CATANACH: Okay. Will the two witnesses
22 please stand to be sworn in at this time?

23 (Thereupon, the witnesses were sworn.)

24 MR. EZZELL: Mr. Examiner, I'd like to call Mr.
25 Craig Clark as my first witness.

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M. CRAIG CLARK,

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

DIRECT EXAMINATION

BY MR. EZZELL:

Q. Mr. Clark, would you state your name, address and
your employment, please?

A. My name is Craig Clark, I'm an independent
landman. My address is 500 West Texas, Suite 1175,
Midland, Texas 79701.

Q. Have you previously testified before the Oil
Conservation Division and had your qualifications accepted
for testimony as a petroleum landman?

A. Yes, I have.

Q. Please explain the nature of your involvement in
the matter involving this Application.

A. I've been in charge of obtaining the oil and gas
leases and the curative materials for the drilling of a
well in Section 18.

Q. Are you familiar with the status of title to the
northeast quarter, southwest quarter of Section 18 and the
south half, northwest quarter --

A. Yes.

Q. -- of the same section?

Have you personally been involved with the

1 conduct of the curative work with respect to the --

2 A. Yes, I have.

3 Q. -- title matters?

4 And are you familiar with the history of the
5 negotiations with unleased mineral owners in attempting to
6 obtain oil and gas leases or voluntary joinder?

7 A. Yes.

8 MR. EZZELL: Mr. Examiner, are the witness's
9 qualifications acceptable?

10 EXAMINER CATANACH: Any objection?

11 MR. GALLEGOS: No objection.

12 EXAMINER CATANACH: The witness is considered
13 qualified.

14 Q. (By Mr. Ezzell) Based on your land work and the
15 title work you've done, are there any unleased mineral
16 interests in your prospect?

17 A. Yes, there is. This is --

18 Q. Who are the unleased mineral owners?

19 A. Doyle Hartman has an unleased mineral in the
20 northeast southwest and the south half, northwest quarter
21 of Section 18.

22 Q. Okay, I hand you what we have marked as Exhibit
23 Number 1, if you would tell me what that is, please.

24 A. Basically, what -- We contacted Mr. Hartman,
25 wrote a letter to him on May 12th of last year, requesting

1 oil and gas lease covering his interest in the 120 acres in
2 Section 18. He had 12.954 acres.

3 We followed up our request, we delivered a lease
4 and a check in July of 1997, again covering this interest.
5 It was for a three-year primary term, 22.5-percent royalty.

6 Q. The lease and the bonus check was -- that was
7 hand-delivered to Mr. Hartman's office?

8 A. That was hand delivered to his office in Dallas
9 at that point.

10 Q. And after the delivery of the lease and the bonus
11 check in July of 1997, what response did you have from Mr.
12 Hartman?

13 A. We had no response from him.

14 Q. Well, what further efforts did you make to
15 contact Mr. Hartman?

16 A. I either left a message at his office or had
17 contact with his Midland office, talked to his son. They
18 indicated they just couldn't get around to it, and they
19 didn't -- They had our papers, they just could not give us
20 an answer for it.

21 Q. When it became apparent to you that Mr. Hartman
22 was not going to either cash or return your check, nor sign
23 your lease, did you make any efforts to get Mr. Hartman to
24 participate in the drilling of the well?

25 A. We did. We sent him an AFE for the drilling of

1 the well on January 9th, 1998, of this year. And we
2 followed that up in February with the joint operating
3 agreements. That was February 12th, 1998.

4 Q. And what response did you have to those requests?

5 A. We never did hear back from him on those.

6 Q. Okay, I hand you what's been marked as Exhibit 2
7 and ask you to identify that.

8 A. This is our Application for force pooling that --
9 where we notified Mr. Hartman.

10 Q. So Mr. Hartman did receive notice of the hearing
11 set for this matter, which was originally for the -- I
12 believe it was March --

13 A. March 5th.

14 Q. -- 5th?

15 And subsequent to Mr. Hartman's receipt of the
16 notice of the force-pooling Application, did you have any
17 contact with Mr. Hartman? Did he make any other effort
18 to --

19 A. No, he did not.

20 Q. I hand you what has been marked as Exhibit 3 and
21 ask you to tell me what that is.

22 A. These are certain pages out of our title opinion
23 we had, covering -- well, it was covering the 120 acres in
24 which Mr. Hartman owned an interest in that section.

25 Q. And that title opinion indicates that Mr. Hartman

1 has what interest in these lands?

2 A. He has 12.954 acres that are unleased.

3 It gives him a 10.29-percent interest in the
4 initial drill sight, and there's two -- or there will be
5 three drill sites, 10.29 in two of them, and the southwest
6 quarter of the northwest quarter it's 11.81-percent
7 interest.

8 Q. And all of your efforts to lease the mineral
9 interest to Mr. Hartman have been intended to obtain a
10 lease on the entire 120 acres?

11 A. That's correct.

12 Q. The drill site for your proposed well is --

13 A. -- the northeast quarter of the southwest
14 quarter.

15 Q. Okay. I now hand you what's been marked as
16 Exhibit 6, and I apologize to the Examiner for getting out
17 of order, but we had already marked our other exhibits
18 before we knew about Exhibit 6.

19 Would you tell me what Exhibit 6 is, please?

20 A. This is correspondence we received from Mr.
21 Hartman yesterday afternoon, with -- saying that they would
22 agree to lease the northeast quarter of the southwest
23 quarter for a six-month term and a quarter royalty.

24 And they had also deleted language concerning
25 secondary-recovery-type operations and inserted in a couple

1 of other things what were not on our initial proposed
2 lease.

3 Q. When did you receive the communication from Mr.
4 Hartman?

5 A. We received this yesterday afternoon about four
6 o'clock.

7 Q. After you had already come to Santa Fe for this
8 hearing?

9 A. Right.

10 Q. And that indicates that the original of the
11 executed lease was forwarded to your Midland office?

12 A. That's correct.

13 Q. And what was your response to Mr. Hartman's offer
14 at 4:30 yesterday afternoon to lease 40 acres to you?

15 A. We declined his offer for this lease. We said
16 that we would be agreeable to taking a lease covering the
17 full 120 acres on -- with a quarter royalty, but with a
18 longer term, two- to three-year term, so it allows us --
19 The lease has a -- clause, and we need something in order
20 to be able to get the wells drilled within a reasonable
21 period.

22 Q. Specifically, what about Mr. Hartman's offer is
23 unacceptable to Pioneer?

24 A. Well, what is unacceptable is that he's asking
25 for a quarter royalty, which increases the royalty from

1 what we had originally offered, and he's only offering to
2 lease us the 40-acre tract, when we could be force pooled
3 and only -- be getting half the royalty that he's
4 requesting, and still be able to take -- I mean, if he's
5 wanting to see what we do after the first well, he
6 shouldn't be entitled to double royalties for that.

7 Q. But if Mr. Hartman were willing to lease the full
8 120 acres that you had requested, would you have any
9 problem with a one-quarter royalty?

10 A. We would not have had a problem with one-quarter
11 royalty.

12 Q. And before eight o'clock this morning, did you
13 have any response from Mr. Hartman as to your offer of --

14 A. No.

15 Q. -- through your primary term, 120 acres with a
16 quarter royalty?

17 A. No.

18 Q. But you now know through Mr. Hartman's counsel
19 that that has been turned down?

20 A. Yes, obviously.

21 Q. Is Pioneer ready to drill a prospect?

22 A. We are.

23 Q. Are you facing any lease expiration dates?

24 A. Yes, we do have several leases that will be
25 expiring in the early summer, in addition to some others

1 that have already expired that we're currently reacquiring.

2 Q. Because of these lease expiration dates, do you
3 seek an expedited order --

4 A. Yes, sir.

5 Q. -- in this matter?

6 In one of your exhibits, you had forwarded an AFE
7 for the proposed well to Mr. Hartman when you were trying
8 to get his voluntary participation. What is the
9 anticipated well cost of the well that Pioneer intends to
10 drill?

11 A. The dryhole costs were \$281,355, and completed
12 costs were \$483,755.

13 Q. Are these estimated costs in line with actual
14 well costs for other Abo wells drilled in the area?

15 A. Yes, they are.

16 Q. Have the working interest owners agreed to a
17 charge for supervision and overhead relative to the
18 proposed well?

19 A. Yes, they have. Drilling well rates for \$4349.30
20 and producing well rate of \$458.04.

21 Q. Are these charges in line with those charges in
22 the area for similar depth wells?

23 A. Yes, they are.

24 Q. Do you request that these overhead rates be
25 incorporated into a compulsory pooling order as sought by

1 Pioneer?

2 A. Yes, we do.

3 Q. With respect to Mr. Hartman, do you -- does
4 Pioneer intend to continue to negotiate with them, to
5 obtain either his voluntary participation or a lease that's
6 acceptable to both parties?

7 A. Yes, we do.

8 Q. In your opinion, will the approval of this
9 Application prevent the drilling of unnecessary wells,
10 prevent waste and protect correlative rights?

11 A. Yes.

12 Q. And were these exhibits, which are 1, 2 and 3 --
13 Exhibits 1, 2 and 3, were they compiled by you?

14 A. Yes, they were.

15 Q. And Exhibit 6 was simply the communication you
16 received last evening from Mr. Hartman?

17 A. That's correct.

18 MR. EZZELL: I move admission of Applicant's
19 Exhibits 1 through 3 and 6.

20 MR. GALLEGOS: No objection.

21 EXAMINER CATANACH: Exhibits 1 through 3 and 6
22 will be admitted as evidence.

23 MR. EZZELL: And I have nothing further for this
24 witness.

25 EXAMINER CATANACH: Mr. Gallegos?

CROSS-EXAMINATION

BY MR. GALLEGOS:

Q. Been doing some skiing, Mr. Clark?

A. Did a little skiing last month.

Q. That brace looked familiar. I've gone through that.

The Application that you're -- that Pioneer is here on, is brought under the New Mexico Oil and Gas Act?

A. That's correct.

Q. Do you agree?

And the Application is for pooling of the mineral interests from the surface to the base of the Abo formation; do you agree?

A. I agree with that.

Q. And the Application covers the northeast quarter of the southwest quarter of Section 18, Township 20 South, Range 90 East; do you agree with that?

A. I agree with that.

Q. Okay. And that constitutes 40 acres?

A. That's correct.

Q. And it calls for the drilling of one well. I think it's called the McCasland 18 or something like that?

A. Right.

Q. That's what this Application is about; isn't that right?

1 A. That is correct.

2 Q. It's not about 120 acres, is it, sir?

3 A. No, sir.

4 Q. And it's not about three wells, is it?

5 A. No, sir.

6 Q. The Hartman lease terms that are Exhibit 6, let's
7 just briefly summarize what this lease is that Mr. Hartman
8 has signed and sent to your Midland office. It covers the
9 northeast quarter of the southwest quarter of Section 18,
10 Township 20 South, Range 9 East, isn't that true?

11 A. 39 East.

12 Q. I'm sorry, 39 East.

13 A. Yes, sir.

14 Q. Misstated. Okay, and that's 40 acres?

15 A. That's correct.

16 Q. Same 40 acres that you're applying for compulsory
17 pooling here today?

18 A. That's correct.

19 Q. And it covers the formations that would be
20 included in the proposed McCasland 18 well, does it not?

21 A. Yes, it does.

22 Q. In fact, I don't think it has any --

23 A. It has a few clauses after the primary term that
24 we'll release all deeper rights.

25 Q. Okay, all right. And that, actually -- When

1 we're dealing with the 40 acres that's the subject of this
2 hearing in this Application, Mr. Hartman's mineral interest
3 is approximately what? About four and a fraction acres?

4 A. 4.1 acres --

5 Q. All right.

6 A. -- or 10.3 percent.

7 Q. Okay, that's close enough. About -- Let's call
8 it four acres, ten percent --

9 A. Okay.

10 Q. -- of this 40-acre proration unit, correct?

11 A. That's correct.

12 Q. All right. And his lease runs from April 1,
13 1998, for six months, which would take it to October 1,
14 1998, or the last day of September?

15 A. Okay.

16 Q. All right? No bonus. Mr. Hartman's waived the
17 \$1900 bonus payment that was offered him, correct?

18 A. That's correct.

19 Q. And he's asked for a 25-percent royalty, or I
20 should say his lease that he's signed and sent to you calls
21 for a 25-percent royalty; is that correct?

22 A. That's correct.

23 Q. All right. Now, you have a number of other
24 leases, quite a large number of other leases, in fact, that
25 pertain to this particular acreage; isn't that true?

1 A. That's correct.

2 Q. Most of them acquired by some -- a company by the
3 name of EnerQuest Resources?

4 A. That's correct.

5 Q. What is the relation between EnerQuest Resources
6 and Pioneer?

7 A. EnerQuest originated the prospect and sold it to
8 Pioneer and has kept a working interest in it.

9 Q. Okay, so they put the prospect together and
10 brought it to Pioneer?

11 A. That's correct.

12 Q. And does EnerQuest have some promote as a result
13 of the deal it made with Pioneer?

14 A. Yes, sir, they do.

15 Q. What are those terms?

16 A. I do not know. I was not privileged to the
17 contract between Pioneer. They have some type of -- They
18 are participating in the drilling of the initial well.

19 Q. You don't have that contract with you --

20 A. No, I do not.

21 Q. -- that agreement?

22 I also notice that there's a company that appears
23 to be in some way related, by the name of Sugarberry Land
24 Company. Can you explain the affiliation?

25 A. There's no affiliation between Sugarberry and

1 EnerQuest.

2 Q. No? All right.

3 Now, without going through the title opinion at
4 length, you will agree, won't you, Mr. Clark, that a number
5 of the leases that you've already accepted or that
6 EnerQuest accepted and assigned to Pioneer call for a 25-
7 percent royalty?

8 A. That is correct.

9 Q. All right. And some of them -- For example, I
10 noticed a lease from Burlington Resources. I think there's
11 some others. But Burlington Resources' lease, by my
12 calculation, would expire July 1 or the end of June of this
13 year.

14 A. Okay.

15 Q. Correct?

16 A. That's correct.

17 Q. So it's a lesser term remaining on that lease
18 than the lease that Mr. Hartman has given to Pioneer?

19 A. The Burlington lease has a continuous development
20 provision on it, and it does cover, you know -- That title
21 opinion covers the whole 120 acres.

22 Q. You mean the Burlington lease covers the 120
23 acres?

24 A. Right.

25 Q. Okay. So what we really come down to, it's not

1 the question of the 25-percent royalty, not the question of
2 the fact that Hartman's lease expires in September and some
3 of yours that you have now expire sooner than that; it's
4 simply that you want 120 acres leased, not 40 acres leased?

5 A. No, sir, that's not -- What our point is, is that
6 for a quarter royalty, with the additional royalty he's
7 being able to watch drill our first well and then make a
8 decision on the additional 80 acres and get twice the
9 royalty, as opposed to if he was -- had to go under the
10 force pooling, he would only get an eighth royalty. And
11 then he is still entitled to -- We are only pooling the 40-
12 acre tract, but he's wanting to have his cake and eat it
13 too as far as, you know, getting the highest royalty that
14 we paid plus not having to commit his additional lands to
15 further development until such point as we drill the
16 initial well.

17 Q. Well, isn't that saying the same thing? The rub,
18 as far as Pioneer's concerned, is that he's only leasing 40
19 acres instead of leasing 120 acres?

20 A. Right.

21 Q. What if Mr. Hartman owned offsetting 200 acres?
22 Would he have to lease that to be accepted?

23 A. Well, at this point he owns 120, and so that's
24 what we're concerned about, is, you know --

25 Q. Well, but if it's 200 or 400 acres, you would be

1 here before the Commission on a 40-acre proration unit and
2 say, We want to force-pool this party because he won't
3 lease this 400 acres?

4 A. Yes.

5 Q. And I think you said something in your direct
6 testimony about Pioneer didn't like the idea that this
7 mineral interest owner could get a look at what happens on
8 the first well that's drilled. I don't know whether that
9 was quite your words, but --

10 A. That's -- With as high as royalty as he is being
11 paid, that's why we are objecting to his lease.

12 Q. In the business they call it a free look, right?

13 A. Right.

14 Q. That's what you're objecting to?

15 A. Uh-huh.

16 Q. All right. I didn't -- I anticipated that you
17 would have your joint operating agreement as part of your
18 exhibits, and I think you mentioned that on the letters
19 that went out to Mr. Hartman --

20 A. -- that we sent him a joint operating --

21 Q. -- you sent him a joint operating agreement,
22 Exhibit 1, but it wasn't on there. And I'm sorry, I don't
23 have multiple copies of what you sent. Do you have
24 additional ones?

25 A. Yeah, I have a copy of the joint operating

1 agreement.

2 Q. Okay. If we could mark that as Exhibit 7,
3 because, as I say, I anticipated that would be one of your
4 exhibits.

5 I've handed the one additional copy I have to
6 Examiner Catanach.

7 Let me ask you -- Well, first of all let's
8 identify this. What is the document?

9 A. This is an AAPL model form, joint operating
10 agreement, covering the northeast quarter of the southwest
11 quarter of Section 18.

12 Q. All right. You refer to it as the Outhouse
13 Project?

14 A. Right.

15 Q. And this would be the joint operating agreement
16 that working interest owners would be a party to?

17 A. That's correct.

18 Q. Would you turn with me to page 4 of Exhibit A?

19 A. Okay. And bearing in mind, the lands that are
20 subject to this agreement, let's confirm, I think you've
21 done so, but it's the 40 acres that's the northeast of the
22 southwest of Section 18?

23 A. That's correct.

24 Q. All right. Now, on page 4 you have -- or the
25 document has a category, Roman Numeral IV, "Interest of

1 Parties to this Agreement". Do you see that?

2 A. Yes, I do.

3 Q. And it lists parties' interest, and there are two
4 columns: "Working Interest Before Casing Point in Initial
5 Well", "Working Interest After Casing Point in Initial
6 Well and in All Subsequent Operations". Are you with me?

7 A. Yes.

8 Q. All right. And in the case of Wynne Petroleum,
9 H.J. Naumann --

10 A. Naumann.

11 Q. -- Naumann -- it's spelled N-a-u-m-a-n-n -- and
12 EnerQuest Resources, those parties do not pay for the
13 drilling of the well through the stage of drilling the
14 wellbore and logging and making the decision whether there
15 will be completion or not; isn't that true?

16 A. No, EnerQuest does pay a small --

17 Q. I'm sorry, I'm sorry, EnerQuest pays 3.5 percent,
18 as opposed to --

19 A. They have a 17-percent after-casing-point
20 interest --

21 Q. All right.

22 A. -- that's correct.

23 Q. So those three parties are in a situation where
24 -- and bearing in mind, EnerQuest does have a small
25 interest they'll pay, but they pay nothing up to the point

1 decided whether or not this is a well that's going to be
2 worthy of completion, correct?

3 A. That's correct.

4 Q. So in effect, that's what you'd call a free look,
5 up to that point, correct?

6 A. It's a carried, yes.

7 Q. A carried interest. In other words, you drill
8 the well, you spend the money on it, you log it and you
9 decide we don't have one here, then Wynne and Naumann have
10 paid nothing, and EnerQuest has paid only 3.5 percent of
11 that cost?

12 A. That's correct.

13 Q. If it turns out to be a well, they're going to
14 complete it, then from that point forward, after so-called
15 casingpoint, then those parties chip in and pay their
16 regular interest?

17 A. That is correct.

18 Q. And EnerQuest has leases with 25 percent
19 royalties; isn't that true?

20 A. That's correct.

21 Q. Okay. Are you familiar, Mr. Clark, with the
22 section of the New Mexico Oil and Gas Act that pertains to
23 compulsory pooling, the type of application that we have
24 here today?

25 A. Somewhat familiar.

1 Q. I'm going to mark as Exhibit 8 a copy of Section
2 70-2-17. I'm sure you gentlemen are very familiar with
3 that provision.

4 My question to you, Mr. Clark, is, what provision
5 does Pioneer rely on for the proposition that a party can
6 be force-pooled when it is voluntarily -- provide you with
7 a lease of the mineral interest on the 40 acres that's the
8 subject of the Application, due to the fact that the
9 Applicant wants a lease on greater acreage?

10 A. It is my understanding that the force pooling is
11 when parties cannot mutually agree, come to agreeable
12 terms. And the lease that Mr. Hartman gave us is not an
13 agreeable lease to Pioneer.

14 Q. Well, my question is, the lease is agreeable to
15 Pioneer, as you said, except that it doesn't cover the 120
16 acres?

17 A. If Mr. Hartman wants to give us a lease with a
18 one-eighth royalty and a six-month term covering the 40
19 acres, that would be agreeable.

20 Q. So other parties that have received leases with a
21 25-percent royalty are in a position of having a free look
22 to the casing point, but that's not acceptable?

23 A. No, that's not correct.

24 Q. Well, we just went through. You've got --

25 A. Those are working interest owners. Those aren't

1 royalty owners.

2 Q. Well, the difference is what?

3 A. Is that they generated the prospect and sold it
4 to Pioneer.

5 Q. And that's their promote?

6 A. That's their promote.

7 MR. GALLEGOS: That's all the questions I have.

8 MR. EZZELL: Just a couple of redirect questions.

9 REDIRECT EXAMINATION

10 BY MR. EZZELL:

11 Q. Mr. Gallegos asked you what the real reason that
12 you -- that Pioneer is here today, and is it true that the
13 real reason that Pioneer is here, and the only reason that
14 Pioneer is here, is that for the last year, until 4:30
15 yesterday afternoon, Mr. Hartman wouldn't talk to you?

16 A. That's correct.

17 Q. Okay. In your title opinion, is there any other
18 mineral interest owner who has an interest in all 120
19 acres, that only leased 40?

20 A. No, they have not.

21 Q. So Pioneer and EnerQuest did not accept a lease
22 from any other mineral interest owner on less than all of
23 their minerals in the prospect?

24 A. That's correct.

25 MR. EZZELL: I have no further questions.

1 Do the Examiners have any questions for this
2 witness?

3 EXAMINER CATANACH: Yes, we do.

4 MR. EZZELL: Okay.

5 EXAMINATION

6 BY EXAMINER CATANACH:

7 Q. Mr. Clark, is Hartman the only outstanding
8 interest owner that hasn't agreed at this point?

9 A. Yes, he is.

10 Q. Okay. You mentioned Burlington earlier. Where
11 does their interest...

12 A. Burlington is -- They have leased their interest
13 in this tract, and they were not -- I mean --

14 Q. So they're covered under Pioneer's?

15 A. -- which lease they have.

16 MR. EZZELL: It's actually shown on the title
17 opinion as being Southland Royalty, isn't it?

18 MR. GALLEGOS: No. Lease 29.

19 MR. EZZELL: Oh, is it Lease 29?

20 EXAMINER CATANACH: Lease 28, actually,
21 Burlington Resources.

22 MR. GALLEGOS: The Examiner doesn't have the
23 title opinion.

24 MR. EZZELL: Again, I apologize. When we
25 prepared the exhibits this was an uncontested hearing, so I

1 didn't include the entire title opinion.

2 Q. (By Examiner Catanach) Which of these interest
3 owners has signed a lease for the 120 acres?

4 A. We have leased the entire 120-acre tract, except
5 for Mr. Hartman.

6 Q. Okay. And the other interest owners, like Robert
7 Castor, James Moring, what is the status of that?

8 A. You're talking on the operating agreement there?

9 Q. Right.

10 A. Those are working interest owners.

11 Q. Okay, they participating --

12 A. They're participating. Those are partners of
13 EnerQuest and, as such, are participating through
14 EnerQuest's interests.

15 Q. Okay, so there are several parties that Pioneer
16 has leased from?

17 A. That's correct. I mean, that's shown on the
18 Exhibit A in the operating agreement, that there's 31
19 leases that we've taken. Those cover the full 120 acres,
20 however the operating agreement is only limited to that 40-
21 acre tract.

22 Q. Okay, of these 31 interest owners, they have all
23 leased their interest in the entire 120 acres?

24 A. That's correct.

25 Q. With the exception of Hartman?

1 A. That's correct.

2 Q. And they received a 25-percent royalty?

3 A. The terms vary per lease. Maximum royalty paid
4 was a quarter. We had taken a lease such as -- from Mr.
5 Hartman's partner, Buddy Davidson, and his was a 22.5-
6 percent lease. And that was the terms we had sent to Mr.
7 Hartman when we had given the lease in July.

8 Q. Okay, I just want to verify. You said something
9 about a lease expiration. Do you have a date for that?

10 A. For lease expirations?

11 Q. Yeah. I mean, you've said you need to start
12 drilling this well as -- What's the --

13 A. Well, in July.

14 Q. That's the earliest --

15 A. That's the earliest that they're coming up.

16 Q. Okay. I want to verify the overhead rates that
17 you proposed.

18 A. June 1st, excuse me.

19 Q. June 1st?

20 You proposed overhead rates of \$4349.30?

21 A. That's correct.

22 Q. And \$458.04?

23 A. That's correct.

24 MR. CARROLL: Mr. Clark, I have a couple of
25 questions.

1 THE WITNESS: Okay.

2 EXAMINATION

3 BY MR. CARROLL:

4 Q. So this letter that was sent by Mr. Hartman
5 yesterday refers to providing to Pioneer on Pioneer's
6 proposed lease form an executed lease. He's not referring
7 to the lease that was sent from Pioneer to Hartman,
8 correct? He's just referring to the form, and he put in
9 different terms on the form he sent back?

10 A. That's correct. He had put in -- there was --
11 They deleted the warranty provision, which was on our
12 previous lease. He had inserted the -- if you notice on
13 his lease, "in paying quantities" --

14 Q. Right.

15 A. -- a couple of the paragraphs here. And then up
16 in paragraph 1 he had deleted a line up there.

17 Q. He's just referring to the printed form that
18 he --

19 A. The printed form.

20 Q. And then reference has been made to the
21 compulsory pooling statute, and I believe the language is
22 in Subsection C of 70-2-17, where owners have not agreed to
23 pool their interests.

24 It's your understanding that the parties have to
25 agree together -- You don't believe that an owner can agree

1 to pool their interest by saying, I'll accept a 75-percent
2 royalty and therefore voluntarily agree to join in this
3 well?

4 A. No, I do not believe that.

5 Q. And likewise in this case, where Mr. Hartman
6 submitted different terms than Pioneer submitted does not
7 constitute an agreement either; is that your understanding?

8 A. My understanding, he countered our agreement, so
9 therefore he declined our offer.

10 Q. They made a counteroffer and you rejected the
11 counteroffer?

12 A. That's correct.

13 MR. CARROLL: That's all the questions I have.

14 FURTHER EXAMINATION

15 BY EXAMINER CATANACH:

16 Q. Mr. Clark, in addition to EnerQuest, was Naumann
17 and Wynne Petroleum involved in developing the prospect?

18 A. Yes, they were.

19 Q. Those three parties?

20 A. (Nods)

21 Q. Okay. So the advantage that Hartman would be
22 gaining if he simply signed a 40-acre lease at this point
23 would be, he would know the results of the well and would
24 be able to negotiate the other two leases after he knew the
25 results of the second -- of the first well?

1 A. That's correct, with --

2 Q. That would give him an advantage over the other
3 interest owners who have already leased; is that correct?

4 A. That's correct. And he -- I mean, he's also
5 doing it with a quarter royalty, as opposed to doing it
6 under the statute.

7 EXAMINER CATANACH: I have nothing further of
8 this witness.

9 FURTHER EXAMINATION

10 BY MR. GALLEGOS:

11 Q. Mr. Clark, let's assume -- On this point of this
12 advantage, let's assume that you take this lease. It's the
13 40 acres that you're applying for, it's 25-percent royalty,
14 it has a term longer than some of the leases that you have
15 now. And you drill a well, and it's a successful well.

16 Now you say Mr. Hartman has an advantage. Let's
17 say that he comes in and he wants 40-percent royalty. If
18 that's unacceptable, you come in with an application to
19 force pool, and it's a one-eighth royalty --

20 A. Uh-huh.

21 Q. -- isn't that right?

22 A. That's correct.

23 Q. And so as you stand right now, you have a lease
24 that's on terms equivalent to other leases that you've
25 given, and the only objection you have is that it does not

1 cover acreage beyond what's in this Application?

2 A. Well, they're not equivalent to the other leases
3 we've taken.

4 Q. Well, they're equivalent on royalty, the term --
5 What? The term is not long enough?

6 A. No, the -- They're not equivalent because they
7 only cover a 40-acre tract.

8 Q. Okay, all right.

9 A. I mean, it goes back. Said, if he wants a 40-
10 percent royalty this time, well, he wants a 25-percent this
11 time, and that's unacceptable.

12 MR. GALLEGOS: That's all the questions I have.

13 FURTHER EXAMINATION

14 BY MR. EZZELL:

15 Q. Actually, Mr. Clark, the 25-percent royalty is
16 acceptable on a lease covering the full interest in the
17 prospect --

18 A. That's correct.

19 Q. -- of 120 acres?

20 So all Pioneer has really asked Mr. Hartman to do
21 is either participate in the well and be their partner --
22 we've prepared the JOA form, we've -- either participate as
23 a working interest owner, because he is an operator, he's a
24 knowledgeable oil and gas professional, or lease his entire
25 interest under the terms of -- no, under the terms similar

1 to all of the other leases covering the rest of the mineral
2 estate in this 120 acres?

3 A. That's correct.

4 Q. All you want him to do is be a working interest
5 owner or a royalty interest owner, one of the two, not pick
6 and choose?

7 A. That's correct.

8 MR. EZZELL: Thank you.

9 I'd like to call Mr. David Keller.

10 DAVID R. KELLER,

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

13 DIRECT EXAMINATION

14 BY MR. EZZELL:

15 Q. Mr. Keller, would you state your name and address
16 and by whom you are employed?

17 A. My name is David Keller. I'm with Pioneer
18 Natural Resources, and I'm at 4900 Tattenham Corners,
19 Midland, Texas.

20 Q. Have you previously testified before the OCD as a
21 petroleum geologist and had your qualifications as an
22 expert in that field accepted?

23 A. No.

24 Q. Would you please state your educational and work
25 experience as a petroleum geologist?

1 A. I have a bachelor's and master's degree in
2 geology from Brigham Young University, and I have 18 years
3 of experience in petroleum with Gulf Oil, Chevron and, most
4 recently, Pioneer Natural Resources.

5 Q. Are you familiar with Pioneer's Application in
6 this matter?

7 A. Yes.

8 Q. Are you familiar with the property and the well
9 location involved in the Application?

10 A. Yes.

11 Q. And you are Pioneer's geologist in charge of this
12 prospect?

13 A. Yes.

14 MR. EZZELL: Mr. Examiner, are the witness's
15 qualifications acceptable as an expert geologist?

16 EXAMINER CATANACH: Yes, the witness is so
17 qualified.

18 Q. (By Mr. Ezzell) What does Pioneer seek in its
19 Application today?

20 A. We seek force pooling of the -- our drill site,
21 all outstanding interests.

22 Q. And on the wall behind you is what we have marked
23 as Exhibit 4. Would you explain what this exhibit
24 represents, please?

25 A. Yes, this is a structure map on the top of the

1 Abo, contour interval 20 feet, color contours.

2 Shown here is a four-way closure which is defined
3 by 2-D seismic. Our drill site is shown in the red box
4 located on one of the seismic lines.

5 Shown in the bubbles are various units that
6 produce in the area. Our main objectives are going to be
7 the Abo and the Drinkard, which are shown by the -- the
8 Drinkard by the dark purple bubbles and the Abo by the
9 flesh-colored bubbles.

10 To the right of each bubble is the cumulative
11 production for those wells in thousands of barrels.

12 The acreage that we have acquired to date is
13 shown in the yellow outline, and the drill site, 40-acre
14 drill site, is shown in the brown color.

15 Q. And you feel that drill site is the optimum
16 location for this prospect?

17 A. Yes.

18 Q. Why is that?

19 A. Because it's on the structure, the crest of the
20 structure, and it's also on the seismic line.

21 Q. I don't believe it's necessary to put it on the
22 wall unless the Examiners would like, but your Exhibit 5,
23 which is also in the Examiner's packet, is -- looks to be a
24 cross-section. Would you explain that exhibit, please?

25 A. Yes, this is a cross-section showing perforated

1 intervals in the Drinkard and Abo interval. It shows the
2 initial potential for wells along the cross-section A-A',
3 which is a north-south cross-section through the drill
4 site.

5 Q. And basically what does that cross-section show
6 with respect to the structure that's on your structure map?

7 A. It shows -- It doesn't really define the
8 structure, because there's not well control in the
9 immediate area of the prospect. But it does show that the
10 units are continuous across the interval and that porosity
11 varies within these intervals that are productive.

12 Q. Is Pioneer the operator of the acreage where the
13 proposed well is to be drilled?

14 A. Yes.

15 Q. And Pioneer has joinder from 100 percent of the
16 working interest owners, with the exception of the unleased
17 mineral interests?

18 A. That's right.

19 Q. Do you have a recommendation to make as to the
20 risk factors to be awarded to the Applicant if this
21 Application is granted?

22 A. While this is a good prospect, I think there's
23 significant risk, as in most any prospect. I would request
24 the full 200-percent penalty maximum.

25 Q. What's the basis for that risk?

1 A. Primary risks are the structure and the vagaries
2 of seismic velocities that could cause that to be
3 interpreted differently, and then the porosity variations
4 which are seen in the area. So the well could be low and
5 tight, possibly.

6 Q. So the structure that is drawn on your structure
7 map is based on the 2-D seismic and does not appear from
8 well control, because of the absence of control --

9 A. That's right.

10 Q. -- in the immediate?

11 A. That's why it's a prospect.

12 Q. Are Exhibits 4 and 5 the exhibits used by you as
13 geologist in charge of the prospect for your
14 recommendations to Pioneer with respect to the drilling of
15 this prospect?

16 A. Yes.

17 Q. In your opinion, will the approval of this
18 Application by the OCD prevent the drilling of unnecessary
19 wells and be in the interest of the prevention of waste and
20 the protection of correlative rights?

21 A. Yes.

22 MR. EZZELL: I move for the admission of Exhibits
23 4 and 5.

24 MR. GALLEGOS: No objection.

25 EXAMINER CATANACH: Exhibits 4 and 5 will be

1 admitted as evidence.

2 MR. EZZELL: And I have no further questions for
3 this witness.

4 EXAMINER CATANACH: Mr. Gallegos?

5 MR. GALLEGOS: I have no questions.

6 EXAMINATION

7 BY EXAMINER CATANACH:

8 Q. Mr. Keller, the closest Drinkard production would
9 be --

10 A. -- to the northwest, three-quarters of a mile or
11 so.

12 Q. It would be in Section 13?

13 A. Yes.

14 Q. And you also have some Drinkard production south
15 in Section 30?

16 A. Yes.

17 Q. Do you know if those are the closest wells that
18 have been drilled to test the Drinkard?

19 A. There is a dry hole on the north end of the D-K
20 field -- well, a near dry hole. It produced 20,000
21 barrels.

22 Yeah, those are probably the closest wells to the
23 prospect at this point.

24 Well, there is one in the northwest of Section
25 24.

1 Q. That was a Drinkard test?

2 A. Yes.

3 Q. And Abo production, you're looking to the south
4 again in Section 30?

5 A. Yes.

6 Q. Is the primary target the Abo?

7 A. The Drinkard and the Abo.

8 Q. Both the Drinkard and the Abo?

9 A. Yes.

10 Q. How does Pioneer propose to -- are they going to
11 complete one formation first, or dually complete, or do you
12 know?

13 A. I don't know for sure. I would expect we would
14 start at the deepest commercial zone and move up.

15 Q. Okay. And your well -- Do you have a well
16 location staked already?

17 A. It's not staked.

18 Q. But it's going to be a standard location?

19 A. I guess I don't know that for sure. It may be --
20 on the seismic line may cause it to be slightly irregular.

21 Q. And you utilized 2-D seismic to generate this
22 map?

23 A. Two lines, yes.

24 Q. Not 3-D?

25 A. No.

1 Q. Have you used 2-D in this area to identify any
2 other Drinkard-Abo wells?

3 A. Well, there is another prospective structure to
4 the north, but it's not directly on the 2-D.

5 And I have not used 2-D, and I don't know the
6 track record for 2-D in this type of prospect.

7 Q. Okay. We've been talking about 120 acres. Which
8 are the other two 40-acre tracts that you guys have leased?

9 A. Somebody will have to help me out with that.

10 MR. EZZELL: The direct north offset and one
11 west.

12 EXAMINER CATANACH: Direct north and west? So it
13 would be right there.

14 I have no further questions of this witness.

15 Anything further, Mr. Ezzell?

16 MR. EZZELL: No, sir.

17 EXAMINER CATANACH: Mr. Gallegos?

18 MR. GALLEGOS: Nothing further of this witness.

19 We'd like to move the admission of Exhibits 7 and
20 8.

21 EXAMINER CATANACH: Okay, Hartman Exhibits 7 and
22 8 will be admitted as evidence.

23 MR. EZZELL: I don't know what 7 and 8 are.

24 MR. CARROLL: Seven is the operating agreement, 8
25 is the statute.

1 MR. EZZELL: I have no objection to those
2 exhibits.

3 EXAMINER CATANACH: Do you have anything further,
4 Mr. Ezzell?

5 MR. EZZELL: Yes, Mr. Examiner, I would just urge
6 the approval of this Application. As you heard the
7 testimony of Mr. Clark, we've been trying to get Mr.
8 Hartman to talk to us for a year, and he does not until the
9 evening before the hearing.

10 I assume that when we have to come back to force
11 pool the next two 40s, if the first well merits drilling
12 offsets, we'll do the same thing, we'll not hear anything
13 from him until the night before the hearing.

14 Under the Statute, the parties have not agreed to
15 the voluntary pooling of all of the interests. He made
16 material changes to our lease offer at the 12th hour,
17 hoping to force us into calling off the hearing and
18 accepting his offer.

19 No other mineral owner that owns an interest in
20 the full 120 acres leased only 40.

21 Now, as Mr. Clark testified, we'd love to have
22 Mr. Hartman as a partner if he'd like to participate in the
23 drilling of the well. We'd love to have him as a royalty
24 interest owner if he would lease his entire interest in the
25 prospect.

1 But we went for a year without hearing anything
2 from him at all until the night before the hearing, and we
3 have countered with a proposal to lease his interest for a
4 quarter royalty, which is the highest royalty to be paid.
5 He can keep the bonus money that he's had since July.
6 Since he hasn't returned the check anyway, he might as well
7 keep it. And we will continue to negotiate with him after
8 this hearing.

9 But Mr. Hartman's actions seem to be calculated
10 to deny Pioneer the opportunity of proceeding with its
11 prospect in an orderly and economic fashion. And his late
12 response and counteroffer with materially different terms
13 is just not acceptable, as you've heard from the testimony.

14 And we fully expect that if Mr. Hartman were
15 here, I'm sure we would be negotiating with him in the hall
16 right now. But the night before the hearing is just not an
17 appropriate time to make your first communication when the
18 matter has been on your desk for a year.

19 So we would urge the granting of the Application
20 and an expedited order so that Mr. Hartman won't try to
21 push us up against our lease expiration dates.

22 Thank you.

23 MR. GALLEGOS: Mr. Examiner, it's clear, whether
24 the Hartman lease was granted the day before the hearing or
25 six months ago, that there is a single obstacle as seen by

1 the Applicant, and that is simply that it's not content
2 with having the lease for the proration unit that is the
3 subject of this Application, that it wants more.

4 The terms of the lease, what it boils down to
5 that the royalty and other terms of the lease are
6 acceptable and are comparable to other leases that have
7 been accepted and are in place, as far as Pioneer is
8 concerned.

9 We have a very clear and, I think what boils down
10 to a legal question, which is, can an applicant in this
11 circumstance force pool a party who leases to it but does
12 not lease additional acreage?

13 And I think the statute, when we -- Counsel was
14 talking about -- agreement. The statute speaks in terms of
15 a requirement of the Applicant to obtain voluntary
16 agreement and good-faith effort to do it, but it is all
17 directed as to the tract that is in question.

18 And I think there is nothing that permits an
19 Applicant to say, We want more, we want more than a lease
20 on the tract that we want to drill on. And that's what it
21 all boils down to.

22 And we would like an opportunity to submit -- we
23 don't need a lot of time on it, we can do it in a week, ten
24 days -- a short written statement with some law on this
25 particular issue, because it's as clear as that.

1 EXAMINER CATANACH: Okay, Mr. Gallegos, you can
2 submit the short brief.

3 MR. CARROLL: And Mr. Ezzell, you can have seven
4 days after that to answer it.

5 MR. EZZELL: We'd really prefer shorter periods
6 of time.

7 I mean, like I say, Mr. Hartman's had notice of
8 this hearing, and the matter has been going on. Everything
9 Mr. Hartman is doing is calculated at pushing my clients up
10 against their lease expirations. And so I would --

11 MR. GALLEGOS: If Mr. Ezzell wants to take a
12 shorter time to reply, he certainly can.

13 MR. EZZELL: I would ask Mr. Gallegos to have his
14 statement in, since it's so simple, by Monday or Tuesday of
15 next week, and then I'll follow up before the end of the
16 week.

17 EXAMINER CATANACH: Is that sufficient time?

18 MR. GALLEGOS: Well, we -- I think we can file
19 something by Tuesday. What is -- Today's Thursday? We can
20 file it by Tuesday. I don't see how --

21 MR. CARROLL: Mr. Ezzell, you can probably get
22 started. You know what the issue is.

23 EXAMINER CATANACH: Okay, so we'll have something
24 filed by Tuesday of next week, and then if you want to take
25 a couple of days to respond to that.

1 Okay, there being nothing further in this case,
2 Case 11,932 will be taken under advisement.

3 MR. GALLEGOS: Thank you.

4 (Thereupon, these proceedings were concluded at
5 9:12 a.m.)

6 * * *

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11 I do hereby certify that the foregoing is
12 a complete and true record of the proceedings of
13 the Executive Hearing of Case No. 11932
14 heard by me on April 2, 1998

15 David L. Crotant, Executive
16 Off Conservation Division
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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 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 April 3rd, 1998.



STEVEN T. BRENNER
CCR No. 7

My commission expires: October 14, 1998