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 OIL AND GAS COMPANY FOR COMPULSORY POOLING, SAN JUAN COUNTY, NEW MEXICO — CASE NO. 12,276

APPLICATION OF BURLINGTON RESOURCES OIL AND GAS COMPANY FOR COMPULSORY POOLING, SAN JUAN COUNTY, NEW MEXICO — CASE NO. 12,277

(Consolidated)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

ORIGINAL

BEFORE: MARK ASHLEY, Hearing Examiner

January 20th, 2000

Santa Fe, New Mexico

This matter came on for hearing before the New Mexico Oil Conservation Division, MARK ASHLEY, Hearing Examiner, on Thursday, January 20th, 2000, 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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I N D E X

January 20th, 2000
Examiner Hearing
CASE NOS. 12,276 and 12,277 (Consolidated)

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* * *

WHEREUPON, the following proceedings were had at 4:40 p.m.:

EXAMINER ASHLEY: This hearing will come to order, and the Division calls Case 12,276.

MR. CARROLL: Application of Burlington Resources Oil and Gas Company for compulsory pooling, San Juan County, New Mexico.

EXAMINER ASHLEY: Call for appearances.

MR. KELLAHIN: Mr. Examiner, I'm Tom Kellahin of the Santa Fe law firm of Kellahin and Kellahin, appearing on behalf of the Applicant, Burlington Resources Oil and Gas Company.

We would ask, Mr. Examiner, that for purposes of presentation and taking testimony this afternoon, that you consolidate this case with the next case, which is 12,277. They're different wells, but they involve the same subject matter.

EXAMINER ASHLEY: Call for additional appearances.

MR. HALL: Mr. Examiner, Scott Hall with the Miller Stratvert Torgerson law firm, Santa Fe, entering appearances today for Energen Resources Corporation, Westport Oil and Gas Company, Carolyn Nielsen Sedberry, C. Fred Luthy, Jr., Cyrene L. Inman, the F.A. and H.B. Cronican Revocable Trust, William C. Briggs, Herbert R.

Briggs, Marcia Berger, WWR Enterprises.

EXAMINER ASHLEY: Do you object to having Cases 12,267 and 12,277 consolidated for the purposes of the testimony?

MR. HALL: We do not.

EXAMINER ASHLEY: Okay, at this time the Division calls Case 12,277.

MR. CARROLL: Application of Burlington Resources Oil and Gas Company for compulsory pooling, San Juan County, New Mexico.

EXAMINER ASHLEY: Any additional appearances?

Mr. Kellahin?

MR. KELLAHIN: Thank you, Mr. Examiner. I have two witnesses to be sworn.

EXAMINER ASHLEY: Will the witnesses please -- Oh, and Mr. Hall?

MR. HALL: I have one.

EXAMINER ASHLEY: Okay, will the witnesses please rise to be sworn in?

(Thereupon, the witnesses were sworn.)

EXAMINER ASHLEY: Mr. Kellahin?

MR. KELLAHIN: Thank you, Mr. Examiner.

Let me see if I can give you a concise introduction of where we are with these two cases.

The compulsory pooling cases that you have before you in 12,276 is the Brookhaven Com 8 and 8A well. They're in the west half of the section, Section 36. There is to be a Mesaverde well in the northwest quarter, and a Mesaverde infill well in the southwest quarter. In addition, those wells are proposed to be dual completions with the Chacra. And so the Well 8A is going to be in the southwest quarter and the Well Number 8 would be in the northwest quarter for the Chacra spacing unit. They're each on 160 acres.

In Case 12,277, Burlington is seeking a compulsory pooling order for the east half of Section 16, and we'll show you where these are in a minute, but this is for a Mesaverde alone. This is a single completion. And so the Brookhaven Com B Well 3B is the stand-alone Mesaverde, and the Com 8 wells are the dual completions that are proposed.

We are back before you attempting to obtain a compulsory pooling order over a group of owners that I have characterized as the GLA-46 Group. There is an old contract farmout operating agreement that dates from 1951, and there's a dispute between Burlington and the GLA-46 Group. A portion of that interest is now held by Energen and others, collectively represented by Mr. Hall.

Burlington takes the position that the old November, 1951, agreement no longer has well obligations attached to it, and therefore any new wells have to be agreed upon in terms of cost, allocation and recovery of money spent.

The GLA-46 Group takes the position that that contract or agreement is still in effect. And so what you have is Burlington saying the contract is not in effect, Energen and the GLA-46 Group saying it is. And when these new wells were proposed, Burlington proposed them under a new operating agreement, using current costs.

Energen has disputed that, and they contend they get the opportunity to elect to participate under the old 46 agreements from 1951, which are very favorable to Energen in that Energen's interest is a carried interest. Let me see if I can describe this in a simple way.

Burlington and Energen are each successors to earlier companies that originally executed this stuff. There was a San Juan Producing Company, later became El Paso and now Burlington, that is the operator. Under this agreement, Burlington now makes all decision on proposing wells and drilling them and operating them, and there is no election made by the working interest owners under that old contract.

Energen succeeded to the interests of Brookhaven Oil Company, and it went through a succession of owners. But when you look at some of this, Brookhaven is the original party. And what they did is, they split their acreage position where El Paso, now Burlington, has 50 percent, Brookhaven, now the GLA-46 Group, has 50 percent.

And under the terms of the well-cost issue it was arranged this way. Originally there was a cap on the costs, $45,000 for a Mesaverde well. That represented current prices back in 1951. Burlington would pay for the total costs of that well, including the casing.

Then in order to recover their costs, they were allowed to do that out of a portion of Brookhaven's interest. Brookhaven has 50 percent, 50 percent was split in half. So 25 percent of production revenues went straight to Brookhaven cost free. The other 25 percent was the burden shared in that production, that 25-percent production, then, was used by which Burlington recouped 50 percent of the costs, which would have been Brookhaven's share, subject to the cost ceiling of $45,000.

So Energen now in that position wants to argue that they keep 25 percent of the production until payout, and their interest increases to 50 percent, and they want to contend that despite new well costs now costing $427,000 for the dual wells and $386,000 for the single, that the price cap stays.

And there's a contract dispute. It needs to be litigated. Mr. Carroll is aware of that. We brought this issue back to the Commission, or the Division, the first time back in 1997, when Burlington was doing the Marcotte and the Scott wells, which were the two deep gas wells in the San Juan Basin on 640 gas spacing. And Mr. Hall and I had this argument before Mr. Catanach and Mr. Carroll. And in Order Number R-10,877 and Order R-10,878, the Division found concerning the contract dispute.

It said it's the Division's position that the interpretation of the agreement should be deferred to the courts and that Burlington's compulsory pooling case against Total -- It was Total Minatome at that time; the current interest holder is now Energen. In order to consolidate all the interests within the proposed spacing unit, the interests of Total should be pooled by this order.

The Division analyzed that result by saying that if Burlington's interpretation of the contract -- which was, it no longer applied -- is determined by the courts to be incorrect, then the GLA-46 Group can and may and has made a voluntary election under the contract, and Burlington is stuck with that result, and they're simply dropped out of the compulsory pooling order, which is how those orders are now phrased. It only force pools uncommitted interest owners, and if Energen is successful in court litigating the validity of the contract, then that will prevail over any force pooling.

Burlington argued successfully before the Division that if they are correct and there is no contract, then they need to have the option of having a force pooling order in place.

And so the risk is on Burlington, not on Energen and not on the Division. If Burlington drills these wells and guesses wrong, they're going to spend $427,000, and they're going to do so with a cost limitation that Energen gets to enjoy, which currently has a cap -- If you look at some of those contracts, there's an escalator; it went from $45,000 to $90,000 back in 1974, I think.

So that's the problem. And we're here today to show you that we can't reach an agreement, we've talked about this issue among the companies. Energen takes one position, Burlington another. It's not within your jurisdiction to resolve the contract dispute.

And so what we're asking to go forward with is a rather simple force pooling case. It shows the parties can't agree, we'll show you the costs, we have an engineer to talk about what we think is the appropriate risk to decide upon in entering the order, then we go home.

On the other hand, we can sit here for the next four or five or six hours, and we can talk and debate and argue over whether any of these contract documents come into evidence. And frankly, I would like you to do what you did back in September of 1997, and that is to simply say it's a contract dispute, we're not going to resolve it, let's issue a pooling order here, and you people go to the courthouse and figure it out.

So that's what we need to decide, how you want to handle the presentation today.

We're prepared to go forward with a landman that has a paper trail to show you the proposals. I'm not prepared to engage in a discussion with experts over what these contracts mean or what happened. I don't think that's the place to do it here. I have an engineering witness that will talk to you about the costs of the wells and what he thinks the risks are attached to that, and then we'll go home.

So that's my proposal.

MR. CARROLL: Before you make your statement, Mr. Hall, I've got a few questions of Mr. Kellahin.

Are there any other working interest owners to be pooled, other than the interests covered by the JOA agreement?

MR. KELLAHIN: Mr. Carroll, when the Application was filed, there is Cross Timbers, and there is a lady whose name escapes me. I can find it here pretty quick. Cheryl Potenziani, I think is her name. The first two people on that notice list, Cross Timbers, and the lady in Albuquerque.

EXAMINER ASHLEY: These two aren't subject to the GLA?

MR. KELLAHIN: No, they're not. What they did is, they would be subject to compulsory pooling. At the time we filed the Application we believed and are hopeful that here very shortly we will have all the signed documents by which their interests would be voluntarily committed to a new operating agreement.

They have both indicated favorable reactions by signing an AFE. But my understanding yesterday is, we don't have signed operating agreements back in place and all the details nailed down.

If that occurs, then the parties to be subject to the force pooling will be the GLA-46 Group that is asserting that the contract is still valid, so that's where we are.

MR. CARROLL: Another question is, yeah, I think the courts could --

MR. KELLAHIN: I'm sorry, I misspoke.

MR. CARROLL: What?

MR. KELLAHIN: These two people are part of the GLA-46 group, except they have -- they're not represented by Mr. Hall, and so they would have the opportunity to argue under the old contract. They have chosen not to do that, so that's the category they're in.

MR. CARROLL: Well, the Division sees -- Really, it looks like the only problem is the risk penalty. I mean, if Burlington is right and this group of people forgoes paying their costs up front, then they're going to be subject to a risk penalty that they wouldn't otherwise have been. So your solution would be, they should both fight it in court and pay their costs up front in order to avoid a risk penalty?

MR. KELLAHIN: No, sir. What I'm suggesting is, they could make a dual election, if you will. They could elect to participate under the contract and then have a qualifier saying, in the event we lose that position, which we don't think we will, we want to elect to participate under a force pooling order.

So I would propose they would have language in the order to give them the election so they have the comfort of avoiding the penalty by electing now.

MR. CARROLL: Would Burlington be willing to front the costs, then, carry them until it is determined by the courts whether --

MR. KELLAHIN: Well, our expectation is, we would recover -- If the elect to participate, then they would pay their share of those costs on a monthly basis, I think. In the event they are right, then we're going to owe them some money back. So we would not carry them without payment. Do you see what I'm saying?

MR. CARROLL: Uh-huh.

MR. KELLAHIN: They would be subject to a refund, but they would avoid the penalty.

Now, they could choose not to participate at all and write all the cards on the contract argument, and so we would recover out of production, then, the costs advanced for carrying them, plus the penalty. And if we lose that, then we have to write them a check.

MR. CARROLL: All right. And what's your argument in court as to why this GLA contract doesn't apply?

MR. KELLAHIN: I'm sorry?

MR. CARROLL: What's your argument in court, why the GLA contract does not apply?

MR. KELLAHIN: Simply stated, there is a provision under Article 4 of the agreement which says that after San Juan has drilled and completed four Mesaverde wells within a 12-month period until a total of 18 Mesaverde wells are drilled, once that happens, we contend that discharges the drilling obligation. And so after that, then, costs for wells are well-specific, and we would need an agreement, then, on what those costs are.

The practice has been between these entities that since about 1974 on at least 13 different occasions, the agreement has been reached voluntarily by the companies, where they acknowledge that the old caps on price were not appropriate to current well costs. And so for the next year's drilling program, they agree that these new wells would not be subject to the cost limitations, and it proceeds from there.

We're now at the point where Energen is taking the position that they don't want to talk about new costs, won't agree to them, and they want to hold us to the old price ceilings plus the recoupment means of getting your money back through production.

And so it's a contract dispute.

MR. CARROLL: And what's the current cost cap? $90,000?

MR. KELLAHIN: $90,000 for a Mesaverde well.

MR. CARROLL: All right.

MR. KELLAHIN: And the end result is, we simply can't drill them, can't drill them with that cost limitation. And so the wells are either not going to be drilled, or we're going to take the risk that we're right on this contract, and we're going to drill them for current costs with the hope and expectation that they're going to pay their share of current costs, and we stand the risk of losing that.

EXAMINER ASHLEY: Mr. Hall, would you like to make an opening statement?

MR. HALL: Yes, Mr. Examiner, thank you.

Mr. Kellahin is correct to a degree. This is, in a certain sense, an ordinary pooling case. But he is also correct that there is a contract issue embedded in this case, and it's a contract issue which you, the Examiner, must consider before you exercise your considerable police powers under the Division statutes to pool the property interests.

Now, there's been allusions to the earlier case between Energen -- or, sorry, Burlington and Total Minatome in 1997. That case was Case Number 11,809, I believe, and the same issue involving GLA-46 appeared in that case.

Mr. Kellahin neglected to mention to you, however, that although there was an order issued by the Division pooling GLA-46 interests, that order was appealed to the Commission. And while it was pending on appeal, the well that was the initial subject of that order came in as a dry hole, unfortunately for all.

So rather than waste energy and time and resources on pursuing that appeal further, it was dropped. So that case is not a legitimate precedent for you to consider in this case.

It is true that there's a contract issue at stake here, and you must consider it. It's a very precondition to the exercise of pooling powers under the pooling statute, 70-2-17 C. That's the statute invoked by Burlington.

The Division must make a finding, an express finding, based on evidence that the lands that are the subject of the proceeding have not been voluntarily committed to the well. So I think that casts the issue fairly concisely for you.

Now, now that issue is framed, how do you decide this case? What evidence should you look at? Should you go in and simply consider that there is disagreement between the parties whether the contract applies or not? I submit to you that you cannot do that. If you go into this case and write an order presuming that the contract does not apply simply because there is disagreement and it's a matter that must be deferred to the courts, that, I would submit to you, is an abdication of your duty as a Hearing Examiner, to consider that voluntary commitment order.

For you to presume that simply because there is disagreement and it is a contract issue to be deferred to the courts is, in effect, an improper adjudication by a Hearing Examiner of a contract term. You would, in effect, be re-writing substantive contract rights negotiated at arm's length between parties nearly 50 years ago and which have been followed consistently in the drilling of scores of wells ever since.

So what do you do? How do you decide this case? Let me suggest to you that you do this when you listen to the evidence in this case. Burlington has asserted to you that after the 18th well, the 18th Mesaverde well, was drilled, GLA-46 was kaput, no longer applied. That's what Mr. Kellahin says.

That 18th well, I think the evidence will show, was drilled in about 1956, so what you should do when you consider the evidence is look at the practice of the parties under GLA-46 from year one, 1951, to year 1956, and on into the 1990s. How did they treat GLA-46? Did they apply it to the drilling of subsequent wells? Did they apply it to more wells than just the 18th well, which they say extinguished any obligations under GLA-46?

Look at the interpretations of the operator over time under GLA-46. We're going to present you with voluminous documentation showing how at the start San Juan and El Paso and Meridian and now Burlington all regarded GLA-46 as giving it exclusive control of the acreage that it affected. We'll show you documents that say that nonoperators have no right to propose a well at all. We would be prohibited from coming before the Division, according to their own interpretation, proposing a well or initiating a compulsory pooling proceeding. We simply could not do it. Their own interpretation of contract.

You look at all of those instances, all of those documents, the conduct of the parties over the years, and that gives you significant guidance upon which you can base a decision that GLA-46 has been followed and adhered to by the parties over time. And once you're satisfied that that's the case, I think that will prevent you from entering a finding that these lands are not voluntarily committed to those wells.

And on the basis of that evidence in the record, I think you'll find you'll have to enter dismissing the case, or denying the relief that Burlington seeks.

Thank you, Mr. Examiner.

EXAMINER ASHLEY: Okay.

MR. CARROLL: Mr. Hall, so it's your client's position that the most you're at risk for is $45,000, and that's recovered out of 50 percent of your share of production?

MR. HALL: That's been the construction for a long time, yes.

MR. CARROLL: And when was the last time a well was drilled that your clients only paid that amount?

MR. HALL: I think as the evidence will show, subject to correction, the most recent well would have been about 1990 or 1992, when Meridian abided by the original GLA-46 terms.

MR. CARROLL: And have your clients considered the argument just advanced by Mr. Kellahin that the economics of that old agreement would prevent these wells from being drilled?

MR. HALL: Well, we would have to accept that argument without any evidence. I don't know, we may have to elicit some cross-examination on that very point. I'm skeptical, frankly. The interest covered by GLA-46 is not 25 percent in the entire proration unit. It's just in the acreage within the proration unit subject to GLA-46. The entire proration unit is not subject to GLA-46, so it's, frankly, a smaller percentage.

Bear in mind, Mr. Carroll, that we heard these same arguments before when the Marcotte well was drilled, but that did not slow down the drilling of that -- what was probably a $5 or $6 million well.

MR. CARROLL: I think this has come up before. I don't know if it was in that Marcotte case or not, but part of that statute regarding pooling, 70-2-17, I'm looking at subparagraph -- or paragraph E.

MR. HALL: Yes, that --

MR. CARROLL: I'd like both counsel to consider this, maybe, in their proposed orders or what happens. It says whenever it appears that the owners in any pool have agreed upon a plan for the development or operation of such pool -- I guess we're looking at the Mesaverde Pool -- the Division, upon hearing after notice, may subsequently modify any such plan to the extent necessary to prevent waste.

MR. KELLAHIN: That was utilized, Mr. Carroll, in the Burlington-Doyle Hartman case, if I'm not mistaken, where Mr. Hartman was claiming there was an old operating agreement that limited you from drilling an infill well in the Mesaverde, and Burlington force-pooled him for the infill well, and you overrode the old agreement because it was not consistent with the plan of development approved for the pool by the Division. So that's the case you're thinking of.

MR. CARROLL: Mr. Hall, it looks like -- maybe you can convince me otherwise -- that even if this agreement is in effect, it looks like the Legislature gave the Division the power to alter a contract to prevent waste. I mean, can your parties agree that you're going to drill 12 wells every 40 acres? We wouldn't allow that, and that would be rewriting your contract.

MR. HALL: We're not asking for the blessing of any contract that would violate the Division's rules or regulations.

And I'd also point out that I think any relief under subsection B is beyond the scope of this hearing as pleaded. It simply has not been invoked by Burlington before now. As the pleadings are cast now, we're limited to subsection C. They have not asked you for that relief.

The case Mr. Kellahin was referring to, where the same issue has come up, is whether or not there was a pre-existing commitment of lands. It's Case Number 11,434. Refer you to Order Number R-10,545. It was a Meridian application in San Juan County. And I'd ask that the Examiner take administrative notice of the record and the order in that case.

EXAMINER ASHLEY: What was the order number again on that, Mr. Hall?

MR. HALL: R-10,545.

MR. CARROLL: And that was the Hartman --

MR. HALL: Yes.

MR. CARROLL: -- case?

MR. KELLAHIN: Yeah, that's the Hartman.

MR. HALL: Hartman --

MR. KELLAHIN: Yeah, it was really -- I called it Burlington, but it was done under Meridian.

EXAMINER ASHLEY: Case 11,434?

MR. HALL: Yes.

EXAMINER ASHLEY: The Division will take administrative notice of Case 11,434 issued in Order R-10,544.

MR. HALL: 10,545.

EXAMINER ASHLEY: 10,545?

MR. HALL: Correct.

EXAMINER ASHLEY: Okay, thank you.

MR. HALL: 1996.

MR. KELLAHIN: Well, the issue is, are we going to sit here and argue over whether subsection E is within your bag of things to do? I propose that it is. I think it's a waste of time to walk away and refile a pleading to assert that you can, if there is an agreement, set aside that agreement. We think it's simpler than that. I'm happy to rely on it, because I think it's the right thing to do.

But looking at subsection C, there is no agreement between Energen and Burlington on these new well costs, and that's the difference. They say there's a contract, we say there's not. There, in fact, is, by admission, no agreement. So we think we're entitled to a force-pooling order.

EXAMINER ASHLEY: Okay, Mr. Kellahin?

MR. KELLAHIN: Sir?

EXAMINER ASHLEY: Are you ready to go?

MR. KELLAHIN: If you'll tell me what you want me to present. Are we going to need the contract stuff or not?

MR. CARROLL: Well, we're going to defer ruling on the issues raised, but we will take evidence today.

MR. HALL: If I may make a brief comment about that before we see -- I think the reason that Burlington has not imposed subsection E of 70-2-17 is that it's consistent with the position that a contract does not exist. So for you to exercise your authority under subsection E necessarily presumes a contract would be in place. So that's why they have not pleaded --

MR. CARROLL: Well, I think the parties agree in the interest of economy, all the witnesses are here to hear the testimony today.

MR. KELLAHIN: Yeah.

MR. CARROLL: Because the issues aren't going to change.

MR. KELLAHIN: Well, they're not going to change, and I disagree with his argument about not pleading subsection E. If there is an agreement, I lose that issue, and you override it as a matter of Division policy, I still win. So I think it's inherently incorporated in your decision-making process, and I think it's a waste of everybody's time to suggest that I have to continue and come back in three weeks to add an E to the pleading.

We're here, we ought to take the witness's testimony and move forward.

MR. CARROLL: Is there any objection to that?

MR. HALL: Not to proceeding. I think, to respond to Mr. Kellahin's comments, there's a due-process problem embedded in the assertion that you may have the authority to invoke subsection E in the context of this case.

MR. KELLAHIN: Well, I'll formally move at this time, Mr. Examiner, that you allow my pleadings to be amended at this time to include arguments considered under the provisions of 70-2-17 E.

MR. CARROLL: Objection?

MR. HALL: I object. We weren't fully prepared to address that, but we will do our best.

MR. CARROLL: Well, we'll defer ruling on that. Proceed with the witnesses.

MR. KELLAHIN: All right, we call Shannon Nichols.

MR. HALL: I move we invoke the no-coat rule.

EXAMINER ASHLEY: Sounds good. Everybody please remove their coat.

MR. KELLAHIN: Mr. Examiner, I have distributed two exhibit books. One is marked for the 12,276 case, which is the Brookhaven Com 8 and 8A wells, and the exhibit booklet for Case 12,277 is the 3B. I propose to start with the 12,276 book, and they're identical in all areas except the correspondence and proposals as to each well are unique in each book. So Burlington's well proposal for the 8 well will be in this booklet we're talking about. The well proposal for the B3 is going to be in the 12,277 book.

Other than those minor differences, the information is the same. So we'll see if we can --

EXAMINER ASHLEY: Okay.

MR. KELLAHIN: -- not confuse you.

SHANNON NICHOLS,

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

DIRECTLY EXAMINATION

BY MR. KELLAHIN:

Q. Mr. Nichols, for the record, please state your name and occupation.

A. My name is Shannon Nichols. I am employed as a petroleum landman with Burlington Resources Oil and Gas Company in Farmington.

Q. Were you the landman responsible for proposing the subject wells, which are the Brookhaven Com Well 8 and 8A, to the various interest owners in the spacing unit?

A. Yes, sir, I was responsible for proposing those wells.

Q. Okay. And when we get to the Brookhaven Com B well, the 3B well --

A. That well was actually proposed by a fellow landman employed by Burlington by the name of James Strickler.

Q. All right. Have you reviewed Mr. Strickler's correspondence and communications --

A. Yes, I have.

Q. -- with the company? And you have examined the interest owner distribution and can speak knowledgeably about the parties that have interest in all these spacing units?

A. Yes, I can.

Q. In addition, are you familiar with the spacing requirements for these wells and the proposed spacing units and where they are located?

A. Yes, I am.

MR. KELLAHIN: We tender Mr. Nichols as an expert petroleum landman.

EXAMINER ASHLEY: Mr. Nichols is so qualified.

Q. (By Mr. Kellahin) Let me have you turn to Exhibit 1 of Case 12,276 and identify the information behind Exhibit 1.

A. The information behind Exhibit 1 is simply the

Application that Mr. Kellahin had submitted, along with the certification notices, and there is included in that certification a list of all the owners in the Brookhaven 8 and 8A wells.

In addition to that, there are certified mailing receipts for all parties at the very back of Exhibit 1.

Q. All right. Let's turn through the pages and find Exhibit A, which is a tabulation of interest owners. Do you find that?

A. I have found that.

Q. All right, sir. When we exclude Burlington's interest from the spacing unit, do these percentages, to the best of your knowledge, and the individuals listed, to the best of your knowledge, are they accurate and true as to their interests in the Mesaverde and in the Chacra, within the proposed spacing unit for the Brookhaven Com Well Number 8?

A. Yes, they are.

Q. And is that also true for the 8A?

A. That is also correct. The only difference I might see right there is on the 8A, I believe. The Chacra interest may vary from what's shown as Exhibit A there. We've got that information at a further point in the book.

Q. Okay. So for notification purposes, have I sent notice to all the proper parties?

A. Yes, sir, you have.

Q. Okay. Let's turn to Exhibit 2 and locate the Examiner as to where these wells are.

A. The first map that you'll find in Exhibit 2 is just a map of basically the San Juan Basin. You can see that pretty much in the center of the map there is a well spot with an arrow, and the Brookhaven Com 8 and 8A wells are located in that Township 27 North, Range 8 West, Section 36.

Q. It looks to be located just north of the City of Aztec in the next township?

A. That, Mr. Kellahin, I believe is the Brookhaven Com 3B well that you're looking at.

Q. I'm sorry, I've got these reversed. The 8 and 8B are down south, and they're on the county line between San Juan County and Rio Arriba?

A. That is correct.

Q. All right. Let's locate the Brookhaven Com 3B.

A. The 3B, if you go up to the left, upper left portion of the map and you spot the City of Aztec, you will find the well spot for the Brookhaven Com 3B arrowed in, basically just above the City of Aztec location.

Q. All right, sir. Let's turn now to the second display and look more specifically at the area included within Section 36 and the adjoining sections.

A. The second map there is just simply a nine-section offset map. We're centered on, again, 27 North, 8 West, Section 36. The Mesaverde wells, both the 8 and the 8A, are going to be west-half units. The 8 Chacra portion will be spaced as the northwest quarter, and the 8A Chacra portion will be spaced as the southwest quarter.

Q. And the color code indicates the other types of well in the area?

A. That is correct, color code and symbol.

Q. All right, let's turn more specifically to the chronology of events. If you'll turn with me behind Exhibit Tab Number 3, did you prepare this summary?

A. Yes, I did.

Q. And have you summarized your various contacts with the interest owners, the working interest owners in the spacing units proposed for these wells?

A. All written correspondence is included in this chronology.

Q. And you have commenced with the date at which Burlington proposes to these interest owners that they sign an operating agreement, and you have included an AFE which represents well costs current as of that date?

A. That is correct.

Q. All right. So that we see how you've organized the exhibit book, behind the tabulation, then, is the supporting documentation for each of these entries; is that not true?

A. That is correct.

Q. All right. Let's start with the first correspondence, the July 30th, 1998. What are you doing here?

A. The July 30th, 1998, letter was simply our election ballot letter and -- along with the joint operating agreement and AFE submittal proposing the Brookhaven Com 8 as a Mesaverde-Chacra dual completion.

Q. All right, what's the next entry?

A. The next entry is August 4th, 1998. Cheryl Potenziani elects to participate in the proposed well and signs the joint operating agreement, dated July 29th, 1998.

Q. Okay. Is her interest fully committed, then, in the spacing unit, based upon this, or is there something else that needs to happen?

A. At that point in time, her interest is fully committed.

Q. All right, this is under the July, 1998, proposal, then?

A. That is correct.

Q. Okay. So she commits her interest under that proposal?

A. Yes.

Q. On August 14th, what do you do?

A. On August 14th of 1998, NationsBank -- The date of the letter is August 14th. NationsBank, as agent for eight working interest owners, elects to be carried in the proposed well under the terms of GLA-46 agreement dated 11-27-51.

Q. All right, this is the agreement I referred to in my opening remarks?

A. Yes, it is.

Q. Did I correctly summarize the cost-carrying provisions of that 1951 agreement?

A. Those are correctly characterized.

Q. All right. And so this is part of the GLA-46 group that is attempting to elect under the old agreement?

A. That is correct.

Q. What happens then?

A. August 24th, 1998, Total Minatome, as predecessor to Energen, elects to participate in the proposed well under the terms of GLA-46 agreement dated 11-27-51.

Q. Al right, they're doing the same thing NationsBank did?

A. Yes.

Q. What happens on August 26th?

A. August 26th, 1998, Cross Timbers Oil Company elects to participate unconditionally in the proposed well and also returns executed signature pages to the joint operating agreement dated July 29, 1998.

Q. At this point, then, you do not have unanimous working interest owner commitment to the proposal made on July 30th, 1998?

A. That is correct.

Q. What then do you do?

A. By letter dated September 18th, 1998, we submitted a letter to all working interest owners, with the exception of Cross Timbers and Cheryl Potenziani, that Burlington's position that GLA-46 does not apply to this well.

In our letter of same date, we proposed two participation options under which we would be willing to drill the proposed well, if all parties elect under an option provided.

Q. All right, let's turn to the September 18th letter and see what those options were, Mr. Nichols.

A. Okay.

Q. We have two years of correspondence in here. I need to look for the September 18th, 1998, letter, right?

A. Yes, and it should be in chronological order.

Q. Okay, I've found it. What are you proposing?

A. Option 1 under this second-request type of letter, or additional options, is, enter into the modern form JOA and either participate or nonconsent under the terms of the JOA.

Option 2 was that Burlington will voluntarily carry your drilling, completing and equipping costs in the referenced well. Upon doing so, we will be allowed to recoup 100 percent of its costs associated with the carried interest, with recoupment occurring from 100 percent of the revenue stream associated with the carried interest. Upon payout, each party will revert to its full participation interest. Further, we propose under that agreement a drilling rate, overhead rate, of $4063.77 per month and a producing well rate of $474.13 per month, with an expenditure limit without partner approval for $25,000.

Q. This is for the Brookhaven Com 8 well?

A. That is correct.

Q. Is there a similar chronology or a history of proposals for the infill well, the 8A?

A. No, there is not substantial correspondence of this nature of the Brookhaven Com 8. We were hoping to drill this initial well in the section. At this point in time, we were still hoping to get voluntary participation. We were going to, of course, evaluate that initial well and then look at the 8A, the infill well.

Q. All right, so at this point we're dealing with just the parent or the original well in the --

A. That is correct, we're dealing solely with one well at this point in time.

Q. You're offering to carry these interest owners and to recover out of 100 percent of the production those costs attributed to their interest?

A. That's correct.

Q. There is no penalty or fee or an interest associated with that recoupment?

A. There is no penalty involved in that. It's simply 100 percent payout.

Q. Okay. What happens then, after that?

A. Going back to the chronology of events, by letter dated November 16th, 1998, Energen Resources as successor in title to Total Minatome elects to participate under Option 2 as provided in Burlington's September 18th, 1998, letter. Energen's letter further conditions their election to reflect that the terms of GLA-46 are still in effect.

Q. What happens on January 5th of 1999?

A. January 5th, 1999, NationsBank as agent for eight working interest owners elects to participate under Option 2 as provided in Burlington's September 18th, 1998, letter.

Q. Okay, at this point, then, did you have full agreement on the working interest owners as to a course of performance under these new proposals?

A. At this point in time we still had -- We did not have unanimous participation under either option.

Q. All right, so what happens? We get to May 18th of 1999, right?

A. May 18th of 1999, Burlington mails out a new joint operating agreement dated February 1, 1999, to all GLA-46 working interest owners and covering all lands included in GLA-46.

Q. Okay. By August 25th, what's happening?

A. By August 25th, we still had not received unanimous participation to either participate in the well under current JOA or Option 2 as provided in our September 18th letter, so we issued a letter again dated August 25, 1999, that we were withdrawing our offer to drill and complete the Brookhaven Com 8 under the participation options provided for in our September 18th, 1998, letter.

Q. All right. On September 15th, then, you reproposed this well under new terms and conditions?

A. That is -- The well was reproposed on September 15th using the same AFE as originally submitted in July -- under letter dated July 30th, 1998. The difference at this point in time is being that the joint operating agreement that was submitted with our election letter and AFE was the joint operating agreement dated February 1, 1999, which we originally provided May 18th of 1999.

Q. All right, so what's the change?

A. The change -- The original joint operating agreement was limited just to the proration unit covered by the Brookhaven Com 8 well. This second proposal, dated September 15th, 1999, the joint operating agreement which we sent under that letter covered all lands under the old GLA-46 contract.

Q. Okay. Also on this same date you now propose the infill well, which was originally numbered the 9, and it was later changed to 8A to reflect it was infill?

A. That is correct.

Q. Okay. What happens after that?

A. By letter dated September 27th, 1999, Cheryl Potenziani elects to participate unconditionally in the proposed Brookhaven Com 8 and Brookhaven Com 9.

Q. She made that election how? By executing the AFE?

A. She executed our -- Actually, all she executed was the ballot letter saying she would participate in the drilling and completing of the well.

Q. All right. What happens then?

A. October 11th, 1999, Energen Resources elects to participate in the Brookhaven Com 8 and Brookhaven Com 9 under the terms of GLA-46 agreement dated 11-27-51.

Q. Okay, please continue.

A. October 13th, 1999, Burlington mails a letter to

Energen acknowledging the receipt of Energen's letter 11th, 1999, and advising Energen that it remains Burlington's assertion that GLA-46 does not govern the drilling of additional wells on the subject acreage.

October 14th, 1999, Westport Oil and Gas, this is the first entry we'll see to Westport Oil and Gas at this time. My understanding of the transaction of Westport coming into title was that Energen made an assignment of a portion of their interest under these lands and assigned that to Westport Oil and Gas. That being cleared up, Westport Oil and Gas elects to participate in the Brookhaven Com 8, Brookhaven Com 9, under the terms of GLA-46 agreement dated 11-27-51.

Q. Okay.

A. October 19th, 1999, Cross Timbers Oil Company, as agent for Merchant Resources Number 1 Limited Partnership, elects to participate unconditionally in the Brookhaven Com 8 and Brookhaven Com 9.

October 26th, 1999, Burlington advises all working interest owners in the Brookhaven Com 9 that the Well name has been changed from the Brookhaven Com 9 to the Brookhaven Com 8A.

And also on October 26th of 1999, by letter date, Bank of America, as agent for eight working interest owners, elects to be carried in the Brookhaven Com 8A under the terms of GLA-46 agreement dated 11-27-51.

Q. At this point then, as of today's hearing, we have a stalemate between you and the GLA-46 Group with regards to agreeing to current well costs and how to recoup those costs?

A. That is correct.

Q. And you have not been able to resolve that?

A. We have not been able to resolve it. We had a meeting between our management and the management of Energen Resources in Burlington's office. I don't have the exact date. Rich might have it. But at that meeting, at the high-level management meeting, we did try to again hash out something that was workable for both parties. Again, we did not have success. And both parties, at that point in time, with the exception of some follow-ups and basically both companies saying our position hasn't changed, there's been no further correspondence since those particular meetings and their follow-ups.

Q. When I look at Exhibit Tab 4, what is contained behind Exhibit Tab 4?

A. Exhibit Tab 4, this was included, I believe, in the joint operating agreement that we submitted under letter dated September 15th, 1999.

What this does is, it identifies the proration unit for the Brookhaven Com 8, and it identifies the interests in the Mesaverde completion and also in the Chacra completion and further gives a participation option. Burlington, of course, is participating. Cross Timbers, Cheryl Potenziani, had elected to participate, and the balance of the parties have elected under the terms of GLA-46.

Q. Have you enclosed a copy of the proposed operating agreement that you were proposing to apply to the spacing unit?

A. Yes, sir, I have. Let me make one further note. Behind the two pages on the Brookhaven Com 8, we have the same thing for the Brookhaven Com 8A. The Mesaverde interests are identical. We did have a difference in the interest in the Chacra due to one being the southwest quarter and the other being spaced solely on the northwest quarter.

Following those two items is a complete copy of our operating agreement, dated February 1, 1999.

Q. Okay. There's a portion of the operating agreement I would like to direct your attention to, because it deals with the mechanics of how you handle cost allocation and revenue apportionment for a dual completion, right?

A. Yes, sir. Actually, it's just -- refers to cost allocation.

Q. It's a cost allocation?

A. Yes, sir.

Q. Could you find that for us?

A. Yes, it is. If you'll turn in your joint operating agreement to page 9A and 9B, at the bottom of page 9A you'll find a formula for allocation of costs for drilling and completing dual wells, and we're basically -- How we treat this is that we are going to the base of the Mesaverde as the estimated TD. The Chacra formation lies above the Mesaverde. So drilling costs from the surface to the base of the Chacra under our language here would be shared equally by the two parties.

Q. So the shallow-zone owners split half those costs with the deep owners?

A. That is correct.

Q. And then below the shallow zone, what happens?

A. Below the shallow zone, any additional costs of drilling or testing or completing are borne solely by the owners in that deeper formation.

Q. Has Burlington utilized this cost-allocation method for dual wells in other areas?

A. Yes.

Q. Other agree- -- This is sort of a standard --

A. This is Burlington's standard cost-allocation language.

Q. All right. Let's turn to an additional provision on this topic. If you'll turn with me to page 14 of the operating agreement, is there an additional item that needs to be referenced to the Examiner?

A. Yes, sir, there is. On Article XV, Division F, we talk there about multiple completed formations in a well will be treated as a dual well until such time the formations are commingled. At such time the formations are commingled, all future costs and expenses will be adjusted pursuant to the allocation formula approved by and in compliance with New Mexico Oil Conservation Division Rules and Regulations.

We feel that that should also be incorporated here, for allocation of overhead costs.

Q. Is it your recommendation that these two provisions we've just described be included in any compulsory pooling order issued which involves these Chacra-Mesaverde duals?

A. Yes, it is my recommendation.

Q. This operating agreement obviously covers a great many other properties.

A. Yes, it does.

Q. Who signed off on this agreement, generally? Do you have Amoco's participation under this new contract?

A. Yes, we do have Amoco's participation under this contract, and we also have George Umbach, and I believe there's one more party -- possibly not.

Q. As to the original GLA-46 contract area, that acreage, and subject to other acreage additions to the contract area, was Amoco ever in the position to argue that it could take advantage of the GLA-46 agreements, or are they outside of that agreement?

A. No, Amoco -- Next to Burlington, Amoco owns the second largest ownership position in GLA-46. It's been their recognition, and the new operating agreement was done somewhat at the request of Amoco, that this thing, this whole contract, was holding up development. They recognized the fact that we could not economically develop these lands under the owners' terms that we agreed to back in 1951. Amoco was the driving factor in bringing to bear this new operating agreement.

Q. So they were in a position to assert the price limitations and the recoupment provisions of the old 1951 agreement?

A. Absolutely.

Q. And they chose to execute a new agreement?

A. Yes, sir, they did.

Q. And were you in a similar position to not be able to develop the properties without a new agreement?

A. We would have been in the same onerous economic conditions with Amoco as we are with these parties here today.

Q. Let's turn to show me the provisions or the exhibit portion of the book that contains the AFEs for this population of wells, the 8 and the 8A. Where do I find those?

A. Those would be found behind Exhibit Number 5.

Q. All right, show me how to read one of these to figure out how I get the total prices of the dual wells.

A. The dual wells, as you'll see here, we've got -- What we'll have here are drilling completion and facilities for this dual Chacra-Mesaverde well.

Q. You have to sum some of these totals to get to the total cost, right?

A. We do have to sum some of those totals. You'll find two AFEs attached for the Brookhaven Com 8. The first one is an AFE in the amount of $190,015, and the second one is for the Mesaverde completion. The first AFE is for the Chacra completion. The second AFE for the Brookhaven 8, in the amount of $237,615, for the Mesaverde completion.

Q. You've used the cost allocation method you have shown us in the operating agreement to come forward with the cost split here, I guess?

A. Yeah, I did not write these AFEs, but that is my understanding.

Q. That's the method?

A. Yes.

Q. And so to get the total well cost for a completed well, I need to add the $190,000 to the $237,000?

A. That is correct.

Q. All right. The same thing in here, you've got AFEs for the infill well?

A. Uh-huh. Yeah, the Brookhaven Com 8A is the same AFE.

Q. Okay, and those were the AFEs that were circulated to all the working interest owners?

A. That is correct.

Q. Under your well proposal?

A. Yes.

Q. All right. Let's leave that exhibit book, and let me turn your attention to Mr. Strickler's well. It's in the Case Book 12,277; it's going to be the Brookhaven Com B well, 3B, and it's the stand-alone Mesaverde well. Let's turn to Exhibit Tab 2, and let's look at the layout of the section, the adjoining sections in the wells. Where's the 3B well proposed for?

A. The 3B well is proposed as an east-half well in Section 16 of Township 31 North, Range 11 West.

Q. And when we look at the San Juan Basin locator map, this is the one that's north of Aztec and slightly west of the Marcotte well?

A. That is correct.

Q. Find in the exhibit book the tabulation of interest owners. Exhibit A, attached to the notice of hearing, which is the third page in Exhibit 1, does this correctly reflect the working interests, with the exception of Burlington?

A. Yes, it does.

Q. Let's use this as our index for a moment. As we are here before the Examiner today, do you have agreement with any of the parties or groups listed here?

A. To my knowledge, we do not have agreement with any of the parties referenced herein, with the possible exception -- and let me check my chronology -- of --

Q. -- Cheryl Potenziani?

A. Yes, Potenziani. Yes, Ms. Potenziani has elected to participate in the proposed well.

Q. It's your belief that the others listed on the exhibit have taken the Energen position of asserting participation pursuant to the cost limitations and the carry provisions of the November, 1991 [*sic*], agreement?

A. Yes, that is correct, November, 1951, agreement.

Q. All right, let's go to Exhibit 3, now, and start with the chronology of events for the 3B well, starting with the proposal of December 14th, 1998.

A. At this -- Under letter dated December 14th, 1998, Mr. James Strickler originally proposed the drilling and completing of the Brookhaven Com B Number 3B as a Mesaverde new drill.

Q. And he's using Mesaverde new drill costs in his letter, if you turn to the letter, which is the second page, he's got a total AFE cost of $386,488?

A. That is correct.

Q. Start with the next entry. What's happened on December 28th of 1998?

A. By letter dated December 28th, 1998, Burlington receives Cheryl Potenziani's election ballot to participate in the proposed well.

Q. All right, please continue.

A. January 15th, 199, Burlington receives Energen election ballot to participate in the proposed well under the terms of GLA-46. We advise that GLA-46 does not govern the drilling of additional wells.

May 18th, 1999, Burlington mails out the new operating agreement dated February 1, 1999, to all GLA-46 working interest owners.

By letter dated September 15th, 1999, Burlington mails a second request letter with the election ballot once again proposing the Brookhaven Com B Number 3B as a Mesaverde new drill to all working interest owners in the proposed well. Attached to the proposal letter is Burlington's AFE and new joint operating agreement, dated February 1, 1999, covering the proposed proration unit of the well.

September 30th, 1999, Burlington receives Cheryl Potenziani's election to participate in the proposed well.

October 11th, 1999, Burlington receives Energen's letter electing to join in the drilling of the Brookhaven Com 8, 8A and 9 and 3 -- Com 3B, subject to the terms of the operating agreement dated 11-27-51, as amended.

October 13th, 1999, Burlington mails a letter to Energen acknowledging receipt of their letter of October 11th, 1999. We advise under this letter that we don't think that GLA applies to the drilling of additional wells.

October 18th, 1999, Burlington receives a letter dated October 14th from Westport Oil and Gas, indicating that they were in receipt of the AFEs covering the Brookhaven 8, 9 and Brookhaven Com B 3B wells, and that they would participate under the terms of GLA-46.

October 26th, 1999, NationsBank as agent for eight working interest owners elects to be carried in the proposed well under the terms of GLA-46 agreement dated 11-27-51.

Q. Mr. Strickler, with his proposal for the B3 is at the same point as you are with your Com 8 and 8A wells?

A. Yes, Mr. Strickler is at the same point. And from this point forward, I took over this particular geographic area, and these became my responsibility.

Q. Okay. Based upon your review of the chronology and the documents in the correspondence file that deals with this period, are you satisfied that the parties are at an impasse concerning their ability to agree to utilize current well costs for these wells?

A. I am satisfied that we're at an impasse.

Q. And that you've exhausted reasonable opportunities to reach a compromise or an agreement and have not been able to do so?

A. Yes, we -- That is correct.

Q. Other than that ownership information and correspondence that's unique to this proposal, is the operating and your recommendations for provisions out of the operating agreement to be incorporated in a pooling order, the same recommendations as you just made?

A. Yes, sir, they are.

Q. Behind Exhibit Tab 5, what do we find in this portion of the exhibit?

A. We find under this portion of the exhibit Burlington's AFE in the amount of $386,488. Again, same format as provided for in the Brookhaven 8 and 8A wells.

Q. Do you have a recommendation to the Division for overhead rates to charge on a monthly basis for a drilling well and a producing well?

A. We would like to, as found in our joint operating agreement that we had proposed, we have provided for a producing overhead rate of $450. We would like the Division to enter under the pooling order to utilize the same $450-per-well overhead rate.

Q. That's the producing well rate, $450? What's the drilling well rate?

A. The drilling overhead rate is $4500 per month, and again we would like the pooling order to reflect the same.

Q. How do those rates compare to the tabulation of rates by Ernst and Whinney?

A. Those rates, the Ernst and Young survey --

Q. Yeah.

A. -- for depths of -- for wells of this particular depth, I know -- I think both wells' estimated TD is around 5600 feet. For the Colorado Plateau Basin and Range, from Ernst and Young survey, wells that are from 5001 feet to 10,000 feet, average drilling overhead is $5000, median drilling overhead is $5000, producing well overhead averaged $575 and median is $478. So we are under, it appears, current industry use.

MR. KELLAHIN: That concludes my examination of

Mr. Nichols. We move the introduction of his Exhibit 1 through 5 in both exhibit books.

EXAMINER ASHLEY: Exhibits 1 through 5 in both exhibit books --

THE WITNESS: Mr. Kellahin, I --

MR. KELLAHIN: Sir?

THE WITNESS: May I correct myself? I was referring --

MR. KELLAHIN: Please.

THE WITNESS: -- incorrectly when I was referencing the Ernst and Young surveys to oil well overhead rates. If I may provide gas overhead rates?

Again, from 5001 to 10,000 feet, average drilling overhead is $5326, median is $5000, average producing is $481 and median producing is $477. So if I could clarify that, again reiterate that we are under average.

EXAMINER ASHLEY: Exhibits 1 through 5 from Case 12,277 and 1 through 5 in Case 12,276 will be admitted as evidence at this time.

Mr. Hall?

CROSS-EXAMINATION

BY MR. HALL:

Q. Mr. Nichols, at the outset it would be helpful to all of us if we had a clear understanding what Burlington's position is in these two cases. And to do that, Let me refer you to the two Applications that have been filed in each of the cases.

If you have those available to you, Mr. Examiner, I didn't bring extra copies.

MR. KELLAHIN: The Applications are included in the exhibit book, Mr. Hall, behind Exhibit Tab Number 1. So we might utilize that, if you want to.

Q. (By Mr. Hall) Okay. Why don't we take the application from 12,276, that case --

A. Okay.

Q. -- and if you would refer to the second page of that, the one that has the numbered paragraph 2 there.

The representation to the Division was, "By Letter Agreement dated May 24, 1952 this proposed spacing unit was included within acreage subject to a November 27, 1951 farmout/operating agreements between Brookhaven Oil Company and San Juan Production Company (collectively the 'GLA-46 Agreement') which set forth a drilling obligation for 18 Mesaverde wells to be drilled within the contract area."

Now, the next paragraph says, paragraph 3 there, "This drilling obligation has been satisfied."

Let me see if I correctly understand Burlington's position, is that Burlington only had an obligation to drill 18 Mesaverde wells --

A. Yes.
Q. -- correct?
And that drilling obligation was satisfied when?
A. I don't have the exact date that the 18th well was drilled.
Q. In a motion to quash filed with the Division in this case by counsel, it was represented that the 18th well may have been drilled around 1956. Does that sound about right?
A. That sounds -- The neighborhood sounds correct.
Q. Yeah. If you look at paragraph 4 of the pleading, it says, "Thereafter and only by unanimous agreement made on an individual well basis, did the parties decide to make any future well subject to the GLA-46 Agreement." Do you see that?
Can you elaborate on that? What does that mean to you?
A. My interpretation of that is simply that from this point forward, any wells that were drilled after the initial drilling obligation was satisfied was done so by mutual benefit of San Juan and Brookhaven Oil Company, and that absent their mutual agreement to drill these wells, neither party was under any obligation to do so.
Q. Well, was the unanimous agreement the paragraph refers to some sort of an agreement to modify GLA-46, or

was it the case, alternatively, at that time that GLA-46 simply didn't apply to the 18th well?

A. I don't think the intent of any of the amendments was ever to acknowledge that GLA-46 terminated. It was simply that these wells continue to be drilled under GLA-46, the basic provisions of GLA-46, if all parties could reach unanimous agreement to the amendments. And if they could do so, they could drill the wells under GLA-46. If they couldn't do so, no development might have occurred. So I don't think there was ever any intent to terminate the GLA-46 itself.

Q. Okay, so it's Burlington's position in this case today that GLA-46 does continue to apply, then?

A. It's our contention that if we and the other parties of GLA-46 can reach consent under well costs and things of that nature, that development could occur under GLA-46, that there would be nothing that would prevent that if we could all agree on an equitable sharing of costs and overhead rates and things of that nature.

So it's not my contention right here to say that GLA-46 does not apply.

Q. That it's not your contention --

A. That it is not my contention. If we have unanimous consent of both parties, then we could further develop under the terms of GLA-46 as amended.

MR. HALL: All right.

MR. KELLAHIN: Mr. Carroll, I'm going to object to the cross-examination at this point. Mr. Hall has passed out an exhibit book that contains a number of documents apparently with regards to this contract-dispute issue. It's my position that this is not the forum or the jurisdiction to litigate that issue, and we would object.

MR. CARROLL: Response?

MR. HALL: The Exhibit A I've handed out is marked Energen's Exhibit A. It consists of documents produced by Burlington pursuant to a voluntary agreement of counsel. All of them, I believe you'll find, have Bates numbers on the bottom right-hand corner. There shouldn't be any problem authenticating these documents, or counsel can simply stipulate that that is their production source.

I believe we've already addressed whether or not these documents of this type are relevant to the issues in this proceeding in our opening statements. I don't have much more to add on that, but -- other than to say that these documents will help you, the Examiner, to determine what the practice was under GLA-46, whether what was adhered to, whether there was unanimous consent, as Mr. Nichols says, to drill additional wells, et cetera. All of those questions are probative of the main issue of whether or not these lands were voluntarily committed to these wells. That's why we'd like the opportunity to examine him on them.

MR. KELLAHIN: Here's the difficulty with Mr. Hall's strategy, Mr. Carroll. One, the cross-examination of this witness with these documents is not appropriate. He is certainly not an expert on GLA-46 documents. He's not in a position to render legal opinions.

The other issue is, you've deferred till now, and now's the time to decide, are we going to engage in reviewing all these contract documents? And if so, for what purpose? It's our position the parties can't agree. They admit they can't agree on current price, they want to assert the old contract. We say the contract doesn't apply, and the courthouse is where we do this, not here.

MR. HALL: For you to enter a finding either way that the lands are or are not committed to the wells, the finding must be based on substantial evidence in the record. That's what all of these are probative of, so we are entitled to examine him on it.

MR. CARROLL: All these documents were produced by Burlington?

MR. KELLAHIN: In response -- You may remember the chronology, Mr. Carroll. Back on November 16th you issued a letter in which you --

MR. CARROLL: Well, my question is --

MR. KELLAHIN: Yeah.

MR. CARROLL: -- were they produced by Burlington?

MR. KELLAHIN: Sure, I did -- You know, the issue was whether the motion to quash would go to the Commission and go on, and in response to that I voluntarily produced some 1800 pages of documents, and I assume these are them, that's where I got them, I produced for them.

But my question is that under the pooling statute, you already have evidence that's uncontested that the parties can't agree on these current costs. The underlying issue which he wants you to decide is whether this contract still applies, and I think we're going where you're not supposed to be.

MR. CARROLL: Well, the parties can't agree whether they're agreed, is where we're at; isn't that correct?

MR. KELLAHIN: So he wants you to substitute the court's judgement and decide if there's still a binding agreement, based upon 50 years of documents.

MR. HALL: That is not why we appear here. I think these arguments that this is a matter to be deferred to the courts are really fallacious, because the Division has a mandatory statutory duty to make that finding, that the lands are or are not voluntarily committed to the wells. You cannot defer that duty to the court.

So you are obliged to take evidence on that issue, which is a precondition to the entry of any order, no matter which way you rule. That's why we're entitled to look at these documents.

MR. CARROLL: How long will we be looking at these documents, Mr. Hall?

MR. HALL: Well, I'm not going to lie to you, it's going to take a while.

MR. KELLAHIN: well, then he ought not to do it by cross-examining this witness with these documents. If he wants to admit them, admit them, and you guys can read them tomorrow or next week.

MR. CARROLL: You'll stipulate to the admission of these documents?

MR. KELLAHIN: I don't think they're relevant, I don't think they're necessary, but that's how he's going to get them in the record over my objection as to relevancy. You can deny that objection, and introduce them and sit there and read them, if you want.

MR. CARROLL: We'll admit these documents into evidence.

Where are we going with cross-examining this witness over these documents?

MR. HALL: Mr. Carroll, I'll do everything I can to expedite it.

MR. CARROLL: I mean, do they speak for themselves? I mean, do we have to --

MR. HALL: To an extent they do. I've taken pains to highlight specific language which I think speaks for itself.

MR. CARROLL: Yeah, I saw that, I really appreciate it.

MR. HALL: Burlington has made representations in its pleadings and through its witnesses now about its positions, and we can compare those positions to their own documents, which you may or may not find are admissions against interest. And again, they're directly probative of that threshold issue --

MR. CARROLL: So how many admissions against interest are contained in these documents?

MR. HALL: Well, I think, as we say, they'll have to speak for themselves. I have not tabulated each of --

MR. KELLAHIN: Well, Mr. Carroll, that's the rules of evidence. The documents speak for themselves, they're introduced, there's no point quibbling with Mr. Nichols about what he thinks or might not think about 45 years of documents.

MR. CARROLL: How long have you been employed with Burlington?

THE WITNESS: I've been employed with Burlington for about 10 years, two years of that being employed in the Farmington office.

MR. CARROLL: And Mr. Hall, you think he has personal knowledge of -- Was he involved in any of these communications, negotiations?

MR. HALL: I won't be asking him questions about that specifically, but Mr. Nichols, through his testimony, and through pleadings of counsel, has outlined certain issues which are on the table now, and I think I can juxtapose the evidence contained in these documents against those stated positions and see which is correct.

We've already seen a little bit of change in position already with respect to whether or not GLA-46 continues to exist. I think it's their position now, they've clarified, that yes, GLA-46 does exist. We've gotten that far with it. Let's see how much further we can go with their --

MR. CARROLL: Okay, we'll hear some of it.

MR. KELLAHIN: Am I understanding that he's going to be able to cross-examiner Mr. Nichols about documents for which Mr. Nichols had no involvement? Are we going to play questions with the witness to get him to --

MR. CARROLL: I think Mr. Nichols testified as to Burlington's position on the agreement. I just -- We're going to hear some questions regarding some conflicting evidence to that position, I believe.

MR. KELLAHIN: Well, you know, he asked what Burlington's position was. Mr. Nichols stated it. If this is rebuttal evidence against his testimony, the way you do it is introducing these documents and reading them for yourself. That's how you do it.

MR. HALL: You have the flexibility under Rule 1204 to allow it.

MR. CARROLL: Yeah, we're going to hear it.

Q. (By Mr. Hall) Mr. Nichols, if you would, take what's been marked as Energen Exhibit A, and if you would flip to Tab 22, please, sir, let me ask you initially, do you have that in front of you? Let me check.

A. January 14th, 1975.

Q. Yeah, we're together. We've talked about the 18-well drilling obligation earlier. Can you tell the Hearing Examiner exactly how many wells have been drilled under GLA-46?

A. No, I cannot.

Q. Okay, let's look at what's been marked as Exhibit A-22. Would it appear to you that this is a memo for an exhibit which shows all acreage subject to the Brookhaven GLA-46 --

MR. KELLAHIN: I'm going to object to the question. There's no foundation that this witness has knowledge of what acreage and what wells are involved in the GLA-46 agreements. He's not qualified to render opinions about this.

MR. CARROLL: If he has knowledge, he can answer.

THE WITNESS: Your question, Mr. Hall?

Q. (By Mr. Hall) Mr. Nichols, would it appear that Exhibit A-22 is a memorandum dated January 14th, 1975, covering an exhibit which shows all the acreage and wells and locations by formation that would be subject to GLA-46 as of that date, anyway?

A. Yes, it would appear that this January 14th memo does contain an Exhibit 1 and an Exhibit 2. Whether or not those are accurate, I have no knowledge of the accuracy or completeness of them.

Q. Would it be safe to say that approximately 100 wells have been drilled under GLA-46? Very round number, I realize, but is that your understanding, more or less?

A. I don't know what the total well count is. I don't see it in either one of the exhibits that you've presented with -- in front of me right here, so I really don't have -- I don't have any idea how many wells.

Q. All right. Burlington doesn't plan on presenting any other evidence today with respect to acreage covered by GLA-46 or number of wells drilled under GLA-46?

A. No, sir, I have no further plans to present anything of that nature.

Q. All right. Let's look at Exhibit A-47, please, sir. Now, earlier you testified that additional wells were drilled under GLA-46. I understand you don't have knowledge of the specific number. But if you'll look at the documentation under Tab 47, your Exhibit A, it appears to be Amendment Number 24 to GLA-46, dated September 2, 1987, is it not?

A. Yes, it does.

Q. Earlier, you said that additional wells were drilled after the 18th initial well, only on the unanimous of all parties to do so. You need to state verbally --

A. Yes, that is correct.

Q. All right. If you'll look at the second page that has Bates stamp number 719, would it appear that Meridian at the time negotiated with Amoco Production Company and the Potenziani Family Partnership for the drilling of an additional well under GLA-46?

A. Yes, I agree that this amendment does do that.

Q. All right. And what they amended, among other things, if you'll look at the second page again, at subparagraph (b), it provided that 200 percent of costs of completing the well would be paid by the parties, correct?

A. Yes.

Q. Now, let's turn the next tab, Tab 48 -- I'm sorry, let me refer you back again to 47. The last page of that, Bates Number 720, there's an execution by Amoco, correct?

A. Yes, sir, that is correct.

Q. So that's Amoco's modification --

A. Yes, sir.

Q. -- under Amendment 24?

Now, let's look at Tab 48, if you would. The same letter again, is it not?

A. Yes, it is.

Q. And you look at the last page of that, Bates Number 723, it appears to be an execution on behalf of the Potenziani Family Partnership, correct?

A. Yes, sir.

Q. And you look at the middle page, Bates Number 722, subparagraph (b) there, you'll see that the cost provision says 100 percent?

A. Yes, I see that.

Q. Do you agree with that?

A. Yes, I -- Yeah, I --

Q. So it's not accurate, is it, that in each case you had unanimous agreement on all provisions for drilling of additional wells after the 18th well? That would show?

A. No, that to me does not show that. To me that shows that Potenziani has made a counter and that although we don't recognize it here, that I would make the recognition that El Paso agreed to the proposed counter and carried forward.

So again, I think that this is unanimous-consent participation. That's my opinion on it.

Q. You don't know whether this counter at 100 percent of cost was accepted by Meridian or not; is that what you're saying?

A. No, I do not know that personally. I don't see anything accepting or denying the marked-through changes.

Q. Would you happen to know whether the subject well was drilled, the Atlantic D Com E 6R?

A. I do believe that that well was probably drilled, and probably by 100 percent recoupment. Obviously, this well probably cost more than $90,000, so probably it was an amendment.

Q. All right.

A. Yeah.

Q. Let me ask you about some additional issues that have been raised by application and some of your direct testimony. If you'll look back at the Application you had before you before --

A. On 12,276?

Q. Yes, sir.

A. Okay.

Q. Third page of that, at numbered paragraph 9, do you see that?

A. Yes, sir.

Q. It says, paraphrasing, Burlington advised the GLA-46 Group, including Energen, that GLA-46 agreement did not apply to this new well proposal. Is that an accurate statement of --

A. No, the letter did state that, yes, sir.

Q. All right. If you turn to your Exhibit A, Tab 64, that's that letter?

A. Yes.

Q. In fact, this is one of your original --

A. Okay.

Q. There you say it is Burlington's -- I don't mean to say "you". Yes, it is you, Shannon Nichols wrote this. You say, "It is Burlington's position that the provisions of GLA-46 do not apply to this well inasmuch as the drilling obligations, terms and conditions of GLA-46 were satisfied with the drilling of the initial eighteen (18) wells on GLA-46 lands as set out in the agreement."

Now, to your knowledge, is that the first time that specific position was articulated to any of the GLA-46 interest owners, that GLA-46 did not apply after the 18 wells?

A. I don't have personal knowledge that that is the first time that was specifically articulated in that format.

Q. Let's turn to Tab 68 under Exhibit A.

A. Okay.

Q. It's a letter from Mr. Strickler dated May 18, 1999, to GLA-46 working interest owners. I assume you're probably familiar with this letter?

A. Yes, I am.

Q. It transmits a new joint operating agreement. If you'll look at the second sentence there [*sic*], it says, "...which is intended to replace the original Farmout Agreement Contract dated November 27, 1951..." Do you see that language there?

A. Yes, uh-huh.

Q. So would it be accurate to say that as of May 18, 1999, anyway, it was Burlington's position that, as you said, GLA-46 was in effect and you were seeking its replacement?

A. Yeah, that was the intent of this proposal, it's my understanding that --

Q. All right. And you look further down on that same exhibit, the next to last sentence of the second paragraph, it says, "Burlington is unwilling to accommodate the non-operators under the original earning provision due to simple economics." Do you see that there?

A. Yes, I do.

Q. Is that the first time that position was stated by Burlington to any of the GLA-46 interest owners?

A. I don't know personally that that was the first time that's been communicated.

Q. All right. But in this case, anyway, you're saying that you couldn't abide by GLA-46 because economics wouldn't allow you to do that?

A. That's what that sentence says.

Q. And you're somewhat familiar with the terms of GLA-46, you've read it?

A. Yes, I've read it.

Q. The farmout agreement and operating agreement?

A. Yes, sir, yeah.

Q. Have you read the force majeure provision in that agreement?

A. I'm sure I've read it. The specifics of it, I couldn't speak with you on right now, but I'm sure I have read it as part of my readings on it.

Q. There's no provision in the force majeure article which states that change in economic conditions is a force majeure event, is there?

A. I -- Again, Scott, I don't know.

Q. Let's turn the tab to Tab 69, Exhibit A. It's a letter dated August 25th, 1999, authored by you. And this is the withdrawal of the initial well proposal for the Brookhaven Com 8, correct?

A. Yes, sir, that's correct.

Q. And if you look at the third paragraph there it says, "In the near future, Burlington is planning to mail another Joint Operating Agreement covering the proration unit for this well and other lands previously subject to GLA-46."

A. Yes, I see that.

Q. Let me make sure I understand what Burlington's position was, on that date anyway. Were you saying that the lands were no longer subject to GLA-46?

A. For new drilling operations, yes, that is a correct statement, that we don't feel that GLA-46 any longer had applicability on new-drill proposals. That is the intent of that statement.

Q. All right. To your knowledge, was this the first time this particular position was articulated to the GLA-46 interest owners?

A. I do not have specific knowledge that that was communicated prior to that, so I don't know.

Q. All right, let's turn to Tab 70 there, quickly. It's a letter dated September 9, 1999, by Jim Strickler to Rich Corcoran at Energen. And if you look at the last sentence of the first full paragraph there it says, "Burlington is also prepared to make you a cash offer to purchase your GLA interest as another alternative."

A. I see that.

Q. So as of September 9, 1999, anyway, Burlington regarded the GLA-46 as existing as to some lands, and it had some value for a purchase, did it not?

A. The way I interpret that particular sentence is that you have a group of leases subject to the old GLA-46. My interpretation of that sentence is simply stating that those lands and leases that were subject to the original GLA-46, Burlington is willing to entertain making an offer of that interest. I don't interpret that any further than that.

Q. Okay. Would you know whether the GLA interests Burlington was suggesting be purchased by it were those outlined in Exhibit 22, the acreage and the formation list?

A. Mr. Strickler did not consult me before making his offer, so again I don't have personal knowledge of what James's proposal solicitations did or did not include. I don't know, again, if it was all-inclusive or if it was a portion of those.

Q. Okay. Now, let's get a better understanding of Burlington's construction and understanding of GLA-46. Would you turn to Tab 51, Exhibit A? It looks like an internal Meridian memorandum dated July 26th, 1989, from Tom Hawkins to Tommy Nusz. If you look down there at the bottom, numbered paragraph 2, it says, "EPPC..." I assume that's El Paso Production Company?

A. That's correct.

Q. "...carries Amoco, et al., and recoups drilling cost, as limited below, out of 1/2 of each parties' [*sic*] net working interest. Production from one well shall not be used to repay drilling costs of another well."

Is that consistent with your understanding of how GLA-46 worked?

A. Under the stringent terms of GLA-46, that is my understanding.

Q. All right. Then if you'd turn the page there, following the numbered paragraphs there is an unnumbered paragraph and it says, "The Agreement gives EPPC control of the acreage because the other parties have no way to propose and force wells to be drilled."

Now, is that consistent with your understanding of the operation of GLA-46?

A. Yes, sir, that is. The original agreement, that is consistent with the original agreement.

Q. All right. So under any acreage where GLA-46 would apply --

A. Uh-huh --

Q. -- Energen, for instance, would not have ownership of the executive rights? In other words, Energen cannot propose that it drill and operate a well, only El Paso/Meridian/Burlington could?

A. That is my understanding, yes.

Q. Does that continue to be Burlington's position today, that it has the exclusive ownership of the operating and executive rights on the GLA-46 acreage?

A. Certainly with -- absent other agreements, such as our new proposed JOA, which would open these lands up to any party making a proposal, if you continue to refer to the strict interpretation of GLA-46 then, yes, Burlington is the only party that can serve as operator.

Q. Let's turn to Tab 54 in your Exhibit A. It appears to be a contract brief dated June 15, 1995, Jim P. -- Jim Parmenter?

A. Permenter, that is correct, uh-huh.

Q. And if you look in the upper left-hand corner there, it refers to the instrument GLA-46, and then what does it say for "Status"?

A. It says "Active".

Q. All right. Then if you look under the heading -- this is in the center there -- "Rights Granted", it says "Pursuant to Operating Agreement of 11-27-51:" first entry is, "EPNG was obligated to fully develop acreage in the

Mesaverde formation." That was Meridian's position, correct, as of 1990?

A. That was Mr. Permenter's review of the actual contract itself. Again, that's Mr. Permenter's -- simply his review of the contract and his written summary of that contract.

Q. All right. And do I have my time frame right? Was it Meridian at the time?

A. 1990 was Meridian, that is correct.

Q. All right. The next entry there, it says "EPNG has authority to drill all wells without consent of other parties." Do you see that there?

A. Yes, I do.

Q. And that was Meridian's position at the time, and from what I understand of your testimony here tonight, it continues to be Burlington's position?

A. Yeah, our position has not changed under the strict interpretation of that contact. If you go back and read it, that is provided in the contract.

Q. Okay. Let's go to Tab 60, if you would, please, sir.

A. Okay.

MR. HALL: For the record, Mr. Examiner, I would note that this is not a document produced by Burlington to me. It's one of the documents that came forward in connection with the Marcotte 2 well in 1996 -- 1997, rather. Just so the record is clear on that. I don't think there's going to be any dispute about its authenticity.

Q. (By Mr. Hall) Mr. Nichols, look at that exhibit. It appears to be a letter dated May 22, 1997, authored by Mr. Strickler, to Total Minatome Corporation, correct?

A. Yes.

Q. If you look at that first full paragraph after the numbered paragraph 2, it says, "Historically, it is clear that the November 27, 1951, farmout/operating agreement, known as GLA-46, covered the Pictured Cliffs and Mesaverde formations." Do you see that there?

A. Yes, I do.

Q. You don't disagree with that?

A. No, I don't dispute the original contract.

Q. All right. Then it goes on to say, skip a sentence, "This agreement was never intended to cover deep gas exploration as indicated by past experience."

A. Okay.

Q. Do you agree with that?

A. I have never delved into the matter that Mr. Strickler has as far as its applicability on deep rights, so I would be reluctant to offer an opinion on whether it covered any depths.

Q. All right. Well, as you say, you've examined the terms of GLA-46. Isn't it accurate to say that where drilling to a formation outside the Mesaverde is contemplated and the costs of drilling to that new formation have not been addressed, then the parties are to negotiate those costs?

A. I concur that obviously the shallower producing horizons have been covered in cost agreements through the years. How they intended, or if it was contemplated under the original agreement, to cover deep gas, I have no idea if the -- what the thinking of the parties were at that time.

Q. Is it accurate to say that El Paso/Meridian/ Burlington, as the operator under GLA-46, had an obligation under the contract itself to try to negotiate costs for those non-Mesaverde formations, shallow or deep?

A. To my knowledge, Burlington did not have an obligation to make any negotiations as to other horizons that were not covered in the agreement, to my knowledge.

Q. Let me make sure I understand what your position is, then. So GLA-46 wa applied to Mesaverde formation only?

A. No, my position, I think, in response to your question was, was it contemplated in the agreement that for any deep gas that may have been contemplated under the agreement -- and I'm trying to rephrase your question, correct me if I'm wrong, Mr. Hall -- that Burlington was under an obligation to go to the non-operators under that agreement and attempt to negotiate deep-gas costs.

To my knowledge, the agreement does not include that provision. To my knowledge, it does not.

Q. All right. Well, let's -- If we don't consider the deep gas --

A. Okay.

Q. -- as was involved with the Marcotte --

A. Okay.

Q. -- and Scott wells, say a shallower formation or a Dakota formation, isn't it accurate to say in those cases where drilling to those non-Mesaverde formations was contemplated, the operator had an obligation under the GLA-46 contract to get together with the parties and try to negotiate well costs?

A. Again, Mr. Hall, unless it was specifically contemplated in the old agreement, and unless the costs were set out, I'm not sure that Burlington or San Juan or any of our predecessors-in-title had an obligation to make a negotiation. I don't know that. I've never specifically seen that in anything that I've read in the contract file.

Q. Okay. Let's turn back to Tab 58.

A. Okay.

Q. And after we just saw Mr. Strickler's representation that GLA-46 was never intended to apply to deep rights, let's look at Exhibit A-58. It appears to be a letter from Michael Cunninghan, dated January 14, 1997. First of all, let me ask you, do you know Mr. Cunningham?
A. Yes, sir, I do.
Q. He's who everybody calls "Cutter", right?
A. Yes, sir.
Q. And he does title work for Burlington?
A. That is correct.
Q. And on January 14, 1997, if you look at the last sentence of the first paragraph, would it appear that Burlington was advised that GLA-46 covers all depths?
A. Mr. Cunningham's second sentence, the first paragraph, does state that.
Q. All right. So that's inconsistent with what Mr. Strickler said later, as evidenced by Exhibit 60, when he communicated to Total Minatome, GLA-46 owner?
A. No, I disagree with your contention there. I think that if the agreement was intended to contemplate deep gas, then the agreement would have specifically referenced some cost obligations under that. So I can't argue with Mr. Strickler's sentence there that it was never intended.
Now, to take that back to Mr. Cunningham's

interpretation that there's no depth limitations, I don't you can apply Cutter's sentence to Mr. Strickler's sentence. At least I certainly would not, in my review of those two sentences. I think whether or not there were vertical limits on the operating agreement, and whether or not that operating agreement specifically contemplated deep gas, I think, are two different issues. And I don't -- I think that both sentences in Mr. Cunningham's letter -- his sentence.

And I also -- My personal opinion is that Mr. Strickler's highlighted sentence in May 22, 1997, is correct. That's my personal opinion of that letter.

Q. All right, fair enough. Look further on down in Mr. Cunningham's letter. He says, "...Burlington has complete control over the development of the acreage, but most provide and then recoup the working interest owners' percentage of costs for all operations." Do you agree that that is the proper operation of GLA-46?

A. I agree with Mr. Cunningham's review of GLA-46.

Q. Okay. Let's look at Tab 57. And again, Mr. Examiner, this document does not have a Bates stamp number. It's not included among those produced to my by Mr. Kellahin. But it is a Meridian document.

It appears to be a letter dated October 23, 1992, from John Zent, of Meridian, to the GLA-46 parties, right?

A. Yes, sir.

Q. All right. And if you look at the second sentence of the first paragraph it says, "Meridian will drill this well..." referring to the Scott 1R. "Meridian will drill this pursuant to the terms and conditions of that certain Joint Operating agreement dated November 27, 1951."

And that same paragraph goes on to explain how recoupment of the maximum well costs of $45,000 from 50 percent revenue stream is accomplished.

Do you agree that that was the proper operation of GLA-46, Meridian's position as of 1992, anyway?

A. Mr. Zent, at the time he proposed this letter, stated that he would be willing to drill that, the Scott 1R, under the terms of the 11-27-51 agreement, if he could amend it to allow for adequate cost recovery.

Q. I see.

A. So again, it's not inconsistent that by unanimous agreement the parties agreed to drill another well.

Q. So it appears in that case, from a review of this document, that once again Meridian offered the GLA-46 parties a couple of options. One, they could sign a new JOA for the Scott 1R, first option.

Would execution of the new JOA effectively release and replace GLA-46 as to a drilling unit?

A. Mr. Hall, are you still referring to the --

Q. Exhibit 57.

A. Under the Option A, participate in and pay for the costs of drilling at the test well, is there -- I'm not following you.

Q. Yeah, I'm sorry. If you look at the first page there, that second paragraph that says execute a new JOA.

A. Okay, I follow you now.

Q. Yeah. And --

A. My interpretation of that would be that, yes, if these parties entered into a new joint operating agreement, that more than likely -- Again, I'm purely speculating here, because I have not seen that particular joint operating agreement. But my assumption would be that Mr. Zent would have put some supersede language in his -- So I -- again, speculation.

Q. All right. Then the alternative option, again on the first page there, is that -- amend the November 27, 1951, operating agreement to allow Meridian a vehicle to recoup 100 percent of actual drilling costs, according to the AFE?

A. Okay.

Q. And that was the other option?

A. Yes, okay.

Q. Whoever this was sent to, it looks like they said

"Do not execute" their right?

A. Yes, that is noted on the letter I've got right here.

Q. Let me refer you to Exhibit A-1, under Tab 1 there. That's the farmout and operating agreement. That is GLA-46, right?

A. Just a moment.

Q. Okay.

A. Yes, that does appear to be the original farmout agreement.

Q. All right. And if you turn to page 1 of Exhibit B, that's the operating agreement itself?

A. I'm sorry?

Q. If you page to -- I'm sorry, turn to page 1 of Exhibit "B", the operating agreement itself. Are you with me there? It's --

A. Page 1 of Exhibit 1?

Q. Exhibit "B" is part of Exhibit 1.

A. Oh, okay, let me find that. Okay, yes, I agree that that is the operating agreement.

Q. Look at numbered paragraph 1 at the bottom of the page there. As you have previously testified here today, it looks like that provision provides for the transfer and assignment of San Juan's operating rights to -- I'm sorry, Brookhaven transfers its operating rights to San Juan, correct?

A. I agree with that.

Q. And that's consistent with your earlier testimony that you believe Burlington to be the owner of exclusive operating rights for the GLA-46 acreage?

A. Yeah, under the -- Yes, that is correct.

Q. Then keep on turning pages, paragraph 4 there --

A. Okay.

Q. -- that's the drilling obligation we've been talking about.

A. Okay.

Q. Turn to page 4, a continuation of that same paragraph 4.b., the drilling obligation, I will paraphrase. I think we've discussed, the language speaks for itself, but it says after the 18 wells or whatever the drilling obligation is has been satisfied, the operator "shall reassign or relinquish the undrilled locations or the rights to all formations undrilled or non-producing on those locations." Do you see that there?

A. Yes, I do.

Q. Has Burlington released any of the drilling locations under GLA-46?

A. To my knowledge, no, we have not. But that's again, just my own take.

Q. All right. And if you continue on, turn to page

5 there, look at paragraph 4.f., again, it's a reiteration of the release and relinquishment obligation, correct?

A. Yeah, it's very -- It's similar language.

Q. Okay. And if you turn to page 7, if you look at paragraph 5.d.1. there, and that's --

A. Okay.

Q. -- we've discussed in part tonight, that addresses the well-cost issue, and it was the initial provision for recoupment of Mesaverde --

A. Okay.

Q. -- of, at that time, $45,000?

A. Yes.

Q. And there's no dispute that that was later amended to increase the number to $90,000, correct?

A. That is correct.

Q. If you look at paragraph 5.d.2. on page 8 of that exhibit it says, "IN the event any well be drilled upon said acreage to a greater or lesser depth than a Mesa Verde well, the drilling costs (except casing to be furnished by San Juan) to be paid out of production by Brookhaven shall be determined proportionately with the parties agreeing upon a maximum cost comparable to the maximum of a Mesa Verde well, as defined in Section 5d1 above."

A. Okay.

Q. So that's somewhat at issue in this proceeding, correct?

A. I'm sorry?

Q. That particular paragraph is at issue, the well-cost issue, correct?

A. Yes, that is one of the concerns that we have, is the --

Q. All right.

A. -- the actual cost.

Q. Now, in the case of the Brookhaven wells proposed by Burlington in 1998 and 1999, to your knowledge, did Burlington ever attempt to renegotiate the costs according to paragraph 5.d.2. and as it incorporates paragraph 5.d.1.?

A. I'm not sure that the paragraph that's labeled as number 2 on page 8 for the Mesaverde side, I don't know that it's applicable. Did we make an attempt to negotiate actual costs for the Chacra? Absolutely, the same as we did as the Mesaverde. As we clearly identified under two options, we certainly made an attempt to negotiate well costs.

Q. It is not in dispute, is it, that the agreed well cost for Mesaverde wells under GLA-46 contract is $90,000 now?

A. No, I don't dispute that that was the last amendment encompassing the entire contract. I don't dispute that. Other wells have been drilled under different circumstances, certainly, but as far as an actual amendment to the contract, I don't dispute that.

Q. All right. Let's refer now to, in Exhibit A, Tab 50, and that appears to be a letter dated December 7, 1987, by Tom Hawkins, senior landman for Meridian at the time, to working interest owners, and it says regarding farmout agreement and operating agreement, the GLA-46 agreement.

A. Okay.

Q. And would it appear that this letter sought the amendment of GLA-46 to provide for gas balancing?

A. Yes.

Q. And I don't think it's disputed that the GLA-46 was amended and all parties agreed to incorporate the gas balancing agreement. Do you dispute that?

A. No, I don't dispute that.

Q. All right. Under that letter it shows in Exhibit "E", the gas balancing agreement itself. To your knowledge, does this appear to be what everybody agreed to?

A. Yeah, from memory, that certainly looks to be the same agreement.

Q. Okay. Look at the last page, last paragraph of the gas balancing agreement amendment.

A. Okay.

Q. It says there, "This agreement shall remain in force and effect as long as the operating agreement is in effect."

Q. Okay.

Q. Would that mean to you that as long as GLA-46 is in effect and applies to the subject lands, then gas balancing applies?

A. Yes, that's how I would interpret that.

Q. So Burlington as operator of all that acreage could effect gas balancing among the interest owners?

A. Yes, that is my interpretation of that.

Q. That is, unless the undrilled locations are no longer subject to GLA-46. Would that be accurate?

A. Yeah, I think if we entered into alternative agreements for undrilled locations, then yes, that would be accurate.

Now, if we made amendments -- if we agreed by unanimous consent to drill the wells under agreed-upon costs and we amended it, then my interpretation would be that this gas balancing agreement would apply to any amended location that we drilled, if there was a new operating agreement that covered -- For instance, if we had success and we submitted a brand-new JOA and along with that JOA we submitted a gas balancing agreement, I think that the gas balancing agreement that would be associated with the new JOA would be the one that's in effect.

Q. Okay. There's no dispute that under the GLA-46 acreage, anyway, there are some undrilled Dakota locations, Pictured Cliffs locations, perhaps some Fruitland Coal locations?

A. I don't pick well locations, so I'm at a loss to speak with certainty. But I think as evidenced right here, there are some locations that are developable.

Q. Okay. Is it Burlington's position that those undrilled and undeveloped locations are subject to gas balancing under the amendment to GLA-46?

A. I would be hesitant to offer an opinion on that.

Q. Okay. If Burlington succeeds in obtaining the relief it requests under the two Applications, its compulsory pooling of the lands, the gas balancing agreement under GLA-46 would not apply, correct?

A. Again, Mr. Hall, I think that's an interpretation for Burlington's legal counsel, and I would offer no opinion on that.

MR. HALL: That concludes my cross, Mr. Examiner.

EXAMINER ASHLEY: Mr. Kellahin?

MR. KELLAHIN: A couple of points, Mr. Examiner.

REDIRECT EXAMINATION

BY MR. KELLAHIN:

Q. Mr. Nichols, would you turn with me to document 51?

A. Okay.
Q. Would you turn to the second page?
A. Okay.
Q. Mr. Hall was discussing with you the first full paragraph below the Number 4. Do you see that?
A. Yes, sir.
Q. He omitted drawing your attention to the last sentence. Would you read the last sentence?
A. The last sentence, "This is what was done on the Scott -- "
Q. No, sir -- Yeah, right.
A. "This is what was done on the Scott wells. Unfortunately, each time we wish to drill a well, we have to amend the Agreement."
Q. Would you turn with me to document 54?
A. Okay.
Q. Mr. Hall discussed with you some of the items on the first page. If you'll turn to the third page, there is a list of amendments.
A. Okay.
Q. Starting with Amendment 13 in 1973.
A. Okay.
Q. It says "Subject of Amendment". The subject of those amendments is to change the costs or the carrying portions of the original 1951 agreement?

A. That is correct.

Q. Does Burlington intend to drill these proposed wells, subject to the $90,000 price-ceiling cap and the carry provisions of the 1951 agreement?

A. Absolutely not.

MR. KELLAHIN: No further questions.

EXAMINER ASHLEY: Mr. Hall, do you have anything else?

RECROSS-EXAMINATION

BY MR. HALL:

Q. Let me ask you about your Exhibit 3 for Case 12,276.

A. Okay.

Q. It's your chronology of events.

A. Yes.

Q. And it says -- Well, it states actions of Cross Timbers Oil Company, August of 1998, it says they elected to participate unconditionally and signed a new JOA.

A. Uh-huh.

Q. So as I understand your earlier testimony, as to Cross Timbers anyway, for this well anyway, GLA-46 is released?

A. Note that the joint operating agreement that's referred to in that particular entry, August 26, 1998, is that Cross Timbers executed the signature page to the joint operating agreement dated July 29th, 1998.

Subsequently, we withdrew that proposal and reproposed the wells under a new joint operating agreement. Under our subsequent proposal, Cross Timbers has signed the AFE as agent for Merchant Resources. And the operating agreement -- The last I understood from Mr. George Cox at Cross Timbers was that the operating agreement had been forwarded to Merchant for their review and possible execution.

So -- and again, I'm -- Mr. Kellahin and I had a discussion yesterday whether or not, absent a joint operating agreement, even though they are in the well and are going to pay actual costs, that I will let Mr. Kellahin work out as far as whether or not they're subject to the pooling order if issued.

Q. Whether the Merchant Resources, LP, interest -- Is that what you're speaking of?

A. I'm sorry?

Q. The question is whether or not the Merchant Resources is subject to the JOA?

A. Well, not subject to the JOA, but they've agreed to participate in the well. Now the question is, absent their execution of the JOA, are they going to be subject to a pooling provision? Mr. Kellahin was going to work that out. I do not know the answer to that.

Q. I understand what you mean. Anyway, with respect to the Cross Timbers interest -- and then you also indicated that Amoco had participated under your JOA, correct?

A. They have signed the new joint operating agreement, yes.

Q. All right. Can you tell us about the negotiations that were had with each of those parties that led up to the execution?

A. I can't speak to the blanket joint operating agreement. Mr. Strickler proposed that, handled all the negotiations on that. I can tell you that the joint operating agreement which I originally submitted with the Brookhaven Com 8, Cross Timbers' execution of that was not subject to any conditional letters of acceptance. Let me verify that by their election here.

If you can turn back several pages, back to Cross Timbers, we've enclosed a copy of the signature page where they signed the joint operating agreement that was originally included in our proposal, and there are no conditional -- nothing to note that they were signing this conditionally, as pretty much standard industry practice. So my assumption, again, based on that and based from memory, was, they did not make any amendments to the joint operating agreement we proposed.

Q. All right. Did either Amoco or Cross Timbers receive any other consideration or other concessions in exchange for executing the JOA on the GLA-46 acreage?

A. On this proposal that I had first-hand knowledge of, absolutely not. Second-hand knowledge, I've heard Mr. Strickler state very strongly, as probably Rich has in Burlington's meeting, that Amoco was not compensated in any format by Burlington for execution. They want development to occur on these lands, that's what they want. They don't want them sitting down here in force pooling proceedings all the time.

Q. So it's your testimony, as far as you know, there was no acreage exchange?

A. Absolutely not.

Q. Amoco was not allowed to operate under acreage with the GLA-46 acreage?

A. Amoco -- The blanket joint operating agreement that Amoco signed would allow them to propose and operate. It's a typical 1982 form JOA which would allow other parties to propose operations.

Q. All right.

A. They were not compensated in any format for their signature, they want development out here.

Q. And as you've testified earlier, they would not have had the right to do that under GLA-46 because

Burlington had exclusive control of operating rights?

A. Under GLA-46, that is correct, yeah.

MR. HALL: Okay. Nothing further, Mr. Examiner.

EXAMINER ASHLEY: Mr. Kellahin?

MR. KELLAHIN: No, sir.

EXAMINATION

BY EXAMINER ASHLEY:

Q. I have to refresh my memory here. In Exhibit 3 of 12,276, at one point Burlington's offer was to just recover their expenses without any penalty; is that correct?

A. Yes, sir. Under letter dated September 18th of 1998, Burlington did provide two options under which we would be willing to drill that. One of the options -- and again, the -- "Enter into a modern form Joint Operating Agreement and either participate or non-consent..."

The second option would have been, "Burlington will voluntarily carry your drilling, completing and equipping costs in the referenced well..." subject to simple 100-percent payout out of 100 percent of the carried interest revenue stream.

Q. Okay, now -- So help me out here. Where does that offer stand?

A. By letter dated -- Oh, let me find it, just a moment here. By letter dated August 25th, 1999 --

Q. All right.

A. -- Burlington advised all owners, nonoperating owners, in the proposed drilling unit that -- if you're looking at that letter, in the second paragraph, I've -- it was bolded: "As such, this letter is to advise that Burlington hereby withdraws its offer to drill and complete the referenced well under the participation options outlined in our letter dated September 18th, 1998."

So at that point in time, we withdrew all proposals that were outstanding on the Brookhaven Com 8.

Q. And that's why you're here today?

A. Yes, sir. If we could have -- If the folks in the oil patch would have participated and paid their way, we would not be here today. We would have drilled the well under the options in the September 18th, 1998, letter. But we cannot economically develop these projects to the benefit of our nonoperators.

EXAMINER ASHLEY: I have nothing further. You may be excused.

And let's take a break.

(Off the record)

EXAMINER ASHLEY: We'll recess for 30 minutes and come back at approximately 7:35.

(Thereupon, a recess was taken at 7:03 p.m.)

(The following proceedings had at 7:38 p.m.)

EXAMINER ASHLEY: This hearing will now come to order.

Mr. Kellahin?

MR. KELLAHIN: Yes, sir, call Mr. Ralph Nelms.

Mr. Examiner, we are referring to the Exhibit Tab 6 in each of the books. The information is identical, so we'll simply select one of the books.

RALPH L. NELMS,

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

DIRECT EXAMINATION

BY MR. KELLAHIN:

Q. Mr. Nelms, for the record, sir, would you please state your name and occupation?

A. My name is Ralph Nelms, senior reservoir engineer, Burlington Resources, Farmington, New Mexico.

Q. As part of your employment responsibilities as a petroleum engineer for Burlington, have you made an examination and economic analysis of the potential consequences of drilling this Mesaverde well and the other wells involved in this case under various assumptions and scenarios?

A. I have, and the results of those findings are shown in the exhibit books under Exhibit 6 in the very back.

Q. That economic analysis that you prepared for these wells, is that the type of analysis that you would customarily perform for your company for other similar wells?
A. That is correct.
Q. This is not unique just to this case, is it?
A. No, it is not.
Q. As a result of your efforts, were you able to assimilate sufficient information to come to reasonable engineering conclusions that have substantial probability of being accurate?
A. I was.
MR. KELLAHIN: We tender Mr. Nelms as an expert petroleum engineer.
EXAMINER ASHLEY: Mr. Nelms is so qualified.
Q. (By Mr. Kellahin) As part of your study, Mr. Nelms, do you have a recommendation to the Examiner as to the appropriate risk factor penalty to be applied for each of the wells in these two cases?
A. I do, and my recommendation is the maximum allowable penalty which the Division can assign, and that is 200-percent penalty.
Q. As part of your analysis, did you address the question as to whether or not if subject to the limitations set forth in the carrying provisions and the cost ceilings

in the November, 1951, GLA-46 agreements, what would be the consequence of doing that? You have come to a conclusion, have you not?

A. Yes. Certainly that the economics associated with drilling under the conditions of GLA-46 would not allow us to proceed with the drilling of these wells. It would be uneconomic.

Q. Let's turn to the last entries in the exhibit book, Exhibit 6, and look at the two spreadsheets. There's a two-page spreadsheet and the first spreadsheet. It says a summary of findings for the Brookhaven 8, 8A, the B3B well, economic evaluations. This is your work product, is it not?

A. Correct.

Q. In order to arrive at these conclusions, were you able to, within reasonable engineering judgments, assess what you thought to be the appropriate costs of the wells?

A. I was.

Q. Were you able to determine in your expectations as an engineer what might be the recovery from these wells?

A. I was.

Q. As part of your analysis, were you able to conclude that these were marginal wells?

A. The 8, the Brookhaven 8 and 8A, are in an area where the wells are marginal. The Brookhaven 3 B3 is in a more prolific area with higher reserves.

Q. You took all those variables into consideration when you ran your economic analysis?

A. Correct.

Q. Let's look at the first spreadsheet. This is all your work, right?

A. Correct.

Q. On the top of the spreadsheet we have numbered some of the columns, and they start with number 1 and they proceed from left to right, to column 9.

I want to deal just with the row that deals with the Brookhaven B 3B well, the top row, and we will deal with each of the columns, and then the Examiner can see the same methodology that's applied for the Brookhaven 8A and the 8 well. So let's use the 1 as a type example.

In column 1 for the Brookhaven B 3B well, there is a dollar amount associated with that column. It says $386,000. What does that represent?

A. That is the total capital investment to drill and complete the Brookhaven 3 -- B3B well, drilling and completion cost.

Q. When we look at this spreadsheet, you have divided it so that the upper portion refers to the analyzed profit that Burlington would realize under various assumptions, true?

A. Correct.

Q. The bottom part of the spreadsheet reflects what would be the advantages and disadvantages to the GLA-46 group, right?

A. Correct, that is their cash flow from the wells based on their working interest in the wells.

Q. In order to look at profit, you have a 10-percent discount, and you've got some after-tax factors in here, true?

A. Correct, these are after-tax values.

Q. All right. If we look at the $386,000 investment and we look over at column 2, and you're dealing with 100 percent of the working interest, the net-revenue interest, the total potential profit for all working interest owners for this well, after they recover the costs of the well, is what amount?

A. That would be $312,000.

Q. Okay. If Burlington, in column 3, makes its investment for its percentage and is not subject to having to carry any of the GLA-46 investment, and they participate in a conventional way, what is the potential profit to Burlington?

A. The investment would be $196,000 for Burlington's 50.9-percent working interest. That $196,000 investment would generate a profit of $158,000.

Q. So you have to link 3 and 4 together, and 4 represents the profit?

A. For Burlington's share of their working-interest investment in the well.

Q. And that would be done under a modern sharing arrangement from a joint operating agreement where each working interest owner pays their share, and Burlington has to pay only its share and carries no other interest?

A. That's correct.

Q. If you're required to drill and produce this well under the GLA-46 1951 agreement, do you have a column that reflects the consequence to Burlington?

A. That would be shown as column 6.

Q. And what does it show?

A. It shows that under the GLA-46, if we carried the GLA-46 interest owners, we would only generate a profit of $53,000 on our investment of $386,000.

Q. So under a modern arrangement you would have $158,000, under the 1951 agreement you only get $53,000 profit?

A. That's correct.

Q. Correspondingly, go down to the GLA-46 entry for column 6 and tell me what happens, first of all, in column 5 with their investment. What investment are they making?

A. If they're carried, they have zero investment, zero dollars investment.

Q. In exchange for that carried interest, using the payback provisions under column 6 for the old contract, what is GLA-46's profit?

A. They would realize a profit of $259,000 on an investment of zero dollars, being carried fully in the well.

Q. Is this an economic scenario where Burlington will be able to drill these wells and carry these interest owners?

A. No, that's why we've not done this to this point in time.

Q. Okay. If the Division enters a compulsory pooling order and Burlington is required to pay the total cost of the well, what level of penalty allows Burlington to approximate a position it would be in, had it not been required to carry these interest owners under the old contract?

A. That penalty would be the maximum of 200 percent.

Q. And what number does that generate?

A. That would generate a profit to Burlington of $227,000 on the investment of $386,000.

Q. In your opinion, is that fair and reasonable?

A. The $227,000 is closer to where our profit should be, based upon the risk we're taking to drill the well.

Q. Okay. Let's turn the page. You had an opinion associated with this risk factor penalty?

A. Correct.

Q. Describe for me which of the spreadsheets I should look at to see your analysis of your opinion as to risk.

A. The very last spreadsheet shows the rate of return on investment, and what it shows is that if Burlington did not have any additional partners in the well, they could realize a 43-percent return on their investment. And if Burlington paid its working interest share of the well and the GLA-46 partners also paid their working interest share of the well, we could realize a 43-percent return on investment. But if we carried the GLA-46 owners, we would only realize a 15-percent return on investment.

Q. That's under the 1951 agreement provisions, your return on investment is only 15 percent?

A. That's correct.

Q. Would you do a deal with that kind of return on investment --

A. No.

Q. -- rate of return?

A. No.

Q. To balance the opportunities so that you could go forward with the additional recovery to be achieved by this type of activity, what level of penalty is appropriate?

A. The maximum penalty of 200 percent allows us to recover a 40.4-percent return on our investment, which is close to the 43-percent that we would realize if we participated with our working interest share, the GLA-46 owners participated with their working interest share and we did not have to carry them. So the 200 percent is the closest return on investment we could realize if we did not have to carry them.

Q. Let's go to the spreadsheet that's at the top of this page, the economic evaluation that shows payout in terms of years. Do you see that?

A. Correct.

Q. Analyze that spreadsheet for me.

A. Basically what that spreadsheet shows is that if we develop the well 100 percent, without any partners, we could pay out our investment in 2.5 years. And if we participated in the well with our working interest share and did not have to carry the GLA partners, we would realize a payout on our investment in 2.5 years. But if we had to carry the GLA partners, it would take us eight years to pay out our investment of $386,000.

Q. Is Burlington in a position where it can carry the GLA-46 owners under these payout conditions to achieve payout in more than eight years?

A. We're not.

MR. KELLAHIN: That concludes my examination of Mr. Nelms. We move the introduction of his Exhibit 6..

MR. HALL: Let me raise one point. I'm not sure we established for the record his area of expertise, in case I completely missed it. Is it anything other than petroleum engineering? I just don't think it was established as a matter of record.

MR. KELLAHIN: I am sorry, it's late in the day and I've forgotten what I've done. Did I tender him as an expert?

EXAMINER ASHLEY: Yes, you did.

MR. KELLAHIN: I thought I did.

EXAMINER ASHLEY: As a reservoir engineer.

MR. KELLAHIN: His expertise as a reservoir engineer is to do economic analyses like this.

EXAMINER ASHLEY: right.

MR. HALL: I have no objection to the exhibit.

EXAMINER ASHLEY: Okay, Exhibit 6 will be admitted at this time.

Mr. Hall?

CROSS-EXAMINATION

BY MR. HALL:

Q. Mr. Nelms, what is the purpose of the risk penalty assessment?

A. As I understand it, it's to compensate the company carrying interest for their risk.

Q. It has nothing to do with augmenting the operator's rate of return on investment, does it?

A. I think to the degree in which the risk reflects the need for that higher return, it does. The higher the risk, the higher the return should be.

Q. What is the basis of the risk in this case?

A. There are several types of risk. First, drilling a well in itself implies risk. Statistically on the Mesaverde wells that we've drilled, we have downhole drilling problems with about 20 percent of the wells that we drill in this area. About 10 percent of the wells, we see significant increases in drilling costs, due to being stuck or cement problems.

So the fact of drilling the well itself has an element of risk.

Q. Is there any extraordinary risk associated with what are infill Mesaverde wells in this case?

A. There is no more extraordinary risk, other than statistically what we see when we drill wells in infill, which is approximately 10 to 20 percent of the wells have problems.

Q. All right. Are you prepared to offer any sort of evidence with respect to the proximity of Mesaverde and Chacra production in the immediate vicinity of these wells?

A. The initial analysis that was done for the AFE, I believe, did present some information on what the production capability was of the offset wells. I do have that original prognosis.

Q. Is that contained within an existing exhibit?

A. No, it is not. This was the original AFE and the original drilling package that was completed on the Brookhaven 8 well.

MR. HALL: May I approach the witness?

EXAMINER ASHLEY: That's fine.

MR. HALL: May I have this?

THE WITNESS: Sure. That's my only copy, so I won't be able to talk to it. But when we do packages on wells, we look at the production from the offset wells.

Basically on the Brookhaven 8 and 8A, we'd estimated reserves in the Mesaverde formation to be approximately 680 million standard cubic feet. We estimated reserves in the Chacra to be approximately 480 million standard cubic feet.

So the Brookhaven 8 and 8A, the combined reserves for both formations was approximately 1.06 billion standard cubic feet of gas, which is not a very high reserve well, considering the other areas on the Basin. If it was not for the Chacra reserves at 683 million standard cubic feet, the Dakota would be essentially uneconomic to drill.

So Mesaverde stand-alone in this area would be uneconomic. It requires the addition of the Chacra to make it economic.

Q. With respect to the Brookhaven Com Number 8, the materials you've given me, it's a memorandum dated July 16, 1998, internal memorandum from Burlington. It appears to say a 90-percent probability of success is assumed for the Brookhaven Com 8. Is that still your position?

A. That would reflect the 10-percent to 20-percent risk that I was stating that we incur drilling wells.

Q. Dryhole costs you reflect here are $119,000. Does that sound right?

A. That sounds reasonable.

Q. Does Burlington intend on putting on any additional geologic evidence, or are you it?

A. We did not bring any geological evidence, no. We felt the economic evidence spoke for itself.

Q. There is no doubt, is there, that these wells are assured of encountering the Chacra and Mesaverde in each of the three locations?

A. The geologic risk is low.

Q. All right.

A. The economic risk is high. We will find reservoir. There may be some pressure depletion. We won't know till we get there. But the geologic risk is low since these are infill development wells.

Q. Is any of the pressure depletion reflected in the bottomhole pressures for the initial wells in the proration units?

A. We have seen some reduction in pressures in some of the wells we've drilled. I can't give you specifics in this area, I didn't bring any background information.

That is the document that the GLA partners should have received when we initially submitted the AFE to them. The AFE is there, the cost breakdown is there. And those costs are also shown in the exhibit books, as far as the breakdowns go. That would be -- It looks they're in Exhibit 5. Those are the same costs that are in that document.

That's the $427,000 total investment. I think it was $190,000 for drilling and $237,000 for completion.

Q. Mr. Nelms, with the materials you've handed me there's included a couple of well-location plats for the --

A. -- Mesaverde and the Chacra.

Q. -- subject wells?

A. Correct.

Q. I wonder, does this material reflect the daily producing rates and the cumulative production for the offsetting wells to the proposed wells?

A. They did as of July 14th, 1998, as was stated --

Q. I wonder if you could read into the record what those figures are for the wells surrounding the proposed wells?

A. I'll just do the closest three wells.

Q. That's fine.

A. Section 36, the Brookhaven Com 7A was drilled in January, 1997. As of July 14th, 1998, that well was producing at a rate of 411 MCF a day. It accumulated 150 million standard cubic feet. The estimated ultimate recoverable reserves from the Chacra were approximately 2064 million standard cubic feet.

North of the proposed location for the Brookhaven 8 is the Hammond 92 well, drilled in January, 1980. As of July 14th, 1998, that well was producing at a rate of 64 MCF a day with a cumulative production of 597 million.

The next closest well would be the Federal E 1. That would be in the southwest quarter of Section 25, 27 North, 8 West. It was currently only producing at a rate of 1 MCF a day. Cumulative production is 543 million.

Those were the closest wells in the Chacra.

Q. And for the record, these are the closest locations to the Brookhaven 8 and 8A?

A. They were as of July 14th, 1998. There may be some recent drills and development in that area that I'm not aware of.

Q. Okay. How about the Brookhaven Com B 3B? What are the production figures for those offsets?

A. In the Brookhaven Com 7A, this well is located in the southeast quarter of 36, 27 North, 8 West. The well was making at that point in time 241 MCF a day, cumulative production 158 million, estimated ultimate recoverable would be 2498 million standard cubic feet or about 2.5 B's.

The well directly to the north is the Hammond 41A. As of July 14th, 1998, that well was producing at a rate of approximately 133 MCF per day. Cumulative production is 1.09 B's.

And the Federal E 1 was basically shut in, in the Mesaverde. It totaled 818 million, and it looked like it had expired. It was not producing economically at that time.

Q. All right. What is the minimum economic criterion for the drilling of each of these three proposed wells?

A. Define "minimum economic criteria".

Q. What is Burlington's criteria on deciding whether or not to proceed with the drilling of the three wells?

A. I don't feel comfortable basically exposing what our internal decisions are on what we determine for decision points on rate of return on investment. I think that's confidential information.

We -- Definitely 15 percent is not enough for us to move forward.

Q. All right. What's industry average? Do you have an opinion on that?

A. It varies.

Q. In the San Juan Basin?

A. Each operator has their own numbers that they deal with.

Q. Burlington's is a little bit higher than the other operators in the San Juan Basin?

A. We have some opportunities to achieve returns on investments that are significantly higher than 15 percent, and we'll pursue those before we pursue this type of an investment.

Q. What is the rate of return that's acceptable to Burlington on their actual well cost?

A. I guess -- Define "acceptable". Greater than zero? It has to be -- We make our decisions based on what we can do with our money, investing in other wells.

Q. Do you know if Burlington or yourself ever attempted to place a value on the acquisition of the operating rights under GLA-46?

A. I've never seen any work done on that. I have no idea if that has ever been done or not.

Q. Do you know the last time El Paso, Meridian or Burlington may have carried, as you say, an interest owner under the GLA-46 cost provisions?

A. Based on the previous conversations I heard, sometime in the 1990s.

Q. All right.

A. But that is not based on anything I've read, that was just overhearing conversations at today's meeting.

Q. Now, who told you that?

A. That is what I heard on the previous discussions here today.

Q. Did you run your rate of returns if you carried at actual well cost for these three wells?

A. I ran my rate of returns at the AFE costs, what the AFE costs were originally projected to be.

Q. And is that different from actual cost?

A. Today -- These economics were based on actual costs in July of 1998. Today these cost would be higher than this.

Q. All right. And did you calculate rate of return on actual versus GLA-46 carried interest terms?

A. For the GLA-46, I used GLA-46. For the other penalties, I used the AFE total costs.

Q. All right, Mr. Nelms, what is the rate of return on actual cost with the risk penalty applied? Is it your 29.1 percent shown on your last page?

A. That would be correct, that basically at zero percent penalty Burlington would realize a 29-percent return on its investment, if we carried the working interest and we only realized a penalty of zero percent. Our return on it would be 29 percent.

Q. All right. And if you recovered 100 percent of costs, actual costs?

A. Yes.

Q. I believe you were present when you heard the earlier testimony on Burlington's proposal for, say, the Brookhaven Com 8 made on September 18, 1998, and it was proposed that Burlington recoup only 100 percent of the actual costs, without a risk penalty. Do you recall that testimony?

A. I remember that. I do.

Q. Was that an economically feasible well for Burlington to propose?

A. I can't address the economics at that time, whoever made -- I did not make that decision. Someone made that decision other than myself.

Q. Burlington wouldn't have proposed an uneconomic well, would it, at that 100-percent cost-recovery figure?

A. It probably was not uneconomic. It may not have met the guidelines for funding, which is another question.

MR. HALL: Nothing further, Mr. Examiner.

EXAMINER ASHLEY: Mr. Kellahin, there was a document that Mr. Hall and Mr. Nelms referred to. It's not --

MR. KELLAHIN: It wasn't intended to be an exhibit. If you choose to have it, I'm happy to copy it and include it.

EXAMINER ASHLEY: Yeah, I would like for that to be copied and included as an exhibit.

MR. KELLAHIN: We will mark it for the record as Burlington Exhibit 7, and we'll do that after the hearing.

EXAMINER ASHLEY: Okay, we'll accept that as on the record.

EXAMINATION

BY EXAMINER ASHLEY:

Q. Mr. Nelms, regarding the 8 and 8A, is it likely that you're going to encounter Chacra and Mesaverde production?

A. We -- There's a strong possibility that we will encounter production in the Chacra and Mesaverde, since these are both infill wells.

Q. As a Mesaverde stand-alone, they would not be economical by Burlington's standards?

A. If we had a Mesaverde well that we had reserves of 680 million, that would be very close to being marginally economic.

Q. Are the majority of the wells in the area of the 8 and 8A -- Are they downhole commingling, dual production?

A. I can't address that question, I don't have the data to address that question.

Q. Okay. You talked about the economic risk being high. Is that in regards to being completed as just a Mesaverde well?

A. Certainly there's more risk there, because the reserves are more marginal, that if there is a pressure-depletion issue, there will be less gas there to recover, as opposed to an area where you had reserves in excess of one B or almost two B's, then your risk is much lower. But because this Mesaverde reservoir is lower EUR, there's more risk here.

EXAMINER ASHLEY: Okay. I have nothing further. Mr. Hall, Mr. Kellahin?

MR. KELLAHIN: That concludes my presentation, Mr. Examiner.

EXAMINER ASHLEY: Thank you.

THE WITNESS: Thank you.

EXAMINER ASHLEY: Mr. Hall?

MR. HALL: Mr. Examiner, at this time we would call Mr. Rich Corcoran to the stand.

RICHARD CORCORAN,

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

DIRECT EXAMINATION

BY MR. HALL:

Q. For the record, please state your name.

A. I'm Rich Corcoran.

Q. Mr. Corcoran, where do you live and by whom are you employed?

A. I'm employed by Energen Resources in Farmington, New Mexico, as a district landman.

Q. And are you familiar with the lands that are the subject of Burlington's pooling applications?

A. I am.

Q. And are you familiar with the GLA-46 agreement in the surrounding materials?

A. I have become familiar with it.

Q. And have you previously testified before the Examiner and had your credentials accepted as a matter of record?

A. Yes, I have.

MR. HALL: Mr. Examiner, at this time we would offer Mr. Corcoran as an expert petroleum landman.

EXAMINER ASHLEY: Mr. Corcoran is so qualified.

MR. HALL: Mr. Examiner, in order to expedite the proceedings tonight, I would note the earlier ruling allowing the introduction of Energen's Exhibit A and all the materials contained under Tabs 1 through 75 [*sic*] therein. As we've discussed, documents do speak for themselves. It was my original intent to have Mr. Corcoran examined on most of them, but I think in view of the earlier ruling I can dispatch with that and just highlight some of the more salient documents, if that's agreeable procedure to you.

EXAMINER ASHLEY: That's fine.

Q. (By Mr. Hall) Mr. Corcoran, referring to Energen Exhibit A-1, you are familiar, as you said, with the terms of the GLA-46 agreement, are you not?

A. That's correct.

Q. Let's look at a couple of provisions in that agreement. I believe you were present for the testimony of Mr. Nichols with respect to the issue of the applicability of well costs for Mesaverde wells. Originally they were $45,000, and they have been amended to $90,000 in subsequent years; is that correct?

A. That is correct, and I was present.

Q. And you also heard his testimony with respect to the applicability of the cost provision where drilling to intervals other than the Mesaverde is contemplated?

A. Yes.

Q. Tell me from your review of the GLA-46 documents and your understanding of the practice of El Paso, Meridian, Burlington, Energen over the years, with respect to predecessors, how was that specific issue handled, if GLA 46 -- if drilling was contemplated to a formation other than Mesaverde under GLA-46, how did the parties deal with that?

A. What they did is, they then got together and determined the appropriate terms, the appropriate costs, drilling costs, for those -- for the other formations, the target formations.

Q. All right. If you would look at pages 7 and 8 of the operating agreement, the paragraphs 5.d. under Exhibit A-1.

A. Yes.

Q. There it sets out the well costs for a Mesaverde well, $45,000 initially. Then if you refer to paragraph 5.d.2. on page 8 --

A. Yes.

Q. -- where drilling to another non-Mesaverde formation was contemplated, what guidance does that provision give to the parties for negotiating the well cost?

A. It specifically states that it "...shall be determined proportionately with the parties agreeing upon a maximum cost comparable to the maximum cost of a Mesa Verde well..."

Q. All right. Based on your experience as a petroleum landman, would it be true to say that operatorship itself, under almost any situation, would have value --

A. Yes.

Q. -- to a party?

A. Absolutely.

Q. And in your opinion, does operatorship under GLA-46 have value?

A. Yes.

Q. And is that part of the consideration San Juan Production originally received when it negotiated GLA-46 in 1951?

A. That's correct.

Q. And that component of value would continue to have value today, to the operator, correct?

A. Yes, it does.

Q. Let's turn, if you would to Tab 11 under Exhibit A. If you look at that, it appears to be a letter from El Paso Natural Gas Company, dated September 27, 1962, to Mr. Thomas B. Scott. Who was Mr. Scott?

A. Mr. Scott was the president of Brookhaven Oil Company, our predecessor.

Q. So Brookhaven was predecessor under GLA-46 to the Energen interest today?
A. That's correct.
Q. And if you look at the second sentence of the first paragraph, they were talking about drilling a Dakota development well, correct?
A. That's what they were talking about, that's right.
Q. And does that language say, "...we will have to reach an agreement on the allocation of costs as required by Section 5-d (2) of Operating Agreement dated November 27, 1951"?
A. That's correct, that's exactly what it says.
Q. Would you understand this to mean that El Paso undertook an effort to negotiate with Brookhaven costs for non-Mesaverde wells?
A. Yes, that's my interpretation.
Q. All right. Let's look at Exhibit 18. It's an internal memorandum at El Paso, dated October 11, 1974, and it refers to communications with Mr. Scott by El Paso, does it not?
A. Yes, sir, that's what they're referring to in the letter.
Q. Why don't you look at that last paragraph? Apparently Mr. Scott called and was very upset that the

wells were not being drilled this year. And "this year" is 1974, correct?

A. At that time, that's correct.

Q. You've heard the earlier testimony here today that stated that there was no obligation to drill beyond the 18th Mesaverde well under GLA-46; did you hear that testimony?

A. I heard that.

Q. And here when you get to a memorandum in 1974, they're still talking about drilling obligations under GLA-46, are they not?

A. They are.

Q. Look at the last sentence of that memorandum. What does that say?

A. He also stated that he would like to see the remaining undrilled blocks he owns an interest in drilled.

Q. Now, is that consistent with your understanding of GLA-46, that the operator has an obligation to drill all drilling blocks?

A. Yes.

Q. Mr. Corcoran, have you undertaken a review of the acreage covered by GLA-46?

A. I have.

Q. You know its areal extent?

A. Yes, I do.

Q. And have you reviewed the situation on all that acreage to determine whether all of the drilling blocks available have been drilled?

A. I have reviewed that.

Q. All right. Look at Exhibit B. Can you identify that, please, sir?

A. Sure, this is a list of undrilled locations, excluding the three, excluding the three proposed wells that we're discussing today. Undrilled locations in the GLA-46 acreage.

Q. And approximately how many locations are under --

A. Twenty-some-odd.

Q. Mr. Corcoran, what are Exhibits C and D?

A. If I may, you know, I just sat here and counted the undrilled locations, and there's more than 30. There's actually in excess of 30 on this sheet, and this is not an exhaustive list.

Q. All right. So they are undrilled locations, according to Exhibit B, in the Fruitland Coal, Mesaverde, Dakota and Pictured Cliffs in the acreage you've described?

A. That's correct.

Q. All right. Let's look at Exhibits C and D, if you would explain those to the Hearing Examiner, please, sir.

A. Exhibits C and D are maps depicting where Energen owns acreage governed by the GLA-46. It further depicts the existing producing horizons and spacing units for those horizons on that acreage. And as you study it, you can determine quickly, for example, in 31 North, 10 West, on Exhibit C, there are a number of spacing units not accounted for, there are a number of zones that have not been drilled. And the offsets have been. And that list that coincides with this is a list of those spacing units that have not been drilled.

The same is true for Exhibit D. We just split the map into two segments to talk about them easier.

Q. All right, so Exhibits C and D are a graphic depiction of the undrilled locations summarized on your Exhibit B?

A. That's correct.

Q. Mr. Corcoran, to your knowledge has Burlington or its predecessors ever offered to release those undrilled locations to you as contemplated by GLA-46?

A. Not to my knowledge.

Q. So would it be the case that Burlington continues to own the operating rights in all those undrilled locations?

A. They do.

Q. And you've heard the earlier testimony with respect to the gas balancing agreement applicability, did you not?

A. Yes, I did.

Q. Is it your opinion that the gas balancing provisions would continue to apply to those undrilled acreage locations as well?

A. It is.

Q. Let's turn to Exhibit 19 under Exhibit A, please, sir. Do you have that in front of you? It appears to be a letter from Mr. Scott to El Paso dated November 7, 1974.

A. Okay.

Q. And if you look at that language in the last sentence of the third paragraph there, the highlighted portion says, "...we'll just go back to the original contract." And then up at the top there, there's a reference to GLA-46. Is it safe to assume that we're talking about going back to GLA-46 as the original contract?

A. That's right, and the terms governing it on the -- originally.

Q. All right. And the following sentence says, "There are about twenty Pictured Cliffs wells that can be drilled in the above townships wherein Brookhaven has an interest."

A. That's what it says.

Q. Would it be your conclusion that Mr. Scott took the position that El Paso had an ongoing drilling obligation under GLA-46, as of November, 1974?

A. Yes, they continued to add to that obligation.

Q. Let's turn to Exhibit 23 real quickly. Do you have that in front of you?

A. I do.

Q. That's a letter dated February 25, 1975, from Mr. Scott, Brookhaven Oil Company, to El Paso Natural Gas Company. Have you reviewed that letter?

A. I have.

Q. And what is your understanding of the thrust of that letter?

A. That they were changing the terms of maximum amount of drilling costs from $45,000 to $90,000 for a Mesaverde well.

Q. All right. Does it appear, if you will look at the highlighted language in the mid-paragraph, second paragraph, would it be reasonable to conclude that in exchange for increasing the well cost for Mesaverde wells to $90,000, that Mr. Scott was seeking an obligation from El Paso to drill additional Mesaverde wells?

A. Yes, that's -- Although mine is not highlighted, yes, that's what that reads.

Q. All right. And would that be the same if you look at the third paragraph there? There was a similar accommodation for the drilling of additional Pictured Cliffs wells?

A. Correct, wherein they -- in exchange for drilling additional wells they agreed to increase the drilling costs from the $16,500 to $33,000 per well.

Q. And the letter references "Section 5 - d - 1" of GLA-46. Is it reasonable to conclude that the parties were engaged in arm's length negotiation for increased well costs for non-Mesaverde-formation wells?

A. Yes.

Q. If you will turn to Tab 29, El Paso internal memorandum dated March 4, 1976 --

A. Okay.

Q. -- have you got that there?

A. Yes.

Q. You would agree with me that there is no dispute that GLA-46 has been amended a number of times, at least 24 or 25 times?

A. Right.

Q. And this memo, Exhibit 29, that discusses a further amendment to GLA-46, does it not?

A. Yes, it's one of the many amendments.

Q. And in order to obtain an amendment, El Paso is discussing consideration, correct?

A. Right, the consideration in my reading of this was their agreement to commit to drill an additional 10 PC wells before the end of that particular year.

Q. All right. Now, let's look at Exhibit 35. Can you turn to that tab, please?

A. Okay, I'm there.

Q. This is another internal memorandum, El Paso, dated May 20, 1976?

A. Yes.

Q. And it is a discussion of El Paso's understanding of the operation of GLA-46, is it not?

A. Yes, it is.

Q. And it says, "The Farmout Agreement provides that in the event a well is completed in a formation for which a recovery amount is not provided for, then the parties thereto shall agree upon a maximum cost to be recovered comparable to the maximum cost of a Mesaverde well." Do you see that language?

A. Yes, I do.

Q. And that is consistent with your earlier testimony about your understanding of how the terms of GLA-46 work?

A. Yeah.

Q. That's what the express language --

A. Almost -- It's not verbatim, but it's close.

Q. So would it be reasonable to conclude that El

Paso or the operator had an obligation under the contract to negotiate well costs?

A. As I understand it, yes.

Q. And if we look at, quickly, Exhibits 37, 38 and 39, you can refer to the upper right-hand corners of those, and they say GLA-46, Amendment 20, 21, et cetera --

A. Yes.

Q. Do you see that there?

A. Correct. Yes, I see it.

Q. Those would appear to be the amendments to GLA-46 themselves, done over time between the parties, correct?

A. Yes.

Q. And in each case, in each of those exhibits, at the numbered paragraph 1, it again talks about consideration. What was the consideration for the amendments given in those cases?

A. In each of those cases it's for drilling certain wells, which are later described on the second -- on the next page, during a given period of time in exchange for that, that being the consideration to Brookhaven.

Q. All right. Now let's look quickly at the exhibit under Tab 40, internal Memorandum, El Paso, March 16, 1977.

A. Yes.

Q. Again, it discusses the drilling of 10 Mesaverde "infield" wells, as it's called there?

A. Yes, it does.

Q. What does the last sentence of that memorandum say?

A. It says, "Their share of the total costs of the Mesaverde well is limited to their share of a total cost of $90,000.00 per Mesaverde Well as provided in the Farmout Agreement as amended."

Q. All right. So would it be reasonable to conclude from this that, El Paso's understanding as of 1977, anyway, that the $90,000 cost provision for Mesaverde wells still apply?

A. That's correct.

Q. And at this point, 1977, we are well beyond the drilling of the 18th Mesaverde well in 1956, correct?

A. Yes, we are.

Q. And again, there were additional amendments to GLA-46, correct? Look at Exhibit 41.

A. Yes.

Q. Again, that's an amendment dated January 13, 1978, amendment 23?

A. Okay, yes.

Q. And it again discusses consideration, does it not?

A. Yes, it does, in the same fashion.

Q. In this particular case, as in probably more in this example, the agreement was for that well that the parties would pay 100 percent of actual well costs --

A. Yes.

Q. -- for those two wells?

A. They deviated at that point, that's correct.

Q. All right. Then let's look at Exhibit 43. It's a letter dated August 7, 1979, from Lear Petroleum Corporation to El Paso. First of all, who was Lear in the sequence of events?

A. Lear was a successor to Brookhaven.

Q. All right. What does it appear the purpose of this letter to be?

A. Lear is advising El Paso that -- in the last line they state, they desire "to continue to pay our share of all drilling costs out of production pursuant to the amendatory letter dated April 3, 1975," indicating what that amount was.

Q. So they were reverting to a previous arrangement under GLA-46?

A. To the $90,000 that's correct.

Q. Yeah. And if you look at Exhibit 46, it's a letter from Lear, Don W. Moore, to El Paso, July 25, 1985. And again, he reiterates that same position, does he not?

A. I'm sorry, I'm --

Q. Too far ahead of you?

A. Yeah, give me the --
Q. It's Exhibit 46.
A. Okay, mine is different, I'm looking at a letter from [*sic*] Mr. Poage.
Q. Yes.
A. Okay, wherein he's clearing up a misunderstanding or something that wasn't clear between himself and Lear Petroleum.
Q. All right.
A. And they're talking about in that well only they were willing to pay.
Q. All right. He's saying otherwise GLA-46 applies?
A. That's correct.
Q. Let's look, if you would, quickly, at Exhibit 49.
A. Okay.
Q. Does that appear to be GLA-46 Amendment Number 25?
A. It does.
Q. And how did that particular amendment operate?
A. Let's see. They went to actual well cost.
Q. And that's for three Fruitland Coal wells?
A. That's correct. Amoco agreed to actual well costs.
Q. And you've heard the earlier testimony with respect to the amendment of GLA-46 to provide for gas

balancing?

A. Yes.

Q. Let's look at Exhibit 52 real quick. What does that appear to be?

A. It's a contract summary sheet, indicating that all the parties have approved the gas balancing agreement.

Q. All right. It's all parties under GLA-46?

A. That's right, under that, yes. It is pertaining to the GLA-46.

Q. Now, let's look at -- turn -- skipping to Exhibit 56. Now we're in the 1990s. Exhibit 56 is a letter from Meridian, dated October 20th, 1992, and it address three wells that were proposed in the 1990s, does it not?

A. Yes.

Q. Talking about the Atlantic Com "A" Number 7, on page 1 there, and then if you turn to page 2 of that exhibit it continues to discuss the Atlantic Com "A" Number 7, and there's a reference to "Governing Agreements". Do you see that?

A. I do.

Q. What agreements are identified as the governing agreements?

A. It states, "Originally drilled and operated under Farmout dated November 27, 1951," which is our GLA-46.

Q. All right.

A. As well has a JOA dated November 1st, 1976, between El Paso and G.T. McAlpin, and then a 12.5-percent working interest still subject to the GLA-46.

Q. And then similarly with respect to the Atlantic Com "A" 7A further on down that same page?

A. Yes.

Q. Turn the page again, it identifies "Governing Agreements".

A. Okay, they are the same.

Q. Including GLA-46?

A. Yes.

Q. And then it discusses the Atlantic Com "A" 7R at the bottom of page 3.

A. Okay.

Q. If you turn the page you see division of interest after payout for what are the GLA-46 interest owners, talking about here today, correct?

A. Yes.

Q. And that letter, in the bold language at the bottom of page 4, discusses the operation of the payout provisions under GLA-46?

A. It does, and it -- It indicates that it was not agreeable to the working interest owners, so Meridian proceeded to drill the well under the two governing agreements and carried a total of 24.68 percent nonconsent.

Q. If you look on page 5 it, as you say, addresses the governing agreements?

A. Yes.

Q. And that's where it says that the well was drilled under both a JOA and GLA-46?

A. That's correct.

Q. You heard testimony earlier today with respect to Burlington's position that wells were drilled under GLA-46 beyond the 18 initial Mesaverde wells, only where they had 100-percent unanimous agreement from all the parties in their operating agreement. Did you hear that testimony?

A. I did.

Q. And this particular letter is inconsistent with Burlington's position, is it not?

A. That's right, it's inconsistent.

Q. Again, let's skip to Exhibit 59, if you would. Exhibit 59 is a letter from Burlington dated April 1, 1997, to Total Minatome. Total is Energen's immediate predecessor in interest, correct?

A. That is right.

Q. And what is this letter regarding?

A. Let's see.

Q. Well, let me ask it this way --

A. Well, they're going to exchange certain proprietary geology and seismic.

Q. Was Burlington seeking an amendment to GLA-46 by this letter?

A. Yes.

Q. And did it offer some consideration to Total --

A. It did --

Q. -- to amend?

A. As I started to say, yes, it did, and that was certain seismic and geology they had, in exchange for the amendment of GLA-46.

Q. And was it contemplated that the entirety of GLA-46 would be amended, all the acreage under GLA-46?

A. It looks to me like it was Section 8 of the GLA, then later on I guess it does go on and say Total agrees to amend the operating agreement, dated such-and-such, by deleting that particular paragraph, and the accounting procedures, et cetera.

Q. All right.

A. So yes, the whole thing.

Q. So as of April, 1997, is it reasonable to conclude that it was Burlington's position that GLA-46 was still applicable to the lands at that time?

A. Based on the fact that they were continuously referring back to it and amending it over and over again, yes, they must have understood it to still be valid.

Q. So is it also reasonable to conclude that

Burlington was seeking a release of GLA-46?

A. By -- Yeah, later it can be demonstrated by their asking them to sign new operating agreements.

Q. And again, if you'll refer to the exhibit under Tab 63, do you have that in front of you?

A. I do.

Q. What was the purpose of that letter, as you understand it?

A. Let's see, it's to Total from Mr. Strickler, requesting support for a deep Penn test and support in the manner of amending GLA-46 again.

Q. Uh-huh. And to your knowledge, did Total accept either of those proposals to amend GLA-46?

A. Not to my knowledge.

Q. But it was true, is it not, as reflected by the exhibits, that consideration was offered to Total to do so?

A. Yes.

Q. Now, let's look at Exhibit 64. It's a letter dated September 18, 1998, by Mr. Nichols here, to the GLA-46 interest owners, is it not?

A. Yes, it is.

Q. And there's a reference there, it states Burlington's "...position that the provisions of GLA-46 do not apply to this well..." and it's speaking of the Brookhaven Com 8?

A. Okay, correct.

Q. "...do not apply to this well inasmuch as the drilling obligations, terms and conditions of GLA-46 were satisfied with the drilling of the initial 18 wells on GLA-46 lands as set out in the agreement."

A. That's what it states.

Q. Yeah. To your knowledge, is that the first the first time Burlington, Meridian or El Paso ever articulated that particular position, that they had only an 18-well drilling operation?

A. Yes, from my involvement.

Q. And again, that was a well proposal that provided for two options, correct?

A. Yes.

Q. And option 2 was what, briefly?

A. It was that Burlington recoups 100 percent of their cost out of 100 percent of the revenue stream, and it also provided for changing drilling and producing well rates.

Q. All right. Now, did you accept that option 2 on behalf of Energen?

A. Yes, I did.

Q. Why did you do that?

A. We wanted to support that particular drill, that well, that proposal.

Q. Now, your execution on the acceptance is on page 2 there, correct?

A. Yes.

Q. Okay, and you've made it subject to another letter of acceptance, correct?

A. Yes.

Q. What did you indicate in that other letter?

A. That other letter, I indicated that -- you know, that we wanted to go ahead and support this, however I didn't want them to -- I wanted for the one well only.

Q. All right. And that other letter is, in fact, under Tab 65, is it not?

A. It is. I misstated the date here, and -- I said dated November 18th. My letter actually was dated November 16th.

Q. All right. What position did you take in that letter with respect to the applicability of GLA-46?

A. That it was, in fact, this -- We specifically stated that it was -- it would continue to apply to all future wells.

Q. All right. And to save time, that is how you exercised the election on behalf of Energen to participate in all of the wells that are proposed by Burlington here today, correct?

A. All the other ones, no. All the other ones, I chose to join them under the terms of GLA-46.

This one, we chose to join them under the terms that they offered here.

Q. All right. And what happened to this particular proposal that you accepted, 100 percent cost?

A. We went ahead and approved their option 2, and they later decided to rescind that and not drill that well at that time?

Q. Do you know why?

A. Today, I was -- I heard Shannon testify that there were -- he did not have 100-percent joinder.

Q. I see, although they had drilled wells in the past under GLA-46 without 100-percent joinder, under standard operating agreements?

A. Right, as was stated in that letter by John Zent earlier, indicating that they took 24 or 26 percent nonconsent.

Q. All right.

A. Or carried them, I'm not sure which.

Q. Now, the letter of withdrawal of that one well you did elect to participate in, that's under Tab 69, is it not? Letter dated August 25, 1999?

A. Yes.

Q. That's where they withdrew the proposal you accepted --

A. That's correct.
Q. -- one well?
A. That is correct.
Q. You look at that letter, the last paragraph, there's a reference to lands previously subject to GLA-46. Do you see that there?
A. Yes, I do.
Q. To your knowledge, is that the first time Burlington has adopted the position that GLA-46 previously applied to lands?
A. That's the first time I saw it worded in that fashion.
Q. All right. And if you turn to the next exhibit, under Tab 70 -- do you have that there? -- what is that?
A. Let's see, it's a proposed operating agreement dated February 1st, 1999, for eight well proposals.
Q. And it involved GLA-46 lands, correct?
A. Yes, it did.
Q. If you looked at the last sentence of the first full paragraph there, did it indicate Burlington was prepared to make a cash offer to purchase the GLA interest?
A. It did, it so stated.
Q. Yeah. So as of September 9, 1999, anyway, Burlington thought GLA applied to the lands?
A. Yes.

Q. And they had some value?
A. Correct.
Q. And was willing to purchase it from you?
A. That's correct.
Q. We discussed the three drilling proposals for the Brookhaven 8, 8A and B3B wells here?
A. Yes.
Q. You've indicated previously that you elected to participate, as you said, under GLA-46?
A. Correct.
Q. How did Burlington react to that?
A. That those terms were not something they wanted to drill the wells under.
Q. All right. Let's look at the document under Tab 73. Can you identify that, please, sir?
A. It's a response to those well proposals wherein we just indicated that GLA-46 still applied until it was changed, and we needed to abide by it.
Q. All right. Each of the occasions where you were involved, where Burlington sought to have Energen execute its joint operating agreements, what was the practical effect of that request, to execute those joint operating agreements?
A. The way I saw that was, if, in fact, we executed a new operating agreement, we forfeited whatever rights we

did have or whatever value GLA-46 actually had to us.

Q. So you were being asked to release and give up substantive contract rights under GLA-46?

A. That is correct.

Q. Now, back to the terms of GLA-46 again. In your opinion, your understanding of the operation of those terms, did Burlington have an obligation, a contractual obligation, to negotiate well costs for wells outside the Mesaverde?

A. It was my understanding that if it wasn't specifically stated, that the parties were to arrive at a reasonable cost between them.

Q. All right. And in your opinion, did Burlington make a good-faith effort to try to negotiate those well costs under the contract obligation?

A. I didn't see any kind of exchange of value offered to us.

Q. Was Energen offered consideration such as was offered to Mr. Scott and Lear Petroleum in the earlier exhibits we discussed?

A. I didn't see it. The only thing I saw was that they were willing to drill a well or a second well or a third well, or whatever the particular proposal was, but not several wells within a given period of time, or whatever other consideration.

Q. You didn't receive a commitment to, say, a 10- or 12-well drilling obligation?

A. That's what I'm trying to say, that's correct.

MR. HALL: I'm almost finished, Mr. Examiner.

Q. (By Mr. Hall) Let's refer back to Exhibit 32, and that letter discusses the drilling and equipping of the San Juan 32-9 Community 94 Pictured Cliffs well, does it not?

A. Yes, it does.

Q. And was that well also a dual-completion well?

A. It looks -- Yes, it looks as though it was.

Q. And this is a letter from Mr. Scott to El Paso, 1976, and at that time is it accurate to say that El Paso and Brookhaven didn't have an agreement for the allocation of costs for a non-Mesaverde dual-completion like that?

A. That's what I understand this to be addressing.

Q. So how did they handle that in that instance?

A. Well, they talk about it in the last paragraph down there. What they did was, they combined the Tertiary Sands well, and they charged them $16,500.

Q. Now, is that $16,500 amount the amount that was agreed to under one of the GLA-46 amendments for Pictured Cliffs wells?

A. It was.

Q. That's the agreed figure?

A. Right.
Q. What did they do for the Tertiary Sands?
A. They were going to charge them 100 percent, as I recall, of that as well. Let's see. Let's see if it's in here.
Q. All right.
A. Yes, that's what they did.
Q. And El Paso responded to Mr. Scott's inquiry about how to handle those unaddressed costs in their letter of May 3, 1976, under Tab 33.
And does that letter say, in substance, that yes, that's what we did, we billed you at the agreed rate for the Pictured Cliffs, $16,500?
A. Yes, in the last --
Q. -- billed you for actual costs for the Tertiary --
A. Right, the last sentence, correct.
Q. And then if you turn to Tab 34, that is an amendment to GLA-46, Amendment 19, is it not?
A. Yes, it is.
Q. And it's dated May 20, 1976?
A. Okay, correct.
Q. And that's where they formalized their understanding about how to handle the cost for dual completions?

A. Yes.

Q. And in this circumstance, Burlington has made no similar effort to negotiate the costs of their proposed dual completions with you in accordance with the terms of GLA-46 --

A. No --

Q. -- is that correct?

A. -- not in the same manner as this, no, they have not.

Q. All right. Mr. Corcoran, is it your position that Energen's interests are voluntarily committed to the wells proposed by Burlington?

A. Yes, it is.

MR. HALL: That concludes my direct of Mr. Corcoran.

I'm sorry, let me move the admission of Exhibits B, C and D, Mr Examiner.

Q. (By Mr. Hall) Mr. Corcoran, were Exhibits B, C and D prepared by you or under your direction and control?

A. They were.

MR. HALL: So moved, Mr. Examiner.

EXAMINER ASHLEY: Exhibits B, C and D will be admitted as evidence at this time.

Mr. Kellahin?

MR. KELLAHIN: Thank you, Mr. Examiner.

CROSS-EXAMINATION

BY MR. KELLAHIN:

Q. Mr. Corcoran, when did you first become employed by Energen?

A. Two and a half years ago.

Q. And that caused you to move back to Farmington with Energen, or were you there already?

A. I was there already.

Q. When you became involved with Energen in your employment, when did you first become aware of the existence of the GLA-46 agreement?

A. Not until after Energen had acquired Total Minatome, which was effective the 1st of January, 1998, but I wasn't even aware of it -- we didn't -- We did not finalize it until October or November of that year.

So after the first letters that were penned by Burlington concerning these wells -- they were penned in July or thereabouts, and those were actually directed to Total Minatome, and we received them subsequently.

Q. All right. So in late summer or early fall of 1998, as a result of correspondence from Burlington, you became aware of the existence of the GLA-46 agreement?

A. That's correct.

Q. In your experience as a petroleum landman, have you ever seen another agreement like the GLA-46 agreement?

A. Not exactly. There's several, however, as I'm sure aware, there are several GLA out there, and each of them are unique.

Q. Does Energen have any objection to the estimated well costs that Burlington has proposed for the Brookhaven Com 8 well, which is $427,630?

A. We do not object to that dollar amount. However, we're not willing to join at that rate.

Q. All right. My question is, though, there is no quibble by Energen as to the fact that $427,000 for a dual Chacra-Mesaverde well is a fair and reasonable estimate, based upon current costs of such wells?

A. Correct.

Q. For the 8A well, a similar cost for that well of $427,000 is fair and reasonable?

A. Yes, no problem.

Q. When we look at the B3 well, which is the single Mesaverde, Burlington's estimate of $386,000 is also fair and reasonable in current market conditions?

A. It is.

Q. Okay. If we apply the 1951 price ceiling as amended --

A. Yes.

Q. -- where a total cost of a Mesaverde well, by which reimbursement is to be calculated, that ceiling is

$90,000?

A. That's correct.

Q. Is that $90,000 ceiling a fair and reasonable ceiling in today's pricing where wells of this type cost in excess of $386,000?

A. No, it's not.

Q. It's not. And Energen would, if they were in Burlington's position, not drill these wells, right?

MR. HALL: I'm going to object --

THE WITNESS: I don't know --

MR. HALL: -- it calls for speculation.

THE WITNESS: Okay, I'm not sure, you know --

MR. HALL: Just a minute --

THE WITNESS: Oh, I'm sorry.

MR. HALL: -- let the Examiner rule on the objection.

MR. KELLAHIN: What's the objection?

MR. HALL: Speculation.

MR. KELLAHIN: Speculation by a company? I'm asking him if he's in Burlington's position whether they would drill the wells. I think it's a fair question.

MR. HALL: It's hypothetical. There's not the facts presented to the Hearing Examiner.

EXAMINER ASHLEY: I'll allow the question.

THE WITNESS: I'm not sure. You know, there's a number of things we'd have to study before I could answer that question.

Q. (By Mr. Kellahin) That's an extremely severe limitation on an operator, is it not, in today's situation, Mr. Corcoran?

A. That's a -- It's something that they're going to have to work with, yes.

Q. And it's so severe that you believe Burlington when they tell you they're not going to drill these wells subject to that limitation, right?

A. I don't know that that's true. I look at the economics that were talked about earlier, and I think they could -- a 29-percent return on their investment is not too bad.

Q. How does the GLA-46 acreage have any value to Energen if Burlington is unwilling to drill the well subject to this limitation?

A. We need to be -- It's an asset that our firm is not willing to just give away.

Q. Well, the asset is going to sit on the shelf undeveloped unless there's some resolution of this issue --

A. Yes.

Q. -- is that not true?

A. That is correct.

Q. Let's see how the parties resolved that in the past. Let's turn back to some of the exhibits that you have presented. Let's look at Number 19.

A. Okay.

Q. That's a letter of November 7th, 1974?

A. Yes.

Q. I'm going to look at a part of that letter that Mr. Hall did not highlight. I'm going to look at the first sentence of the second paragraph. Am I reading this correctly when I say it says, "Toward the latter part of last year, I saw Mr. Ben Howell and told him that the limited costs which you would be able to charge for drilling wells was about 1/2 of the present actual costs." Right?

A. That's what that says.

Q. And what he's speaking about is the original contract limitation of $45,000, right?

A. Yes.

Q. And at his insistence, then, and with the agreement of El Paso, there is an amendment by which the costs are escalated to $90,000 as a ceiling, which represents the time in 1974 when that would have represented reasonable fair cost, right?

A. Okay.

Q. That's what they did, right?

A. Yes.

Q. And they made that effective 1-1-75, right?
A. (No response)
Q. And as you look at the various amendments to this various agreement, starting back as early as, I think, 1973, on repeated occasions, in order to have an agreement as to cost to get these wells drilled, the parties agreed to use current costs at that time. Is that not true?
A. No, Mr. Kellahin, I don't think it is.
Q. No?
A. I think they limited it to $90,000 over and over again, is the way I was reading that, unless I'm misconstruing it.
Q. All right. The subsequent amendments that you saw --
A. Yes.
Q. -- amendments 23, 24 and 25, those kind of things?
A. Yes, they were limiting it to $90,000 but, you know, that they could recoup it out of 100 percent of the revenues instead of 50 percent.
Q. All right. So part of the arrangement, then, was to change the recoupment provision --
A. Correct.
Q. -- so instead of getting it out of 25 percent, they could have it out of --

A. -- 50 --

Q. -- 50 percent of the Brookhaven interest?

Okay, let's go back to the 1951 agreement. It's in Exhibit 1. And I want to look at the attachment which is Exhibit "B"; it's the operating agreement.

A. Okay.

Q. Are you with me?

A. Yes.

Q. Let's turn through that and get to page 4.

A. Okay.

Q. All right?

A. Yes.

Q. I'm looking at that portion of 4b. that says the drilling obligations on San Juan --

A. Yes.

Q. -- are going to continue on an annual basis "until a total of 18 Mesaverde wells have been drilled or shall reassign or relinquish the undrilled locations" and the rights to all formations undrilled -- et cetera, et cetera.

A. Yes.

Q. Okay?

A. Uh-huh.

Q. What does that mean to you?

A. It means what it says, 18 wells.

Q. Okay. If that drilling obligation is satisfied, okay?, by that provision --
A. Yes.
Q. -- then when we look at all the acreage that you say has not been developed --
A. Right.
Q. -- on these exhibits --
A. Correct.
Q. -- and not reassigned --
A. Right.
Q. -- to Energen, Brookhaven or any of the parties in that position --
A. Uh-huh.
Q. -- wouldn't that cause you to reasonably conclude that the parties in Burlington's position satisfied the drilling obligation?
A. No, because each time they amended it, they added a number of wells that they agreed to drill.
Q. If you turn to page 5, the bottom sentence in that paragraph --
A. Yes.
Q. -- it says, "If San Juan has failed to comply with the drilling obligations of this Operating Agreement, then San Juan shall execute and deliver to Brookhaven a release of this Operating Agreement as to such tracts..."

A. Yes.
Q. All right?
A. Yes.
Q. In examining all the documents, did you find any instance in which San Juan delivered a reassignment back to Brookhaven?
A. I have not.
Q. Did you find any occurrence where Brookhaven demanded a reassignment?
A. I did not.
Q. Did you find any occasion where any of Brookhaven's predecessors demanded a reassignment?
A. No.
Q. Has Energen demanded a reassignment?
A. They have not.
Q. Could that cause you to reasonably conclude that the drilling obligations are satisfied?
A. No, what it causes me to conclude is that they simply haven't made that demand yet.
Q. And after 45 years --
A. Yes.
Q. -- nobody in your company's position made that demand?
A. We've had this all of a year.
Q. In 1973 and 1974, they're amending the agreement

to provide for current costs, and the ceiling goes up to $90,000; is that the way I understand it?

A. Yes, that's correct.

Q. Turn with me to Exhibit 64. It's the September 18th, 1998, letter from Burlington to the interest owners. It's the one that you signed on behalf of Energen.

A. Yes.

Q. Okay. At this point in time, Burlington is offering the opportunity to the interest owners to either sign a new operating agreement, or option 2 is, they'll pay for the costs of the well, recoup out of 100 percent of the revenues the cost, and then everybody is happy. All right?

A. Yes.

Q. And you signed off?

A. Yes, we did.

Q. If you're asserting the limitations of the 1951 agreement --

A. Uh-huh.

Q. -- why did you propose to accept option 2?

A. Because we wanted to support them on a one-well basis, to try and begin working with them to develop these properties. We'd like to see them developed also.

Q. Okay. And as a consequence, you recognize that the limitations of the 1951 agreement was going to be such that the well wasn't going to get drilled?

A. It could be detrimental. However, when we did do this, they chose not to drill it for whatever reasons.

Q. Well, and you heard the reasons from Mr. Nichols. He said he couldn't get everyone else to agree to the change and so they went back to square one?

A. Okay. But we stood ready, willing and were prepared to do that.

Q. Okay. Would that be true of all remaining spacing units in which the GLA acreage might be included?

A. I'm not --

MR. HALL: Again, I'm going to object. It calls for speculation once again, Mr. Examiner.

THE WITNESS: Yeah, I can't answer that question, I can't speak for my company.

Q. (By Mr. Kellahin) Okay. Well, it appears that we're at an impasse, doesn't it, Mr. Corcoran?

A. Yes.

Q. Burlington and Energen can't agree on the cost of the well, and the wells are not going to get drilled, are they?

A. I hope there's some middle ground.

Q. I hope so too. You've been working on it since what? October, September --

A. Not real --

Q. -- of 1999?

A. Let's see. Yeah, that's correct, that's about the time we started looking at this in earnest, or sometime shortly before that.

Q. Okay. And Mr. Nichols says that upper management for both Energen and Burlington have met on this topic, and above your level and above his there has not been an agreement, right?

A. Yeah, it's unfortunate.

MR. KELLAHIN: No further questions.

EXAMINER ASHLEY: Mr. Hall?

MR. HALL: Briefly, Mr. Examiner.

REDIRECT EXAMINATION

BY MR. HALL:

Q. Mr. Corcoran, the many amendments by Mr. Scott and Lear, GLA-46, that Mr. Kellahin asked you about on cross-examination --

A. Yes.

Q. -- none of those, none of those operated as a release of GLA-46, did they?

A. No, they did not.

MR. HALL: Nothing further, Mr. Examiner.

EXAMINER ASHLEY: I have nothing further, thank you.

THE WITNESS: Thanks.

MR. HALL: Mr. Examiner, to close, two letters were sent to you -- I don't know that you've received them -- Janet Cunningham, who is a landman with Bank of America. They administer the Dacresa Group, former shareholders of the Dacresa Corporation, Carolyn Nelson Sedberry, et al., who I've entered an appearance for here today.

Ms. Cunningham has provided you with a letter in opposition to Burlington's Application, as has Kent S. Davis, Senior Landman for Westport Oil and Gas Company, Inc.

I provide you with copies of those, and I ask that they be included in the record in this case.

EXAMINER ASHLEY: I have this one...

MR. KELLAHIN: Mr. Examiner, I object to letters to be considered by you where the parties that sign these letters don't care enough about the issue to come here and testify on behalf of their position. I'm not able to rebut or examine these people, so we would ask that you not consider them.

EXAMINER ASHLEY: Mr. Hall, you represent Westport Oil and Gas; is that correct?

MR. HALL: Yes.

EXAMINER ASHLEY: What about the letter from Bank of America? Is that the group that you represent as well?

MR. HALL: Yes, it is.

You have the discretion to consider them.

EXAMINER ASHLEY: Both of these letters were addressed to me. I've already received one in the original, so we'll make these a part of the record.

MR. HALL: Mr. Examiner, I would propose in lieu of further closing statements we provide you with a memorandum on the facts and the law we view as applicable in this case, provide you with draft orders and go home.

MR. KELLAHIN: I would like one procedural matter -- renew my motion to ask to amend the pleadings to assert relief under 70-2-17 E, which would provide an opportunity for you to consider, then, whether or not you will issue a force pooling order and modify this agreement, if you think it is still in effect, in order that these wells may be drilled.

Without either finding these properties are not subject to the contract, or by utilizing subparagraph E, these wells are not going to get drilled.

EXAMINER ASHLEY: I would object, Mr. Examiner. I think, one, you're estopped to try to amend at this point, given the position they've taken with respect to the applicability or not of GLA-46.

Secondly, amending at this time presents, I think, a substantial due-process question. Had we known in advance, I think we would have prepared a completely different case, had a completely different set of proof for you to consider. It's not proper to amend at this point in time on that basis.

We would object.

MR. CARROLL: Okay, we're going to defer ruling on that issue. We'd like you to address it in your written statements.

MR. KELLAHIN: All right, sir.

EXAMINER ASHLEY: And we'll continue the case for two weeks.

MR. KELLAHIN: Say again? You want to continue this? For what reason? I can --

MR. CARROLL: -- amending the Application.

MR. KELLAHIN: All right, we'll do it that way.

EXAMINER ASHLEY: Okay.

MR. KELLAHIN: Do you have a time frame for submitting orders? I could get an order in --

MR. HALL: Monday.

MR. KELLAHIN: -- two weeks, or --

EXAMINER ASHLEY: Monday?

MR. HALL: Yeah, and a memorandum.

MR. KELLAHIN: Some of us are going to Hobbs and fight with Mr. Hartman and the Jalmat there.

MR. HALL: I didn't know.

MR. KELLAHIN: Yeah, I need to spread myself towards the Jalmat.

EXAMINER ASHLEY: The 1st?

MR. KELLAHIN: We can do it by the next hearing.

MR. HALL: Sure, that's fine.

EXAMINER ASHLEY: That will be --

MR. KELLAHIN: We're going to continue the case anyway --

MR. CARROLL: February 3rd.

MR. KELLAHIN: -- for two weeks, so that puts us -- what? February 2nd, is it?

MR. CARROLL: Yeah, February 2nd.

MR. KELLAHIN: Okay, February 2nd.

MS. McGRAW: 3rd.

MR. KELLAHIN: Ma'am?

EXAMINER ASHLEY: The 3rd.

MR. KELLAHIN: February 3rd is the hearing date. So we'll get you -- or at least I can get you a proposed order by then.

EXAMINER ASHLEY: Okay.

MR. KELLAHIN: Is that all right?

MR. CARROLL: By the 2nd, so we have it by the 3rd.

MR. KELLAHIN: Yes, sir.

EXAMINER ASHLEY: Is there anything further in this case at this time?

MR. HALL: No, sir. Thank you very much.

EXAMINER ASHLEY: We'll continue this for two weeks.

Thank you, and this hearing is adjourned.

(Thereupon, these proceedings were concluded at 9:28 p.m.)

* * *

I do hereby certify that the foregoing is a complete record of the proceedings in the Examiner hearing of Case No. 12276, 12277 heard by me on 1-20 ~~19~~ 2000.

________________, 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 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 February 2nd, 2000.

STEVEN T. BRENNER
CCR No. 7

My commission expires: October 14, 2002