

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 GREAT WESTERN DRILLING	)	CASE NO. 12,943
COMPANY FOR COMPULSORY POOLING,	)	
LEA COUNTY, NEW MEXICO	)	
	)	
APPLICATION OF DAVID H. ARRINGTON OIL	)	CASE NO. 12,922
AND GAS, INC., FOR COMPULSORY POOLING,	)	
LEA COUNTY, NEW MEXICO	)	
	)	(Consolidated)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: DAVID K. BROOKS, Hearing Examiner

October 10th, 2002

Santa Fe, New Mexico

02 OCT 24 AM 9:13  
STEVEN T. BRENNER, CCR

This matter came on for hearing before the New Mexico Oil Conservation Division, DAVID K. BROOKS, Hearing Examiner, on Thursday, October 10th, 2002, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South Saint Francis Drive, Room 102, 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

October 10th, 2002  
 Examiner Hearing  
 CASE NOS. 12,943 and 12,922 (Consolidated)

	PAGE
EXHIBITS	3
APPEARANCES	5
GREAT WESTERN WITNESSES:	
<u>MICHAEL S. HEADINGTON</u> (Landman)	
Direct Examination by Mr. Owen	8
Cross-Examination by Mr. Hall	26
Redirect Examination by Mr. Owen	34
Recross-Examination by Mr. Hall	38
Examination by Examiner Brooks	39
Examination by Examiner Catanach	40
<u>RUSSELL P. RICHARDS</u> (Geologist)	
Direct Examination by Mr. Owen	41
Cross-Examination by Mr. Hall	52
Examination by Mr. Jones	54
<u>MICHAEL S. HEADINGTON</u> (Landman, recalled)	
Direct Examination by Mr. Owen	56
Cross-Examination by Mr. Hall	57
ARRINGTON WITNESS:	
<u>BILLY DON BAKER, JR.</u> (Geologist)	
Direct Examination by Mr. Hall	59
Cross-Examination by Mr. Owen	76
Redirect Examination by Mr. Hall	83

(Continued...)

## CLOSING ARGUMENTS:

By Mr. Owen	85
By Mr. Hall	92
By Mr. Owen	101

## REPORTER'S CERTIFICATE

106

\* \* \*

## E X H I B I T S

Great Western	Identified	Admitted
Exhibit 1	11	25
Exhibit 2	13	25
Exhibit 3	14	25
Exhibit 4	16	25
Exhibit 5	18	25
Exhibit 6	19	25
Exhibit 7	21	25
Exhibit 8	24	25
Exhibit 9	25	25
Exhibit 10	43	52
Exhibit 11	44	52
Exhibit 12	46	52

\* \* \*

Arrington	Identified	Admitted
Exhibit 12	59	76
Exhibit 13	63	76
Exhibit 14	66	76
Exhibit 15	68	76
Exhibit 16	74	76
Exhibit 17	83	84
Exhibit 18	75	76

\* \* \*

(Continued...)

## E X H I B I T S (Continued)

Additional submissions by Arrington, not offered or admitted:

	Identified
Order No. R-10,977 (Case No. 11,927)	94
Memo dated 4-5-95 from Catanach to LeMay Re: Competing Forced Pooling Applications	97
Order No. R-10,922 (Case Nos. 11,830 and 11,833)	97
Order No. R-11,663-C (Case No. 12,705)	99

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## A P P E A R A N C E S

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By: PAUL R. OWEN

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By: WILLIAM F. CARR

\* \* \*

ALSO PRESENT:

DAVID R. CATANACH  
Hearing Examiner  
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WILLIAM V. JONES, JR.  
Petroleum Engineer  
New Mexico Oil Conservation Division  
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\* \* \*

1           WHEREUPON, the following proceedings were had at  
2           1:03 p.m.:

3           EXAMINER BROOKS: At this time we will call Case  
4           Number 12,943, the Application of Great Western Drilling  
5           for compulsory pooling, Lea County, New Mexico, and  
6           companion Case Number 12,922, the Application of David H.  
7           Arrington Oil and Gas, Inc., for compulsory pooling, Lea  
8           County, New Mexico.

9           The determination, I believe, at the conclusion  
10          of the hearing in Case Number 12,922 previously was that it  
11          would be continued to this date for consideration in  
12          connection with Case Number 12,943, so I believe these two  
13          cases will be consolidated for the purpose of this hearing,  
14          and they will retain their existing case numbers.

15          Call for appearances on both cases, 12,922 and  
16          12,943.

17          MR. OWEN: May it please the Examiner, my name is  
18          Paul R. Owen. I'm with the Santa Fe law firm of Montgomery  
19          and Andrews, appearing on behalf of Great Western Drilling  
20          Company in both cases.

21          I have two witnesses in this matter.

22          MR. HALL: Mr. Examiner, Scott Hall, Miller,  
23          Stratvert and Torgerson law firm, Santa Fe, appearing on  
24          behalf of David H. Arrington Oil and Gas, Incorporated.

25          I have two witnesses this morning, one of which

1 was previously sworn in Case 12,922 two weeks ago; it's  
2 Bill Baker. In addition, Dale Douglas appeared in another  
3 case this morning, he's been sworn. I plan to call at this  
4 time only one witness but would like to reserve the right  
5 to call Mr. Douglas if necessary.

6 EXAMINER BROOKS: Okay.

7 MR. HALL: If we need to have them sworn again or  
8 not, they're --

9 EXAMINER BROOKS: The record will reflect that  
10 Mr. Douglas and Mr. Baker were both sworn this morning.

11 Will your witnesses please stand to be sworn?

12 MR. CARR: May it please the Examiner --

13 EXAMINER BROOKS: I'm sorry.

14 MR. CARR: -- my name is William F. Carr. I'm  
15 with the Santa Fe office of Holland and Hart, L.L.P. We'd  
16 like to enter our appearance in the consolidated cases for  
17 Yates Petroleum Corporation. We're appearing in support of  
18 Great Western Drilling Company and are executing their  
19 operating agreement.

20 EXAMINER BROOKS: Do you have any witnesses?

21 MR. CARR: No, I do not.

22 EXAMINER BROOKS: Okay, very good.

23 Will your witnesses please stand to be sworn, Mr.  
24 Owen?

25 (Thereupon, the witnesses were sworn.)

1 MR. OWEN: Mr. Examiner, for my first witness I  
2 call Mr. Mike Headington.

3 MICHAEL S. HEADINGTON,  
4 the witness herein, after having been first duly sworn upon  
5 his oath, was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. OWEN:

8 Q. Mr. Headington, would you please tell us your  
9 full name and where you live?

10 A. Michael Slade Headington, and I reside in  
11 Midland, Texas.

12 Q. Who do you work for?

13 A. I work for Great Western Drilling Company, also  
14 out of Midland.

15 Q. And what do you do for Great Western?

16 A. I'm the land manager for Great Western.

17 Q. Are you a certified public landman?

18 A. No, I'm not, I'm a registered professional  
19 landman.

20 Q. Okay. Have you previously testified before the  
21 Division and had your credentials as a petroleum landman  
22 accepted and made a matter of record?

23 A. Yes, I believe so.

24 Q. Are you familiar with the Application filed in  
25 this case?

1 A. Yes.

2 Q. Are you familiar with the status of the lands in  
3 the subject area?

4 A. Yes.

5 Q. Are you aware that in Case Number 12,922, David  
6 H. Arrington Oil and Gas, Inc., has sought to have the same  
7 lands pooled and dedicated to a similar well with Arrington  
8 to be named as operator?

9 A. Yes, we are.

10 Q. Are you aware that Arrington's Application was  
11 heard by the Division on September 5th, 2002?

12 A. Yes.

13 Q. Have you reviewed the exhibits offered by  
14 Arrington in the September 5th hearing and the transcript  
15 from that hearing?

16 A. Yes, I have.

17 Q. Does Great Western seek a different well location  
18 than that proposed by David H. Arrington Oil and Gas, Inc.,  
19 in Case Number 12922?

20 A. No, we do not. As Russell Richards will talk  
21 about later, our seismic interpretation that we've done  
22 through our 3-D work is -- we're okay with that, that same  
23 location.

24 Q. Do you have a different well name for the  
25 prospect?

1           A.    Yes, we do.  We prefer to call it the Great  
2 Western Drilling Federal "34" Com Number 1 well.

3           EXAMINER BROOKS:  Mr. Owen, are you going to  
4 tender the witness as an expert?

5           MR. OWEN:  I'll do that now, sure.  I tender the  
6 witness as an expert.

7           EXAMINER BROOKS:  Okay, he is so qualified.

8           Q.    (By Mr. Owen)  Does Great Western propose to  
9 drill to a different formation or horizon than that  
10 proposed by Arrington in Case Number 12,922?

11          A.    No, we do not.

12          Q.    Are you prepared to explain why Great Western  
13 should be designated the operator of this well instead of  
14 Arrington?

15          A.    Yes, we are.  Yes, I am.

16          Q.    Can you tell us what Great Western seeks with  
17 this Application?

18          A.    Basically, we seek an order pooling all mineral  
19 interests underlying the east half of Section 34 of  
20 Township 15 South, Range 34 East, Lea County, New Mexico,  
21 in the following manner:

22                basically all formations and/or pools developed  
23 on 320-acre spacing within that vertical extent, including  
24 but not limited to the Undesignated North Edison-Morrow Gas  
25 Pool;

1           all formations developed on 160-acre spacing  
2 underlying the southeast quarter;

3           all formations developed on 80-acre spacing  
4 underlying the north half, southeast quarter, including but  
5 not limited to the Undesignated North Edison-Strawn Pool;

6           and all formations developed on 40-acre spacing  
7 underlying the northeast quarter, southeast quarter, which  
8 includes but is not limited to the Townsend-Permo Penn  
9 Pool;

10           and said spacing and proration units are to be  
11 dedicated to our proposed Federal "34" Com Number 1 well,  
12 to be drilled at a standard location in the southeast  
13 quarter of Section 34.

14           Q.    All right.

15           EXAMINER BROOKS: Clarification. It sounded like  
16 that you were saying Edison. Is that Edison or Eidson?

17           THE WITNESS: It is Edison.

18           EXAMINER BROOKS: It is Edison, okay. I wanted  
19 to clarify that because I'm familiar with the North Eidson  
20 and I wanted to be sure I had it right. Go ahead.

21           Q.    (By Mr. Owen) All right, why don't you take a  
22 look at Great Western's Exhibit Number 1? Can you review  
23 that for the Examiner, please?

24           A.    Yes, that's a land map that has the proposed  
25 spacing and proration unit outlined in green in the east

1 half of Section 34. It also has in red the proposed  
2 footage well location, which is 1700 feet from the south  
3 line, 950 feet from the east line of said Section 34.

4 Q. All right, and what's the primary objective of  
5 the well?

6 A. Atoka-Morrow.

7 Q. So it's a dual primary objective?

8 A. It's kind of a dual primary objective target.

9 Q. Okay. When did you start to consider this  
10 project?

11 A. Great Western received several -- We've been out  
12 here as a lease owner in this area for -- you know, since  
13 the early 1970s. And recently, towards the end of last  
14 year, the beginning of this year, Yates Petroleum made  
15 several significant requests to purchase or farm in our  
16 interest in this area, and that's when we began, the first  
17 of this year, maybe towards the end of last year, we began  
18 updating our geological information and seeing the new  
19 activity, seeing what people were proposing, to try and  
20 extend this Atoka trend northward. So basically we've been  
21 looking at it now for about ten months.

22 Q. All right, and when did you start talking to  
23 other interest owners in the well about this project?

24 A. Upon receipt of David Arrington's well proposal  
25 we immediately began updating our title information and

1 immediately talking to Yates Petroleum, David Petroleum,  
2 Colin McMillan, et al., about who needs to go about  
3 possibly being the operator of this spacing unit.

4 Q. All right. Have you obtained a drilling permit  
5 for this location?

6 A. No, we have not.

7 Q. And what's the process involved for your  
8 obtaining a drilling permit?

9 A. Well, Mr. Arrington does have a valid permit for  
10 the same location that we are wishing to drill, and we  
11 understand -- and we've done this in other areas -- that  
12 basically that permit, depending on the outcome of these  
13 pooling Applications, if necessary, can be easily  
14 transferred by sundry notice to, hopefully, Great Western  
15 Drilling Company if we're successful.

16 Q. Does that require Arrington's assent to the  
17 transfer?

18 A. From what I understand, it does not.

19 Q. All right. And that's a transfer of the permit  
20 from the BLM; is that right?

21 A. It's a transfer of the approved BLM permit, yes.

22 Q. Okay. Let's turn to Great Western Exhibit Number  
23 2. Could you explain that for the Examiner, please?

24 A. Exhibit 2 is basically our ownership exhibit that  
25 we attached to our joint operating agreement that has been

1 sent out to the parties in our efforts to obtain voluntary  
2 joinder to this well proposal. Exhibit 2, like I said, is  
3 attached to our joint operating agreement, which  
4 essentially has been executed by, of course, all parties to  
5 date, with the exception of David Arrington.

6 Q. All right, and what percentage of the acreage is  
7 voluntarily committed to the well?

8 A. We currently have a voluntary commitment to our  
9 well proposal and joint operating agreement of 67.97  
10 percent --

11 Q. Okay.

12 A. -- of the working interest.

13 Q. Keeping Exhibit Number 2 out, I want you to put  
14 Exhibit Number 3 beside it. Can you tell me what Exhibit  
15 Number 3 is?

16 A. Yes, Exhibit Number 3 is the breakdown of  
17 ownership that Mr. Arrington presented at the hearing last  
18 month for the east half of Section 34.

19 Q. Okay. And is there a difference in the  
20 percentages shown on Exhibit 2 and the percentages shown on  
21 Exhibit Number 3?

22 A. Yes, there's several differences. Basically, the  
23 first being David Arrington is combining his working  
24 interest with an interest that we credit to Tom Brown,  
25 Inc., on our Exhibit, a little over 7 percent of the

1 working interest. It looks like he's combining, off of our  
2 exhibit, the 24.85 percent we show for Mr. Arrington with  
3 the Tom Brown interest, which I assume he has under some  
4 type of a letter agreement or contract to be assigned to  
5 him later.

6 There's also -- Every other interest listed on  
7 this exhibit, all the David Petroleum, Yates Petroleum, et  
8 al., groups, their interests are also different than our  
9 exhibit that we are presenting.

10 And the reason for that is, in our discussions to  
11 obtain voluntary joinder to our proposal, we discovered  
12 from Bill Owen with the David Group in Roswell that they  
13 have an expiration agreement, off-the-record expiration  
14 agreement that determines the ownership between the David  
15 Petroleum group, Yates Petroleum group, as to their  
16 interest in this proposed proration unit. And therefore,  
17 every interest on the Arrington exhibit is different than  
18 the interest which we show, which we believe to be correct  
19 on our Exhibit "A" that we're showing today, our Exhibit  
20 Number 2.

21 Q. Have you done land work independent of that done  
22 by Arrington and presented in their September 5th hearing?

23 A. Yes, yes, like I said, we've been in, you know,  
24 several discussions with all the parties listed on this  
25 exhibit, and they are in agreement that the interests set

1 out on our exhibit are correct.

2 Q. Okay. So you're not just piggy-backing on  
3 Arrington's efforts on the land side?

4 A. No, sir.

5 Q. Okay. Now, you've indicated that the other  
6 interest owners, with the exception of Arrington and Tom  
7 Brown, Inc., are committed to Great Western's proposal; is  
8 that right?

9 A. Correct.

10 Q. How are they committed to Great Western's  
11 proposal?

12 A. They have signed our proposed AFE and approved  
13 that AFE for the location we have proposed, and they also  
14 are signatory to our joint operating agreement that is  
15 Exhibit Number 4 to this hearing.

16 Q. All right, let's go ahead and take a look at  
17 that. Why don't you explain that for the Examiner, please?

18 A. Exhibit 4, of course, is an operating agreement  
19 dated September 12th, 2002. It's in the model form  
20 operating agreement of A.A.P.L. approved Form 610-1989  
21 form. It is a contract, of course, that governs well  
22 proposals, nonconsent operations, accounting procedures,  
23 basically all the terms and conditions that normally go  
24 with getting a well drilled in this state absent a pooling  
25 order. So...

1           And again, like I said, there are 14 interest  
2 owners in here that have executed this contract, naming  
3 Great Western Drilling Company as operator of the well.

4           Q.    This operating agreement names Great Western as  
5 operator; is that right?

6           A.    Yes, it does.

7           Q.    Does it govern subsequent operations?

8           A.    Yes, it does.

9           Q.    So if an infill well or some other prospect were  
10 developed on this acreage, this JOA would govern those  
11 subsequent operations; is that right?

12          A.    Yes, it will.

13          Q.    Does this contain provisions in it which are in  
14 addition to those which might be found in a typical  
15 compulsory pooling order issued by the Division?

16          A.    Yes.

17          Q.    And do those have to do with accounting and  
18 operations and things like that?

19          A.    Yeah, subsequent operations, and it provides for  
20 penalties associated with nonconsenting owners on different  
21 well proposals, and of course sets out the interests of the  
22 parties correctly.

23          Q.    Okay. And how many interest owners did you say  
24 had committed to this proposal, to this JOA?

25          A.    All of them but David Arrington Oil and Gas, and

1 I believe that to be 14.

2 Q. All right. About halfway through the exhibit are  
3 a bunch of signature pages. Are those in fact the  
4 signature pages of these other parties?

5 A. Those are the signature pages that have been  
6 signed by the authorized person of those different  
7 entities, yes.

8 Q. And did these result as a result of your  
9 negotiations with these other interest owners?

10 A. We find it very helpful to, you know, pick up the  
11 phone and call people when we get into these matters and --  
12 you know, and discuss pertinent things which we feel like,  
13 you know, govern any approved well that needs to be  
14 drilled, and these are the direct result of those  
15 discussions, both verbally and written, with these parties.

16 Q. Okay, let's go ahead and take a look at Exhibit  
17 Number 5. Can you tell me what that is?

18 A. That is our AFE for the well.

19 Q. When did you submit this AFE to the other  
20 interest owners in the well?

21 A. I believe it was submitted September 5th of 2002.

22 Q. Is that the same day as the hearing in  
23 Arrington's Case 12,922?

24 A. Yes, it was.

25 Q. All right. Why don't you review the totals on

1 that AFE for the Examiner?

2 A. The estimated dryhole cost on this AFE reflect  
3 \$941,500 worth of anticipated expenditures, the completed  
4 well cost we estimate to be \$550,100, for a total completed  
5 well cost of \$1,491,600. Not any significant difference  
6 with the well proposal that Mr. Arrington has made.

7 Q. And I want to go ahead and make that comparison.  
8 Why don't you -- Keeping Exhibit Number 5 in front of you,  
9 can you explain Exhibit Number 6 to the Examiner?

10 A. I'm sorry, Paul?

11 Q. Can you explain Exhibit Number 6 for the  
12 Examiner, please? What is Exhibit Number 6?

13 A. Exhibit Number 6 is David Arrington Oil and Gas's  
14 authority for expenditure, their estimated cost of the well  
15 that they've proposed. It calls for an estimated dryhole  
16 cost of \$995,201, their estimated dryhole cost, which, with  
17 their completed well cost, being \$529,700, and a total  
18 estimated well cost of \$1,524,901.

19 Q. Okay. Are the costs that Great Western proposes  
20 in Exhibit Number 5 in line with what's being charged by  
21 other operators in the area?

22 A. I believe they are.

23 Q. And have you estimated overhead and  
24 administrative costs while drilling the well and also while  
25 producing the well if it's successful?

1           A.    Yes, we have.  The drilling well rate that we are  
2   estimating, which we believe is competitive with other  
3   rates charged in the area, is \$6000 per month, with a  
4   producing well overhead rate of \$600 a month, and that is  
5   part of our operating agreement presented as Exhibit 4  
6   here.

7           Q.    You said these costs are in line with what's  
8   being charged by other operators in the area.  How do you  
9   know that?

10          A.    Oh, basically by the joinder we've received from  
11   these very sophisticated co-owners in this tract.

12          Q.    Are you involved in other producing wells in the  
13   area?

14          A.    We've got several producing wells we have  
15   interest with in the area.

16          Q.    And are these costs in line with what's being  
17   charged --

18          A.    Yes.

19          Q.    -- what was charged, and what is being charged on  
20   those wells?

21          A.    Yes, they are.

22          Q.    All right.  Do you recommend that these overhead  
23   and administrative figures be incorporated into any order  
24   that results from this hearing?

25          A.    Yes, I do.

1 Q. With a COPAS adjustment?

2 A. Yes, I do.

3 Q. Okay. Why don't you turn to Exhibit Number 7 for  
4 me, please? Can you tell me what that is?

5 A. Those are copies of our original well proposal.  
6 The first one, the September 5th letter, is when we  
7 proposed the Federal "34" Com Number 1 well to the owners  
8 in the east half of Section 34. And that was sent, of  
9 course, to all parties owning an interest in that acreage.

10 And then the September 17th letter is when we  
11 sent out our proposed joint operating agreement covering  
12 the east half of Section 34 to the parties.

13 Q. And was that sent to Arrington as well?

14 A. I don't believe it was.

15 Q. The JOA wasn't?

16 A. I don't believe it was, Paul.

17 Q. Was the AFE sent to Arrington?

18 A. Yes, it was.

19 Q. Okay. Why don't you summarize the efforts that  
20 you engaged in to obtain the voluntary joinder of all the  
21 working interest owners?

22 A. Basically just, you know, just numerous  
23 conversations about who would be the -- who would make the  
24 most sense logically to get this well drilled in a timely  
25 manner to accommodate everybody's, you know, lease-

1 expiration concerns, who has the engineering on staff  
2 capable of -- you know, of getting this well drilled to the  
3 objective depths, get the well completed and put on line in  
4 a timely manner.

5           You know, we don't use a lot of consulting-type  
6 technical people when we drill our wells; we try to do them  
7 mostly with our on-staff engineering group.

8           And those factors were considered, as well as  
9 interest. Great Western and Davoil, or -- Davoil Inc., is  
10 a spinoff of Great Western interests that was spun off into  
11 a separate company in 1977, but we represent 25-percent  
12 ownership in the well, so we had a significant stake  
13 collectively, going in, before we started negotiations with  
14 the Yates, et al., group.

15           Q.    And when did you start those negotiations?

16           A.    Immediately in June upon receiving Arrington's  
17 well proposal.

18           Q.    And what were the result of those discussions?

19           A.    We came up with an acceptable joint operating  
20 agreement that everybody can live with.

21           Q.    All right. Why don't you summarize any  
22 discussions you've had with Arrington? Have you had any  
23 discussions with Arrington?

24           A.    No, I have not.

25           Q.    Okay. Have you received anything from Arrington

1 besides their well proposals?

2 A. No, not to my knowledge.

3 Q. Did they ever submit a JOA to you?

4 A. No, they did not.

5 Q. Okay. Does Great Western have any experience  
6 operating deep gas wells in the area?

7 A. Great Western has been operating in New Mexico  
8 since the early 1950s, but more recently this southern  
9 portion of this Atoka trend that is now being extended by  
10 all the new activity. Great Western has got a well called  
11 the Lowe State Number 1 well, about two miles to the  
12 southeast of here that was drilled in the late 1970s.  
13 We're kind of proud of that well. It's cum'd over 9 BCF of  
14 gas, and it's still producing from the Atoka formation.

15 Our more recent history, not necessarily as an  
16 operator, but our more recent history as a major non-  
17 operating working interest participant, has been in Section  
18 5 of 16 South, 34 East, the Harrod State Number 5 well that  
19 was drilled, that I believe sets up the Kukui well in  
20 Section 6. And of course I think that's the well we're all  
21 keying off of for our Section 34 well, but Great Western  
22 did own a significant non-operating working interest in the  
23 Nadel and Gussman Harrod State Number 5 well in Section 5.

24 Q. Okay. Now, you indicated that there was a well  
25 about two miles to the south that you're particularly proud

1 of. What formation is that producing from?

2 A. That's producing from this prolific Atoka trend.

3 Q. And is that the same trend that you're shooting  
4 for in this well?

5 A. Yes, sir, it is, I believe it is.

6 Q. Was that the original well that discovered these  
7 sands that it produced from?

8 A. It was one of the original wells drilled in this  
9 trend, yes.

10 Q. Did Great Western, in fact, drill that well?

11 A. We drilled and completed it.

12 Q. And have you operated that well since it was  
13 drilled, continuously?

14 A. Yes.

15 Q. All right. Is Exhibit Number 8 an affidavit and  
16 attached letters giving notice of today's hearing?

17 A. Yes.

18 Q. All right. Does Great Western seek to be  
19 designated operator of this proposed well?

20 A. Yes.

21 Q. Why should Great Western be designated the  
22 operator, instead of Arrington?

23 A. Well, we believe we've achieved voluntary joinder  
24 and commitment from 67-plus percent of the working interest  
25 in this proposed proration unit. So therefore we believe

1 because of those efforts and because of that support that  
2 that voice should be named the operator.

3 Q. Do you know of any reason why Arrington should be  
4 designated operator instead of Great Western?

5 A. I do not.

6 Q. Okay. Are you familiar with an April 5th, 1995,  
7 memorandum from David Catanach to William J. LeMay, then  
8 Director of the Oil Conservation Division?

9 A. Yes, sir.

10 Q. And is that memorandum comprised of Great Western  
11 Exhibit Number 9?

12 A. Yes, it is.

13 Q. And does that memorandum purport to set forth  
14 suggested guidelines to be utilized in deciding competing  
15 force-pooling applications?

16 A. I believe it does.

17 Q. All right, were Exhibits Number 1 through 9  
18 prepared by you or compiled under your direction or  
19 supervision?

20 A. Yes.

21 MR. OWEN: Mr. Examiner, I move the admission  
22 into evidence of Exhibits 1 through 9.

23 EXAMINER BROOKS: Objection?

24 MR. HALL: No objection.

25 EXAMINER BROOKS: 1 through 9 are admitted.

1 MR. OWEN: Pass the witness.

2 EXAMINER BROOKS: Mr. Hall?

3 CROSS-EXAMINATION

4 BY MR. HALL:

5 Q. Mr. Headington, can you tell us how many wells  
6 Great Western has drilled in the Lovington area in the last  
7 five years?

8 A. As an operator?

9 Q. Yes.

10 A. We've been in several wells as a non-operator.  
11 But as an operator in the last five years, probably -- We  
12 probably have not drilled one as operator.

13 Q. From what I understood from your earlier  
14 testimony, the last well you've apparently drilled in the  
15 area was in the late 1970s. Does that sound right?

16 A. As an operator, that's correct.

17 Q. Okay.

18 A. Excuse me, that is not correct. We drilled and  
19 operated three Morton-Townsend-Wolfcamp wells about three  
20 miles north of here in 15-34, so we did in the mid- to late  
21 1980s, Great Western did operate and drill two wells up  
22 there.

23 Q. And you speak in the past tense. Are you  
24 operator today of those wells?

25 A. We've sold those wells.

1 Q. I see. When is the last time you've done a  
2 compulsory pooling case?

3 A. We normally always reach voluntary agreement.  
4 Great Western has not done one in quite some time.

5 Q. Okay. Can you tell the Hearing Examiner your  
6 understanding of what the practice is in proposing a well  
7 before you file a compulsory pooling application? What's  
8 your understanding?

9 A. I'm sorry, could you repeat that, Scott?

10 Q. What is your understanding of the Division's  
11 accepted practice for proposing wells prior to filing a  
12 compulsory pooling application? Do you know?

13 A. I'm not sure I've been -- I understand you have  
14 to propose a well at the time your application is made,  
15 yes.

16 Q. Do you know how far in advance you're supposed to  
17 propose your well?

18 A. I do not.

19 Q. We don't have a dispute here, do we, that Great  
20 Western failed to propose their well in this case before  
21 filing their compulsory pooling Application? There's no  
22 dispute about that, I don't believe?

23 A. I believe they were done simultaneously.

24 Q. Could you tell us what is Great Western's in-  
25 house protocol for getting a well drilled, from proposal to

1 drilling? What steps do you take in-house?

2 A. Anytime there's new activity in an area where we  
3 have interest, we're always updating our geological  
4 information, acquiring pertinent seismic data, reviewing  
5 appropriate land records to determine proper ownership, and  
6 then, you know, deciding whether or not we want to go  
7 forward with a well proposal.

8 Q. I guess it's been some time since Great Western  
9 took those steps for a well in the Lovington area anyway;  
10 is that safe to say?

11 A. Well, we participated in two wells in Section 5  
12 within a mile of here, within the last couple of years.

13 Q. But not as operator?

14 A. Not as operator.

15 Q. And as I understood your earlier testimony for  
16 this well, Great Western did not develop the geology; you  
17 relied on the Yates geology. That's what piqued your  
18 interest?

19 A. No, that's not correct, Scott. We had our own  
20 3-D seismic information in this area, we have worked that  
21 -- the information, and we -- you know, we have our own  
22 maps and seismic in this area.

23 Q. But isn't it accurate to say that Great Western  
24 was not going to develop this acreage before Yates came  
25 along and requested a farmout from you?

1 A. That's not accurate, no.

2 Q. If I understood your earlier testimony, it wasn't  
3 until after Arrington's well proposal was submitted to you  
4 that Great Western really got so serious about this  
5 acreage; is that fair to say?

6 A. No, no, it's not. We started getting serious  
7 long before that, when Yates tried to buy our interest in  
8 here.

9 Q. Oh, all right, so it was when Yates came around  
10 for a farmout?

11 A. Yes, which was seven, eight months, nine months  
12 before the actual well proposal by Arrington.

13 Q. Let's talk about your Exhibits 2 and 3 briefly,  
14 Mr. Headington. Exhibit 3 was Arrington's Exhibit Number 2  
15 in the prior hearing, and I understand you to say that  
16 there's some difference about the percentage reflected for  
17 David Petroleum, McMillan Permian, McMillan Ventures,  
18 Michael McMillan, Edward David, McKamey, that group?

19 A. I believe they're all different, yes.

20 Q. Yeah. And that is pursuant to a private  
21 agreement among them?

22 A. That is pursuant to a non- -- an agreement that's  
23 not of record. It's an exploration agreement that has an  
24 AMI attached to it that determines the interest of their  
25 ownership in this area, yes.

1 Q. And you say it's not of record?

2 A. I don't believe it's of record. You have to talk  
3 to those folks to get that information.

4 Q. But the gross percentages otherwise evident of  
5 record, as reflected on your Exhibit 3, are correct, are  
6 they not, based on evidence of record?

7 A. I haven't compared that, Scott --

8 Q. Okay.

9 A. -- and I -- They may be.

10 Q. Did you have a landman or an abstractor do a  
11 takeoff for you to try to run that down?

12 A. Yes, I have. I just -- I haven't looked at that,  
13 I haven't compared that -- our takeoff information with our  
14 exhibit.

15 Q. You say you have almost 68 percent that's  
16 voluntarily committed to you now under your JOA. Did any  
17 of the Yates companies receive any additional consideration  
18 outside of the operating agreement for their joinder in  
19 your well?

20 A. No, they did not.

21 Q. How about any of the other interest owners, the  
22 Owens, the --

23 A. No.

24 Q. Now, let's turn to your Exhibit 5, Great  
25 Western's AFE, and also if you take before you Exhibit 6,

1 correct me if I'm wrong, but I thought I heard you say that  
2 the Arrington AFE total well cost was \$1.6 million?

3 A. I probably need my reading glasses. It may be  
4 1.5.

5 Q. Okay, just need to clear that up for the record.  
6 So really, we're not too far apart on our total well costs  
7 here?

8 A. The estimated total well costs are very similar.

9 Q. Let's talk about what else you must do before you  
10 drill a well. Have you done any of your regulatory or  
11 permitting work outside of this compulsory pooling  
12 proceeding?

13 A. We have called about his approved BLM permit that  
14 he does have for his well proposal, we have called in to  
15 find out because we do realize, we do respect -- he has a  
16 date coming up on his assignment of interest in this tract.  
17 We certainly intend to -- If our Application is approved,  
18 we certainly intend to meet that date.

19 And we have called BLM and they tell us there  
20 will not have to be a new arch. survey done, it's simply a  
21 matter of sundry notice to get that transferred, should we  
22 be allowed to do that.

23 Q. So Great Western did not undertake to obtain an  
24 archaeological survey, did they?

25 A. We did not.

1 Q. Okay. Has Great Western reached an agreement for  
2 surface damages with the surface owner or occupant out  
3 there?

4 A. Not yet, no.

5 Q. Have you even talked to the surface owner?

6 A. No.

7 Q. What is the surface ownership, if you know?

8 A. We have not checked that.

9 Q. Tell me what communications Great Western has had  
10 with Arrington about the development of this acreage in  
11 Section 34?

12 A. I haven't received anything, other than their  
13 well proposal, from them. And as far as I know, I have not  
14 had any communication with them.

15 Q. All right. So Great Western took no steps to try  
16 to communicate with Arrington; is that accurate to say?

17 A. And vice-versa.

18 Q. Well, the answer to the question is yes?

19 A. Yes.

20 Q. So they got the first well proposal out, and  
21 there's simply no response to that from Great Western?  
22 That's a fact we can agree on.

23 A. (Nods)

24 Q. You need to indicate for the record.

25 A. Yes.

1 Q. What's wrong with Arrington's proposal?

2 A. Basically, we just feel like we would do a better  
3 job of operating a well in this area. We've been at it a  
4 lot longer than Mr. Arrington has, even though we haven't  
5 drilled the recent wells that he has in this area. And  
6 we've had some very real concerns in the past with wells  
7 we've been in with him.

8 Q. Any of these wells in southeastern New Mexico?

9 A. No, they're not.

10 Q. Was it an operating concern?

11 A. Yes.

12 Q. Or was it a cost concern?

13 A. Both.

14 Q. There's no disagreement about the well location  
15 here, is there?

16 A. No.

17 Q. And there's no disagreement about the geology?

18 A. No significant disagreement, no.

19 Q. And we're reasonably close on estimated costs  
20 under the AFES?

21 A. Right.

22 Q. Some \$30,000 difference --

23 A. Yeah.

24 Q. -- give or take?

25 So the reasons you don't want Arrington to

1 operate have to do with a dispute somewhere else. Is that  
2 in Texas?

3 A. That's where our experience has been with him  
4 operating, yes.

5 Q. Any other reasons?

6 A. No.

7 Q. And wouldn't you agree with me that Arrington has  
8 significantly, significantly, much more experience than  
9 Great Western in drilling to the Atoka-Morrow in  
10 southeastern New Mexico?

11 A. Not necessarily.

12 Q. Not necessarily, but you will agree that he has  
13 significantly more?

14 A. He has some recent experience, yeah, Scott.

15 MR. HALL: I have nothing further, Mr. Examiner.

16 EXAMINER BROOKS: Redirect, Mr. Owen?

17 MR. HALL: Sure.

18 REDIRECT EXAMINATION

19 BY MR. OWEN:

20 Q. Mr. Headington, Mr. Hall seemed particularly  
21 interested in your disagreement with Arrington. What was  
22 that disagreement?

23 A. We were an interest owner in a property in Texas  
24 for -- since about 1950 we've been in these properties, and  
25 he acquired the operator's interest and went out to drill

1 some additional wells. And we had trouble getting backup  
2 information provided on the joint-interest billings that  
3 were received. We would request backup information for the  
4 bills and basically never received any backup information,  
5 any significant information to satisfy some of our  
6 questions. And it just kind of escalated from there to,  
7 you know, an even more -- a larger disagreement.

8 Q. Did you have an independent auditor review that  
9 information?

10 A. Yes, we did, we were forced to -- Because we  
11 could not receive backup information, we were forced to  
12 audit -- attempt to audit the joint account, and we did  
13 have an audit done on those wells.

14 Q. Did that auditor generate a report?

15 A. Yes, he did.

16 Q. Did that auditor reach conclusions about  
17 Arrington's practices as operator of these wells?

18 A. Yes, he did.

19 Q. What were those conclusions?

20 A. There were numerous exceptions to the billings --

21 Q. What does that mean?

22 A. -- that were noted by the audit.

23 Q. What does that mean?

24 A. That means something that backup was not provided  
25 for on a bill that went to the joint account.

1 Q. Did the auditor indicate that Arrington had done  
2 anything wrong in its operations?

3 A. He just -- An audit notes exceptions, Paul.  
4 Those exceptions usually are satisfied by the operator,  
5 they usually provide the exception information. And again,  
6 I'm not exactly sure how much of that was ever satisfied.  
7 We did end up in litigation over those wells.

8 Q. We did. What was the conclusion of that?

9 A. There was a settlement reached in mediation.

10 Q. What was that settlement?

11 A. We received consideration.

12 Q. Arrington paid you?

13 A. Paid us.

14 Q. All right. How long has Great Western operated  
15 Atoka-Morrow wells in this immediate area?

16 A. In this immediate area, we've been an operator,  
17 like I said, of a very nice well that we really thought was  
18 really a good state well, since 1976.

19 Q. 1976. How long has Arrington been an operator of  
20 Atoka-Morrow wells in this area?

21 A. I believe their testimony was since 1990, or  
22 around there.

23 Q. Okay. Are you familiar with any Division rule  
24 which requires a well proposal in a competing force pooling  
25 application to be submitted before an application for

1 compulsory pooling is filed?

2 A. I'm sorry, Paul, could you repeat that?

3 Q. That was -- I confused myself. Sorry about that.

4 Are you aware of any division rule or regulation  
5 which states a prerequisite to filing a compulsory pooling  
6 application is proposing a well?

7 A. No, no, I'm not.

8 Q. Okay. Now, you said that Great Western took no  
9 steps to communicate with Arrington; am I stating that  
10 correctly?

11 A. That's correct.

12 Q. Well, you did send a well proposal, though,  
13 didn't you?

14 A. They did get a well proposal, yes.

15 Q. Okay, so you did send some communications to  
16 Arrington?

17 A. Yes, we did. We sent an AFE. How many  
18 communications have you received from Arrington?

19 A. One letter with an AFE from them also.

20 Q. You've sent one letter and you've received one  
21 letter?

22 A. Yes.

23 MR. OWEN: Okay. That's all I have.

24 EXAMINER BROOKS: Do you have further questions,  
25 Mr. Hall?

1 MR. HALL: Yes, just briefly, Mr. Examiner.

2 RE-CROSS-EXAMINATION

3 BY MR. HALL:

4 Q. Mr. Headington, do you suppose it's the prior  
5 disagreement over well costs in your Texas well that  
6 created this atmosphere that Arrington and Great Western  
7 aren't communicating very well?

8 A. I suppose it is.

9 Q. Do you wish the Hearing Examiner here to consider  
10 this previous disagreement over well costs as a factor in  
11 this compulsory pooling proceeding?

12 A. Not if it's within their guidelines. I mean,  
13 depending on the guidelines that they want to use. We're  
14 not suggesting that, no.

15 Q. Okay. Well, let's look at Exhibit Number 9, Mr.  
16 Catanach's memorandum from 1995. Do you have that there?  
17 Exhibit Number 9, I believe from your earlier testimony,  
18 outlines relevant and irrelevant testimony to be considered  
19 in compulsory pooling hearings.

20 Under the heading of "Irrelevant and Unnecessary  
21 Evidence", let's look down to subsection e), if you'd just  
22 read that into the record, please, sir.

23 A. "Incidence and description of previous  
24 disagreements between the parties."

25 MR. HALL: That's all I have, Mr. Examiner.

1 EXAMINER BROOKS: Anything further, Mr. Owen?

2 MR. OWEN: Nothing further, Mr. Examiner.

3 EXAMINATION

4 BY EXAMINER BROOKS:

5 Q. Well, at the risk of prolonging something that's  
6 irrelevant...

7 Anyway, when Mr. Hall was examining you, he asked  
8 you if your questions had to do with operational matters or  
9 billing, and according to my notes you said both. And as I  
10 understood, this is mostly an accounting dispute on the  
11 previous incidents. Did you run across anything that  
12 caused you to believe that Arrington was not capable of  
13 operating?

14 A. There were some operational issues as part of the  
15 disagreement we had.

16 Q. Do you remember what those were?

17 A. Cost overruns.

18 Q. Anything else?

19 A. No, sir.

20 Q. What magnitude of cost overruns are you talking  
21 about?

22 A. A hundred percent over the AFE.

23 EXAMINER BROOKS: I think that's all I have from  
24 this witness.

25 Do you have anything, Mr. Catanach?

1 EXAMINER CATANACH: Just a couple.

2 EXAMINATION

3 BY EXAMINER CATANACH:

4 Q. Do you remember -- Do you recall the date that  
5 Yates approached you to acquire your interest in this area?

6 A. I'd have to go back to the correspondence file,  
7 but I believe it was late 2001 or early -- They approached  
8 us several times, Mr. Catanach. I believe it started in  
9 2001 and continued into the first part of this year.

10 Q. And do you know at what point in time Arrington  
11 acquired his interest in this spacing unit?

12 A. I understand right at the first of 2001, I  
13 believe.

14 Q. So it was prior to the time that Yates approached  
15 you that Arrington had his interest, Arrington acquired his  
16 interest?

17 A. Have to look at that. I understood that  
18 Arrington received actual conveyance from some of the  
19 people they acquired title from at the first of this year.

20 Q. First of 2002?

21 A. 2002, yes, sir.

22 EXAMINER CATANACH: Okay.

23 MR. OWEN: Mr. Examiner, I'm not sure exactly  
24 when it was, but I know it's clearly stated in the  
25 transcript in the previous hearing.

1 EXAMINER CATANACH: Yeah, I just don't recall  
2 when it was, the previous hearing.

3 MR. OWEN: And we're not trying to contradict  
4 that testimony from Mr. Arrington's witnesses.

5 Q. (By Examiner Catanach) I notice that you have --  
6 in our proposal of September 5th and your subsequent letter  
7 of September 17th, you have been able to secure voluntary  
8 agreement with all the interest owners in a fairly rapid  
9 fashion. Have you talked to any of these interest owners,  
10 and have they expressed to you why they prefer Great  
11 Western drill and operate this well instead of Arrington?

12 A. Not directly, no, I have not. That discussion  
13 has not come up directly.

14 EXAMINER CATANACH: Okay, that's all I have.

15 EXAMINER BROOKS: Mr. Jones?

16 Okay, you may step down.

17 You may call your next witness, Mr. Owen.

18 MR. OWEN: Thank you, Mr. Examiner. Call Mr.  
19 Russell Richards.

20 RUSSELL P. RICHARDS,

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

23 DIRECT EXAMINATION

24 BY MR. OWEN:

25 Q. Would you please tell us your full name and where

1 you live?

2 A. Russell Paul Richards, Midland, Texas.

3 Q. Who do you work for?

4 A. Great Western Drilling Company.

5 Q. What do you do for Great Western?

6 A. I'm their exploration manager.

7 Q. Have you previously testified before this  
8 Division or one of its Examiners and had your credentials  
9 as a petroleum geologist accepted and made a matter of  
10 record?

11 A. Yes, I have.

12 Q. Are you familiar with the Application filed in  
13 this case?

14 A. Yes, I am.

15 Q. Have you made a technical study of the area which  
16 is the subject of this Application?

17 A. Yes, I have.

18 Q. Are you prepared to share the results of your  
19 study with the Examiner?

20 A. Yes, I am.

21 MR. OWEN: Mr. Examiner, I tender the witness as  
22 an expert in petroleum geology.

23 EXAMINER BROOKS: Any objection?

24 MR. HALL: No objection.

25 EXAMINER BROOKS: So qualified.

1 Q. (By Mr. Owen) Have you prepared exhibits for  
2 presentation in this case?

3 A. Yes, I have.

4 Q. Are you prepared to make a recommendation to the  
5 Examiner as to the risk penalty that should be assessed  
6 against the nonconsenting working interest owners?

7 A. Yes, I am.

8 Q. What's that recommendation?

9 A. And will you explain the basis for that  
10 recommendation here in a minute?

11 A. Yes, I will.

12 Q. All right. Why don't you identify and review  
13 Great Western Exhibit Number 10 for the Examiner?

14 A. Exhibit 10 is a structure map on the top of the  
15 Morrow lime, which is a regionally correlatable event. The  
16 location is indicated in red of the proposed Federal "34"  
17 Com Number 1 well. Just kind of a matter of what color-  
18 coding the producing well formations are indicated, blue is  
19 the Atoka-Townsend zone, and the green is a Morrow  
20 producer.

21 Also indicated, as in other exhibits, the east-  
22 half proration unit is indicated in green and Great  
23 Western's acreage is indicated in yellow.

24 The significance to the specific location of  
25 structure is that this location will be located -- It's on

1 an overall subregional north-south-trending ridge. The  
2 specific location proposed is in a saddle along that ridge.  
3 The high points along that ridge are encountered by the  
4 Kukui well to the south, in the northeast of Section 6, and  
5 the well in the southeast of Section 26 is the Nearburg  
6 Grasslands well, which I'll talk about more.

7 Q. All right. Well, let's turn to Exhibit Number  
8 11, then, your isopach. Can you explain that for the  
9 Examiner?

10 A. Yes, this is an isopach of one of the two primary  
11 objectives. It's the Atoka-Townsend sand. We feel like  
12 the significance of the interpretation of this location is  
13 set up by the recent completion of the Kukui Degas well in  
14 the northeast of Section 6, which was an extension of the  
15 Townsend-Morrow trend.

16 The next nearest well along this channel, the way  
17 I interpret it, is the Nadel and Gussman Harrod 5 State  
18 well in the extreme southwest of Section 5, which Great  
19 Western was a participant in.

20 And off the edge -- Put the edge of the map  
21 somewhere, but additionally, off the edge of the map there  
22 are additional producing wells that are actually older and  
23 with higher cums along this same trend.

24 I've also indicated date of first production by  
25 each of the producing wells, as well as cumulative

1 production and current daily rates.

2 Q. Does Great Western have any experience drilling  
3 and operating an Atoka sand or an Atoka-Morrow well in this  
4 immediate area?

5 A. Yes, as indicated by prior testimony, Great  
6 Western drilled one of the original wells that started  
7 development in the Townsend-Morrow Pool. I should enter  
8 for the record, it's identified by the Commission as the  
9 Townsend-Morrow field. But in fact, it's my contention,  
10 and I think it's accepted pretty industrywide that that's  
11 actually an Atoka-age sand. It's a matter of semantics,  
12 but just kind of for the record.

13 Q. All right.

14 A. And yes, that we -- On that well we drilled,  
15 recompleted a well to the Morrow up in the Morton field,  
16 and also I don't want to --

17 Q. How far away is the Morton field?

18 A. It's three miles northeast, just off the edge of  
19 this map.

20 Q. Okay, and I interrupted you, you were about to  
21 say --

22 A. Well, I just -- I don't want to discount the  
23 significance of being a significant non-operator. We  
24 participated with Amerind in their Medlin State well, which  
25 was a test to extend the Townsend trend. That's the well

1 that's indicated in the eastern portion of Section 5 that  
2 actually did not encounter Townsend sand, which we  
3 subsequently made a well in the Cisco carbonate.

4 And then we participated and were key in causing  
5 this Harrod 5 well, that Nadel and Gussman operated, to be  
6 drilled.

7 Q. Okay.

8 A. Also indicated on the cross-section -- excuse me,  
9 on Exhibit 11, is a line of section that is my next  
10 exhibit.

11 Q. Well, let's talk about that next exhibit then.  
12 Why don't you review that for the Examiner?

13 A. Exhibit 12 is a structural cross-section, north-  
14 south cross-section that brackets the two nearest wells on  
15 trend, if you will, to the proposed location. The well to  
16 the south, as I indicated before, is the Kukui Degas "6"  
17 State Com Number 1, which is a very recent well, completed  
18 in July of this year in the Townsend sand.

19 This well also -- Let me just finish talking  
20 about my first primary objective, and then we can talk  
21 about the Morrow- --

22 Q. Okay.

23 A. -- -Strawn.

24 The second well, or the northernmost well on the  
25 right-hand side of the cross-section is the Nearburg

1 Production Grasslands "27" well. This well I've  
2 indicated -- you know, put a couple of question marks there  
3 on my correlation. This well has really been a question  
4 mark in my mind for a long time as to whether it really  
5 extends this trend to the north. I want to believe that  
6 that's -- It is stratigraphically equivalent to sand. Is  
7 it truly -- You know, does this set up the trend? I think  
8 that's one of the significant risk factors that we can  
9 discuss more.

10 There's a washout across that zone that affects  
11 log quality, but I also can't help but think that maybe  
12 it's tight, no porosity or permeability. I think Nearburg  
13 -- It would have been something that would have been  
14 tested.

15 Q. Okay, and you were going to talk about the  
16 Morrow?

17 A. Yes, our second primary objective is the Morrow  
18 clastics interval, which are sands deposited on the  
19 erosional surface of the Mississippian-Austin. I've  
20 indicated on the cross-section there -- Mesa is kind of a  
21 local terminology; I think it was originally coined by  
22 Yates for these sands. But the play concept in the Morrow  
23 is that these sands were preferentially deposited  
24 offstructure in Mississippian erosional lows.

25 I will admit there's some interpretation,

1 geologic license, if you will, and, you know, the potential  
2 for additional sand deposition at our proposed location,  
3 but that's going to be the key to making this work. You  
4 know, the risk there is that we don't know if we are in  
5 reservoir communication with the Degas well. We don't know  
6 if those are gas-bearing sands there, based on production  
7 tests -- there are indications logwise that they are -- but  
8 Kukui chose to not complete in those intervals prior to  
9 completion in the Townsend sand.

10 Q. All right. Do you think there's a chance that  
11 you could drill a well at this proposed location that would  
12 not be a commercial success?

13 A. That's a tough question for a geologist, but --  
14 and I must say, in my 20 years of experience I've never  
15 intentionally set out to drill a dry hole. But  
16 unfortunately, in most all situations, especially here,  
17 that's a significant risk.

18 Q. Why?

19 A. Well, the -- just to specifically address it to  
20 these two primary objectives, I think there's risk. And in  
21 fact, are we interpreting correctly, Mr. Baker and myself,  
22 that the sands extend northward from the Kukui well, and  
23 are they of reservoir quality? We know that we're going to  
24 be structurally low to that well. I'm comfortable with --  
25 I'm comfortable that with drilling, even though we are, but

1 that still there is risk related to being in that position  
2 due to possible water-bearing sands.

3 Q. Okay.

4 A. And in the Morrow, the same basic risk. You  
5 know, either no sand developed, similar to the Nearburg  
6 well, or they are wet -- formation water bearing has been  
7 indicated by some of the other wells to the north that  
8 Yates have drilled -- or that they're tight. So  
9 significant risks exist, yes, with drilling this.

10 Q. Now, you've mentioned Mr. Baker's testimony  
11 several times. Does Great Western seek to drill to a  
12 different formation or horizon than that proposed by  
13 Arrington?

14 A. No, we do not.

15 Q. And I assume, since you've referred to it several  
16 times, that you're aware that Mr. Bill Baker offered  
17 petroleum geology testimony and exhibits at the September  
18 5th, 2002, hearing?

19 A. Yes, I am.

20 Q. Have you conducted independent petroleum geology  
21 investigation in this are to determine a prospect?

22 A. Yes, I have.

23 Q. Have you just piggy-backed on the back of  
24 Arrington's efforts in this matter?

25 A. Not at all, Mr. Owen, I've -- Great Western's

1 experience goes back, you know, as indicated before, to the  
2 1970s. My personal experience, I've worked or evaluated  
3 the area or areas adjacent to this back to late 1999.

4 In fact, I would submit that I was the author of  
5 a field study done on the Townsend Morrow Pool that was  
6 published in 1999 in the Roswell Geological Society  
7 publication, that actually includes data on the wells there  
8 kind of in the south half of my Exhibits 10 and 11.

9 Q. When did you start considering this specific  
10 prospect for drilling?

11 A. Well, I think it was early -- late last year, the  
12 -- Mr. Headington had indicated offers that we had had, but  
13 more so we had been -- it was -- a lot of it was concurrent  
14 with monitoring of well activity, primarily to the north.

15 I think, though, what obviously sets it up in the  
16 -- the immediate offset well was just drilled in June of  
17 this year, so I think that moved everybody's urgency or  
18 feeling of urgency about this potential location up a lot.

19 Q. When was that well completed?

20 A. July of this year.

21 Q. Is that the well indicated on Exhibit Number 11  
22 in the northeast quarter of Section 6?

23 A. That's correct.

24 Q. What's the initial production on that well?

25 A. This is verbal communication from geologists

1 involved in the well. It was a million cubic feet per day  
2 plus 40 barrels of condensate, and that was with no  
3 stimulation. And that was a test, short-period test. I do  
4 not have any information to indicate that that well has  
5 been put on production as of yet.

6 Q. Okay. How does your interpretation -- Just very  
7 briefly, how does your interpretation of the geology in  
8 this area differ from that of Mr. Baker?

9 A. Well, you know, we connect up the sand trends a  
10 little differently, but that's a pretty subjective  
11 interpretation. I think the only thing of significance on  
12 our structural interpretations is that Mr. Baker indicates  
13 a north-south trending down to the west fault that comes  
14 through the proposed location and near the two north-  
15 south -- near the north offsetting and the south offsetting  
16 wells. And based on the well control, I do not see  
17 justification for that.

18 Q. Are you aware that Mr. Baker recommended that a  
19 200-percent risk penalty be awarded against the  
20 nonconsenting interest owners if Arrington's Application  
21 for compulsory pooling is granted?

22 A. Yes, I am.

23 Q. Do you agree with Mr. Baker that a 200-percent  
24 penalty should be awarded?

25 A. Yes, I do.

1 Q. In your opinion, will the granting of Great  
2 Western's Application in this case be in the best interests  
3 of conservation or prevention of waste and the protection  
4 of correlative rights?

5 A. Yes, I do.

6 Q. Were Great Western Exhibits 10 through 12  
7 prepared by you or compiled under your direction?

8 A. Yes, they were.

9 MR. OWEN: Mr. Examiner, I move the admission  
10 into evidence of Exhibits 10 through 10.

11 EXAMINER BROOKS: Objection?

12 MR. HALL: No objection.

13 EXAMINER BROOKS: Ten through 12 are admitted.  
14 Pass the witness?

15 MR. OWEN: I pass the witness, Mr. Examiner.

16 EXAMINER BROOKS: Mr. Hall.

17 CROSS-EXAMINATION

18 BY MR. HALL:

19 Q. Again, Mr. Richards, Great Western has no recent  
20 experience drilling Atoka or Morrow wells in the area, do  
21 they?

22 A. If your definition is the last five years, no.

23 Q. I think in prior testimony today, Mr. Headington  
24 was -- the example Great Western is most proud of is the  
25 Lowe well, which as I understand was drilled to south in

1 the late 1970s, correct?

2 A. Yeah, I think the actual date was 1972.

3 Q. Okay. You don't look too old. I assume you were  
4 not with Great Western at that time, weren't working with  
5 them in any way?

6 A. No, in fact, I was probably in junior high at  
7 that time.

8 Q. Do you know if any of the people who contributed  
9 to the drilling of that well, in-house at Great Western  
10 time, engineering, geologists, are they still employed by  
11 Great Western?

12 A. No, they're not.

13 Q. Geologically, then, there is no dispute between  
14 Arrington and Great Western on the well location?

15 A. No, there's not.

16 Q. Did you utilize any 3-D seismic data to confirm  
17 the well location?

18 A. I'm not presenting any 3-D data as evidence in  
19 this matter.

20 Q. My question is, did you utilize any 3-D data?

21 A. Yes.

22 Q. And did that 3-D data confirm Arrington's  
23 location?

24 A. The 3-D interpretation was in agreement with  
25 that.

1 MR. HALL: I have nothing further, Mr. Examiner.

2 EXAMINER BROOKS: Anything further?

3 MR. OWEN: Nothing further, Mr. Examiner.

4 EXAMINER BROOKS: Okay, I have nothing further.  
5 Mr. Catanach, Mr. Jones?

6 MR. JONES: I have one question.

7 EXAMINATION

8 BY MR. JONES:

9 Q. Mr. Richards, did you hear the testimony, the  
10 previous testimony in the case that Arrington presented in  
11 Case 12,922?

12 A. Yes, I did.

13 Q. Okay. Well, you probably remember a question  
14 about the washout in the Atoka?

15 A. Uh-huh.

16 Q. And what would you do, drilling through the  
17 Atoka, if you --

18 A. The -- I don't -- Well, I guess my first comment  
19 is that I don't know what Nearburg did. I don't have -- I  
20 do not have a drilling report to indicate what their water  
21 loss control was there. I mean, that would be a  
22 significant consideration.

23 Two of the primary drilling considerations in  
24 this area are control of wellbore deviation, as well as  
25 water loss control, and that is significant in the Atoka as

1 well as the Morrow. I can only assume that they were not  
2 controlling water loss when they drilled this, because, as  
3 indicated at the bottom of the cross-section, it was a test  
4 that was drilled to the Devonian, drilled to 14,650 feet.

5 Q. Would your drilling contract with your -- Would  
6 it be a day rate or a footage rate?

7 A. I'm not sure which that they would choose. I  
8 mean, that's something that operationally we look at in  
9 which, you know, best arrangements, best price, you know,  
10 best -- but more critical would be control of the well and  
11 protection of the zones.

12 Q. Okay, I should have prefaced that with, I guess,  
13 most of our experience has been that drilling engineers are  
14 extremely big egos, and they rarely listen to geologists,  
15 for -- sometimes for really good reasons, but --

16 A. They'd rather not listen to geologists.

17 Q. Right.

18 A. We've got a good working relationship with our  
19 operational people, and we work together and they're always  
20 seeking our input on matters of protecting potential  
21 productive zones.

22 MR. JONES: Thank you very much. No further  
23 questions.

24 EXAMINER BROOKS: Nothing further, the witness  
25 may step down.

1                   Anything further, Mr. Owen?

2                   MR. OWEN: Yes, Mr. Examiner, I'd like to recall  
3 Mr. Mike Headington for a couple of brief questions.

4                   EXAMINER BROOKS: Very good.

5                   MICHAEL S. HEADINGTON,

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

8                   DIRECT EXAMINATION

9 BY MR. OWEN:

10                  Q. Mr. Headington, is Great Western willing to have  
11 a provision included in any order resulting from this  
12 hearing which would require Great Western to drill this  
13 well before March 1, 2002?

14                  A. Yes, I believe we would be willing to.

15                  Q. Or at least commence drilling before that period  
16 of time?

17                  A. Yes, I think we all respect everybody's  
18 expiration dates, agree to that.

19                  Q. Okay. Does Great Western operate other -- Has  
20 Great Western drilled or operated other hydrocarbon wells  
21 anywhere else in the last five years?

22                  A. We participate or drill. I've been there, you  
23 know, certainly in the last 12 years. We've been averaging  
24 about 50 to 65 wells a year that we either -- We operate  
25 about 50 percent of those, with the other half being not

1 operated. But we've been participating in that many wells  
2 consistently for the last ten years, west Texas,  
3 southeastern New Mexico, northwestern New Mexico, as well  
4 as south Texas.

5 Q. So you have experience in drilling and operating  
6 wells in the last five years?

7 A. Yes, I believe we do, Paul.

8 Q. And you have experience drilling and operating  
9 Atoka-Townsend wells in this immediate area?

10 A. Yes.

11 MR. OWEN: Okay, that's all I have.

12 MR. HALL: Brief cross?

13 EXAMINER BROOKS: All right.

14 CROSS-EXAMINATION

15 BY MR. HALL:

16 Q. Can you point to us a Townsend-Morrow or Atoka  
17 well you've drilled in the last few years?

18 A. We've -- Again, we've participated, you know, as  
19 an active, large, non-operating owner in the section to the  
20 southeast of the proposed location. Great Western owned 36  
21 percent of a couple of those wells, so we were actively  
22 involved with the design and implementation of those wells.

23 I'm not absolutely sure where the Morton-Wolfcamp  
24 tests were taken. Russell, you may know more about that  
25 than I would. He would maybe need to -- But we drilled

1 three miles north of here, we have drilled a couple of  
2 wells, I believe to the Morrow. They were completed in the  
3 Wolfcamp.

4 Q. That Great Western was the drilling --

5 A. Great Western operated, yes, sir.

6 Q. You made reference to the size of Great Western's  
7 participation in some of its nonoperated wells. In this  
8 particular case, which interest owner owns the single  
9 largest interest in the well? Owns?

10 A. I believe the exhibit shows David Arrington do.

11 Q. And would Arrington be responsible for paying the  
12 largest share of well costs in the well that's ultimately  
13 drilled?

14 A. At this point I believe he would, yes.

15 MR. HALL: Nothing further.

16 EXAMINER BROOKS: Mr. Owen, anything further?

17 MR. OWEN: Nothing further, Mr. Examiner.

18 EXAMINER BROOKS: Very good, the witness may  
19 stand down.

20 MR. OWEN: And that concludes my presentation in  
21 this case.

22 EXAMINER BROOKS: Mr. Hall?

23 MR. HALL: Call Mr. Bill Baker to the stand, Mr.  
24 Examiner.

25 EXAMINER BROOKS: Mr. Baker, Mr. Hall.

1 MR. HALL: Mr. Examiner, we've already  
2 established Mr. Baker's credential in these cases. I  
3 assume there's no reason to tender him as an expert again.

4 EXAMINER BROOKS: He is so qualified.

5 BILLY DON BAKER, JR.,

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

8 DIRECT EXAMINATION

9 BY MR. HALL:

10 Q. Mr. Baker, I'd like to discuss with you the  
11 respective diligence exercised by the parties in these  
12 proceedings. If you could tell us, Mr. Baker, explain for  
13 the Hearing Examiner the sequence of events here from start  
14 to finish, getting Arrington's well proposal off the  
15 ground. And if you would refer to Exhibit 12 when you do  
16 that, please, sir.

17 A. Okay, this Exhibit 12 is a chronology of events  
18 in how we got to our respective location, and this was  
19 presented in the September 5th hearing, up to that bullet  
20 point down below that says September 3rd of 2002.

21 And to just briefly go back across it, you know,  
22 we acquired our first interest in here in January of 2001,  
23 through a mutually agreeable deal with Devon. We actually  
24 acquired our Hunt interest in here March, 2001.

25 We staked the initial location in here in April

1 of 2002. We were doing the same thing, as Mr. Richards  
2 alluded to, we were monitoring the well, the Kukui well, in  
3 Section 6. Upon receiving the lots and the information of  
4 that, we re-staked the well on June 21st of 2002.

5 We actually sent out an initial well proposal.  
6 It had a typo in it, so we -- That was on June 18th. We  
7 actually sent the second well proposal with the corrected  
8 typo on June 27th of 2002. We started our archaeology  
9 survey July 1st, and we started receiving our certified  
10 receipts in on July 1st from the other parties in this  
11 section.

12 On July 23rd, Davoil did call Mr. Douglas, if I'm  
13 not mistaken, and request a joint operating agreement be  
14 sent to them. And if I'm not mistaken, that was sent as  
15 well.

16 On August 2nd, we filed our APD to the BLM, and  
17 then on August the 12th we contacted Mr. Hall to start  
18 compulsory pooling proceedings. In August we filed our  
19 Application. And then we showed up on September 5th for  
20 that compulsory pooling hearing.

21 Q. And what happened after that date? Or what  
22 happened on that date?

23 A. Well, actually on that date -- I mean, we got  
24 here and showed everything that we had. And as of that  
25 date we specifically had not received Great Western's

1 drilling proposal for their Federal "34", I believe. It  
2 was when I got back, you know, home on the 6th that we  
3 actually had received, and it was stamped in our office on  
4 that date.

5 Q. And so -- and you're referring -- That's the  
6 first reaction to either the June 18th or June 27th  
7 proposal letters?

8 A. Yes, sir.

9 Q. There had been silence before that time?

10 A. Yes, sir.

11 Q. What else happened on September 5th?

12 A. Well, now, on September 5th, the day we got here,  
13 Great Western actually filed their compulsory pooling  
14 application here that morning. And that was, like I say,  
15 prior to us receiving their well proposal. And then on the  
16 5th we also did get approval from the BLM on that day back  
17 in Midland, that our APD had been approved by the BLM.

18 Let's see, on September 6th, the day after we  
19 showed up here, Mr. Arrington actually drove to Artesia,  
20 New Mexico, and had a face-to-face meeting with Mr. Randy  
21 Patterson in an attempt to solicit Yates's participation in  
22 the well.

23 On the 12th of September I sent an e-mail to Mr.  
24 Patterson confirming the conversation that Mr. Patterson  
25 and Mr. Arrington had had, as we understood it, and how the

1 conversation went, and you know, was looking forward to Mr.  
2 Patterson's support in the well and to respond to us as to  
3 how they were going to participate in the well.

4 On September 16th Randy Patterson did respond to  
5 me by e-mail, stating that they had had the conversation,  
6 that that particular time they had not completely agreed to  
7 participate with Mr. Arrington, they had to pool their  
8 partners.

9 And I did some follow-up e-mails stating that I  
10 certainly understand how it is to deal with partners, but  
11 because of the urgency of this particular hearing, would  
12 they please respond to us as soon as possible?

13 On the 19th we received -- or basically I guess  
14 Great Western sends their notice of pooling.

15 On the 27th I followed up with additional  
16 communication to Mr. Patterson with Yates, because at that  
17 time I had not heard anything back from the original letter  
18 that I sent him on the 12th.

19 On September 27th Tom Brown, Inc., executed the  
20 farmout to David H. Arrington Oil and Gas, Inc.

21 On October the 2nd, Mr. Arrington actually sent  
22 an e-mail to Mr. Patterson at Yates Petroleum saying we  
23 still have not heard from you, we haven't had any response,  
24 would you please respond as to how you're going to  
25 participate or what you're going to do in this particular

1 well.

2           And then on October the 8th, which I guess would  
3 have been that Monday, Monday or Tuesday, Mr. Arrington  
4 actually made a follow-up phone call to Mr. Patterson. At  
5 that time Mr. Patterson was unavailable, he was not in the  
6 office. Mr. Arrington left instructions with his secretary  
7 if he would please call him.

8           And then on October the 9th Mr. Patterson did  
9 call Mr. Arrington back and advised them that they would be  
10 participating and supporting Great Western in their  
11 proposal.

12           Q. Now, let's look at Exhibit 13. What does Exhibit  
13 13 consist of?

14           A. Exhibit 13 is just all -- It's a copy of all the  
15 e-mails and correspondence that I referenced in Number 12  
16 with Mr. Patterson.

17           The very first one was September the 12th. I  
18 also referenced a letter in here that I sent to Randy  
19 Patterson, basically discussing Mr. Arrington and Mr.  
20 Patterson's conversation, as we understood that  
21 conversation.

22           The 16th was Mr. Patterson's communication back  
23 to us, stating that I had indicated we had agreed to  
24 support him. We did not agree on the spot. I told David  
25 that we will consider his request. We have partners to

1 deal with, as you know. Thanks, Randy. RP.

2 On the 17th I responded to Mr. Patterson, Thanks  
3 for your reply about having to deal with partners. Please  
4 try to pool your partners as soon as possible. I made a  
5 comment in there that I know that you and David discussed  
6 the right thing to do in these situations and that the  
7 single largest interest owner should be the operator of the  
8 well. I believe that you would support this position as it  
9 is the right thing to do. And once again thanked him.

10 The 27th, Friday the 27th, I still had not heard  
11 from Mr. Patterson. This is just another letter or e-mail  
12 saying, you know, Have you contacted your partners in the  
13 Huma Huma and determined your position as to supporting  
14 Arrington as operator in the well? This is just another  
15 communication with him.

16 And then the last one is October 2nd, where Mr.  
17 Arrington actually sent Mr. Patterson an e-mail saying, We  
18 haven't heard a decision and what are you going to do? We  
19 have a hearing next week and we still have not heard from  
20 you.

21 That's just the e-mails we sent, correspondence.

22 Q. Now, at the previous hearing Great Western  
23 protested that the percentage interest that we represented  
24 Arrington controlled for the well was not accurate. I  
25 believe we had stated controlled 36 percent or so --

1 A. 32, yes.

2 Q. 32 percent, rather.

3 A. Yes.

4 Q. And they asserted that the correct number is 24  
5 percent. What's the difference there?

6 A. The difference there is the Tom Brown interest.  
7 And at that particular time we had, if I'm not mistaken --  
8 and Mr. Douglas can tell us directly -- I believe we had  
9 got a -- entered into an agreement with Tom Brown if they  
10 would enter into a farmout, if I'm not mistaken, of their  
11 interest to David H. Arrington Oil and Gas, Inc.

12 Q. Since that hearing, have they executed a farmout  
13 agreement?

14 A. Yes, they have. That was September 27th, I  
15 believe, we received the executed document on that.

16 Q. All right. Since you were involved directly in  
17 the efforts to secure the joinder of the uncommitted  
18 interest here, the Yates negotiations, and in view of the  
19 fact that you've participated in numerous compulsory  
20 pooling proceedings before the Division, in your opinion,  
21 did Arrington exercise good faith in seeking to acquire the  
22 participation of the unjoined interests prior to filing its  
23 compulsory pooling Application?

24 A. Yes, sir, I believe so.

25 Q. Mr. Baker, what do you know about Great Western's

1 experience in drilling in the Lovington area?

2 A. Well, I mean, obviously we've known of Great  
3 Western Drilling for a number of years. We have not  
4 particularly crossed paths in southeast New Mexico, as I  
5 have focused principally on Lea County since 1990.

6 But when this began to transform as to an  
7 operator issue, I actually went to a service that we had  
8 and basically had my geotech conduct a search of the wells  
9 that Great Western had drilled in this immediate area,  
10 and --

11 Q. Let's look at Exhibit 14.

12 A. Yes, sir.

13 Q. Can you identify that for the Examiner?

14 A. Yes, sir, this is a copy of that search that I  
15 had her do, and this is from drillinginfo.com. And this is  
16 just a data-gathering service that you can pay a fee for,  
17 and they have data that has been supplied to the Oil  
18 Conservation Division, the Railroad Commission, any type of  
19 public service. And they gather this information, is what  
20 they do, and you can pay a fee to access this data.

21 And what I did is, I simply asked my geotech to  
22 please go back five years and just research the number of  
23 wells, Atoka-Morrow wells, that Great Western Drilling had  
24 operated in Lea and Eddy County.

25 And as you can see by what I colored here in

1 yellow, what this particular survey popped out was  
2 basically two wells.

3 One of them is located near Hobbs, and it appears  
4 to be a 5400-foot -- probably a San Andres test that  
5 appears to have been drilled in June of 2000.

6 And then the second one appears to be a 15,000-  
7 foot test down in southern Lea County. But it also --  
8 these records look like -- it looks like Great Western may  
9 have taken that well over as operator in 1997, and a  
10 company called Trans-Global Oil was probably the operator  
11 in 1994.

12 But basically, it indicates that in the last five  
13 years, which is what this was, from 1997 to date, they had  
14 operated two wells in Lea County.

15 Q. Let me ask you a little bit about  
16 drillinginfo.com. Is it a proprietary database?

17 A. Yes, sir, you have to pay a fee.

18 Q. And I understand the drillinginfo.com data is  
19 derived from official documents of record from public  
20 agencies; is that correct?

21 A. As I understand it, yes, sir.

22 Q. And is the data you derive from  
23 drillinginfo.com's database the type of data that industry  
24 relies in the conduct of its operations?

25 A. Yes, sir, I believe so.

1 Q. Let's look at Exhibit 15.

2 A. Okay, Exhibit 15, is the same thing, but only for  
3 Arrington. And basically what we did is, we just simply  
4 had her go back five years and research all the wells that  
5 were operated by David H. Arrington Oil and Gas, Inc., in  
6 Eddy and Lea County. And basically what this popped out is  
7 what you see on this initial plat.

8 You can see there's a heavy cluster of wells in  
9 and around the Lovington area, and then you see a cluster  
10 of wells kind of in western Eddy. The total number of  
11 wells on here is between 28 to 32 wells. Now, not all  
12 those are Atoka-Morrow. The Atoka-Morrow wells consist of  
13 about 15 wells that we have operated in here. And all of  
14 them, with the exception of one or two, are right in that  
15 Lovington area. So that's what that shows.

16 Q. Do the attachments to Exhibit 15 reflect dry  
17 holes?

18 A. No, sir, that was one of the things that we  
19 noticed on here, because several of our wells that were dry  
20 holes did not pop up on here. So this is only producers.  
21 So I would -- I guess Great Western could have drilled some  
22 wells in the last five years out here that were dry holes  
23 that I would not know about.

24 Q. And by that same token, Arrington could have  
25 drilled additional dry holes that are not --

1           A.    I know of two specific dry holes on here that are  
2           located east of Lovington that were Strawn tests that  
3           aren't located on here.

4           Q.    So within the last five years, the data shows  
5           that Arrington has drilled 32-plus wells to the Morrow  
6           formation in the Lovington area?

7           A.    Yes, sir.  And I should also note, the first page  
8           right after this also shows a lot of the locations that we  
9           currently have approved and ready to go, to drill.  Not all  
10          of those are Atoka-Morrow.  This researches all approved  
11          permits.

12          Q.    All right.  Notwithstanding that the data don't  
13          reflect dry holes, and it appears that the one Great  
14          Western deep well was probably a takeover, does it appear  
15          that Great Western has drilled zero wells in the Lovington  
16          area?

17          A.    In the last five years, yes, sir.

18          Q.    All right.  Today you've had a chance, I take it,  
19          to review or at least listen to testimony about Great  
20          Western's estimated well costs under its AFE?

21          A.    Yes, sir.

22          Q.    And Arrington and Great Western are within  
23          \$30,000 or so on their well costs?

24          A.    Yes, sir.

25          Q.    In your view, can Arrington drill its well in

1 line with the AFE cost estimates under the Great Western  
2 AFE?

3 A. Yes, sir, I'm sure we could.

4 Q. Mr. Baker, if you would, I'd like for you to  
5 explain to the Hearing Examiner the exact procedures that  
6 Arrington employs in-house for starting a well and taking  
7 it to completion, start to finish. How does that work in-  
8 house?

9 A. Well, basically, I mean, you've got your  
10 geologist, your landman, your engineers. The geologist's  
11 job is to use subsurface well control, seismic data, any  
12 information available to him to research an area to come up  
13 with drillable exploration targets.

14 Once the geologist has identified a target, then  
15 you contact the landman, you generally start, you know,  
16 doing an acreage search and trying to attempt to acquire  
17 acreage.

18 Once we have acquired acreage in there, in a  
19 prospective area, we actually propose a location. And it's  
20 at that time that we really start allocating dollars to the  
21 project. At that point you continue to try to secure all  
22 the leases in the prospective area, as many as possible, up  
23 until a point in which you feel like, okay, now I have all  
24 the available acreage that I can lease or farm in or  
25 something like that, and then you make a well proposal to a

1 designated target, whatever that target may be.

2           You actually start sending out well proposals,  
3 you contact the other potential working interest owners in  
4 that particular unit.

5           We actually go through the process at that time  
6 of going ahead and staking a well. If it's on federal  
7 acreage, you obviously have to start an archaeological  
8 study, and that archaeological study can take anywhere from  
9 30 to 60 days. And you file -- once you get that arch.  
10 site study in -- excuse me, the arch. site study actually  
11 takes about a week to ten days; it's the BLM application  
12 that actually takes 45 to 60 days, is what it does.

13           But once you get your arch. site survey back in,  
14 you file that with the BLM along with the application for a  
15 permit. They go through all their proceedings, and then if  
16 everything checks out they will approve your location. And  
17 as I understand it, with that they send it automatically to  
18 the state. And the state, it's an automatic -- once the  
19 BLM approves it, it's an approved location, then the state  
20 automatically approves it, and you get your APD.

21           And from that point, then we move to try to clean  
22 up your negotiations with your other working interest  
23 partners in there or begin force pooling proceedings,  
24 whatever it takes at that point to move the well towards  
25 getting a spud date put together and commencing the

1 drilling of that well.

2           Once that procedure has taken place, which  
3 generally can take 60 to 90 days minimum to go through a  
4 pooling proceeding, you know, with your good faith  
5 negotiation time of 30 days to six weeks -- different law  
6 firms suggest different criteria -- and then you've got  
7 your notification period and then you've got your hearing,  
8 and then generally you have 30 days of time, minimum,  
9 before an order is issued.

10           And then after that, depending on rig schedule,  
11 budget, everything else, you move forward with the drilling  
12 of the well.

13           Q.    So all told, from start to finish you're talking  
14 how much time? Six months or more?

15           A.    About six months, I'd say, is probably a good  
16 average time.

17           Q.    And you started your efforts when, in January?

18           A.    In January of this year.

19           Q.    And Great Western didn't start their efforts  
20 until September, correct?

21           A.    As far as formal well proposals, yes, sir.

22           Q.    Well, let me ask you, what is the surface  
23 ownership in Section 34?

24           A.    It's my understanding that the surface ownership  
25 is owned by Mr. Dan Fields out here, and we have an

1 operations geologist, Mr. Danny Ledford, who does our APDs,  
2 our well site, and I believe we have already negotiated an  
3 agreement with Mr. Fields on this specific drill site.

4 Q. And did you get a title takeoff or a title  
5 opinion?

6 A. Yes, sir. That doesn't fall under my  
7 authorization, but yes sir, as I understand it, we already  
8 have a title opinion, approved title opinion, of this area.

9 Q. Okay. Well, let's go through this list from the  
10 testimony we've heard from Great Western today. Tell me if  
11 you agree or not, but it doesn't appear that they  
12 identified this prospect, correct?

13 A. Not until probably Kukui will, yes, sir.

14 Q. All right. And they've had that lease for how  
15 many years?

16 A. I believe Mr. Douglas in our takeoff says 1973.

17 Q. So nearly 30 years?

18 A. Yes, sir.

19 Q. You heard no testimony with respect to whether  
20 they obtained a title opinion?

21 A. I haven't heard any.

22 Q. Okay. Their testimony verified that they had not  
23 done a field inspection? I believe that's correct?

24 A. Correct, I think that Mr. Headington suggested  
25 they had contacted the BLM and talked about the transfer of

1 our information or our APD, if it should be.

2 Q. And Great Western did not undertake to obtain an  
3 archaeological survey for the acreage?

4 A. Not that I've heard, no, sir.

5 Q. Great Western didn't even know who the surface  
6 owner was; is that correct?

7 A. I don't believe they testified that they did.

8 Q. Isn't it correct to say that they testified that  
9 they had not entered into a surface owner agreement?

10 A. Yes, sir.

11 Q. And given your understanding that 30 days is the  
12 minimum time you can file a compulsory pooling application  
13 after having submitted a well proposal, they didn't do that  
14 either?

15 A. No, sir.

16 Q. Okay. Let's look at your Exhibit 16 briefly. I  
17 have that in front of me. What is that?

18 A. That's just our approved APD that was completed  
19 by the BLM and with an effective date of September 9th of  
20 '02.

21 Q. Now, explain to us, when did Arrington actually  
22 commit the capital to drill this well?

23 A. That probably would have been in January of 2002.

24 Q. Mr. Baker, if you would refer to what's been  
25 marked as Exhibit 18 -- and I recognize, Mr. Examiner, the

1 number here -- what is Exhibit 18?

2 A. I believe this is a copy of our understanding of  
3 the working interest in the east half of Section 34 that we  
4 filed at the September 5th hearing. And basically this  
5 just outlines the working interest that we had an  
6 understanding of in that unit at that particular time.

7 But with the exception of this one right here, we  
8 have taken our proposed AFE of \$1,524,901, and then we have  
9 actually taken that working interest and attributed a well  
10 cost, what each individual well cost is going to be to  
11 that.

12 Q. And again, which single owner is paying the  
13 largest share of costs to drill this well?

14 A. Well, right now, once again, the largest single  
15 owner is Mr. Arrington with 32 -- a little over 32 percent.  
16 And he's going to have to spend about \$488,000 on this  
17 particular well.

18 Q. And how much larger is Mr. Arrington's share,  
19 compared to Great Western's share?

20 A. It would be roughly twice.

21 Q. And we've heard no testimony here today, have we,  
22 with respect to when Great Western has committed their  
23 capital to the well?

24 A. No, sir, not that I recall.

25 MR. HALL: Mr. Examiner, that concludes my direct

1 of this witness.

2 I would move the admission of Exhibits 12, 13,  
3 14, 15, 16 and 18.

4 EXAMINER BROOKS: Objection?

5 MR. OWEN: No objection.

6 EXAMINER BROOKS: Twelve through 16 and 18 are  
7 admitted.

8 Cross-examination?

9 MR. OWEN: Yes.

10 CROSS-EXAMINATION

11 BY MR. OWEN:

12 Q. Mr. Baker, I want you to turn to Arrington  
13 Exhibit Number 13.

14 A. Yes, sir.

15 Q. That reflects negotiations that you had with  
16 Randy Patterson of Yates; is that right?

17 A. Yes, sir.

18 Q. You had quite a few correspondence and e-mails  
19 back and forth?

20 A. Yes, sir.

21 Q. Who is Yates supporting in this case?

22 A. Great Western.

23 Q. Great Western?

24 A. Yes, sir.

25 Q. Did they agree to support Arrington?

1 A. No, sir.

2 Q. I don't see any communications here with the  
3 group represented by Colin McMillan. Do you have any of  
4 those?

5 A. It was our understanding that Yates Petroleum was  
6 representing their group, that's their group that they were  
7 representing, their partners.

8 Q. Did you attempt to contact Mr. McMillan or any of  
9 the companies represented by his interests?

10 A. No, sir. We felt like Yates Petroleum and Randy  
11 Patterson were speaking for them.

12 Q. And I don't -- In fact, Yates supports Great  
13 Western again, right?

14 A. Yes, sir.

15 Q. I don't see any negotiations in this packet with  
16 Great Western. Do you have any of those?

17 A. No, sir. We felt like with their competing  
18 pooling Application that they wanted to operate this well,  
19 and there really wasn't a need to be trying to get them to  
20 participate with us when they were filing a competing  
21 pooling application.

22 Q. And the only other negotiations you've had with  
23 Great Western is sending out your well proposal --

24 A. Yes, sir.

25 Q. -- is that right?

1 A. Correct.

2 Q. And the only negotiations you've had from Great  
3 Western is the receipt of their proposal; is that right?

4 A. Correct, yes, sir.

5 Q. And the only party that you've actually  
6 negotiated with is Yates?

7 A. Yes.

8 Q. And Yates ended up supporting Great Western?

9 A. Correct.

10 Q. Yates is committed to a JOA; is that right?

11 A. As I understand it.

12 Q. And that JOA appoints Great Western as the  
13 operator?

14 A. As was testified, I believe so.

15 Q. Okay. You stated that you received a farmout  
16 from Tom Brown, Inc.; is that correct?

17 A. Yes, sir.

18 Q. Have you recorded that instrument?

19 A. I do not know, sir. That's not under my  
20 direction and we'd have to defer to Mr. Douglas as to that.

21 Q. Okay. You presented petroleum geology exhibits  
22 at the September 5th hearing, correct?

23 A. Yes, sir.

24 Q. Did you look at 3-D seismic in the development of  
25 this prospect?

1 A. Yes, sir, we have 3-D seismic.

2 Q. Is that proprietary?

3 A. Yes, sir, it is.

4 Q. You paid money to get that?

5 A. Yes, sir, we did.

6 Q. Probably under a similar arrangement as Great  
7 Western; is that right?

8 A. I do not know.

9 Q. How many wells, deep gas wells, has Arrington  
10 drilled in the last five years, in the immediate --

11 A. Approximately 15.

12 Q. How many times has Arrington failed to reach  
13 voluntary agreement with the interest owners in those wells  
14 and proceeded to a compulsory pooling hearing?

15 A. Not many. Maybe two or three, four.

16 Q. So if we looked at the Division's orders over the  
17 last four or five years, there will only be two or three  
18 compulsory pooling hearings involving Arrington?

19 A. No, sir, I mean we've had numerous hearings, but  
20 we've always ended up coming to an agreement.

21 Q. You've always ended up -- Have you actually gone  
22 through and gotten an order in any case?

23 A. Oh, yes, sir.

24 Q. I want you to look at Arrington Exhibit Number  
25 18. You've got a lot of percentages represented there.

1 What percent out of that 100 percent represented at the  
2 bottom has committed to a JOA appointing Arrington as an  
3 operator?

4 A. 32 percent.

5 Q. What percent has committed to a JOA naming Great  
6 Western as an operator?

7 A. I guess the remaining 67-point-something.

8 Q. Now, you indicated that 32 percent has agreed to  
9 a JOA with Arrington as an operator?

10 A. Well, Mr. Arrington and his interest, yeah, or  
11 it's just us.

12 Q. Do you have a JOA in place?

13 A. I don't know. I mean, we have a JOA, but we  
14 don't have any other partners.

15 Q. So it's simply Arrington?

16 A. Correct.

17 Q. There is no JOA?

18 A. Correct.

19 Q. If Arrington is the operator of this well, it  
20 will be under the guise of a compulsory pooling order; is  
21 that right?

22 A. Correct.

23 Q. Have you seen compulsory pooling orders from this  
24 Division in the past?

25 A. Yes, sir.

1 Q. Do they treat subsequent operations?

2 A. I don't recall.

3 Q. Do they treat plugging?

4 A. I don't recall.

5 Q. Do they treat liability between the parties?

6 A. I don't recall if they do or not.

7 Q. Do they treat defaults between the parties?

8 A. I don't recall.

9 Q. Do they treat lawsuits between the parties?

10 A. I don't believe so.

11 Q. Do they treat accounting?

12 A. I don't believe so.

13 Q. What percentage of this 100 percent represented  
14 on Exhibit Number 18 is committed to a JOA naming Great  
15 Western as an operator?

16 MR. HALL: Objection, asked and answered.

17 EXAMINER BROOKS: Sustained.

18 Q. (By Mr. Owen) It's about 67 percent, isn't it?

19 A. Yes, sir, as I understand it.

20 Q. And that JOA is -- Have you seen that JOA?

21 A. No, sir, I have not.

22 Q. I'm handing you Great Western Exhibit Number 4.  
23 Can you tell me what that is?

24 A. It looks like a model form operating agreement,  
25 it's Form 610-1989 operating agreement.

1 Q. Does that name Great Western as the operator?

2 A. Well, the operator on the first page says Great  
3 Western, yes, sir.

4 Q. Are you familiar with this form operating  
5 agreement?

6 A. No, sir, I'm not qualified as far as operating  
7 agreements. You can let Mr. Douglas --

8 Q. Mr. Douglas is?

9 A. Right.

10 Q. All right. Now, when you were discussing your  
11 negotiations with the parties, you indicated that you sent  
12 out a well proposal to Great Western; is that right?

13 A. Yes, sir.

14 Q. Mr. Hall indicated there had been silence from  
15 that time; is that right?

16 A. Yes, sir.

17 Q. Now, Great Western has sent out a well proposal  
18 to you; is that right?

19 A. (Nods)

20 Q. And have they heard anything from you about that  
21 proposal?

22 A. Not from me specifically, no, sir.

23 Q. So there's been silence since that time?

24 A. Yes, sir.

25 MR. OWEN: Okay. That's all I have, Mr.

1 Examiner.

2 EXAMINER BROOKS: Anything further?

3 MR. HALL: Brief redirect, yes, Mr. Examiner.

4 REDIRECT EXAMINATION

5 BY MR. HALL:

6 Q. Mr. Baker, let's look at Exhibit 17. Can you  
7 identify that for the record, please, sir?

8 A. I believe this is the farmout agreement from Tom  
9 Brown, Inc., giving us the farmout interest in Section 34  
10 of 15-34, and also the acreage in Section 33 and then also  
11 Section 1 of 16-34.

12 Q. Does Exhibit 17 indicate the firm commitment of  
13 Tom Brown to participate in the Humahumanukinukiwapa- --

14 A. -- -opawaha.

15 Q. -- -nowa 34.1 well?

16 A. I believe it just farms out their interest to  
17 David H. Arrington Oil and Gas, Inc.

18 Q. Does the farmout explain why there's no need for  
19 a JOA between Arrington and Tom Brown?

20 A. I don't know, sir. I haven't completely read  
21 through this.

22 Q. If Tom Brown has farmed out its acreage in  
23 Section 34 to you, there would be no need for an operating  
24 agreement between Tom Brown --

25 A. Oh, absolutely.

1           Q.    Mr. Owen asked you about Great Western's joint  
2 operating agreement. Was that ever provided to you before  
3 today's hearing?

4           A.    Not to the best of my knowledge, no, sir.

5           MR. HALL: Okay, nothing further.

6           Move the admission of Exhibit 17.

7           EXAMINER BROOKS: Objection?

8           MR. OWEN: No objection.

9           EXAMINER BROOKS: 17 is admitted. Anything  
10 further of this witness?

11          MR. OWEN: I have nothing further.

12          EXAMINER BROOKS: Witness may stand down.

13          Mr. Hall?

14          MR. HALL: That concludes our testimony, Mr.  
15 Examiner.

16          EXAMINER BROOKS: Are you offering any further  
17 testimony?

18          MR. OWEN: No, Mr. Examiner.

19          EXAMINER BROOKS: Okay, do you wish to make  
20 closing statements?

21          MR. OWEN: Yes, Mr. Examiner. If we might have  
22 about five minutes, I'd like to consult with Yates'  
23 attorney about Yates' position in this case.

24          EXAMINER BROOKS: Okay, we'll take a brief  
25 recess. We'll take a recess not to exceed ten minutes.

1 (Thereupon, a recess was taken at 2:50 p.m.)

2 (The following proceedings had at 3:00 p.m.)

3 EXAMINER BROOKS: Okay, Mr. Catanach indicated  
4 that he was not going to attend the closing arguments, so I  
5 think we can go ahead.

6 MR. OWEN: Thank you, Mr. Examiner.

7 Mr. Examiner, you have in front of you competing  
8 force pooling Applications. That is the subject line of  
9 the April 5th, 1995, memorandum from Mr. Catanach to Mr.  
10 LeMay. That memorandum sets forth very specific procedures  
11 or very specific factors for the Division to consider in  
12 considering competing force pooling applications.

13 Mr. Hall has alluded to a requirement that a well  
14 proposal be made a certain number of days before a  
15 compulsory pooling application is filed. There is no such  
16 requirement in law or in fact. In fact, the only  
17 requirement before you file the force pooling application,  
18 as Mr. Feldewert so ably pointed out, is that you own an  
19 interest in the subject area, and you have not reached  
20 agreement with anybody else. That situation exists. The  
21 statutory prerequisites, the regulatory prerequisites, have  
22 been met for Great Western's application.

23 The specific factors -- it was Exhibit Number 9  
24 to Great Western's case, Mr. Examiner.

25 EXAMINER BROOKS: Okay, yeah, go ahead.

1           MR. OWEN: The first specific factor which the  
2 Division should consider is any information related to  
3 prehearing negotiations conducted between the parties.

4           Before the September 5th hearing, Great Western  
5 proposed a continuance of Arrington's case so that the  
6 parties could negotiate. Arrington, citing the lease  
7 expiration -- well, its term assignment expiration,  
8 declined to continue and opted to put on its case at that  
9 time. That forced Great Western's hand in proposing the  
10 well and in filing its force pooling Application.

11           Arrington says that it has negotiated with the  
12 other parties. In reality, the other parties have never  
13 been given an opportunity to make an informed decision  
14 about whether to join Arrington in its proposal. Arrington  
15 has never provided a proposed JOA to any of the other  
16 parties. The parties don't know what terms Arrington  
17 proposes to use in operating the acreage.

18           In contrast, Great Western has proposed the well,  
19 has provided both the estimated costs and the terms  
20 operation, in the AFE and the JOA, and in fact has secured  
21 the agreement of 13 other parties.

22           I submit, Mr. Examiner, that the only party that  
23 has negotiated before this hearing is Great Western. The  
24 evidence of that negotiation is the execution of a joint  
25 operating agreement and AFE by 13 other parties, 13 other

1 interest owners in this acreage. The second factor -- That  
2 factor is strongly in favor of Great Western in this case,  
3 Mr. Examiner.

4 The second factor is the willingness of the  
5 operator to negotiate a voluntary agreement. Mr. Examiner,  
6 that factor is very simply satisfied by Great Western.  
7 Great Western has, in fact, negotiated voluntary agreement  
8 with 13 other parties. Arrington has negotiated voluntary  
9 agreement with no one. Tom Brown, Inc., has executed a  
10 farmout assignment. That's not an agreement to join  
11 Arrington's proposed operation of the well, that's a  
12 conveyance.

13 Arrington has negotiated and reached voluntary  
14 agreement with zero other parties.

15 The third factor in the April 5th, 1995, memo is  
16 the interest ownership within the particular spacing unit  
17 being sought. Great Western represents 68 percent of that  
18 interest, 67.9689. Sixty-eight percent of that interest.  
19 We're not talking about Great Western's 16-percent interest  
20 ownership versus Arrington's 32 percent. In fact, all of  
21 the other interest owners support Great Western's operation  
22 of this well. Not one of them support Arrington's.  
23 Arrington only represents 32 percent of the interest.  
24 Great Western represents 67. This factor is strongly in  
25 favor of Great Western.

1           The fourth factor is the geologic evidence and  
2 testimony as it relates to the proposed well location.  
3 That's not at issue in this case. Both of the parties  
4 agree that the geology supports the drilling of a well  
5 there. Both of the parties agree, as another factor, that  
6 the risk penalty should be 200 percent.

7           The fifth factor is information regarding the  
8 dates the prospect was developed, proposed, et cetera.  
9 Arrington was first in line. Arrington submitted a well  
10 proposal and filed its Application for compulsory pooling  
11 before Great Western did. That doesn't mean it prevails in  
12 this case. That's one factor.

13           In fact, Mr. Examiner, Great Western hasn't been  
14 sitting on its hands for two years, or since 1972 when it  
15 acquired its interest. It's been considering this prospect  
16 since early 2002, and it proposed its well on September  
17 5th, 2002.

18           The next factor is the overhead rates for  
19 supervision. Although Great Western's rates are slightly  
20 lower, I think that issue is a wash. It's not really an  
21 issue in this case.

22           The next one is the proposed risk penalties.  
23 Again, I indicated the parties don't disagree that a 200-  
24 percent risk penalty should be assessed in this case  
25 against the nonconsenting working interest owners.

1           Next factor is significant difference in the  
2 AFEs, the well costs. Again, Great Western's are slightly  
3 lower but not significantly, and that factor is a wash.  
4 That's a factor that I don't think comes into play in this  
5 case.

6           Final factor, Mr. Examiner, is other information  
7 deemed pertinent by the Division Examiner. You're going to  
8 hear a lot from Mr. Hall, I'm sure, about the huge number  
9 of wells that Arrington has drilled in the immediate area  
10 in the last five years. You've heard a lot of testimony  
11 about that in this hearing.

12           Mr. Examiner, Great Western drilled the initial  
13 well in this prospect in 1972 and has operated it  
14 continuously since that time. It has drilled and operated  
15 numerous wells across the country. We're not talking about  
16 a non-operating interest owner who sits in an office and  
17 signs or declines AFEs. We're talking about a significant  
18 company that operates a significant number of wells, not  
19 only in this immediate area, but across the country.

20           I think the most important factor for you,  
21 though, to consider is the fact that the majority of the  
22 interest owners in the well, 14 owners, representing 67  
23 percent, or 68 percent, support Great Western's  
24 Application. Thirty-two percent support Arrington. Only  
25 one party supports Arrington, and that's Arrington himself.

1 All of the interest owners who support Great  
2 Western have formally and voluntarily committed to the well  
3 through execution of the JOA naming Great Western as  
4 operator. That JOA covers a very broad array of  
5 arrangements between the parties with respect not only to  
6 the drilling of the well but subsequent development,  
7 accounting, lawsuits between the parties, default.

8 Mr. Examiner, the parties -- a compulsory pooling  
9 order does not treat the current drilling operations in  
10 nearly the same detail as the parties have already agreed  
11 to Great Western's operation, and it doesn't even touch  
12 future development. It doesn't touch accounting, which, as  
13 Mr. Hall went into with my client, in fact, is a  
14 significant concern with Arrington as the operator.

15 You're faced with the choice of endorsing 14  
16 interest owners who represent 68 percent of the interest  
17 and have voluntarily committed to a JOA, or endorsing a  
18 minority interest owner and forcing the majority to  
19 unwillingly an operator expressly considered and rejected.  
20 I submit you should choose the former.

21 This Division's statutory duties are to prevent  
22 waste and protect correlative rights. By joining Great  
23 Western's proposal and executing Great Western's JOA, the  
24 majority of the interest owners have indicated their  
25 agreement that Great Western is the party better suited to

1 preventing waste and protecting correlative rights. The  
2 Division should recognize that endorsement.

3 Mr. Examiner, there are nine factors. Four are  
4 not at issue: the geology, the overhead rates, proposed  
5 risk penalties and the significant difference in the AFEs.

6 One is in favor of Arrington: He was in line  
7 first.

8 Four are in favor of Great Western:

9 They've conducted extensive negotiations with the  
10 other parties to this case. Arrington has never even  
11 provided a JOA to anybody else.

12 Great Western has, in fact, reached agreement  
13 with 13 other parties. Arrington has reached agreement  
14 with no one.

15 The interest ownership, Great Western is  
16 representing 68 percent of the interest ownership in this  
17 case. Arrington is representing 32 percent.

18 The issue is not only the interest ownership but  
19 how that interest ownership has been committed. This has  
20 been committed through a JOA. Mr. Examiner, from the other  
21 information deemed relevant by the Examiner, that  
22 information strongly is in favor of Great Western.

23 There are five factors from the April 5th, 1995,  
24 memo that are relevant in this case. Great Western  
25 prevails on four of those, 80 percent. Arrington prevails

1 on, maybe, one.

2 The evidence in this case overwhelmingly favors  
3 Great Western. Both parties seek the pooling of the lands  
4 and dedication to a well at a specified location. Both  
5 parties seek 200-percent penalty against the nonconsenting  
6 working interest owners. Great Western represents a  
7 majority, Great Western prevails on a majority of the  
8 factors.

9 Mr. Examiner, this case really comes down to one  
10 central point. We can talk about these factors and the  
11 weighing of these factors back and forth. We can talk  
12 about Arrington's extensive experience in drilling in the  
13 last five years. I'm happy that they're so proud of that  
14 experience. We can talk about Great Western's experience.  
15 We can talk about all those things all day. But there's  
16 one central point. There's disagreement about all those  
17 other issues. There is no disagreement about the bottom  
18 line: No one wants Arrington as the operator of this well.

19 I ask that you enter an order appointing Great  
20 Western the operator of this well.

21 Thank you.

22 EXAMINER BROOKS: Mr. Hall?

23 MR. HALL: Mr. Examiner, I previously made  
24 comments on the merits of Arrington's Application at the  
25 September 5th hearing. Let me make some comments, very

1 brief comments, about Great Western's Application.

2           What you have before you is a party who comes  
3 with one half of the interest of Arrington, which will bear  
4 only one half of the costs of the well, an operator who has  
5 only a fraction of the experience drilling -- actual  
6 drilling of Morrow and Atoka wells in southeastern New  
7 Mexico, coming to you with a last-minute -- not a last-  
8 minute but an untimely well proposal, after having sat on  
9 an undeveloped lease for 30 years. Think about that. That  
10 is significant.

11           The significance that Great Western offered no  
12 opinion testimony at all on their good-faith negotiations  
13 is not lost on me, and it is not lost on the Hearing  
14 Examiner, I suspect. They were afraid to get into that  
15 issue. Mr. Owen was avoiding having his land witness  
16 testify about the good-faith negotiations entered into by  
17 Great Western, because there were none. He could not opine  
18 -- give you the required testimony that Great Western  
19 exercise good faith, which is a statutory and order-  
20 precedent prerequisite for the entry of a compulsory  
21 pooling order by this agency.

22           This case is not significant for geological  
23 issues. There are no disputes over geology.

24           It's not significant for the well location.  
25 Everybody agrees that the well location is appropriate.

1 Great Western agrees with Arrington's established location.

2 And it is not significant for any well-cost  
3 issues. The parties are a mere \$30,000 apart on their  
4 estimates for well costs.

5 What I think this case is significant for, and  
6 what I wish to address directly with you, Mr. Examiner, is  
7 significant for its departure from established practice.

8 Earlier, I had made a motion to dismiss the Great  
9 Western Application because Great Western's Application was  
10 untimely, and it violated what is known as the 30-day Rule.  
11 Great Western can claim all it wants that there is no 30-  
12 day Rule. Great Western is flat-out wrong about that. Let  
13 me give you some precedent that shows that.

14 Mr. Examiner, I have practiced before this  
15 agency, really, for portions of two centuries, believe it  
16 or not. That's true. There is not a practitioner in this  
17 room, including Mr. Owen, who has not advised his clients  
18 that the Division will not accept a compulsory pooling  
19 Application any sooner than 30 days after having proposed a  
20 well. If you come in with an Application and you haven't  
21 proposed a well more than 30 days out, you will be tossed  
22 out. That is established practice.

23 Let's look at Order Number R-10,977. It's the  
24 first order I've given you in the packet. It's from the  
25 Redstone-Fasken case, entered not too long ago, 1998.

1           Here, look at what I've highlighted on page 2:  
2 "Fasken filed a motion to dismiss..." because "On January  
3 26th, 1998...Redstone... filed a compulsory pooling  
4 application."

5           Further on, on page 2: "b) Redstone did not  
6 formally propose the drilling of its well to the various  
7 interest owners in Section 12 until February 9, 1998."

8           Next highlighted entry: "Case No. 11,927 should  
9 therefore be dismissed."

10           That's the law around here, Mr. Examiner. It is  
11 the established practice, and it is what industry has  
12 relied on, it is what all practitioners have relied on for  
13 literally decades. The fact that there is no written rule  
14 or regulation or order or memorandum stating such is  
15 inconsequential. It is accepted, recognized practice.

16           Under the Supreme Court authority of *General*  
17 *Electric Company vs. Environmental Protection Agency* --  
18 I'll provide you with a citation later on -- that case  
19 establishes that where there is an established, recognized  
20 practice, consistently relied on by practitioners, by  
21 industry members, it has the weight of law, whether or not  
22 it is a written rule or regulation. And where an agency  
23 deviates from an established practice, that is serious.  
24 The *GE* case found that that is tantamount to a rule-making  
25 in itself, and it violates due process.

1           So what do we do in a circumstance like this  
2 where an Applicant comes in, like Arrington, follows the  
3 rules in good faith, meets all the recognized time-line  
4 requirements, and then all of a sudden sees its application  
5 bumped back for 30 days because somebody comes in with an  
6 application without having first proposed a well. It's  
7 threatened by that, particularly when it has a lease-  
8 expiration problem.

9           Arrington has heard the promises from Great  
10 Western that it will drill its well in time to meet  
11 Arrington's lease-expiration problems, but that's nothing  
12 but air at this point. It's a mere promise, certainly not  
13 supported by any experience that we've seen. And Arrington  
14 is quite worried.

15           I tell you what -- The situation it puts  
16 applicants in, and practitioners, is, we don't know what to  
17 tell our clients. Mr. Feldewert's comments were right on  
18 the money in that respect. What do we do now? How do we  
19 proceed?

20           Because Arrington's interests are so directly  
21 threatened by additional delays, my recommendation to my  
22 client will be, look, I don't know that we can afford to go  
23 *de novo* if we lose this case and the Great Western  
24 Application is not dismissed. We may have to do something  
25 else. It may be incumbent upon us to seek a writ of

1 prohibition superintending control to get this issue  
2 resolved and the 30-day rule recognized. That would be my  
3 advice to my client.

4 Now, let's look at some additional Division  
5 protocol and practice. What does the Division do in cases  
6 of competing pooling applications?

7 If you will look at the second paper in the  
8 packet I've just given you -- again it's the April 5th,  
9 1995, memo -- again, it outlines relevant, pertinent  
10 evidence, and irrelevant and unnecessary evidence. I had  
11 Mr. Headington read into the record that it is irrelevant  
12 and unnecessary to take evidence on previous disagreements.

13 So the fact that Great Western failed to pay its  
14 joint interest billings on a Texas well is of absolutely no  
15 consequence in this hearing. It has no bearing on  
16 Arrington's ability to operate a well. This Division knows  
17 Arrington's experience already. That is a non-issue in  
18 this case. Arrington is a competent, well recognized  
19 operator.

20 What else does the Division do when there's  
21 competing compulsory pooling applications? Here's some  
22 more guidance for you. If you'd look at the third  
23 document, it is Order Number 10,922. It's the order issued  
24 in 1997 in a fight between Mewbourne and Devon. There you  
25 had two operators, virtually identical facts to this case,

1 both proposing an east-half well. There was no dispute  
2 about geology, no dispute about well costs, really. It was  
3 heads-up, an even deal. What does the Division do? Here's  
4 the answer.

5           If you look at page 7 of Order Number R-10,922,  
6 finding paragraph (21), I think this is the rule you ought  
7 to apply here. It says, finding (21) says: "In the  
8 absence of other compelling factors, the operatorship of  
9 the S/2 of Section 15 should be awarded to the operator who  
10 originally developed the Strawn prospect, developed the  
11 geologic data necessary to determine the optimum well  
12 location, and initially..." *initially* "...initially sought  
13 to obtain farmout or voluntary agreement to drill its  
14 well."

15           That's Arrington in this case, it is not Great  
16 Western.

17           Finally, I think the evidence in the case is  
18 clear, the Division must consider the relative diligence of  
19 the parties in getting this acreage developed and a well  
20 drilled. Here on the one hand, like I say, you have one  
21 party with a 30-year lease that it's done nothing to  
22 develop. Somebody else did the geology, somebody else took  
23 the initiative. They were totally reactive throughout.

24           Not so with Arrington. Arrington acquired his  
25 interest in January, 2001, and then he got on it, he

1 committed capital, he developed geology, he developed  
2 seismic, he started trying to get joinder in the well, he  
3 was getting his permitting with the BLM, got his title work  
4 done, got a surface agreement in the bag. He went through  
5 the checklist and completed his items. Great Western can't  
6 say that.

7           Why is diligence important? It is a prerequisite  
8 to the entry of a pooling case, and I would refer you to  
9 Order Number R-11,663, a Commission order issued just last  
10 year, and that was a fight between D.J. Simmons and  
11 McElvain Oil and Gas, and if you would refer to finding  
12 paragraph 24 of the order, it says: "It has long been the  
13 practice of the Commission to require parties to show good  
14 faith and diligence in proposing a well to other interest  
15 owners in the unit as a prerequisite of a compulsory  
16 pooling order." It cites Law Review authority for that.  
17 It also says that the Oil and Gas Act may require such  
18 efforts.

19           There is no express requirement in the statute or  
20 the Division's Rules that you do so, but the Division and  
21 the Commission require it nevertheless. And here's another  
22 example where an established practice, an accepted  
23 practice, is recognized and applied by the agency in the  
24 interpretation of its own authority.

25           Finally, Mr. Examiner, the Division cannot pass,

1 must not pass on the opportunity to see an operator name a  
2 well the Humahumanukinukiopawaha "34" Number 1. That is a  
3 very compelling reason to deny Great Western's Application  
4 and grant Arrington's.

5 (Laughter)

6 MR. HALL: That's all I have, Mr. Examiner.

7 MR. OWEN: Mr. Examiner --

8 EXAMINER BROOKS: Well, we've managed to deal  
9 with the Glass-Eyed Midge and I've forgotten what all else,  
10 but we're very familiar with Mr. Arrington's originality.

11 MR. OWEN: Mr. Examiner --

12 EXAMINER BROOKS: Before -- I have one  
13 question --

14 MR. HALL: Yes, sir.

15 EXAMINER BROOKS: -- Mr. Hall. Is your  
16 understanding of the 30-day rule that you allude to -- is  
17 it your understanding that the proposal must precede the  
18 filing of the compulsory pooling proceeding by 30 days? Is  
19 that --

20 MR. HALL: At least.

21 EXAMINER BROOKS: -- what you're saying, is  
22 that -- Well, doesn't that create a serious problem for  
23 somebody who just finds -- gets served with a compulsory  
24 pooling application, and then they don't have time to act  
25 before the hearing on that compulsory pooling application,

1 and they have to file their own application in order to get  
2 a continuance on that hearing.

3 MR. HALL: Well --

4 EXAMINER BROOKS: Maybe this is an argument that  
5 should not be -- that I should not raise in the context of  
6 adjudicating a case, but something that should be taken up  
7 in the proposed rule-making proceeding, but --

8 MR. HALL: Well, I think that's right, but I  
9 think you can apply that analysis here. And I think that  
10 begs the question, what is the diligence of the parties?  
11 The other party was free for 30 years to promote its  
12 acreage, develop a well, file a compulsory pooling  
13 application at any time since 1973, I understand. Where  
14 was it?

15 EXAMINER BROOKS: Rebuttal?

16 MR. OWEN: Briefly.

17 Mr. Examiner, I'm glad that Mr. Hall brought you  
18 these cases from the Division. I'm glad that he raised  
19 this issue.

20 I'd like you to take a look at the first case  
21 that he has on there, Case Number 11,927, Order Number  
22 R-10,977. In that case the reason it was dismissed is  
23 because the proposal was made after the application was  
24 filed.

25 That's not the case in this case. In that case

1 there was no JOA entered by the parties, entered by 67  
2 percent of the parties naming Great Western as the  
3 operator. Those issues are not presented in that case,  
4 therefore that case was decided on a different basis.

5 In this case we have a proposal made by Great  
6 Western and an Application for compulsory pooling filed.  
7 The reason it was filed so quickly is because Great Western  
8 wanted to negotiate with Arrington and asked for a  
9 continuance to today's hearing. Arrington declined to  
10 negotiate and wanted to put on its case. It's entitled to  
11 do so.

12 Similarly, Great Western owns an interest in the  
13 subject spacing area, has a right to drill on it. It  
14 proposed a well, it filed a compulsory pooling Application.  
15 The statutory prerequisites are satisfied, Great Western is  
16 properly before you.

17 I want you to look carefully through these cases  
18 after the hearing, I want you to look for the words "30-day  
19 rule". It doesn't exist.

20 Mr. Examiner, the April 5th, 1995, memo resulted  
21 from a great -- and you can talk with Mr. Catanach about  
22 this, you can talk with Mr. Stogner about this -- resulted  
23 from a huge number of disagreements between Nearburg and  
24 Yates. They would not negotiate with each other. It was  
25 frequently the practice that in order to protect its

1 interest a party would have to file a compulsory pooling  
2 application simultaneous or very shortly after proposing a  
3 well.

4 Not one bit of that information made it into the  
5 factors to be considered in the April 5th, 1995, memo.  
6 That's the only memo before you which establishes a  
7 precedent.

8 I'd like to go on in the information provided to  
9 you by Mr. Hall. On page 7 of Order Number R-10,922 it  
10 states, "In the absence of other compelling factors, the  
11 operatorship..." should be given to the first party to  
12 propose the well.

13 We have other compelling factors. We have 67  
14 percent of the working interest, 13 other interest owners  
15 supporting Great Western. We have zero supporting  
16 Arrington. No one wants Arrington to operate this well.  
17 That's a compelling factor, Mr. Examiner.

18 Finally, I'd like to look at the last case  
19 provided by Mr. Hall. It's a great case, I like it a lot.

20 Page 5, finding number 24: "It has long been the  
21 practice of the Commission to require parties to show good  
22 faith and diligence in proposing a well to other interest  
23 owners in the unit..."

24 Mr. Examiner, who has 13 other interest owners  
25 signed up? Who has diligently pursued negotiation with the

1 other interest owners in this case? Great Western has.

2 The other interest owners entered an appearance  
3 in this case through Mr. Carr's firm at the September 5th  
4 hearing. They didn't need to enter an appearance in this  
5 case today, because they've joined Great Western in this  
6 well.

7 Great Western has been diligent and it has  
8 conducted its negotiations in good faith. That good faith  
9 is evidenced clearly by the execution of a joint operating  
10 agreement by 13 other interest owners.

11 Mr. Examiner, the compelling evidence in this  
12 case points to Great Western's operatorship of this  
13 prospect.

14 Thank you.

15 EXAMINER BROOKS: Mr. Carr, did you want to add  
16 anything?

17 MR. CARR: I'm not going to add anything to the  
18 hearing.

19 EXAMINER BROOKS: Okay, very good. Then Cases  
20 Numbers 12,922 and 12,943 -- Well, let me be sure I'm right  
21 here. 12,9- --

22 MR. OWEN: That's correct, Mr. Examiner.

23 EXAMINER BROOKS: Is that Great -- 12,9- --

24 MR. OWEN: That's Great Western's.

25 EXAMINER BROOKS: -- it's Great Western's,

1 relates to this section.

2 Cases Number 12,922 and 12,943 will be taken  
3 under advisement.

4 MR. OWEN: Thank you.

5 EXAMINER BROOKS: And this docket stands  
6 adjourned.

7 (Thereupon, these proceedings were concluded at  
8 3:30 p.m.)

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I do hereby certify that the foregoing is  
a complete record of the proceedings in  
the Examiner hearing of Case No. \_\_\_\_\_  
heard by me on \_\_\_\_\_ 19\_\_

\_\_\_\_\_, 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 October 13th, 2002.



STEVEN T. BRENNER  
 CCR No. 7

My commission expires: October 14, 2002