

STATE OF NEW MEXICO
 ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIV.
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OIL CONSERVATION DIVISION

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

CASE NO. 12,278

APPLICATION OF PRIDE ENERGY COMPANY)
 FOR DIVISION RESCISSION OF APPROVAL)
 OF A CHANGE OF OPERATOR, LEA COUNTY,)
 NEW MEXICO)

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: MICHAEL E. STOGNER, Hearing Examiner

November 18th, 1999

Santa Fe, New Mexico

This matter came on for hearing before the New Mexico Oil Conservation Division, MICHAEL E. STOGNER, Hearing Examiner, on Thursday, November 18th, 1999, 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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 Examiner Hearing
 CASE NO. 12,278

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A P P E A R A N C E S

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* * *

1 WHEREUPON, the following proceedings were had at
2 11:55 a.m.:

3 EXAMINER STOGNER: At this time we will go back
4 on the record, and this hearing will come to order. At
5 this time I'll call Case Number 12,278.

6 MR. CARROLL: Application of Pride Energy Company
7 for Division rescission of approval of a change of
8 operator, Lea County, New Mexico.

9 EXAMINER STOGNER: Call for appearances.

10 MR. KELLAHIN: Mr. Examiner, my name is Tom
11 Kellahin, I'm with the Santa Fe law firm of Kellahin and
12 Kellahin. I'm appearing on behalf of the Pride Energy
13 Company, and I have one witness.

14 EXAMINER STOGNER: Other appearances?

15 MR. BRUCE: Mr. Examiner, Jim Bruce of Santa Fe,
16 and I am representing E.G.L. -- that's E period, G period,
17 L period -- Resources, Inc., and I have one witness.

18 EXAMINER STOGNER: Any other appearances?

19 I believe we have three witnesses -- or two?

20 MR. BRUCE: Two.

21 MR. KELLAHIN: Two.

22 EXAMINER STOGNER: Two witnesses to be sworn.

23 (Thereupon, the witnesses were sworn.)

24 EXAMINER STOGNER: Is there any need of opening
25 statements?

1 MR. KELLAHIN: No, sir.

2 EXAMINER STOGNER: I'll tell you what, I'd like a
3 little bit of a condensed version of what we're doing here
4 today --

5 MR. KELLAHIN: Yes, sir.

6 EXAMINER STOGNER: -- Mr. Bruce, and then Mr. --
7 I'm sorry, Mr. Kellahin, if you'll give me a little brief
8 version of what's going on, and then Mr. Bruce, if you have
9 anything to add.

10 MR. BRUCE: Sure.

11 MR. KELLAHIN: Mr. Examiner, I'm here on behalf
12 of Pride Energy Company. Pride Energy Company, up until
13 recently, was the Division-designated operator of a well in
14 Lea County, New Mexico. It's called the Arco State Well
15 Number 1. It's located in Unit Letter P, Section 16, 18
16 South, 35 East.

17 The contention by E.G.L. Resources, Inc., is that
18 for issues we're about to describe to you, they contend
19 that Pride Energy Company failed or refused to carry out
20 its duties in accordance with the operating agreement that
21 applied to the well. And as a consequence, then, they ask
22 the Division to approve a change of operator.

23 What occurred without Pride Energy Company's
24 knowledge and without notice to them is that E.G.L.
25 Resources balloted the other working interest owners in an

1 attempt, we contend, to improperly remove Pride Energy
2 Company as operator of the well. There was no notice to
3 Pride about any failure to be operator or to conduct the
4 operations in accordance with the conditions of the
5 operating agreement. This is a standard form operating
6 agreement, 1977 version.

7 And without notice to Pride, then, without their
8 knowledge, E.G.L. Resources filed Division Form 104,
9 requesting the Division change the operator. The Division
10 did so. That approval was by the Division on October 5th
11 of 1999.

12 We are going to ask you, sir, Mr. Examiner, to
13 set aside that approval and require that E.G.L. remove
14 itself from the currently approved list of designated
15 operators for the well.

16 We are not asking you to litigate a contract,
17 we're not asking you to resolve this dispute. We're
18 contending, however, on its face, that the actions by
19 E.G.L. were so improper in how they caused the Division to
20 approve the change of operator that you must and you should
21 set aside the change of operator.

22 I have one witness to present, Mr. Matt Pride.
23 Mr. Pride and his brother are owners of this company, and
24 he's been involved in this well. We'll go through the
25 chronology, we'll talk about the correspondence, he will

1 show you what he did and what has occurred.

2 The first notice to Mr. Pride of the change was a
3 letter from Allen Harvey, an attorney in Midland, in
4 September of this year, in which he dictated to Mr. Pride
5 that he had been removed. And that was the first notice
6 that there was anything going on with regards to removing
7 Mr. Pride as the operator or contending that he and his
8 company had not properly performed their duties with
9 regards to this well.

10 EXAMINER STOGNER: Anything to add, Mr. Bruce?

11 MR. BRUCE: Mr. Examiner, this is a contract
12 matter which should be resolved by the District Court.
13 Now, both Pride and E.G.L., my client, are parties to an
14 operating agreement which, if it's not completely in
15 Pride's exhibit booklet, we will provide to you.

16 Pride was operator of the subject well, but
17 through a valid vote by the working interest owners in the
18 well was removed, and E.G.L. was elected to be the new
19 operator.

20 The reason we are here today is that E.G.L. did
21 come to the Division to get a Form C-104 approved. As you
22 know, under normal circumstances it's Division policy, and
23 it's set forth on the Form C-104, to require both the old
24 and new operators to sign a Form C-104. However, by the
25 fact that we're here today it's apparent that Pride Energy

1 won't sign the Form C-104, even though E.G.L. has properly
2 been elected operator.

3 Because it was -- Because E.G.L. was properly
4 elected, Division approval of the C-104 was correct, and
5 this Application should be denied.

6 In the alternative, if there is an issue
7 regarding the contract, the operating agreement -- and
8 there were several problems regarding Pride's operatorship,
9 which we will outline today -- then the Division should
10 leave things as they are so that the interest owners
11 continue to be paid in a timely and proper manner until
12 this matter is litigated in district court.

13 Thank you.

14 EXAMINER STOGNER: Before we get started, do we
15 have a copy of that C-104?

16 MR. KELLAHIN: Yes, sir, it's in here. Give me a
17 moment, and I will --

18 MR. BRUCE: It's Exhibit 4 in Pride's Energy
19 book, Mr. Examiner.

20 EXAMINER STOGNER: Okay, bear with me, I can't
21 find it here.

22 MR. BRUCE: I do have a signed copy later on that
23 we can -- I can --

24 EXAMINER STOGNER: Is that Exhibit 3? Oh, here
25 it is, Exhibit 4.

1 MR. CARROLL: That's still not signed.

2 MR. BRUCE: That's an unsigned copy.

3 EXAMINER STOGNER: Well, my exhibit -- Oh, that's
4 changing from Rhombus to Pride.

5 MR. KELLAHIN: Yeah, that's not the right one,
6 Mr. Examiner.

7 EXAMINER STOGNER: Okay, then where is the right
8 one?

9 MR. KELLAHIN: If you'll turn back to the very
10 end of the exhibit book and find the last blue divider and
11 look behind that, you'll find Exhibit 11. That's the
12 E.G.L. change of operator that was approved in the District
13 Office. It's dated October 5th as the approval date.

14 (Lights went out.)

15 EXAMINER STOGNER: Oh, well, that answered that
16 question. Well, let's take a recess.

17 (Off the record at 12:03 p.m.)

18 (The following proceedings had at 12:10 p.m.)

19 EXAMINER STOGNER: Light's back on, so we'll
20 begin here.

21 Mr. Bruce, do you want to start in?

22 MR. CARROLL: Mr. Kellahin.

23 EXAMINER STOGNER: I'm sorry, Mr. Kellahin?

24 MR. KELLAHIN: Thank you, Mr. Examiner. My
25 witness is Matt Pride.

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MATTHEW L. PRIDE,

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. Pride, for the record, sir, would you please state your name and occupation?

A. Matt Pride, and I'm an oil and gas producer.

Q. And where do you reside, Mr. Pride?

A. In Tulsa, Oklahoma.

Q. Do you have any professional degrees, Mr. Pride?

A. Yes, I have a bachelor of science degree in accounting. I have 18 years experience of engineering and land.

Q. What is your function and responsibility with Pride Energy Company?

A. I oversee the operations of all of our operated wells.

Q. As part of your responsibility, are you responsible for the Arco State Number 1 well in Lea County, New Mexico, that we described a while ago?

A. Yes, I am.

Q. Have you been involved as the representative of your company in all matters with regards to your operations and the payment of parties from proceeds from production in

1 this well?

2 A. Yes, I have.

3 MR. KELLAHIN: We tender Mr. Pride as an expert
4 witness.

5 EXAMINER STOGNER: Mr. Pride is so qualified.

6 Q. (By Mr. Kellahin) Mr. Pride, let's turn to the
7 exhibit book, and I would like to start with the September
8 9th, 1999, letter from Mr. Harvey to you. Did you receive
9 that letter?

10 A. Yes, we did.

11 Q. Prior to receiving this letter, did E.G.L. ever
12 give you notice that they were seeking to remove you as
13 operator of the well?

14 A. No, not until after we were already notified. We
15 didn't get any notice whatsoever.

16 Q. Were you afforded the opportunity to ballot on
17 removal of operator?

18 A. No, we were not.

19 Q. Were you afforded an opportunity to ballot on
20 electing a successor operator?

21 A. No.

22 Q. Did you have any knowledge of the fact that that
23 balloting was occurring prior to receiving Mr. Harvey's
24 letter?

25 A. No, I did not.

1 Q. How did Pride Energy Company come to be the
2 operator of the well?

3 A. Well, if we look over at the chain of events,
4 which is Exhibit Number 3...

5 Q. You prepared this chronology?

6 A. Yes, I did.

7 Q. All right.

8 A. On the "Chain of Events", it pretty well
9 describes what has occurred. This Arco State Number 1 well
10 was completed in February, 1982. Pride Energy purchased a
11 7.5-percent working interest with a 5.9875-percent net
12 revenue interest effective September 1st, 1997, from King
13 Ranch Oil and Gas. Swift Energy Company was the operator
14 at that time and owned a 12-percent working interest with a
15 9.58-percent net revenue interest.

16 Effective March 1st of 1998, Swift Energy Company
17 sold its 12-percent working interest with that same net
18 revenue to the group out of Midland, Texas, which is set
19 out below. As you can see there, there's five parties,
20 beginning with Rhombus Energy Company. These five parties
21 are now E.G.L. -- I think it was April 1st of 1999, when
22 they conveyed their interest over to E.G.L.

23 Without balloting the working interest owners and
24 without working interest approval, Rhombus Energy began
25 operating the well effective March 1st, 1998.

1 To answer your question, in April, 1998, Pride
2 Energy balloted the working interest owners to elect a new
3 operator pursuant to the terms of a joint operating
4 agreement, to take the place of Swift Energy Company, which
5 resigned as operator on March 1st of 1999.

6 Pride Energy did obtain more than 50 percent of
7 the working interest votes and officially became the
8 operator, effective June 1st, 1998.

9 Q. Let me stop you at that point.

10 A. All right.

11 Q. What is your understanding of the link or the
12 connection between Rhombus and this Midland group and what
13 we now are referring to as E.G.L.?

14 A. Well, Rhombus, the way I understand it, is a part
15 owner of E.G.L.

16 Q. Effective March 1st of 1998, Rhombus is the
17 operator. April of 1998 you ballot, and Pride becomes the
18 operator, right?

19 A. That's correct.

20 Q. Was there any objection by Rhombus to Pride
21 assuming operation of the well?

22 A. Well, they weren't pleased, obviously, whenever
23 they did -- as far as on being removed as operator. But
24 they did sign this change-of-operator form.

25 Q. Let's go back at this moment to Mr. Harvey's

1 letter of September 9th. He's referring to an operating
2 agreement. Exhibit Number 2 is an operating agreement,
3 Exhibit Number 2 in our exhibit book?

4 A. Yes, that is correct.

5 Q. The operating agreement that applies to this
6 well, is it on the Model Form 1977 year date for that form?

7 A. Yes.

8 Q. All right. The allegation in the letter is that
9 an examination by Mr. Harvey of his client's files causes
10 him to believe that Pride had not paid for oil production
11 for the months described in the letter. In fact, is that
12 true or not?

13 A. That's incorrect.

14 Q. And why is it incorrect?

15 A. Well, for specifically the months that's set out
16 in that letter, first of all, in June of 1998 there were no
17 oil sales. Keep in mind that this is an oil well; 90
18 percent of the revenue comes from oil, only 10 percent from
19 gas.

20 So there were no oil sales in June, so they
21 wouldn't have got paid, obviously.

22 In July there was no oil sales.

23 And then in August, 1998, they were paid seven --
24 oh, it's back in February of 1999 -- this is, what? Six or
25 seven months prior to this letter being written. So they

1 were, indeed, paid.

2 January, 1999, the oil purchaser, E.G.L., or the
3 predecessors to E.G.L. at that time, had requested that
4 they get paid direct by the oil purchaser.

5 Q. So who was the oil purchaser?

6 A. That was Equiva, which was formerly known as
7 Texaco.

8 Q. So they were getting their money directly from
9 the oil purchaser, and you had no obligation to pay them?

10 A. Beginning January 1st of 1999, they were getting
11 paid directly, just as they requested, by Equiva, and
12 that's where they should have received their money, is from
13 -- is for the January, 1999, is from Equiva.

14 Q. Okay. Mr. Harvey raises an issue with regards to
15 the disposition of payments with regards to a disposal
16 well. Do you see that in the second paragraph?

17 A. Yes, I do.

18 Q. What's the story on that?

19 A. These are credits that's derived from what they
20 call the Arco State Number 2 saltwater disposal well. This
21 is operator. This is operated by another operator, Maralo,
22 which is right next to this -- our Arco State Number 1
23 well.

24 The revenue that -- and it is explained in the --
25 it's my letter, Pride's letter, dated August 25th, which is

1 Exhibit Number 6.

2 Q. So on August 25th of 1999, you were explaining to
3 the interest owners in the well the disposition with
4 regards to the saltwater disposal issue?

5 A. That is correct, we sent them a letter and
6 explaining that there were some credits and there were some
7 expenses that were booked through another property, and so
8 that's what this was explaining, that those credits would
9 show up on the August, 1999, joint interest billing.

10 Q. So you're taking care of that issue in August on
11 the 25th, which precedes Mr. Harvey's letter to you of
12 September 9th?

13 A. That's exactly right.

14 Q. To the best of your knowledge, on September 9th
15 of 1999, was that an issue, or any kind of accounting
16 problem?

17 A. To the best of my knowledge it was not an issue,
18 because it had already been resolved and the changes were
19 made and the correspondence was sent out to every working
20 interest owner.

21 We did also mention in that letter, which is that
22 August 25th, 1999, letter, Exhibit 6, too, that since we
23 had taken over as operator June 1st of 1998, we had
24 increased the revenue for all of the working interest
25 owners by negotiating the oil price up from -- I think it

1 was a 65-cent bonus. We got it up to a \$1.65 bonus, which
2 obviously makes more money for everybody in the well. And
3 we also decreased the expenses, specifically, the saltwater
4 hauling expenses, by simply running a poly pipe over to the
5 saltwater disposal well that's just a few feet and --
6 virtually saving thousands of dollars per year.

7 Q. Is your company equipped and organized in such a
8 way that you can manage and operate properties like this?

9 A. Yes.

10 Q. What is the extent of your operations?

11 A. We've been operating -- Well, currently we
12 operate about 150 wells, we have interest in about another
13 1100 nonoperated wells in about eight different states.

14 Q. And how long have you been doing this, Mr. Pride?

15 A. Eighteen years.

16 Q. Let's go back to your chronology on Exhibit 3 and
17 let's pick up the chronology now, with entry Number 6
18 talking about effective May 1st of 1998, you've
19 characterized the Rhombus, et al., group as the Midland
20 group?

21 A. Yes.

22 Q. What's occurring in what you're trying to
23 describe for us in item 6?

24 A. Effective May 1st of 1998, the Midland group
25 purchased an additional -- well, before that, right before

1 that, Number 5, which I didn't go over a minute ago, Pride
2 had purchased an additional 20-percent working interest
3 with a 17.5-percent net revenue, giving Pride a total of
4 27.5-percent working interest, with a 23.4875-percent net
5 revenue, which it currently owns.

6 And then effective the same date, the Midland
7 group purchased an additional 20 percent working interest
8 with a 17.5-percent net revenue and was split up, as you
9 can see there, between the five owners at that time, given
10 a total of 32 percent after that May 1st, 1999, date.

11 Then if you look over the next page, in August of
12 1999, E.G.L. Resources, "(formerly the interests of the 5
13 parties of the Midland group", which we talked about, "set
14 out in 6, above, who assigned their interest to E.G.L.
15 Resources effective April 1, 1999 in order to collectively
16 own a larger total working interest in the well), without
17 notifying Pride Energy, solicited the votes from the other
18 working interest owners and" basically "enticed them to
19 vote for E.G.L. as operator by reducing the administrative
20 overhead rate from \$848.30 per month as was established by
21 the terms of the Joint Operating Agreement, to \$450.00 per
22 month and by misrepresenting the facts to the working
23 interest owners as to, 'revenues not being paid and/or
24 invoices for the joint account'."

25 Q. All right, let's talk about the overhead rate.

1 A. Yes.

2 Q. The operating agreement originally started at
3 what? \$450 a month? I forgot where it started.

4 A. I think it was --

5 Q. \$350?

6 A. I think it was \$350, but it was adjusted each
7 year, of course, for COPAS adjustment.

8 Q. There is an escalator, a COPAS adjustment, that
9 escalates that?

10 A. That's correct.

11 Q. All right. When you acquired the well to operate
12 from Rhombus, was Rhombus charging what COPAS required to
13 be charged under the operating agreement for the operating
14 costs?

15 A. Yes, they were.

16 Q. And you simply continued that pursuant to the
17 operating agreement?

18 A. That's correct.

19 Q. Is there any provision you're aware of in the
20 operating agreement to remove you as operator --

21 A. No.

22 Q. -- with regards to that issue?

23 A. No.

24 Q. Let's describe for the Division how you're aware
25 that E.G.L. used a proposed lower operating expense as an

1 inducement to obtain the ballots. If you'll turn over to
2 Exhibit 7, how did you come by the information shown on
3 Exhibit 7?

4 A. Exhibit 7, that information was faxed from the
5 Hobbs office to Pride Energy after I had requested them to
6 send it to us.

7 Q. If you'll turn over, and let's look at the end,
8 all these ballots, I think, are on the same form. If
9 you'll look to the very last page there's a ballot that's
10 dated September 2nd. Where in this ballot are you
11 contending that there's an inducement by E.G.L. to have the
12 overhead rates reduced?

13 A. Well, the second from the last sentence there on
14 the ballot itself, it says -- Do you all see where the
15 ballots are?

16 Q. I think so.

17 A. But it says, "As a condition of this ballot EGL
18 shall charge an overhead rate as shown in the JOA \$450 for
19 the producing well rate." So essentially, they're enticing
20 the other working interest owners to vote for them by
21 lowering the overhead rate.

22 That is -- There is no provision in the joint
23 operating agreement whatsoever that allows a working
24 interest owner who's not the operator to entice the other
25 working interest owners to vote for them to remove the

1 current operator by simply reducing the administrative
2 overhead rates. If that was such a case, then it would
3 essentially be a bidding war on every well that's in
4 existence in the State of New Mexico.

5 Q. The next entry you have on the chronology is
6 Number 8. It refers to the August 25th letter in which
7 you're sending accounting information to the working
8 interest owners. Describe for us, if you will, the
9 sequence of events concerning making sure that the proper
10 people are being paid the proper amounts for their share of
11 production?

12 A. Well, I mentioned earlier that the predecessors
13 to E.G.L. had requested that they get paid directly by the
14 purchasers, so effective January 1st of 1999, they have
15 been getting paid direct by Equiva for all the oil
16 revenues.

17 Now, this letter on August 25th of 1999, we --
18 Pride Energy sent a letter to all the working interest
19 owners, which is Exhibit 6, and inquiring as to whether the
20 working interest owners wanted to get paid direct by the
21 oil and gas disbursers -- that includes everyone except --
22 I mean other than just the E.G.L. group, which was already
23 getting paid direct by the oil purchaser, or simply have
24 Pride Energy net the expenses against the oil and gas
25 revenue and issue them one check. There are some owners

1 that do want that to occur. These are for their accounting
2 purposes.

3 This letter also set out and described certain
4 credits and expenses that were inadvertently booked to
5 another well, and that this correction would be made on the
6 August, 1999, joint interest billing.

7 The correction was made on the August, 1999,
8 billing, and any credit balances were paid.

9 The letter further described how the expenses
10 have been decreased and the revenue has been increased
11 since Pride Energy has been operating this well.

12 Q. Prior to Mr. Harvey's letter, Mr. Pride, had any
13 of these interest owners written you a letter to complain
14 about the manner in which you were handling the operations
15 for the well?

16 A. No, they hadn't.

17 Q. Subsequent to receiving Mr. Harvey's letter, did
18 you respond in writing to any of the interest owners with
19 regards to the questions that he had raised? And if so,
20 how did you do that?

21 A. Yes, we did. We -- On September 15th, Pride
22 Energy received Mr. Allen Harvey's letter, who's the
23 attorney representing E.G.L. Resources, which also again is
24 Exhibit 1. This letter is incorrectly saying that E.G.L.
25 had not been paid for oil and gas revenue by Pride Energy

1 for certain months, and we can refer to Pride's October 5th
2 letter of 1999, which is Exhibit 9.

3 The October 5th letter is the letter from Pride
4 Energy to S.E.S. Oil and Gas, now E.G.L. Resources. All
5 the questions that were set out in the -- excuse me, that
6 -- let's see. That was addressing every question that was
7 set out in the September 9th letter from Mr. Harvey, and it
8 was addressed, and it also had the copies of checks that
9 S.E.S. had received from Pride and had deposited in their
10 bank account.

11 Q. When you look at the last exhibits, 10 and 11,
12 you received a communication from E.G.L. with regards to
13 telling you that they had caused you to be removed as
14 operator?

15 A. That is correct?

16 Q. And sent you a copy of the change-of-operator
17 form?

18 A. That's correct.

19 Q. Are you familiar with and accustomed to managing
20 operations for wells using these various joint operating
21 forms?

22 A. Yes.

23 Q. In your opinion, do you find any reason or basis
24 to have Pride removed as the operator?

25 A. No.

1 Q. Have you accounted to them for all the money?

2 A. Yes.

3 Q. If there's been errors and mistakes, when they
4 come to your attention or you discover them, you seek to
5 correct them?

6 A. Yes.

7 Q. And you were removed by E.G.L. as operator,
8 without any notice, discussion, forewarning, claims or
9 anything else?

10 A. That is correct.

11 MR. KELLAHIN: That concludes my Examination of
12 Mr. Pride, Mr. Stogner.

13 We move the introduction of his Exhibits 1
14 through 11.

15 EXAMINER STOGNER: Exhibits 1 through 11 will be
16 admitted into evidence.

17 Mr. Bruce?

18 CROSS-EXAMINATION

19 BY MR. BRUCE:

20 Q. Mr. Pride, I don't know the exact letter I'm
21 looking for but -- Ah, your Exhibit 5. That's the letter
22 you sent to Rhombus Operating Company, notifying them that
23 they had been voted out as operator, or at least that you
24 had been elected as operator?

25 A. That's correct. This is dated April the 24th,

1 1998.

2 Is that the one that you're referring to?

3 Q. And you sent ballots out -- Or you got ballots
4 from Devon and Redcliff?

5 A. That's correct.

6 Q. Wasn't this the first letter you ever sent to
7 Rhombus regarding the changes of operators?

8 A. I can't recall whether we had any other letters
9 or not, but this is the one that we had notified them of
10 the operator change.

11 Q. But you notified them after the vote?

12 A. The vote occurred, according to the terms of the
13 joint operating agreement, whenever an operator resigns,
14 then that's when you have a vote to have a change of
15 operator. And if you recall --

16 Q. Rhombus hadn't resigned?

17 A. No, if you recall, that Swift Energy resigned, if
18 you look back at the chain of events, Swift Energy had
19 resigned.

20 Q. Well, let's -- Yeah, let's go to your Exhibit 2,
21 which I think is the page regarding resignation or removal
22 of operator, and without going into detail, what you're
23 saying is, Swift sold its interest and therefore
24 effectively resigned as operator?

25 A. That's correct.

1 Q. Okay. Can you point out to me in this provision
2 which I believe is Article Roman Numeral V, capital B,
3 where notice is required of a ballot beforehand?

4 A. I'm not following your question.

5 Q. Does this require advance notice to you of a vote
6 to remove you as operator?

7 A. No, what my point is, is that there's no
8 provision in this joint operating agreement that allows
9 another working interest owner in the well who's not the
10 operator to basically entice the other working interest
11 owners to vote for them by lowering the administrative
12 overhead rate and then removing the operator.

13 If that was the case, then you'd have every well
14 in the State of New Mexico, where the operator has less
15 than 50-percent working interest -- Any working interest
16 owner can essentially go in and do the same thing and
17 essentially ballot and try to reduce the overhead, and it
18 would be a melee.

19 Q. And that would be a contractual determination,
20 wouldn't it?

21 A. Well, I'm not an attorney, so I don't know --
22 I'm --

23 Q. Okay. But once again I ask you, where is advance
24 notice required of a ballot under this provision of the
25 operating agreement?

1 A. Advance notice.

2 Q. Any notice to you.

3 A. In what instance are you referring to? I'm not
4 following your question.

5 Q. Electing a new operator. Where does it say in
6 here that E.G.L. or anyone else has to notify you in
7 advance that they are going to seek to elect a new
8 operator?

9 A. Okay, the part that I'm looking at here is
10 that -- under B.1., it says "Resignation or Removal of
11 Operator", it says, "Operator may be removed if it fails or
12 refuses to carry out its duties hereunder, or becomes
13 insolvent, bankrupt or is placed in receivership, by the
14 affirmative vote of two or more Non-Operators owning a
15 majority interest based on ownership as shown on Exhibit
16 'A', and not on the number of parties remaining after
17 excluding the voting interest of the Operator. Such
18 resignation or removal shall not become effective until
19 7:00 o'clock A.M. on the first day of the calendar month
20 following the expiration of 90 days after the giving of
21 notice of resignation by Operator or action by the Non-
22 Operators to remove Operator, unless a successor Operator
23 has been selected and assumes the duties of Operator at an
24 earlier date."

25 Q. Okay. Once again, is there anything in there

1 that required E.G.L. to notify you in advance of a vote of
2 the working interest owners?

3 A. Well, whenever you send out votes, send out
4 ballots for the votes of working interest owners, it is
5 common practice to send it out to all of the owners. We
6 didn't have any notice --

7 Q. So it's common practice to send it out to
8 everyone?

9 A. Right.

10 Q. Okay. And you do agree that the percentage
11 involved in any valid vote is 50 percent of the working
12 interest?

13 A. Where are you referring to?

14 Q. That same provision, Article 5.B. The vote
15 required -- and ignore everything else, but a vote to elect
16 a new operator is two or more interest owners owning at
17 least 50 percent.

18 A. Own a majority interest, it says.

19 Q. Okay. Turning to that next page, I'm just a
20 little confused. This is what you claim as the operating
21 agreement that governs?

22 A. Well, this is what we have in our files, being
23 that we -- when we became the operator back on June 1st of
24 1998, Rhombus -- We requested the information on all the
25 well files, including the joint operating agreement, and

1 they refused to send them to us.

2 Q. Okay. Up in the upper right-hand corner of the
3 cover page of that JOA, it says "Maralo SV 16 State". What
4 well is that?

5 A. That's the Maralo -- the Maralo -- the well.

6 Q. Is that the saltwater disposal well?

7 A. I'm not for sure. I'm not for sure if it's the
8 disposal well or which one that is. But the reason why it
9 was included in the exhibit is, it's the model form, 1977
10 Model Form Operating Agreement, the same form that is on
11 our agreement.

12 Q. Okay. Now, when you were elected operator, you
13 sent the letter, Exhibit 5, to Rhombus, asking them to sign
14 the C-104, and they did sign it and return it to you?

15 A. Yes.

16 Q. Now, you said you didn't receive much
17 correspondence. Did any interest owners ever call Pride
18 and complain about the operations?

19 A. The S.E.S. called, as I recall, once or twice,
20 but there was no written correspondence at all.

21 Q. Okay.

22 A. And that's when we responded -- as to their
23 questions, we responded appropriately with the proper
24 correspondence that we've already talked about.

25 Q. Now finally, you're discussing the operating

1 charges, and I believe your overhead rate is \$848.30?

2 A. I think that's correct, I think that's the
3 amount.

4 Q. Okay. And that would be under the -- what the
5 COPAS accounting procedure and how it's been escalated over
6 the years?

7 A. That's based on the joint operating agreement and
8 the COPAS adjustment each year, and that rate was taken
9 from Rhombus, the amount that they were charging.

10 Q. Mr. Pride, I've handed to you what's been marked
11 E.G.L. Exhibit 6, and it states at the top it's a joint
12 interest billing for September, 1999. Could you verify
13 that for me?

14 This one is addressed in particular to Amarco Oil
15 Corporation.

16 A. Yes, it looks like September 9th of 1999, joint
17 interest billing.

18 Q. Now, down below there's some costs. For
19 instance, the pumping charge, and then there's the
20 overhead, administrative overhead, which is \$848.30,
21 correct?

22 A. \$848.30, correct.

23 Q. Then you also charge a supervision charge of 75
24 bucks a month, do you not?

25 A. That's correct.

1 Q. What's the difference between an administrative
2 overhead charge and a supervision charge?

3 A. Well, if you'll refer to the Model Form 1977
4 Joint Operating Agreement, it specifically allows for
5 first-level field supervision. It's in the accounting
6 portion of the joint operating agreement.

7 It also allows, of course, for other charges and
8 expenses that could be charged, which you and I probably
9 both know that a lot of major oil companies and large
10 independents charge, which we do not charge for other
11 expenses, but...

12 Q. Do you have a Hobbs field office?

13 A. Pardon?

14 Q. Do you have a field office down in Lea County?

15 A. No, not a field office per se, not a building.

16 Q. Okay, there's also in there a communications
17 expense of \$20. Wouldn't that be covered by your
18 administrative overhead?

19 A. No, again, that's allowed in the accounting
20 provisions of the joint operating agreement.

21 Specifically, if you want to refer to it, it's on
22 page 2 of the Exhibit C --

23 Q. Uh-huh.

24 A. -- and it's under Number 2, it says "Labor", it
25 says "Salaries..." Number -- That's 2.A. and then sub

1 number (2), "Salaries of First Level Supervisors in the
2 field" --

3 Q. Okay.

4 A. -- and also "Operator's cost of" again "holiday,
5 vacation, sickness...", all the benefits. We do not charge
6 all that.

7 Q. Okay. Now you just told me you don't have a
8 field office in Lea County, but you're charging a \$75-a-
9 month overhead charge?

10 A. It's for first-level supervision.

11 Q. In the field?

12 A. Right, that's allocated per well, per all the
13 operated wells.

14 Q. Who is your supervisor there?

15 A. John Pride is the first level supervisor.

16 Q. Is John Pride located in Tulsa?

17 A. Yes.

18 Q. He's not located in the field?

19 A. Well, I mean, he goes to the field, but he
20 resides in Tulsa.

21 MR. BRUCE: I think that's all the questions I
22 have at this time, Mr. Examiner.

23 EXAMINER STOGNER: Thank you.

24 Mr. Kellahin, any redirect?

25 MR. KELLAHIN: No, sir.

EXAMINATION

BY EXAMINER STOGNER:

Q. On Exhibit Number 4, Mr. Pride, that's when the OCD was notified of a change in operator; is that correct?

A. Yes, that is the change-of-operator form, which is Form C-104, where Rhombus was the former operator and Pride Energy becomes the operator, right.

Q. Okay. And Pride signed off on that, did they not?

A. Yes.

Q. Okay, how did Pride sign off? How did Pride approach Rhombus to get the signature on the bottom of this form?

A. Well, we mailed it to them and requested a signature on it. It's on that Exhibit Number 5. It's the last paragraph of that letter that we...

Q. Okay. So they were notified, obviously?

A. Yes.

Q. When did you become aware of the E.G.L. form being approved by the District Office?

A. The first notice that we got, that we received, was a letter from E.G.L. that was on October the 6th, I -- October 6th letter. That is Exhibit Number 10. It should be the last document in that binder.

Q. What are the dates on most of the ballots that

1 you show in your record?

2 A. Are you referring to the ballots that E.G.L. sent
3 out?

4 Q. Yes.

5 A. That's in Exhibit Number 7.

6 Q. Okay, it looks like most of them are around
7 September the 2nd --

8 A. September 2nd.

9 Q. -- some September the 3rd. There's even one on
10 August 12th; is that correct?

11 A. September 3rd, September --

12 Q. When did you first become aware of these ballots?
13 Did anybody send you a copy of one, or how did you obtain
14 these copies?

15 A. The way is that once we received the letter that
16 we referred to on the October 6th letter from E.G.L. with
17 the change-of-operator form, I called the Hobbs office and
18 requested that they send us a copy of what they had in the
19 files.

20 EXAMINER STOGNER: Okay. Any other questions of
21 this witness?

22 MR. CARROLL: Yeah, I've got a question.

23 EXAMINATION

24 BY MR. CARROLL:

25 Q. Mr. Pride, did you receive any letters or phone

1 calls or any other method of making complaints from the
2 working interest owners prior to this September 9th letter
3 from Allen Harvey?

4 A. We've never received any letters from any of the
5 owners complaining about the expenses, no.

6 Now, we did receive some phone calls which we
7 addressed and responded accordingly with -- for example,
8 the August 25th letter, and --

9 Q. And when did you start receiving those phone
10 calls?

11 A. Oh, sometime within the last six months. I don't
12 recall exactly what the dates were, but...

13 Q. And who was making those phone calls?

14 A. Well, the E.G.L. group had called once or twice.
15 And there might have been another working interest or two,
16 and then we would -- Again, that's why we responded with
17 the August 25th letter, basically clarifying it.

18 Q. Correct me if I'm wrong.

19 Did you just say you started receiving these
20 phone calls in a six-month period, and then you responded
21 to them by the August 25th letter?

22 A. Well, no, the August 25th letter was responding
23 to the most recent, the phone -- I mean, the phone call
24 from E.G.L. specifically is what I was referring to.

25 Q. The most recent. What about the earlier phone

1 calls?

2 A. Well, that's when we responded by returning their
3 phone calls and answering any questions.

4 As far as on -- Are you asking about
5 correspondence?

6 Q. Yeah, is there anything in writing?

7 A. We didn't have any written correspondence from
8 them.

9 Q. Who did Pride acquire that extra 20-percent
10 interest from?

11 A. That was from Devon.

12 Q. Who did E.G.L. get their extra 20-percent
13 interest?

14 A. It was Devon also, it was a split interest.

15 MR. CARROLL: All right, that's all I have.

16 EXAMINER STOGNER: I've got one quick question.

17 FURTHER EXAMINATION

18 BY EXAMINER STOGNER:

19 Q. What type of a bond, plugging bond, do you have
20 with the OCD?

21 A. Well, it's -- When you say what type, I'm not
22 following you.

23 It's --

24 Q. You do have a plugging bond, don't you?

25 A. Oh, definitely. We operate several wells in the

1 State of New Mexico.

2 MR. CARROLL: How many wells do you operate in
3 New Mexico?

4 THE WITNESS: In New Mexico? Oh, approximately
5 15 to 20, 15 or -- yeah, about 20.

6 MR. CARROLL: You probably have a blanket bond?

7 THE WITNESS: I'm sure that's what it is.

8 Q. (By Examiner Stogner) Who would be responsible
9 for signing such a bond or obtaining such a bond with Pride
10 Oil Company?

11 A. Well, I'd be responsible for signing it.

12 Q. Okay, then what type do you have?

13 What did you remember paying for, or what the sum
14 or amount was it for?

15 A. I'm sure it's a blanket bond.

16 Q. \$50,000, does that sound right?

17 A. I think that's what it was.

18 MR. CARROLL: Is this Kimberly Mount with
19 Rhombus, is she still in the E.G.L. group? I guess she's
20 just an administrative assistant.

21 THE WITNESS: I don't know, I couldn't answer
22 that.

23 EXAMINER STOGNER: Okay, if there are no other
24 questions, you may be excused.

25 Mr. Bruce?

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WES PERRY,

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

DIRECT EXAMINATION

BY MR. BRUCE:

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

A. My name is Wes Perry. I live in Midland, Texas.

Q. What is your relationship to E.G.L. Resources, Inc.?

A. I'm the president of the corporation.

Q. What is your profession?

A. I'm a -- got a bachelor of science in engineering from the University of Oklahoma in 1978. I'm a petroleum landman, having started my own business during college, 1976. I've been actively engaged in the oil and gas business for 23 years.

Q. Have you previously testified before the Division?

A. No, this is actually my first time.

Q. Okay. And you said -- And has your land business been in Midland since the late 1970s?

A. Actually, we started in Midland in 1980, January of 1980.

Q. And since then you've been involved in the

1 petroleum business?

2 A. Yes.

3 Q. As a landman?

4 A. As a petroleum landman.

5 Q. Both in west Texas and southeast New Mexico?

6 A. Yes, sir.

7 Q. And are you familiar with the operating agreement
8 involved in this and the other land matters involved in
9 this Application?

10 A. Yes, sir.

11 Q. And are you familiar with the operational matters
12 involved in the Arco State Well Number 1?

13 A. Yes, sir.

14 MR. BRUCE: Mr. Examiner, I'd tender Mr. Perry as
15 an expert petroleum landman.

16 EXAMINER STOGNER: Mr. Perry is so qualified.

17 Q. (By Mr. Bruce) Now, I want to ask about Rhombus
18 a little bit, but maybe I'll just wait a second.

19 Mr. Perry, what is E.G.L.'s position in this
20 case?

21 A. Basically, we properly notified all the
22 nonoperator, all the working interest owners in the well,
23 to get all of the majority interest. We got ballots signed
24 by them, they approved E.G.L. as operator.

25 And I approached Pride to sign the change-of-

1 operator form -- and we can talk about some of that in a
2 minute -- but they wouldn't sign it. I didn't have any
3 other remedy but to come to the Commission and ask them to
4 please sign it. I showed them the operating agreement
5 where it had, I showed them the ballots, we had enough of
6 the vote, and it was approved.

7 So it's really a simple thing.

8 Q. Without that C-104 being signed --

9 A. Yes.

10 Q. -- it would be a problem with the purchasers of
11 production?

12 A. Basically, the purchasers of production are on
13 there, and without a signed C-104 they will absolutely not
14 send revenues. So you have to have that signed by the
15 Commission.

16 Q. Okay. What is E.G.L. Exhibit 1, Mr. Perry?

17 A. This is actually a model form operating agreement
18 for the Arco State Number 1 well. It's a 1977 form. It's
19 very similar to the one that Pride has presented to you,
20 but it's not the one under which the well was drilled.

21 Q. Okay. Now, this is a different one than the one
22 Pride submitted --

23 A. Right.

24 Q. -- as Exhibit -- I want to make sure I got the
25 right exhibit number -- as Exhibit 2, but it's the same

1 form --

2 A. Right.

3 Q. -- is that correct? And the specific provision,
4 Article Roman Numeral V.B., is the exact same?

5 A. Yes.

6 Q. So when we're looking at that, it doesn't matter
7 which one you look at?

8 A. I don't think it matters if you look at Pride's
9 form or our form. It appears the COPAS is the same and the
10 change of operators is the same, so I don't have any
11 contention there.

12 Q. Okay. Looking at that Article V.B., what is
13 required for a change of operator?

14 A. We read it: "Operator may be removed if it fails
15 or refuses to carry out its duties hereunder, or becomes
16 insolvent, bankrupt or is placed in receivership, by the
17 affirmative vote of two or more Non-Operators owning a
18 majority interest based on ownership as shown on Exhibit
19 'A'..."

20 Q. Is it your opinion that Pride Energy as operator
21 failed to carry out its duties under this operating
22 agreement?

23 A. Absolutely.

24 Q. What is Exhibit 2, E.G.L. Exhibit 2?

25 A. This is the current working interest ownership,

1 showing what the working interest is each particular party
2 owns and if that particular party signed a ballot and then
3 ultimately signed a letter evidencing why they signed the
4 ballot. And if you'll just skip to the third column there,
5 it says 61.25 percent of the working interest owners voted
6 in favor of E.G.L. as operator, and that's a majority
7 interest.

8 Q. So as far as the percentage, you met the
9 requirements of the operating agreement?

10 A. Yes, sir.

11 Q. What is E.G.L. Exhibit 3?

12 A. Exhibit 3 are the ballots that were actually
13 presented under Pride's -- I don't know what exhibit number
14 it is, but it's the same ballot.

15 Q. Okay. And these ballots would total up to that
16 61.25 percent --

17 A. Yes, sir.

18 Q. -- interest?

19 Now, Mr. Pride claimed that until it was notified
20 by Mr. Harvey's letter of the vote, it had received no
21 notice of a vote. You heard him testify --

22 A. Yes.

23 Q. -- as to that?

24 A. Yes, sir.

25 Q. Now, let's get into the situation, how Pride

1 became operator. For a while, Rhombus Operating Company
2 was the operator of the well, was it not?

3 A. Yes.

4 Q. And you are involved in that entity?

5 A. Yes.

6 Q. And you are familiar with its operations?

7 A. Yes. Yes, sir.

8 Q. There was a letter -- I think it was Exhibit 5 --
9 from -- it was Pride Exhibit Number 5 to Rhombus, notifying
10 them that -- notifying Rhombus that Pride had been elected
11 operator. Was that the first time you had heard about a
12 ballot to change operator?

13 A. Yes, sir.

14 Q. So they had -- When they became operator, they
15 gave you absolutely no notice?

16 A. That's correct.

17 Q. Under the operating agreement, do you see a need
18 to give anybody notice?

19 A. No, sir. And that's why we signed the ballot, or
20 why we signed the change of operator form.

21 Q. You voluntarily signed it?

22 A. Yes, sir.

23 Q. For your company?

24 A. We weren't real happy about it, but after reading
25 the agreement, it says clearly after -- if 50 percent of

1 the owners want you out, you're out.

2 Q. Okay.

3 A. I mean, I don't think -- I think it's clear. So
4 we didn't like it, but we went ahead and signed it.

5 Q. Now, what prompted E.G.L. to seek this ballot to
6 become operator?

7 A. Well, it was a long process. Mr. Pride's correct
8 in that we didn't send written notifications. All of our
9 conversations were over the phone. And in a way, I felt
10 like we were kind of partners in the deal. We shared the
11 Devon interest when we first started it, so I felt like we
12 could resolve the matter with telephone calls.

13 Bob Snyder, who is vice president of geology and
14 geophysics in our office, communicated with the Prides on
15 numerous occasions by telephone, trying to get this
16 corrected. Mainly, the -- The big problem is, basically,
17 we weren't being paid. And every time we called they would
18 have an excuse. Well, you know, we're -- our system is
19 down or one thing or another. And it just got frustrating,
20 never getting paid for our revenues, basically, that was
21 it.

22 Q. Were there also improper joint interest billings?

23 A. There was a charge when Rhombus operated -- When
24 we operated it under Rhombus, there was a joint interest
25 bill that we sent to Pride, and they included their portion

1 of our bill on the joint account for the whole well. So I
2 mean, it was like -- This was prior to them taking over
3 operations, it was a bill they owed, but they just charged
4 it to the joint account for us all to pay, you know, and it
5 was --

6 Q. In effect, double-billing?

7 A. Yeah, I mean, absolutely.

8 Q. There's also been reference to a saltwater
9 disposal well. The same parties here in this well own an
10 interest in a saltwater disposal well nearby, do they not?

11 A. That's correct. The Maralo SV State is a well in
12 Section 16 that Maralo operates. Basically, the owners of
13 the Arco State Number 1 well own 50 percent, you know,
14 proportionally to their interest, and then Maralo owns 50
15 percent, and they operate it.

16 So the deal was, disposal income would come into
17 the well, Maralo would remit 50 percent of the proceeds to
18 the operator of the Arco State Number 1 well. Therefore --
19 And the money should have come down to all the nonoperators
20 in those respective percentages.

21 Q. In other words, that Maralo SV State, the
22 saltwater disposal well, makes money?

23 A. That is right.

24 Q. And that money is distributed to the operator of
25 the Arco State well?

1 A. Fifty percent of it. Fifty percent stays with
2 Maralo, 50 percent goes to the operator.

3 Q. And were there problems involved in E.G.L.
4 receiving its portion of that saltwater disposal income?

5 A. Yes. We didn't even really know what the
6 revenues were until we contacted Maralo to find out what
7 was going on with the deal. We asked quite a number of
8 times about, Where's our money on that well? but never
9 heard anything, and, We'll get back to you and try to
10 resolve it, and just nothing ever happened.

11 Q. Okay. What is Exhibit 4? And let me back up
12 again.

13 A. Yes, sir.

14 Q. Either you or someone at E.G.L. called Pride
15 numerous times during 1999?

16 A. Right, and I'm not sure exactly when it started.
17 I would have said it was probably the end of 1998. We just
18 -- You know, I don't have all the dates here.

19 Q. And you could never get satisfaction?

20 A. Absolutely. It was frustrating.

21 Q. So then describe what Exhibit 4 is.

22 A. This -- Shortly after Pride took over operations,
23 they changed purchaser. Prior to that point, all the
24 nonoperators were getting revenue checks from the
25 purchasers direct. When they changed the operator they set

1 up them to be paid basically the full working interest
2 owner's share of the proceeds. So then they were
3 responsible to disburse.

4 We didn't even know that occurred. You know,
5 that's why I kept sending letters, Where's our money,
6 where's our money? And then we found out, well, they had
7 changed purchaser on us and were taking our money. And
8 then we wanted to go back to the old way of having the
9 purchasers disburse directly to the nonoperators instead of
10 having to come through Pride.

11 MR. CARROLL: You just referred to letters?

12 THE WITNESS: Pardon me? Well, we ended up
13 sending a letter to them saying, We want to go back to the
14 old way where we just get paid directly from the purchasers
15 of production, rather --

16 Q. (By Mr. Bruce) And that's --

17 A. And that's this January 12th, 1999, letter. It's
18 Exhibit 4.

19 Q. You notified not only Pride but the two
20 purchasers as well?

21 A. Yes, sir.

22 Q. And that was due to your problem in getting paid?

23 A. Absolutely.

24 Q. Now, after this all came about, and the ballot
25 was taken and everything else, Mr. Pride in this exhibit

1 package contained a letter from you regarding the well
2 dated September 30, 1999. What was the purpose of that
3 letter?

4 A. Well, that letter -- I mean, he referred to the
5 September 9th letter about the -- where he was notified of
6 the demand to change operator. We felt like -- We hadn't
7 changed the operator. He was notified of it, but we didn't
8 actually act on it yet.

9 My hope was, we could resolve the matter by
10 selling or buying each other's interest, and I proposed
11 that we put together -- I put a number on the table that
12 I'll either sell or buy, and at the end of the day, or
13 after my expiration period, he can buy my interest and I
14 can buy his interest, and we don't have a dispute, thinking
15 that would be a good way to resolve it without going
16 through this whole process of removal.

17 So anyway, waited a couple of days, called him
18 back, he said no, we're not interested in doing that, and
19 really I had no other options at that point.

20 Q. And that's when you went to the Division --

21 A. Right.

22 Q. -- to get the C-104 signed?

23 A. Yeah, if you'll see the date, September the 30th
24 was when I sent the letter. I don't know, maybe October
25 the 3rd or 4th, I talked to Matt again -- Mr. Price, excuse

1 me -- and he said, No, they're interested in doing that.
2 So October the 5th we went to Hobbs and got Mr. Kautz to
3 sign the C-104.

4 Q. And then Pride's Exhibit 9 is a letter from them
5 to -- from Pride Energy to E.G.L., dated October 5th, 1999,
6 with apparently a check attached and some other matters.
7 You did receive this?

8 A. Yeah, we did. I mean, we finally did get our
9 money.

10 Q. Belatedly?

11 A. Pardon me?

12 Q. Belatedly?

13 A. Yeah, belatedly. I mean, if that had happened
14 quite a long time ago it would have made a big difference,
15 but at that point it was kind of too late. And I question
16 when it all started anyway. You know, when did that
17 actually precipitate? Was it after I finally decided that
18 we were going to have to take matters in our own hands and
19 they knew about it? You know, finally got some answers.

20 Q. This had been going on for over a year?

21 A. Right.

22 Q. Without satisfaction?

23 A. Yes, sir.

24 Q. And only once you notified them of the change of
25 the operator did you get a letter like this?

1 A. Right. And it's still not completely resolved,
2 there's still some accounting matters.

3 Q. Now, Mr. Pride, I believe, testified that there
4 weren't any oil sales in June or July of 1998. Do your
5 records show otherwise?

6 A. Yes, they do. I don't have a copy of a
7 production report, but I bet if we can get one out of the
8 NMOCD that we'll find -- we sold oil in June and July. I
9 don't know who got paid for it.

10 Q. Your Exhibit 4 was signed not only by -- Well,
11 it's signed by you as president of S.E.S.

12 A. Uh-huh.

13 Q. That's part of the same -- Is it now E.G.L., or
14 is it --

15 A. Yes, all these interests were merged later into
16 E.G.L. Resources.

17 Q. Okay.

18 A. So back when this was signed, these were all
19 individual interest owners in the well, as the ballots were
20 signed and the individual interests, E.G.L. really became a
21 record title owner effective April 1st of 1999.

22 Q. Okay.

23 A. So it's after this time.

24 Q. Okay. But apparently there were other interest
25 owners who were having the same problems?

1 A. Yes, sir.

2 Q. What is Exhibit 5?

3 A. Exhibit 5 are letters from other working interest
4 owners, basically outlining some of the concerns that they
5 have. You can take some time to read them. I think
6 they're all basically the same. They weren't getting paid
7 for oil and gas revenues, they weren't paying for the
8 saltwater disposal income, they weren't -- There were
9 charges being overcharged on the joint interest account.
10 Various reasons. But we were all experiencing the same
11 problems.

12 Q. Does E.G.L. operate other wells?

13 A. Yes.

14 Q. Approximately how many?

15 A. I think we're about 100 wells, probably 20 of
16 which are in New Mexico, we're drilling and operating.

17 Q. Based on your experience not only as an operator
18 but as a landman who's reviewed JOA's before, was Pride
19 Energy properly operating the well and disbursing revenue?

20 A. Not in my opinion, no, sir.

21 Q. Now, one of these has already been referred to.
22 Mr. Pride said something that in essence E.G.L. was
23 enticing -- I forget the exact word --

24 A. Right.

25 Q. -- I don't mean to mischaracterize, but that you

1 have offered a lower operator overhead charge?

2 A. Right.

3 Q. There's no --

4 A. There's no dispute.

5 Q. You're charging what?

6 A. \$450 a month, which is actually a little more
7 than we normally charge, but we felt like that was a
8 reasonable price for this well.

9 Q. Okay.

10 A. So it didn't really have to do with trying to get
11 operatorship, but why not decrease expenses if we can?

12 Q. And you saw this Exhibit 6, the September, 1999,
13 joint interest billing --

14 A. Yes, sir.

15 Q. -- for the well?

16 In your opinion, are the communications expense
17 and the additional supervision expense necessary or proper?

18 A. No, sir. We wouldn't charge it. I mean, maybe
19 you can under a COPAS. I'm not an expert accountant, but
20 my feeling is, whatever is the cheapest for the best rate
21 of return is the way to go. So, you know -- We don't
22 charge that, though.

23 Q. Were Exhibits 1 through 5 prepared by you or
24 under your supervision or compiled from company business
25 records?

1 A. 1 through 6.

2 Q. 1 through 6?

3 A. Yes, sir.

4 Q. And in your opinion, is the denial of Pride
5 Energy's Application in the interest of conservation and
6 the prevention of waste?

7 A. Yes, sir.

8 MR. BRUCE: Mr. Examiner, I'd move the admission
9 of E.G.L. Exhibits 1 through 6.

10 EXAMINER STOGNER: Exhibits 1 through 6 will be
11 admitted into evidence at this time. Thank you, Mr. Bruce.

12 Mr. Kellahin, your witness.

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

14 CROSS-EXAMINATION

15 BY MR. KELLAHIN:

16 Q. Mr. Perry, let me go back to the March, 1998,
17 sequence of events where at that point, if I'm correct in
18 understanding that Swift Energy is the Division-designated
19 operator of the well, right?

20 A. In March of 1998, I believe that's right, yes,
21 sir.

22 Q. Then Swift sold out it's interest to what Mr.
23 Pride has characterized the Midland group.

24 A. Right.

25 Q. Rhombus and these other entities.

1 A. You might call it former E.G.L. --

2 Q. All right.

3 A. -- interests.

4 Q. That action, when you look at the resignation and
5 removal provisions under the operating agreement that we've
6 talked about, when Swift divest themselves of any working
7 interest, that's an automatic termination of that operator,
8 isn't it?

9 A. No, it's not.

10 Q. It's not?

11 A. Not -- No. I can point to hundreds of wells that
12 are sold at auction every day, or every time there's an
13 auction, and that doesn't trigger a vote.

14 Q. All right. Then Rhombus becomes operator and
15 files a Division-approved change of operator from Swift to
16 Rhombus?

17 A. Yes, sir.

18 Q. Was that done by ballot?

19 A. No, sir, not to my knowledge.

20 Q. There was no ballot to change from Swift to
21 Rhombus or elect Rhombus as the operator among the
22 remaining working interest owners?

23 A. Not to my knowledge, there were no ballots. I'm
24 really not aware of any, when wells are sold at auction
25 like that, there are never ballots, that I'm aware of.

1 Q. So according to Mr. Pride's chronology here, by
2 March 1st of 1998 Rhombus is the operator, but they
3 accomplish that without balloting any of the working
4 interest owners?

5 A. Without balloting the working --

6 Q. Yes, sir.

7 A. Swift signed it? Is that what you're saying?

8 Q. No, I'm saying that Rhombus became operator
9 without balloting any of the working interest owners that
10 then owned an interest in the well, right? You just did it
11 because you had Swift sign it to Rhombus, and you got the
12 change that way?

13 A. Yeah, that's normal operating procedure at an
14 auction.

15 Q. When I go to the issues of your disagreements
16 with Pride over accounting for proceeds --

17 A. Right.

18 Q. -- am I correct in understanding by January of
19 1999 you've got the oil purchaser making payments directly
20 to you and the working interest owners? Is that not what
21 you told me?

22 A. Define the working -- To our group, the E.G.L.
23 group, not everybody in the well.

24 Q. No, no, I meant your group. I'm worried about
25 your group.

1 A. Okay.

2 Q. Your group has changed the paperwork at January,
3 1999, to get your share of the proceeds paid directly by
4 the well purchaser, right?

5 A. Yes, sir.

6 Q. All right.

7 A. I mean, that's when we sent the letter. That
8 didn't happen that date.

9 Q. Well, it's within that time frame?

10 A. Yeah, it's probably about April, March,
11 somewhere, time, before we started getting paid by the
12 purchasers.

13 Q. After that's done, then, except for phone calls,
14 there -- your frustration or problems with Pride never got
15 to the point where you wrote a letter saying either we're
16 going to remove you or you fix these things? It was never
17 reduced to writing, was it?

18 A. No, we just mentioned it in our conversations
19 with them. We're still trying to get paid from June of
20 1998 to April of 1999.

21 Q. I understand. But you never took that issue and
22 put it in writing and said, Listen, we're finding trouble
23 with how you're operating it; if you don't take care of
24 these things, we're going to contend that you're not
25 fulfilling your duties as operator and we'll seek to have

1 you removed? It never got to that point on paper, did it?

2 A. On paper?

3 Q. Yeah, writing letters to Mr. Pride?

4 A. No.

5 Q. You didn't write any, did you? Okay, we've got a
6 letter from you, though, on September 30th of 1999 --

7 A. Right.

8 Q. -- and you're talking about a Lazy Susan buy/sell
9 agreement?

10 A. Yes, sir.

11 Q. Okay. What was the reason to do this?

12 A. It was basically to try to rectify or resolve the
13 operator battle that was going on. I mean, we had already
14 basically had the 50-percent ballots to take over
15 operatorship, they'd been notified of that. And I thought,
16 rather than going through this rigamarole, let's come up
17 with a way just to either buy our interest or sell our
18 interest. We were willing to do either one.

19 So this was trying to really keep from getting to
20 this situation.

21 Q. Well, I'm having trouble understanding, Mr.
22 Perry.

23 A. Right.

24 Q. On September 30th, you're writing the letter to
25 try to get Pride to sell out or --

1 A. No.

2 Q. -- let you sell out. That's the Lazy Susan
3 letter, right?

4 A. Yes, but he'd been notified that -- of all the
5 ballots, September the 9th, under September 9th, Stubbeman
6 McRae's letter, Allen Harvey's letter --

7 Q. Uh-huh.

8 A. -- so that was --

9 Q. So this is an accomplished fact already. He
10 already knows you have the ballots. The ballots are early
11 September.

12 A. Well, he knows I have the ballots, but I don't
13 have the C-104 signed, so it's not a ballot.

14 Q. All right. So then you went to him and you
15 decided that you'd try to work it out by buying each other
16 out in some fashion?

17 A. Well, what I suggested is, I'll come up with a
18 number, and that number is binding. I will agree to either
19 buy or sell our interest.

20 So it was really just to try to resolve this
21 thing, actually.

22 Q. Now, the voting for removal of operator, I'm
23 correct in understanding that you've confirmed what Mr.
24 Pride has said is that he was never sent any of these
25 ballots or notices about the vote, right?

1 A. He was sent the ballots, yes, sir.

2 Q. To Mr. Pride?

3 A. Yes, sir.

4 Q. Do you have proof that he had a ballot?

5 A. Yeah, September the 9th.

6 Q. Well, that's after the fact. At the time you

7 were sending these to other working interest owners --

8 A. Yeah, everybody --

9 Q. -- you didn't send them to him?

10 A. -- everybody in the working -- everybody -- Every
11 working interest owner got the ballot.

12 Q. Including Pride?

13 A. To my knowledge, including Pride.

14 Q. Well, show it to me. It's not in here, is it?

15 A. Well, they didn't send it back.

16 Q. Is there a cover letter that goes with this? Is
17 there some explanation that goes with this besides the
18 ballot?

19 A. We basically faxed them out to all the partners,
20 and if they didn't get them, I don't know where it is.

21 Q. Do you have confirmation --

22 A. No --

23 Q. -- off your fax machine that you --

24 A. -- not with me.

25 Q. There was no cover letter that went with this

1 ballot? You just faxed this ballot out to the working
2 interest owners just like this?

3 A. I'll look and see.

4 Q. See if there's not a cover letter that went with
5 this.

6 A. I can't find a cover letter. Let's just concede
7 there isn't one.

8 Q. That there is not?

9 A. There is no cover letter.

10 Q. There is no cover letter?

11 A. Right, we just faxed them out.

12 Most of the convers- -- Most of this was over the
13 telephone. We were calling the working interest owners, we
14 were talking about it, so yeah, I would agree with you,
15 most of this was over the telephone.

16 MR. KELLAHIN: All right. I don't have any more
17 questions, Mr. Stogner.

18 EXAMINER STOGNER: Any redirect, Mr. Bruce?

19 MR. BRUCE: No, sir.

20 EXAMINER STOGNER: Okay.

21 EXAMINATION

22 BY EXAMINER STOGNER:

23 Q. Do you know what kind of plugging bond that
24 E.G.L. has with the State of New Mexico?

25 A. We've got a statewide bond.

1 Q. Statewide bond.

2 A. Yes, sir.

3 Q. And what is E.G.L. going to do with the produced
4 water?

5 A. Well, we're going to go back into the saltwater
6 disposal system. It's -- We've got to do some plugging on
7 the surface.

8 Q. And on Exhibit Number 5, this was all the letters
9 attached --

10 A. Right.

11 Q. -- from the --

12 A. From the other working interest owners.

13 Q. How was this solicited? How were they contacted
14 to submit these to the Division?

15 A. Basically, we contacted the working interest
16 owners to say, you know, write your reasons for electing
17 us. You know, don't make me tell the Commission why you
18 voted for us. And you know, there wasn't -- I mean, and I
19 didn't have anything to do with these letters. They sent
20 them direct to you. And so --

21 Q. But did you contact them by letter or by phone?

22 A. Well, I contacted them by phone. I said, We will
23 probably be having a hearing, this is the matter coming up
24 and, you know, I'd appreciate if you could tell me why or
25 tell the Commission why you voted for E.G.L.

EXAMINATION

A. About 18 barrels a day. I think it can make about 25 barrels a day. It's not a big producer. It's actually a pretty good well, though. It's made 300,000 barrels of oil.

Mr. Examiner, it's E.G.L.'s contention that Pride was not properly operating the well. The vast majority of non-Pride Energy working interest owners don't want Pride as operator, they want E.G.L. The vote in favor of E.G.L. complied with the terms of the JOA, and at the very least, E.G.L. should remain operator of this well pending any lawsuit, if Pride desires to file one, which is where this should be since it's a contractual dispute, in order that

1 the interest owners are timely and properly paid their
2 interests under this well.

3 Thank you.

4 EXAMINER STOGNER: Mr. Kellahin.

5 MR. KELLAHIN: Mr. Stogner, I've been doing cases
6 before you for three decades, not you but before the
7 Division. This is the first time I have seen a case like
8 this, and in searching your rules and regulations and
9 talking to staff, I am not aware that the Division has in
10 place an effective means to handle this kind of issue with
11 regards to dispute over operations. I would suggest to you
12 that this is an opportunity to effectively and efficiently
13 establish those procedures.

14 Our position is, partly in agreement with Mr.
15 Bruce, this matter belongs in the courthouse. Mr. Perry
16 and Mr. Pride can go to the courthouse and litigate the
17 change of operator. What we're telling you is, when there
18 is an operator approved by the Division and he refuses to
19 resign under circumstances like this, the Division should
20 require the party seeking that removal to litigate their
21 problem in district court. They should not be able to come
22 to you and get that change of operator approved without a
23 court order. They shouldn't put you in the position of
24 having to decide, or having Mr. Kautz decide as a geologist
25 in the District, how to handle the dispute for change of

1 operator.

2 You can sit here and look at this provision all
3 you want. The point is, and Mr. Pride and Mr. Perry are in
4 agreement, Mr. Pride was not provided notice or an
5 opportunity with regards to this issue. It was an
6 accomplished fact, he was told what to do, they ambushed
7 him on getting him removed as operator.

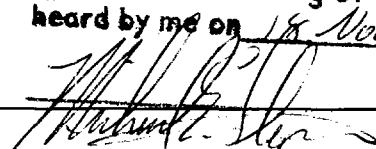
8 Mr. Perry wants to tell you that there's an
9 ongoing dispute. It never reached the point where it was
10 serious enough for Mr. Perry to put pen to paper and
11 complain. Now, I think that's unfair, it's unreasonable,
12 it's inappropriate. There's no reason for the Division to
13 be caught in this. We're asking that you set aside the
14 change of operator, let these parties go down to the
15 district court and they can duke it out. But we're
16 suggesting that the manner in which the operation was
17 changed and approved by the Division is improper,
18 inappropriate and ought to be set aside.

19 EXAMINER STOGNER: Thank you, Mr. Kellahin.

20 If there's nothing else further in Case Number
21 12,278, then this matter will be taken under advisement.

22 (Thereupon, these proceedings were concluded at
23 1:26 p.m.)

24 I do hereby certify that the foregoing is
a complete record of the proceedings in
the Examiner hearing of Case No. 12278.
* * * heard by me on 18 Nov 1999.

25 

STEVEN T. BRENNER, CCR
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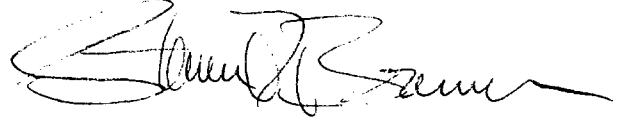
CERTIFICATE OF REPORTER

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

I, Steven T. Brenner, Certified Court Reporter and Notary Public, HEREBY CERTIFY that the foregoing transcript of proceedings before the Oil Conservation Division was reported by me; that I transcribed my notes; and that the foregoing is a true and accurate record of the proceedings.

I FURTHER CERTIFY that I am not a relative or employee of any of the parties or attorneys involved in this matter and that I have no personal interest in the final disposition of this matter.

WITNESS MY HAND AND SEAL November 26th, 1999.



STEVEN T. BRENNER
CCR No. 7

My commission expires: October 14, 2002