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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 BHP PETROLEUM) CASE NO. 10345 & 10346
(AMERICAS) INC.)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: MICHAEL E. STOGNER, Hearing Examiner
July 25, 1991

Santa Fe, New Mexico

This matter came on for hearing before the Oil
Conservation Division on July 25, 1991, at 1:15 p.m. at the
Oil Conservation Division Conference Room, State Land Office
Building, 310 Old Santa Fe Trail, Santa Fe, New Mexico,
before Freda Donica, RPR, Certified Court Reporter No. 417,
for the State of New Mexico.

FOR: OIL CONSERVATION BY: FREDA DONICA, RPR
DIVISION Certified Court Reporter
CCR No. 417

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I N D E X

July 25, 1991
Examiner Hearing
CASE NO. 10345 & 10346

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A P P E A R A N C E S

FOR THE DIVISION:

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BY: WILLIAM F. CARR, ESQUIRE

1 HEARING EXAMINER: At this time I'll call case numbers
2 10345 and 10346, which will be consolidated for purposes of
3 the testimony at this time.

4 MR. STOVALL: Both cases are the application of BHP
5 Petroleum (Americas), Inc., for compulsory pooling, San Juan
6 County, New Mexico.

7 HEARING EXAMINER: Call for appearances.

8 MR. BRUCE: Mr. Examiner, my name is Jim Bruce from the
9 Hinkle law firm in Albuquerque, representing the applicant
10 in conjunction with John Bowden, associate general counsel
11 of BHP Petroleum.

12 MR. CARR: May it please the Examiner, my name is
13 William F. Carr of the law firm Campbell and Black, P.A., in
14 Santa Fe. I represent Louise Locke, doing business as Locke
15 Drilling Company, in opposition to the application. I'm
16 appearing in association with Richard T. C. Tully of
17 Farmington, who also represents Mrs. Locke, and we have one
18 witness.

19 HEARING EXAMINER: Are there any other appearances?

20 Shall we swear the witnesses in at this time, Mr.
21 Stovall?

22 MR. STOVALL: Yes.

23 HEARING EXAMINER: Will the witnesses please stand?

24 (Witnesses sworn.)

25 HEARING EXAMINER: Are there reasons for opening

1 remarks at this time, Mr. Carr, Mr. Bruce?

2 MR. BRUCE: Well, I wasn't going to make one. I
3 understood Mr. Carr may be making a motion. I will let him
4 proceed.

5 HEARING EXAMINER: Mr. Carr?

6 MR. CARR: May it please the Examiner, if our title
7 work is correct, we are appearing before you of the belief
8 that BHP Petroleum (Americas), Inc., has no interest and no
9 right to drill a well which they have drilled in the
10 northeast quarter of Section 23, which is the tract that is
11 the subject of these hearings.

12 This tract is now the subject of a lawsuit. The
13 central question in that is the very question that I just
14 mentioned, the ownership and the rights in the north half of
15 this section. This is a question that we submit is not an
16 appropriate question for the division to resolve, that
17 that's something that has to be decided in court. The first
18 hearing in that matter, as I understand, is scheduled for
19 tomorrow morning in Aztec before Judge Esburn. Accordingly,
20 we would move that the hearing on both these cases be
21 continued indefinitely. We've talked to Mr. Bruce about a
22 voluntary continuation, and we've been unable to get that.
23 Therefore, I would move that the cases be continued.

24 HEARING EXAMINER: Mr. Bruce.

25 MR. BRUCE: Mr. Examiner, BHP will present evidence

1 that there is no dispute over the ownership. Louise Locke
2 does own the pertinent working interest in the north half of
3 Section 23. BHP owns or operates the south half of Section
4 23. It is also BHP's contentions that it operates most of
5 the northeast quarter of Section 23. There is no dispute
6 over that ownership.

7 But this case does involve issues that the OCD
8 has exclusive jurisdiction to determine. We will be asking
9 the OCD to make determinations regarding unit orientation,
10 well location -- at least one well location -- who operates
11 the two wells, and, of course, the other compulsory pooling
12 matters, such as penalty.

13 BHP asks you to hear these cases and to make
14 these determinations. Louise Locke is free to continue her
15 lawsuit concurrently with the OCD proceedings, if she so
16 desires, but there is no court order preventing the OCD from
17 proceeding.

18 And in view of the OCD's exclusive jurisdiction
19 on compulsory pooling, BHP, we believe, is entitled to
20 present these cases, and the OCD does have the right to hear
21 them. There is a case that was filed by Mr. Tully on behalf
22 of Louise Locke in the district court of San Juan County.
23 BHP has just removed that case to federal court, and there
24 will be no hearing today before the district court, just as
25 a matter of clarification.

1 MR. STOVALL: May I ask some questions? Let's clarify
2 where we are on this issue then. This is not the
3 conventional forced pooling -- compulsory pooling case, as I
4 understand it. Most of those involve competing applications
5 to drill or operate a well. Is that assumption correct? Do
6 you both agree with that assumption?

7 MR. BRUCE: To a certain extent. I believe that Mrs.
8 Locke is or will be contending that since she owns the north
9 half, that that should be dedicated to her own well. BHP is
10 contending there should be standup units, in which, of
11 course, Mrs. Locke would share a pro rata in production from
12 the two wells.

13 MR. STOVALL: What you're saying is that Mrs. Locke
14 owns the minerals in the north half, the subject minerals in
15 the north half of the section; BHP owns the subject minerals
16 in the south half of the section?

17 MR. BRUCE: Owns or operates.

18 MR. STOVALL: Has the rights to. Is that essentially
19 correct, Mr. Carr?

20 MR. CARR: That is correct as to the ownership. We
21 don't dispute we own the north half, they own the south
22 half. The question really, I think, hinges on who has the
23 operating rights in the north half. The wells have been
24 drilled. It is our position and opinion that there are no
25 operating rights, that BHP has none in the north half.

1 Consequently, the well that was drilled was done -- their
2 coming onto the property and drilling something constitutes
3 trespass.

4 And even though this can be cast as presenting
5 typical, routine compulsory pooling questions to you, one of
6 the threshold conditions that must be met before an
7 application for pooling can be brought before you, before
8 you can decide it, is that the operator has the right to
9 drill. With no operating rights, they can't meet that first
10 test. Until that's determined in a court proceeding, we
11 submit that it is not only premature, but inappropriate for
12 you to start pooling lands for someone who we contend has no
13 right to drill and did.

14 MR. BRUCE: Well, once again, Mr. Stovall, Mr.
15 Examiner, the landman will present testimony that BHP
16 believes it does own operating rights under the drill site,
17 and, number two, the compulsory pooling statute expressly
18 provides that compulsory pooling can take place before or
19 after a well is drilled.

20 MR. STOVALL: The question whether the well should have
21 been drilled or not before the pooling had taken place is
22 not relevant to whatsoever we should hold a hearing. Both
23 wells have been drilled and they're both in the north half;
24 is that correct?

25 MR. BRUCE: No, sir. One is in the southwest quarter

1 and one is in the northeast quarter, pursuant to the
2 Fruitland Coal pools.

3 MR. STOVALL: So what is Mrs. Locke's position with
4 respect to the well in the southwest quarter which is
5 proposed as a west half dedication?

6 MR. CARR: Our position on that is that it also should
7 be continued indefinitely because dedication of the west
8 half is going to affect the options that are available to
9 the parties on both sides as to how this tract can be
10 developed consistent with OCD rules and the ownership
11 therein as we believe it to be.

12 You know, the powers of the commission are
13 enumerated in the Oil and Gas Act, and you're empowered to
14 identify ownership, but not to determine. I think what
15 you're being asked to do is, in effect or a fashion,
16 determine ownership, and I don't think you really can just
17 say, "Well, we're going to just pass over that point,"
18 because I submit it's really a precondition to your
19 exercising jurisdiction in combining properties. You have
20 no right to be there to drill the well. I don't think you
21 should go forward and consider a pooling application.

22 MR. STOVALL: What you're suggesting, if I hear you,
23 Mr. Carr, is that -- initially, let me back up and make sure
24 we get the application down. BHP has drilled these two
25 wells, and they propose to force pool Mrs. Locke's interest

1 into a west half proration unit and an east half proration
2 unit.

3 Mrs. Locke is opposing those applications and
4 would like to operate her wholly owned north half as a
5 proration unit and let BHP operate its wholly owned south
6 half of the proration unit.

7 MR. CARR: Mrs. Locke has a well in the north half.

8 MR. STOVALL: In this pool?

9 MR. CARR: No, it is the Fruitland sand as opposed to
10 coal, and she wants to continue operations as they exist.

11 MR. BRUCE: And BHP is not contesting her right to
12 continue operating in the Fruitland sand.

13 MR. STOVALL: Let me take you back a step here, and
14 let's deal with one case, that being the case 10345. BHP
15 has drilled a well in the southwest quarter of Section 23,
16 correct?

17 MR. BRUCE: That's correct.

18 MR. STOVALL: And they are proposing to dedicate a west
19 half unit to that well?

20 MR. CARR: Correct.

21 MR. STOVALL: And so with respect to that particular
22 well, there's no trespass issue involved as far as district
23 court claim, whether state or federal.

24 MR. CARR: The only problem we have there is that if,
25 in fact, the well in the northeast is the result of trespass

1 -- that's our contention -- that by establishing a standup
2 unit, then you're going to have to come back and undo that
3 if they elect to dedicate their own 320 acres to their own
4 well in the south half at a later date. I think until the
5 title is resolved, the determination as to who has operating
6 rights is resolved, the matter should simply be continued.

7 MR. STOVALL: And BHP's contention -- I mean, looking
8 at it from the other side, is that you could argue the one
9 case and form a 320-acre west half proration unit. That
10 then leaves only the east half to be dedicated to the other
11 well, and then you could get into an operatorship question
12 on that one.

13 MR. BRUCE: And the OCD definitely has jurisdiction to
14 determine operatorship.

15 MR. STOVALL: My recommendation at this time, Mr.
16 Examiner, is that -- I think there's some legitimate
17 questions which may be beyond the jurisdiction of the OCD.
18 However, I think the application in 10345 appears, based on
19 just argument without hearing evidence, to be within the
20 jurisdiction of the OCD. With respect to the west half,
21 they have the right to at least ask for what they're asking
22 for.

23 And it seems to me that the evidentiary matters
24 are all going to be the same. Splitting the cases wouldn't
25 accomplish anything at this point, would it? It would be

1 possible to hear the evidence and make a record in both
2 cases and act differently with respect to the different
3 applications. Would you agree with that? I mean, what it
4 does -- I understand the implication is if a west half is
5 approved, then it leaves the east half in really a battle
6 over operatorship and ownership.

7 MR. BRUCE: Well, the evidence is intertwined, and I
8 don't think one can be heard reasonably without the other.
9 And there are a lot of interesting legal issues here which,
10 if the OCD considers necessary, we'd be glad to brief for
11 them.

12 MR. STOVALL: If, in fact, the OCD hears the case and
13 issues an order and subsequently a court of competent
14 jurisdiction on the larger title rights to enter and all
15 that enters a decision, it could in effect negate the order
16 of the OCD without overturning it.

17 And where I'm coming to is my recommendation at
18 this point, is that we've got everybody here -- I believe we
19 can build a record, take Mr. Carr's motion under advisement
20 at this time, and then after the record has been built and
21 evidence is entered, then you can, either at the conclusion
22 of the hearing take the case under advisement or rule on his
23 motion at that time.

24 I would recommend that you proceed with this case
25 at this time because I think there's a basis for proceeding

1 at this time with the evidentiary portion of the case.
2 We'll discuss legal issues after we've got a record made.

3 HEARING EXAMINER: Thank you, Mr. Stovall.

4 Mr. Carr, Mr. Bruce, at this time I'm going to
5 defer your motion, Mr. Carr.

6 MR. CARR: We'll make a motion at the end of the
7 evidence.

8 HEARING EXAMINER: Thank you, Mr. Carr.

9 Mr. Bruce.

10 MR. BRUCE: First call Mr. Reinhardt to the stand.

11 DONALD REINHARDT

12 the witness herein, having been first duly sworn, was
13 examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. BRUCE:

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

18 A. My name is Donald Reinhardt. I live in Houston,
19 Texas.

20 Q. What is your occupation and who are you employed
21 by?

22 A. I'm a petroleum landman employed by BHP Petroleum
23 (Americas), Inc.

24 Q. Have you previously testified before the OCD as a
25 landman?

1 A. No.

2 Q. Will you please outline your education and your
3 employment background?

4 A. I have a degree in petroleum land management from
5 the University of Texas. I've been employed in the oil and
6 gas business as a petroleum landman for 14 years.

7 Q. How long have you been with BHP?

8 A. I've been with BHP for nine years.

9 Q. Does your area of responsibility include
10 northwest New Mexico?

11 A. Yes.

12 Q. And are you familiar with the land matters
13 involved in case numbers 10345 and 346?

14 A. Yes.

15 Q. And are you qualified before any other oil and
16 gas commissions?

17 A. The Wyoming Oil and Gas Conservation Commission.

18 MR. BRUCE: Mr. Examiner, I tender the expert as a
19 witness -- as an expert petroleum landman.

20 HEARING EXAMINER: Are there any objections?

21 MR. CARR: None.

22 HEARING EXAMINER: Mr. Reinhardt is so qualified, Mr.
23 Bruce.

24 Q. (By Mr. Bruce) Would you please briefly state
25 what BHP seeks in these two cases?

1 A. BHP seeks orders for compulsory pooling covering
2 all interests in east half of Section 23, Township 29 North,
3 Range 13 West, and in the west half of Section 23, Township
4 29 North, Range 13 West.

5 Q. What wells have been drilled on that acreage?

6 'A. The Gallegos Canyon Unit Well Number 390 has been
7 drilled in the southwest quarter, Section 23. The Gallegos
8 Canyon Unit Well Number 391 has been drilled in the
9 northeast quarter, Section 23.

10 Q. Referring to Exhibit Number 1, will you describe
11 its contents briefly?

12 A. Exhibit 1 is a plat that I prepared from
13 information in our files, and it basically depicts the
14 leasehold ownership in Section 23.

15 Q. What interest does BHP own or operate in the
16 section?

17 A. BHP is a leasehold owner in the north half of the
18 southwest quarter of Section 23 and is party to a farmout
19 contract with Amoco Production Company, covering Amoco's
20 leasehold interest in the south half of the southwest of --
21 and the southeast -- excuse me, the southwest of the
22 southeast of Section 23. In addition to that, BHP is
23 designated unit suboperator for Gallegos Canyon Unit for
24 those depths from the surface to the base of the Pictured
25 Cliffs formation.

1 Q. What acreage is committed to the Gallegos Canyon
2 Unit?

3 A. The south half of the southwest quarter and the
4 southwest quarter of the southeast quarter are presently
5 committed, in addition to the working interest under a
6 certain 133-acre -- excuse me, 137-acre oil and gas lease
7 covering, among other lands, the northeast quarter of the
8 northeast quarter on which the Gallegos Canyon Unit Number
9 391 is located.

10 Q. Would you refer to Exhibit 2 and describe what it
11 represents?

12 A. Exhibit 2 is a copy of the oil and gas lease
13 covering the 137 acres in the northeast quarter, and it's
14 dated the 20th of February 1947, between Helen Zimmerman, et
15 ux, and Charles Newbold. Included in Exhibit 2 is
16 assignment from Mr. Newbold to Stanolind Oil and Gas Company
17 dated February 28th, 1947.

18 Q. Okay.

19 A. Then in addition, there are some other subsequent
20 assignments, or at least one subsequent assignment into Mrs.
21 Locke.

22 Q. Does Exhibit 2 represent the chain of title of
23 this lease from the lessor into Mrs. Locke?

24 A. To the best of my knowledge, it does.

25 Q. Now, there are several assignments contained in

1 here from Stanolind to others. What do these assignments
2 state regarding the Gallegos Canyon Unit?

3 A. Well, among other things, the -- in paragraph two
4 of the assignment --

5 MR. CARR: Which assignment?

6 A. This is an assignment dated 14th of November,
7 1951, between Stanolind and Earl Benson and William Montin,
8 conveying one-half interest to Benson and Montin. And down
9 in paragraph two it states that the leases are within the
10 unit area described in this certain unit agreement for the
11 development and operation of Gallegos Canyon Unit, San Juan
12 County, New Mexico, dated November 1, 1950, which leases
13 have been committed to said unit agreement and unit
14 operating agreement executed with the working interest
15 owners in connection therewith.

16 Q. (By Mr. Bruce) And the next assignment is from?

17 A. It appears that it's an assignment between Mr.
18 Montin and Mr. Benson into a company, Benson and Montin,
19 Inc.

20 Q. And does that also state that this acreage is
21 subject to the Gallegos Canyon Unit agreement?

22 A. Yes, it does, in paragraph two.

23 Q. Now, who committed the lease to this unit?

24 A. The working interest in this lease was committed
25 to the unit by Stanolind Oil and Gas Company by execution of

1 a joinder prior to unit approval in 1951.

2 Q. Referring to Exhibit 3, would you identify that
3 exhibit?

4 A. Exhibit 3 contains a copy of the unit agreement
5 for development and operation of Gallegos Canyon Unit.
6 Included in here, there's a signature page from the original
7 unit operator, Benson and Montin, and a signature page
8 indicating the execution by Stanolind Oil and Gas Company.

9 Q. Would you then move on to Exhibit 4 and identify
10 that and describe its contents for the Examiner?

11 A. Exhibit 4 is a copy of a memo dated -- it's not
12 dated, but it's a copy of a memo I received by fax
13 transmission from Mr. Dwayne Spencer at BLM in Farmington.
14 And attached to the cover memo is a page from a handbook Mr.
15 Spencer advised apparently they use there at BLM in certain
16 unit matters. And the attachment contains a list of
17 definitions; they describe the various possible commitment
18 categories of a unit tract and its effect on operations.

19 Q. And what does it state about where the working
20 interest owner commits its interest?

21 A. Well, the point is addressed in subparagraph C,
22 and it refers to a situation in reference to a patented
23 tract, partially committed tract, is one that indicates that
24 the lessor or mineral owner has not signed but the lessee
25 and working interest owner has committed their interest.

1 Q. And it also states that unitized drilling is
2 permissible on a partially committed tract, does it not?

3 A. That's true.

4 Q. Is Mrs. Locke the only party you seek to force
5 pool in each case?

6 A. Yes, she is.

7 Q. Describe your efforts to get Mrs. Locke to join
8 in the two wells.

9 A. In October of last year, I had -- after some
10 effort, I had located a gentleman in Rifle, Colorado, named
11 Don Locke. I understood him to be a the son of Louise
12 Locke. I acquired his telephone number through directory
13 assistance and telephoned him.

14 My -- I discussed with him in that first
15 telephone conversation the fact that we had plans to drill a
16 well in Section 23 and that we believed that there was a
17 working interest in that section owned by a lady we believed
18 to be his mother. He confirmed for me that Louise was, in
19 fact, his mother, but he was unable to confirm for me her
20 ownership in Section 23.

21 He seemed somewhat unfamiliar with her interests
22 and asked for -- but conceded that he would, you know, look
23 into the matter. We discussed at some length his -- you
24 know, if he was able to verify her interest, he would -- you
25 know, that interest was -- was able to either participate in

1 the well if he wished to take an active -- actively join in
2 the well, or if they did not wish to join, then we could
3 make some other type of arrangements either to buy their
4 interest or -- and have them retain an override.

5 Q. Did you talk to him more than once?

6 A. Yeah. In the following weeks -- I didn't hear
7 back from him right away. I called back a week or two later
8 to see where they were in investigating the interest.

9 Finally, towards the end of October, I sent him
10 an offer offering to buy some of the leasehold interest
11 there in Section 23. And, you know, through the month of
12 November I still didn't hear back from them as to whether or
13 not they wanted to sell.

14 Finally, getting on towards the end of November,
15 maybe early December, in one of my phone calls I was advised
16 by Mr. Locke that he had hired an attorney to look into the
17 matter for him to help verify the interest there in Section
18 23. And at that point I -- other than, you know, mailing
19 off copies of some instruments, I didn't have any further
20 contact with him until maybe early -- late January or early
21 February and -- because I called then -- I called in late
22 January, early February, because I had not heard back from
23 Mr. Locke and I had not heard back from his attorney.

24 He then -- in that telephone conversation in
25 February, he then gave me the name of his attorney. And I

1 contacted him to see, you know, if there was any progress
2 being made in seeing just what they might want to do with
3 their interest. And I was told that, you know, they were
4 indeed looking into it and that we could expect an answer
5 fairly soon. And, indeed, we received a letter dated
6 February 22nd, making certain demands on BHP.

7 After receiving that letter, we, BHP, took steps
8 to go back and verify the interest that they claimed they
9 owned there in the north half and were able to at that point
10 substantiate all of Mrs. Locke's interests, and we then
11 tendered to them an offer to buy their interest with them
12 reserving an overriding royalty, and that offer was
13 rejected.

14 A counteroffer was made in -- later that month in
15 April. We considered that counteroffer and found it
16 unacceptable and tendered back a letter explaining our
17 position, restating our offer, and then again offering them
18 the opportunity to either sell or participate in the
19 drilling of each well.

20 Q. Is Exhibit 5 a copy of all the correspondence
21 between you and either Mr. Locke and/or his attorney Mr.
22 Tully?

23 A. Yes, it is.

24 Q. Than when was the last offer made to Mrs. Locke?

25 A. We made this last offer in a letter dated May

1 29th, 1991.

2 Q. What was your last offer to Mrs. Locke?

3 A. The last offer we tendered was to purchase her
4 interests for \$450.00 a net acre, with Mrs. Locke retaining
5 a proportionate seven-and-a-half percent overriding royalty
6 as to that leasehold.

7 Q. Why did you offer to buy Mrs. Locke's interests
8 rather than offering her a farmout or something like that?

9 A. Well, we had -- we had never -- or I had never
10 really had the impression that she was interested in any
11 type of farmout deal.

12 As far as -- you know, from an operational
13 standpoint, owning the interest is more -- is more
14 economical to us. You know, the interest is not burden by
15 any reversionary interests over and above the overriding
16 royalty, and it's easier to administer because we don't have
17 to set up pay-out accounts, and we don't have to monitor
18 pay-out of the well, and we just generally felt that it
19 would be a simpler way to go with, knowing that -- you know,
20 knowing by that time that Mr. Locke was not actively
21 involved in the oil business and Mrs. Locke apparently was
22 quite elderly and perhaps not that active either.

23 Q. In your opinion, was this final offer that BHP
24 made a fair offer?

25 A. We thought it was a very reasonable offer.

1 Q. You mentioned the \$450.00 per acre. Was that for
2 all of her rights?

3 A. That was for Mrs. Locke's interest in the
4 Fruitland coal interval only. It did not include any other
5 rights from the surface to the base of Pictured Cliffs.

6 Q. How does this compare with other prices in this
7 area?

8 A. About the time I contacted Mr. Locke in October,
9 we were engaged in negotiations for the purchase of two
10 other parcels within the unit. One gentleman whose name was
11 J. A. Palmer was a trustee, acting for a woman named Mildred
12 B. Taylor. She owned the leasehold interest in the north
13 half of the southwest of Section 23. We had agreed to
14 purchase, in that case, all rights from the surface to the
15 base of the Pictured Cliffs for \$312.50 a net acre, with Mr.
16 Palmer, as trustee, retaining a two percent overriding
17 royalty.

18 The other sale involved something in excess of
19 1,300 acres owned by Oryx Energy Company. Oryx accepted our
20 offer of \$450.00 a net acre, assigned us to the leasehold
21 from the surface to the base of the Pictured Cliffs and
22 reserved no overriding royalty at all.

23 Q. Does BHP request that it be named operator of the
24 two wells?

25 A. Yes, we do.

1 Q. How many wells does BHP operate in this general
2 area?

3 A. BHP operates approximately 180 wells in Gallegos
4 Canyon Unit.

5 Q. And if the poolings are approved by the OCD, will
6 BHP communitize the two wells as required by the BLM?

7 A. That's our present plans.

8 Q. If I understand you correctly, there is certain
9 acreage or certain interests in each unit which is not
10 committed to the Gallegos Canyon Unit; is that correct?

11 A. That's correct. There are approximately 13 acres
12 in the northeast quarter -- be more than that -- 23 acres in
13 the northeast quarter, and then, of course, the whole
14 northwest quarter that appears to be uncommitted.

15 Q. When were the wells commenced, the two wells?

16 A. As I mentioned earlier, we have a farmout
17 contract in effect with Amoco Production Company that
18 continues in effect. We're required under that farmout to
19 drill 15 wells within Gallegos Canyon Unit during calendar
20 year 1990. The 390 and the 391 were two of the obligation
21 wells under that farmout contract. The 391 well was
22 commenced December 12th, 1990. The 390 well was commenced
23 December 19th, 1990.

24 Q. These wells have been commenced, but have they
25 been completed?

1 A. No, they have not been completed.

2 Q. When did operations cease?

3 A. Operations would have ceased on each well

4 approximately five to six days after they were commenced, so

5 operations would have ceased probably on each well in mid to

6 late December, waiting on a completion rate.

7 Q. To the best of your knowledge, are there any

8 other Fruitland coal wells in the section, other than the

9 390 and 391 wells?

10 A. No, there are not.

11 Q. Would you please refer to Exhibits 6 and 7 and

12 just very briefly identify them for the Examiner?

13 A. 6 and 7 are form authorities for expenditure

14 prepared by BHP personnel. They set out the estimated costs

15 of drilling and completing Gallegos Canyon Unit Well Number

16 390 and the Gallegos Canyon Unit Well Number 391.

17 Q. Are the costs, the proposed well costs, set forth

18 in these AFE's in line with those normally encountered in

19 drilling wells to this depth in this area in San Juan

20 County?

21 A. Yes, they are.

22 Q. Do you have a recommendation as to the amounts

23 which BHP should be paid for supervision and administrative

24 expenses?

25 A. We believe a drilling well rate of approximately

1 \$3,500.00 and a producing well rate of \$350.00 per well
2 would be appropriate.

3 Q. Are these amounts in line with those charges
4 charged by BHP and other operators of wells of this type in
5 this area?

6 A. Yes, they are.

7 Q. If the OCD grants these applications, what
8 penalty do you recommend against nonconsent from interest
9 owners?

10 A. We would ask for a penalty of 156 percent for
11 each well.

12 Q. Will the next witness discuss the reasonableness
13 of the penalty?

14 A. Yes.

15 Q. Were Exhibits 1 through 7 prepared by you or
16 compiled from company records?

17 A. Yes, they were.

18 Q. In your opinion, will the granting of this
19 application or these applications be in the interest of
20 conservation and the prevention of waste and the protection
21 of correlative rights?

22 A. Yes.

23 MR. BRUCE: Mr. Examiner, I move the admission of
24 Exhibits 1 through 7.

25 HEARING EXAMINER: Are there any objections?

1 MR. CARR: No objections.

2 HEARING EXAMINER: Exhibit 1 through 7 will be admitted
3 into evidence at this time.

4 MR. BRUCE: Mr. Examiner, I'd also move the admission
5 of Exhibit 8, which is counsel's affidavit regarding
6 notice.

7 HEARING EXAMINER: If there are no objections, Exhibit
8 8 will be admitted into evidence at this time too.

9 Is that all your examination of this witness?

10 MR. BRUCE: I am complete with my examination.

11 HEARING EXAMINER: Mr. Carr, your witness.

12 CROSS-EXAMINATION

13 BY MR. CARR:

14 Q. Mr. Reinhardt, let's go first to your Exhibit
15 Number 1, please. This was prepared by you?

16 A. Yes.

17 Q. I believe you indicated that the reason that the
18 two wells that were drilled by BHP on this section in
19 December of 1990, the reason these wells had to be drilled
20 was because of requirements in the Amoco farmout; is that
21 right?

22 A. Yes.

23 Q. Do you know if there were other locations within
24 the Gallegos Canyon Unit that could have been drilled to
25 meet that requirement other than the wells in Section 23?

1 A. There may have been other locations, but not
2 nearly as geologically attractive as these.

3 Q. So in going forward with the drilling program to
4 meet the farmout requirements, you look not only at
5 available locations but at the attractiveness from a
6 technical point of view; is that right?

7 A. Yes.

8 Q. You stated that operations had ceased in December
9 1990, and I believe I understood your testimony to be you
10 were waiting on a completion rig.

11 A. Right.

12 Q. Do you know how long it takes to get a completion
13 rig up in this area?

14 A. As I understood it -- as I remember, you know,
15 there were a number of wells drilled prior to these two, and
16 it wasn't so much a matter of getting a rig. It was a
17 matter that the company already had a completion rig
18 working, but it took -- I don't remember how many days it
19 took to move from one well to another.

20 Q. You're not saying that it's normal up there to
21 take eight months to get a completion rig on a well, are
22 you?

23 A. No.

24 Q. Now, if I understand this exhibit, there's no
25 dispute that Louise Locke is the owner under the north half

1 of the section.

2 A. Right.

3 Q. The question is what operating rights BHP has in
4 the northeast quarter. You understand that. That's my
5 concern.

6 A. Well, the working interest in that northeast
7 quarter under the drill site tract we felt is committed to
8 the unit and, as such, we are the designated suboperator.

9 Q. Now --

10 A. For all lands in unit down to the base of the
11 Pictured Cliffs formation.

12 Q. And that includes Fruitland coal?

13 A. Yes.

14 Q. As an expert petroleum landman, you work with oil
15 and gas leases, do you not?

16 A. Yes.

17 Q. And are you familiar with what a pooling clause
18 is in an oil and gas lease?

19 A. Yes.

20 Q. And could you tell us what your understanding is
21 of what a pooling clause actually is?

22 A. A pooling clause allows the lessee to combine
23 that given lease with other leases in the immediate vicinity
24 to form a pooled unit --

25 Q. Now, if we look at the lease --

1 A. In general.

2 Q. -- which is the first page of your Exhibit Number
3 2 from Zimmerman to Newbold, I can't find any pooling or
4 unitization authority in that lease. Can you point me to
5 that?

6 ' HEARING EXAMINER: Are you referring to Exhibit 2, Mr.
7 Carr?

8 MR. CARR: Yes, sir, Exhibit 2, page one, an oil and
9 gas mining lease dated February 20, 1947.

10 A. The original oil and gas lease, as I understand
11 it, did not contain a pooling provision, but the lessors
12 under that, the mineral owners -- lessor under that lease
13 did at a later date execute an amendment to the oil and gas
14 lease that added a pooling provision.

15 Q. (By Mr. Carr) Do you know what date that might
16 have been added?

17 A. That was added sometime after January 1954. I
18 don't remember the exact date, but it was mentioned in our
19 title opinion.

20 Q. You would agree with me, would you not, that
21 there's no pooling or unitization clause mentioned in the
22 lease from Zimmerman to Newbold?

23 A. Not when it was signed, no.

24 Q. And that there was no pooling clause until
25 sometime after January 1954?

1 A. That's when the parties amended the lease, yeah.

2 Q. Now, in fact, go to the third page of your

3 Exhibit Number 2. That's an assignment from Newbold to

4 Stanolind, correct?

5 A. Okay.

6 Q. The date on that is sometime in 1947?

7 A. February 28, 1947.

8 Q. The assignment was in 1947 to Stanolind. When I

9 look at the Exhibit Number 3, which is the unit agreement,

10 can you tell me approximately when Stanolind executed the

11 unit agreement?

12 A. See, it's either -- I'm trying to read the date

13 on there, on their acknowledging form. I believe it says

14 some day in March 1951.

15 Q. I believe you've stated that the pooling clause

16 wasn't added to the lease until 1954, correct?

17 A. That's right.

18 Q. Do you have an opinion as to what authority

19 Stanolind might have had in 1951 to commit this tract to a

20 unit?

21 A. Well, they are the working interest owner under

22 the unit, and as I understand it, it -- as such, they are

23 entitled to commit their working interest to the unit, along

24 with any other interest.

25 Q. And that is the basis for working interest owner

1 authority, the lease document?

2 A. I would say so.

3 Q. Wouldn't that define their authority?

4 MR. BRUCE: I would object insofar as he's asking any
5 legal conclusions from Mr. Reinhardt.

6 Q. (By Mr. Carr) Mr. Reinhardt, if you know, what is
7 the source of a working interest owner's authority to commit
8 a tract to a unit?

9 A. Well, in cases of federal units, their working
10 interest is granted under the oil and gas lease.

11 Q. What about a fee interest like this one? Would
12 we also look to the lease?

13 A. I think the overriding concern in a case of a fee
14 lease is -- I believe you would still have to -- well, I
15 would say that the oil and gas lease confers on that working
16 interest owner certain rights, and that working interest
17 owner can always -- can commit its interest to a federal
18 unit absent the joinder of the royalty owner-lessor.

19 Q. And is it your understanding that even with a
20 lease that is silent on pooling or unitization the lessee
21 would still have that authority?

22 A. There again, I'm working on my understanding
23 that, you know, these people executed an amendment to the
24 oil and gas lease and that that ratified the actions of
25 Stanolind. But, you know, it's my understanding that

1 Stanolind can commit its interests to a unit absent --
2 absent joinder of the lessor.

3 Q. And you're basing that on the -- I'm just trying
4 to understand your testimony -- you're basing that on the
5 amendment to the lease, the 1954 amendment?

6 A. Well, I think the amendment to the lease is -- I
7 don't -- as I understand it, that's not -- that's not even
8 germane to the situation. They are a working interest
9 owner. They've derived their working interest through this
10 oil and gas lease, and they have the right to commit that
11 interest to a unit, along with any other interests in this
12 -- well, stop there.

13 Q. Was it my understanding of your testimony that
14 they have a right to commit it, and this right would come
15 from the lease agreement, or is there some other authority?

16 A. No, I would have to say that their rights are
17 derived under an oil and gas lease.

18 Q. And the oil and gas lease in this case, you're
19 unable to show me a pooling unitization provision in the
20 lease; isn't that correct?

21 A. Other than that added at a later date.

22 Q. That you said was not germane; isn't that
23 correct?

24 A. It indicates that, as I understand it, in the
25 case of joining working interests to a federal unit.

1 Q. Now, if Stanolind didn't have authority to commit
2 this tract --

3 A. It's my contention they did.

4 Q. Mr. Reinhardt, you've been qualified as an expert
5 witness, and the hypothetical I'm going to present to you is
6 simply if they did not have authority, then that commitment
7 would be void, wouldn't it?

8 A. It's my sense of things that they did have the
9 authority.

10 Q. But the question was not -- the question was
11 hypothetical, that is, if they didn't have authority through
12 the lease arrangement, that commitment wouldn't be
13 effective, would it?

14 A. I still am of the opinion that they had the right
15 to commit that lease, that interest, that working interest,
16 to the unit, regardless of the oil and gas lease.

17 Q. You've been called and qualified as an expert
18 witness, and as such, I have a right to pose a hypothetical
19 question to this man. He's an expert on petroleum land
20 matters. My hypothetical question is: If there was no
21 authority through the lease arrangement into Stanolind
22 giving them the authority to commit a tract to a lease, the
23 commitment would be void. I'm asking you as an expert to
24 tell me, in that set of facts, what your opinion is. If
25 they had no authority --

1 MR. BRUCE: I mean, I'll allow the question to go
2 forward and Mr. Reinhardt to answer it, but I object as to
3 it calling for a legal conclusion. A pooling clause in a
4 lease only pertains to pooling of a lessor's interest and
5 not the lessee's interest.

6 'MR. STOVALL: Mr. Carr, I guess I'm not sure why you're
7 pursuing this line of questioning. I think, as a lawyer, I
8 would agree that if somebody doesn't have the authority to
9 do something, then their act of doing it is probably a void
10 act.

11 MR. CARR: I'm trying to test what this witness knows.
12 He's been tendered as an expert witness in petroleum land
13 matters, and I'm just trying to find out what his
14 understanding is of a lease agreement that contains no
15 pooling clause and what the effect of that --

16 MR. STOVALL: That's a different question than you're
17 asking him though.

18 MR. CARR: The question I'm asking him is if there is
19 no pooling authority -- I'll state it this way then -- if
20 there's no authority in the lease, can the lessee commit a
21 tract to --

22 MR. STOVALL: Pooling authority for which interest, Mr.
23 Carr?

24 MR. CARR: I'm saying that a pooling authority,
25 period.

1 Q. (By Mr. Carr) May he commit the working interest
2 if there's no pooling authority in the lease?

3 A. I believe he can.

4 Q. May he commit the royalty interest?

5 A. No. The royalty in a federal unit agreement, the
6 royalty owner has to commit its own interest.

7 Q. You're of the opinion that a lease like the one
8 we're looking at from Zimmerman to Newbold gives the lessee
9 the authority to commit the working interest to a unit.

10 A. Well, I think it's neither here nor there.

11 MR. STOVALL: Did you understand the question, Mr.
12 Reinhardt?

13 THE WITNESS: Yes.

14 MR. BRUCE: Could you rephrase the question, please,
15 counsel?

16 MR. CARR: Could you read the question back, please?
17 (Question read.)

18 Q. (By Mr. Carr) Did you understand that, Mr.
19 Reinhardt?

20 A. Well, I'm still of the opinion that Amoco had the
21 right to commit their working interest to the unit
22 agreement. They're not committing the entire -- all
23 interest that exists under that oil and gas lease, they're
24 committing their working interest as a working interest
25 owner.

1 Q. And so it's your understanding that under this
2 lease Stanolind or Amoco could commit the working interest?

3 A. In this situation, it could.

4 Q. And are you aware that following the amendment of
5 the oil and gas lease in 1954 to include a pooling or
6 unitization clause that there was a voluntary designation of
7 pooling entered by Stanolind covering the north half with
8 other interest owners?

9 MR. STOVALL: I didn't hear the entire question, Mr.
10 Carr.

11 Q. (By Mr. Carr) In reviewing the title in this
12 situation and your review, did you come across a designation
13 of the pooling for the north half of this section following
14 the amendment of the oil and gas lease in 1954? The
15 question is, did you see one?

16 A. I honestly can't remember having seen one. I
17 know there was -- let's see. Oh, yeah, I recall seeing this
18 pooling designation instrument.

19 MR. STOVALL: Is that a matter that's in evidence at
20 this time?

21 THE WITNESS: No.

22 Q. (By Mr. Carr) What acreage did it cover?

23 A. As I recall, it covered 320 acres.

24 Q. The north half of the section?

25 A. In the north half of the section.

1 Q. Did Stanolind also join in that?

2 A. Apparently they did.

3 Mr. Stovall, would you like that in the record?

4 MR. STOVALL: I didn't want to go looking for it if I

5 don't have it. That was my main reason for asking. Leave

6 that up to your counsel's discretion to enter that if they

7 wish.

8 Q. (By Mr. Carr) Mr. Reinhardt, my next question

9 really is: Is the north half of Section 28 committed to the

10 Gallegos Canyon Unit, as you understand it?

11 A. As I recall, there's -- I spoke earlier about a

12 137-acre tract that's in the northeast quarter that's

13 partially committed to the unit.

14 Q. When you say "partially committed," you're

15 referring to that definition that you got from the BLM; is

16 that right?

17 A. Yes.

18 Q. And that would be based on the commitment of the

19 Stanolind working interest.

20 A. Yes.

21 Q. And does that commit the north half to the unit,

22 or does that just give BHP -- if that commitment is valid,

23 does that commit the north half to the unit, or just give

24 you operating rights in the unit, or in that acreage?

25 A. Well, BHP is designated as suboperator for all

1 formations down to the base of the PC.

2 Q. And so --

3 A. And we would be -- and the right to operate a
4 well there would be conferred on BHP.

5 Q. And it would mean then, if I understand your
6 testimony, that the north half is a partially committed
7 tract to the unit?

8 A. No. I was -- I spoke earlier of just that 137
9 acres in the northeast quarter.

10 Q. And so that lease would be partially committed;
11 is that your understanding of it?

12 A. Well, the tract is partially committed to the
13 unit.

14 Q. The remainder of the north half then would be
15 outside the unit?

16 A. Would be uncommitted.

17 Q. When a tract like that is committed to the unit,
18 what interval is committed? Is it the entire vertical
19 interval, or would it be just particular formations?

20 A. In this case, there wasn't any limitations in the
21 Stanolind joinder, so it would apply to all depths.

22 Q. Is the Locke-Tycksen Number 1 well located on
23 this particular lease?

24 A. Yes.

25 Q. And so would that well then be partially

1 committed to the unit?

2 A. Well, as I recall, that -- that was not a unit
3 well. It was not a commercial well and, therefore, wasn't
4 entitled to be in any type of participating area.

5 Q. Are there certain procedures to be followed
6 determining whether or not a well is commercial?

7 A. There is a -- BLM will make a determination based
8 on information submitted by the operator as to the ability
9 of the well to produce and pay out.

10 Q. And when you say the "BLM will make a
11 determination based on information supplied by the
12 operator," you mean the well operator or the unit operator?

13 A. Well, generally the -- generally, I'd say the
14 unit operator. I believe the unit operator is required to
15 file participating area applications in paying well
16 determination applications.

17 Q. Do you know if this was done in regard to the
18 Tycksen well? My question is just if you know.

19 A. I don't know.

20 Q. But it's your understanding that it's considered
21 not a paying well?

22 A. That's what I understand.

23 Q. As such, there would be, I guess, no obligation
24 on the part of the unit operator to provide any kind of
25 accounting statements or anything to the working interest

1 owner in that tract. And here again, Mr. Reinhardt, if you
2 don't know, that is an acceptable answer. I'm not trying to
3 push you into --

4 A. I don't think they would. I can't see any reason
5 why they would.

6 'Q. Are you aware of anything that BHP has done as
7 the operator of this portion of the Gallegos Canyon whereby
8 they would have treated the north half as being in the unit,
9 north half of this particular section?

10 A. No. There's been no other drilling up there,
11 other than what Stanolind did, or Amoco.

12 Q. Now, in terms of trying to get Mrs. Locke's
13 voluntary joinder, if I understood your testimony, you
14 talked to her by telephone. Or was it her son?

15 A. Her son.

16 Q. And your first written communication with the
17 Lockes was your letter of October 31, which is set out in
18 Exhibit Number 5.

19 A. Right.

20 Q. Now, this offer was confined simply to the
21 northwest quarter; isn't that correct?

22 A. That's right.

23 Q. If I go on in this exhibit and look at your
24 December 11th letter, again, the discussion between BHP
25 through you and Don Locke for Louise Locke focuses on the

1 northwest quarter of 23, does it not?

2 A. At that time it did, yes.

3 Q. At that time you indicated that the title opinion
4 was yet unfinished.

5 A. That's right.

6 Q. Now, the well to which you're proposing to
7 dedicate the northwest quarter of 23 was actually drilled
8 eight days later, was it not?

9 A. Commenced eight days later.

10 Q. Had the title opinion been completed by that
11 time?

12 A. As I recall, it had not.

13 Q. That isn't a normal or preferred procedure, is
14 it?

15 A. No, not preferred.

16 Q. But it was the pressure from the farmout
17 agreement that caused you to go forward at that time.

18 A. That was part of our motivation.

19 Q. You could have dedicated the south half unit to
20 the well in the southwest, could you not? You controlled
21 all of that?

22 A. That's a possibility.

23 Q. And the north half could have just stood out
24 until any questions of title were resolved and negotiations
25 completed.

1 A. That's possible.

2 Q. Now, I believe you -- on the 19th of December,
3 when you drilled the well in the southwest quarter of this
4 section, you'd already drilled a well in the northeast; is
5 that right?

6 A. That's right.

7 Q. And you're dedicating the east half unit or
8 proposing to dedicate the east half unit to that well.

9 A. That's right.

10 Q. Had you at any time prior to drilling the well to
11 which you now propose to dedicate the east half -- at any
12 time had you talked to the Lockes or proposed to them
13 anything in terms of their voluntary participation or
14 joinder concerning the northeast quarter and their interest
15 in the northeast quarter?

16 A. Well, we were still in a period of time in there
17 when the preliminary title information was received
18 indicating that it was owned by Amoco Production Company,
19 and we were of that belief even up until the time we
20 commenced the well.

21 Q. So when you commenced the well, that was on
22 December 12th, wasn't it, in the northeast quarter?

23 A. I believe it was.

24 Q. At that time you hadn't contacted the Lockes
25 about voluntarily joining with you in the well.

1 A. No, because we thought it was, in fact, owned by
2 Amoco Production Company.

3 Q. It was after that that you and Mr. Tully started
4 engaging in some interesting correspondence -- strike the
5 word "interesting." You started corresponding with Mr.
6 Tully about the possibility of acquiring the Locke interest
7 in the north half, correct?

8 A. That's right.

9 Q. If you'd turn to your April 11th -- I'm sorry --
10 April 1, 1991, letter to Mr. Tully. Do you have that, sir?

11 A. Yes.

12 Q. If you go to the third paragraph, it states, "BHP
13 is not willing to completely turn over its Gallegos Canyon
14 Unit 391 well for your client's benefit. BHP's well is a
15 properly permitted well within the existing spacing orders
16 issued by the State of New Mexico for wells producing from
17 the basin Fruitland coal pool." Do you see that language?

18 A. Yes.

19 Q. When you state that BHP's well is a properly
20 permitted well, what are you basing that statement on?

21 A. On the fact that the State of New Mexico had
22 issued a drilling permit for that well.

23 Q. Let me hand you what I'd like to have marked as
24 Locke Exhibit A, and ask you if that's the drilling permit
25 you're talking about.

1 A. Let's see. It appears to be an application for
2 permit to drill for the Gallegos Canyon Unit Number 391.

3 Q. And is it signed at the bottom as approved by
4 Ernie Bush, Deputy Oil and Gas Inspector, District 3?

5 A. Right, yes, that's what it says.

6 Q. And when you talk about this well being properly
7 permitted, this is what you're talking about?

8 A. Well, yes, the fact that they had issued a permit
9 to drill.

10 Q. Attached to this is a state form C-102. Would
11 you look at that please?

12 A. Okay.

13 Q. Now, that form is executed by someone named Chuck
14 Williams. Do you know who Mr. Williams is?

15 A. At the time he was our field services
16 administrator.

17 Q. At the time? Is he no longer there?

18 A. No, he's since left the company.

19 Q. Right above his signature is the statement, "I
20 hereby certify that the information contained herein is true
21 and complete to the best of my knowledge and belief." Do
22 you see that?

23 A. Yes, sir.

24 Q. Mr. Williams was a person authorized to execute
25 this document on behalf of BHP, was he not?

1 A. Yes.

2 Q. Now, if you look up in this, Mr. Reinhardt,
3 there's a block and there's some numbered sentences in
4 that. One says, "Outline the acreage dedicated the subject
5 well by colored pencil or hasher marks on the plat below."
6 That's been done, hasn't it?

7 A. Yes.

8 Q. We go below that to number two, "If more than one
9 lease is dedicated to the well, outline each and identify
10 the ownership thereof both as to working interest and
11 royalty interest." That has not been done, has it?

12 A. I don't see that it's -- that that was done.

13 Q. Then three reads, "If more than one lease of
14 different ownership is dedicated to the well, have the
15 interests of all owners been consolidated by communitization
16 unitization for forced pooling?" And there's no answer
17 provided to that, is there?

18 A. Doesn't appear to be.

19 Q. So this form doesn't appear to be completely
20 filled out, does it?

21 A. Well, it doesn't look like -- looks to me that
22 number three is not completed, but there's --

23 Q. And there was different ownership that was to be
24 dedicated to the well; isn't that right?

25 A. Well, yes, there's more than one oil and gas

1 lease.

2 Q. And there has been no consolidation by
3 communitization unitization, or at that time even forced
4 pooling.

5 A. At that time, no.

6 Q. So when the permit was obtained, that wasn't
7 disclosed to the commission, was it?

8 A. It doesn't appear to be.

9 MR. CARR: I'd move the admission of Lock Exhibit
10 Number A.

11 MR. BRUCE: I have no objection.

12 HEARING EXAMINER: Locke Exhibit A, being copies of the
13 C-101 and C-102 state forms for the well number 391, is it?

14 MR. CARR: Yes, which I'm about to provide you.

15 HEARING EXAMINER: Locke Exhibit A will be admitted
16 into evidence at this time.

17 Q. (By Mr. Carr) Do you know the -- and maybe I
18 should defer this to another person -- whether or not the
19 wells -- the total depths of the wells is still above the
20 base of the Pictured Cliffs? Do you know how deep they go
21 and what formation they --

22 A. The 390 and 391?

23 Q. Yes, sir.

24 A. They were drilled to a depth above the base of
25 the Pictured Cliffs.

1 Q. In Exhibit Number 5 you have an AFE signed by Mr.
2 Bertoglio. Who's Mr. Bertoglio?

3 A. He is an engineer employed by BHP.

4 Q. He's currently in BHP's employ?

5 A. Yes.

6 Q. And this was mailed, I gather, on May the 29th;
7 is that correct, along with a letter that's immediately
8 before it?

9 A. Yes. I included both of these to be mailed, yes.

10 Q. This is the AFE, the last page of Exhibit Number
11 5. Then Exhibit 6 is what? How are they different?

12 A. Oh, the difference between page one and two?

13 Q. Well, I just -- oh, I see, I see. Exhibit 6 is
14 the entire --

15 A. Six is an AFE for the 390. Seven is an AFE for
16 the 391.

17 Q. And there's just an additional sheet; the second
18 pages are the same.

19 A. They should be slightly different.

20 Q. And why is that?

21 A. Well, they're itemizing the different --
22 itemizing the cost of the different elements that are to be
23 included in the drilling of the well.

24 Q. Have these AFE's been adjusted to show the actual
25 costs incurred in drilling the well?

1 A. Have they been adjusted?

2 Q. Do they reflect the actual costs, or are they

3 just estimates?

4 A. They're estimated costs.

5 Q. And do you know if they're above or below the

6 actual costs incurred in drilling?

7 A. Well, so far we haven't completed the wells, so

8 we haven't expended all the funds necessary that would -- so

9 that I could compare the actual costs and the estimate

10 costs.

11 Q. But the wells were actually drilled about eight

12 months ago, right?

13 A. About eight months ago, yes.

14 Q. And we know the rotary footage exactly and

15 actually the number of days involved, and all of that,

16 correct, at this point in time?

17 A. Yeah.

18 Q. And adjustments could be made to accurately

19 reflect on May 29th these numbers, and they wouldn't have to

20 just be estimates, would they?

21 A. Yeah, they could be adjusted.

22 MR. CARR: That's all I have.

23 HEARING EXAMINER: Mr. Bruce, redirect?

24 MR. BRUCE: Just a couple of follow-up questions.

25 REDIRECT EXAMINATION

1 BY MR. BRUCE:

2 Q. When BHP received Mr. Tully's first letter, what
3 did it decide to do with respect to the two wells?

4 A. When we received his February 22nd letter?

5 Q. Yes.

6 A. At that point we decided that we would not
7 proceed any further with completing those wells until we
8 reached some resolution as to with respect to Mrs. Locke's
9 interest, meaning that she would either participate
10 thereafter in the wells in the completion or else her
11 interest would be purchased under some mutually acceptable
12 terms.

13 Q. Referring to the AFE's which Mr. Carr just
14 mentioned regarding actual well costs, what has BHP's
15 experience been with respect to actual versus estimated well
16 costs?

17 A. Well, in this 30-well program here, the costs
18 have been at or just slightly below our estimates. In one
19 case, I think the actual cost came out a little bit higher.

20 Q. And to the best of your knowledge, is the Tycksen
21 well located within a participating area of the unit?

22 A. No, it's not.

23 Q. And BHP doesn't seek to put it in a participating
24 area, does it?

25 A. No.

1 Q. Let me hand you Exhibit BHP 2-A, Mr. Reinhardt.
2 And just identify that for the record.

3 A. It indicates that this is an instrument titled
4 "Pooling Designation." It describes some oil and gas
5 leases.

6 Q. And have you previously seen this?

7 A. I can recall having seen that before.

8 Q. And it purportedly covers the north half of
9 Section 23, does it not?

10 A. That's right.

11 MR. BRUCE: I only have one copy, Mr. Examiner.

12 MR. CARR: Well, I happen to have a bunch of them. In
13 any event, we have no objection to that being made a part of
14 the record.

15 HEARING EXAMINER: At the next break we take, can you
16 get copies of it? What exhibit number is that?

17 MR. BRUCE: BHP Exhibit 2-A.

18 Q. (By Mr. Bruce) Mr. Reinhardt, one thing on that
19 Exhibit 2-A: when was it executed by the Lockes and the
20 Taylors?

21 A. This was apparently -- Locke and Taylor executed
22 this the 30th day of September, 1953.

23 Q. So that was before the amendment to the subject
24 lease, wasn't it?

25 A. That's right.

1 Q. To the best of your knowledge, when this was
2 executed, had any well spaced on 320 acres been drilled by
3 Locke-Taylor Drilling Company?

4 A. In 1953?

5 Q. Yeah.

6 A. As I recall, the Tycksen well was drilled and
7 completed in 1952. And, in fact, I think there's a --

8 Q. Mr. Tully refers to that in his letter.

9 A. Yeah, it's referred to here. It was spud August
10 6th, 1952, drilled to the Pictured Cliffs.

11 Q. Do you know what the spacing for that well is?

12 A. I believe that it's in the Fruitland sand pool.
13 It would be spaced on 160 acres.

14 MR. BRUCE: I have nothing further of the witness, Mr.
15 Examiner.

16 HEARING EXAMINER: At this time Exhibit 2-A will be
17 admitted into evidence.

18 Any cross, Mr. Carr?

19 MR. CARR: Only a couple.

20 RECROSS-EXAMINATION

21 BY MR. CARR:

22 Q. Mr. Reinhardt, the pooling designation was
23 executed by Stanolind also, was it not?

24 A. Yes, it was.

25 Q. And what was the date of that execution?

1 A. According to this, December 14th, 1954.

2 Q. I believe you stated that your experience with
3 BHP is that the actual drilling costs are below the AFE
4 costs; is that a fair statement?

5 A. Drilling, I'm thinking in terms of -- terms of
6 drilling and completion costs.

7 Q. If the costs are actually less than the AFE costs
8 and Mrs. Locke decides to participate pursuant to a pooling
9 order, shouldn't she be able to pay her proportionate share
10 of the actual costs incurred to date?

11 A. Oh, yeah, she'd be allowed to pay actual.

12 MR. CARR: That's all.

13 HEARING EXAMINER: Do you have any questions?

14 MR. STOVALL: Yes, I do.

15 EXAMINATION

16 BY MR. STOVALL:

17 Q. Mr. Reinhardt, am I correct in an assumption that
18 it is BHP's position that it has properly entered on to a
19 location in the northeast of the northeast quarter of this
20 section to drill a well based upon its status as suboperator
21 of this Gallegos Canyon Unit?

22 A. Yes, sir.

23 Q. And that belief is based upon your understanding
24 and BHP's understanding that at least a portion of the
25 working interest within that northeast quarter northeast

1 quarter is committed to the unit agreement?

2 A. Yes, sir.

3 Q. Are you familiar with the unit agreement?

4 A. I have read through it.

5 Q. And the unit operating agreement?

6 A. Yes, sir.

7 Q. Does the unit agreement address the issue of who
8 has the right to drill a well within lands committed to the
9 unit? In other words, is it just an operator of the unit,
10 or does an individual lessee have a right to drill on their
11 -- let me call it a working interest owner for the purpose
12 of this discussion?

13 A. A working interest owner has the right to propose
14 a well on their tract, but the unit operator is responsible
15 for actually conducting the drilling of that well unless
16 there's specific arrangements made to the contrary.

17 Q. Just talking in general and not looking at this
18 particular well situation, if a working interest owner
19 proposed a well on the tract owned by that working interest
20 owner and the unit operator elected not to pursue that, is
21 there some way the working interest owner could get that
22 tract drilled?

23 A. Yes. They can be designated as agent for the
24 drilling and completion of the well. As a general rule,
25 once it's completed, it's turned back to the unit operator,

1 and the unit operator is thereafter charged with actually
2 operating the well after completion.

3 Q. And regardless of who drills a well, some
4 evaluation is made as to whether or not it's a commercial
5 well and whether or not it should be committed to a
6 participating area; is that correct?

7 A. Yes, sir.

8 Q. Now, do I understand you correctly that with
9 respect to the northeast of the northeast of -- what is this
10 -- Section 23 that -- what interest is committed to the
11 unit is a portion of the 137 acres, give or take in that?

12 A. Is the working interest.

13 Q. And that's --

14 A. In that tract. In that unit.

15 Q. The 137 is obviously more than the 40 acres of
16 the northeast northeast. Does it encompass all of -- is a
17 portion of all of that 40-acre northeast northeast
18 committed?

19 A. Yeah. The tract -- the unit tract covered all of
20 the east half northeast. In fact, it's in tract 102.

21 Q. So --

22 A. East half northeast, southwest northeast and part
23 of the northwest northeast.

24 Q. But not 100 percent of the lands you just
25 described are actually committed to part of this lease

1 committed to the union, or is it 100 percent of the working
2 interest in the land you just described that's committed to
3 the unit?

4 A. Of the working interest.

5 Q. There's no outstanding working interest other
6 than that covered by this lease?

7 A. Stanolind owned that. Stanolind owned all the
8 working interest in that lease at the time the unit was
9 formed.

10 Q. And the lease represented 100 percent,
11 eight/eighths interest in those lands?

12 A. Yes.

13 Q. So we don't have a situation where there would be
14 two leases on the same tract of a divided or undivided
15 interest?

16 A. No.

17 Q. It is a single lease, but leased 100 percent?

18 A. As I understand it, the lessor owned 100 percent
19 of the mineral interest, executed that oil and gas lease to
20 Newbold. It was assigned to Stanolind.

21 Q. What is a working interest, in your mind? What
22 does that term mean?

23 A. Working interest is those -- the interest
24 conferred upon the lessee or his assignee representing
25 certain -- certain interest that he's entitled to.

1 Q. That interest being? What's the nature of that
2 interest? It is derived through a lease, you're saying, in
3 most cases; is that correct?

4 A. Yes.

5 Q. So a lessee's interest in a lease, one way of --
6 what does the lessee acquire effectively in terms of rates,
7 in your mind? What does he own?

8 A. Well, he owns the right to go in and prospect on
9 the acreage, drill wells, to reduce and capture the
10 production as long as he's carving out a share for the
11 lessor. You know, oil and gas leases can contain any number
12 of provisions.

13 Q. And if I understand you correctly, you said that
14 Mrs. Locke, through these various conveyances that you've
15 submitted here in the exhibit, is the actual owner of the
16 working interest in the 137 acres that we're concerned with
17 where the well is located?

18 A. That's correct.

19 Q. But because of the fact that it had been
20 previously committed to the Gallegos Canyon Unit, BHP, as
21 suboperator under that unit, has the right to work that
22 working interest, if you will, has the right to enter in on
23 that working interest and operate as part of the unit.

24 A. Yes.

25 Q. Do you believe Mrs. Locke would also have the

1 right to drill a well on that unit, or is it as you
2 described before in terms of --

3 A. Would she have the right. I would say if she
4 drilled a well elsewhere in the north half other than that
5 particular 130-odd-seven acres, I believe she could do that.

6 Q. She would clearly have the right to drill -- she
7 owns the rest of the north half, the working interest; is
8 that right?

9 A. Yeah.

10 Q. She would clearly have a right to drill a well on
11 that portion of the north half which is not committed to the
12 unit; is that correct?

13 A. Yes, I believe she would.

14 Q. Would she, in addition to that, have a right to
15 drill a well -- as well as BHP as suboperator, would Mrs.
16 Locke also have the right to drill on the 137 acres?

17 A. Well, BHP would have first right to operate the
18 well.

19 Q. Under the terms you described before when I asked
20 you about the right to operate in the unit; isn't that
21 correct?

22 A. BHP would be given first opportunity to operate
23 the well as unit operator. If it chose not to for some
24 reason, then Mrs. Locke could be designated agent for a
25 well, if she had wanted to drill a well.

1 Q. If, in fact, the division grants what BHP
2 requests and a proration unit is formed, how will that be
3 treated in terms of east half and west half? How will the
4 interest be treated in terms of participation in the unit?
5 Will there be a participating area formed?

6 A. We had indicated that, you know, we would file
7 communitization agreements covering each of those half
8 sections.

9 Q. What about a participating area? You talked
10 about that and commercial well determinations.

11 A. Well, at the present time I don't know that
12 there's -- there's -- you know, we don't really have a plan
13 right now to include that acreage in a PA.

14 Q. The PA effectively for those wells under the unit
15 operation would be the proration unit?

16 A. There is no Fruitland coal PA now.

17 Q. There's none anywhere within the unit that you
18 operate?

19 A. No, there are no Fruitland coal participating
20 areas in the unit right now.

21 Q. So any well that's drilled as unit operator still
22 shares -- the allocation of costs and production is on a
23 proration unit basis.

24 A. That's how we're doing it right now. There are
25 two other producing Fruitland coal wells elsewhere in the

1 unit, but --

2 Q. There's nothing that goes beyond -- does this
3 sound like a familiar discussion, Mr. Bruce?

4 MR. BRUCE: Yes, it does.

5 MR. STOVALL: We've done this before, entirely
6 different subjects.

7 A. If the well is -- if -- if the well appears --
8 well, I shouldn't even say that. You're going to get to a
9 point in time, whether the well is commercial or
10 noncommercial, the operator is going to have to submit to
11 BLM evidence one way or the other, and BLM will either have
12 to agree or disagree with --

13 Q. (By Mr. Stovall) Even if it's not a commercial
14 well, you can continue to operate it on a proration-unit
15 basis.

16 A. Yes.

17 Q. The difference is if you formed a participating
18 area it could be larger than the proration unit; is that
19 correct?

20 A. Yeah, yeah. It's conceivable that several
21 proration units could be combined into a single
22 participating area.

23 Q. And the acreage --

24 A. Or I guess a better way to say that is that a
25 participating area could be enlarged to encompass more than

1 one proration unit area.

2 Q. Now, regardless of how that occurs with respect
3 to the acreage controlled by Mrs. Locke in the north half
4 and with regardless to whether or not it's a north half
5 proration unit -- this is going to get real complicated here
6 -- let me back up. If we talk about your standup proration
7 units as you are proposing here.

8 A. Right.

9 Q. Based upon the way you are establishing -- the
10 fact that you're dealing with a proration unit, Mrs. Locke
11 is going to receive the revenues from essentially half of
12 each well; is that correct?

13 A. That's right.

14 Q. And if you did laydown units she'd be 100 percent
15 interest owner in the north half well and no interest in the
16 south half well.

17 A. Right.

18 Q. Why did BHP choose standups instead of laydowns?

19 A. I don't know that there's really that much
20 thought given to it. All the other wells -- we had drilled
21 about a dozen Fruitland coal wells, and we had got into a
22 mind set of orienting these things east half-west half, and
23 it's just -- just a progression of things to do those to
24 permit those that way also.

25 Q. Now, if, in fact, BHP had done a laydown south

1 half unit for -- what is it -- the 390 well, then you'd have
2 basically 100 percent well for all practical purposes.
3 Well, you've got 100 percent voluntary participation well.
4 I don't remember what your interests were for Exhibit 1.

5 A. That's right, that would have been a situation.

6 Q. But the reason for not doing it that way is
7 because all your other units are standup?

8 A. Well, yes, that's right.

9 MR. STOVALL: I have no further questions. I'm sorry I
10 do have one.

11 Q. (By Mr. Stovall) You indicated that back in
12 December when you were drilling that -- your indication was
13 that Amoco was the owner of the tract that you're concerned
14 with?

15 A. That's what we believed, yes.

16 Q. We're talking about this Stanolind lease, the one
17 that you put into evidence, right?

18 A. Yes, sir.

19 Q. What negotiations had you had with Amoco up to
20 that point?

21 A. Well, we felt that we have a farmout contract
22 with them covering all of their interest in Section 23, plus
23 numerous other sections in the unit.

24 Q. So you didn't need to negotiate with Amoco?

25 A. That deal was in place. We believed that it was

1 covered by that farmout agreement.

2 MR. STOVALL: Now I have no further questions.

3 HEARING EXAMINER: Is there a provision in the unit
4 agreement which designates how the 320-acre proration unit
5 will be oriented?

6 THE WITNESS: In the unit agreement?

7 HEARING EXAMINER: Yeah.

8 THE WITNESS: No.

9 HEARING EXAMINER: Any other questions? Mr. Carr?

10 MR. CARR: Just real briefly.

11 RECROSS-EXAMINATION

12 BY MR. CARR:

13 Q. Mr. Reinhardt, I think you testified that BHP
14 operated something like 180 wells in the Gallegos Canyon
15 Unit?

16 A. Yes.

17 Q. How many are Fruitland coal?

18 A. I'll have to count them.

19 Q. If it's a big number, don't count very long. And
20 the reason for my question is I thought you said there were
21 no --

22 A. About ten.

23 Q. No participating --

24 A. They're not Fruitland coal --

25 Q. -- participating areas yet?

1 A. Right.

2 Q. How is a participating area created?

3 A. You drill a well. And, like I say, you submit
4 the information to the BLM, and then they will actually
5 designate the participating area.

6 Q. And you can't do that the other way around,
7 create the area and then drill a well?

8 A. No, because BLM insists on having a certain
9 amount of production history from each well in order to make
10 their determination.

11 MR. CARR: That's all.

12 MR. BRUCE: I have nothing further, Mr. Examiner.

13 HEARING EXAMINER: In that case, Mr. Reinhardt may be
14 excused at this time.

15 Mr. Bruce?

16 MR. BRUCE: This witness will be much shorter, if Mr.
17 Carr will cooperate.

18 MR. CARR: I'll do my part.

19 MELISSA TORBET

20 the witness herein, having been first duly sworn, was
21 examined and testified as follows:

22 DIRECT EXAMINATION

23 BY MR. BRUCE:

24 Q. Would you please state your name for the record?

25 A. My name is Melissa Torbet, T-o-r-b-e-t.

1 Q. And who do you work for and in what capacity?
2 A. I work for BHP Petroleum as a senior production
3 engineer.
4 Q. Have you briefly testified before the OCD?
5 A. No.
6 Q. Would you outline your education and your work
7 experience, please?
8 A. I graduated in 1980 from Louisiana Tech
9 University with a B.S. in chemical engineering. I went to
10 work immediately for Mobil Oil Exploration and Producing,
11 and I worked for Mobil for about ten-and-a-half years in
12 various production engineering capacities. I left Mobil in
13 November of 1990 to take my current position with BHP as
14 senior production engineer, and my area of interest or my
15 area that I handle is the San Juan Basin.
16 Q. Are you familiar with the engineering matters
17 related to 390 and 391 wells?
18 A. Yes.
19 Q. As well as BHP's other wells in the Gallegos
20 Canyon Unit?
21 A. Yes.
22 MR. BRUCE: Mr. Examiner, I tender Ms. Torbet as an
23 expert petroleum engineer.
24 MR. CARR: No objection.
25 HEARING EXAMINER: Ms. Torbet is so qualified.

1 Q. (By Mr. Bruce) Would you please refer to Exhibit
2 9 and just identify what it is for the Examiner, please?

3 A. Exhibit 9 is an isopach map of the Fruitland coal
4 in the Gallegos Canyon Unit. The colors represent different
5 thicknesses. The dark orange color represents 30-plus feet
6 of net coal pay. The lighter orange indicates 20-to-30 feet
7 of pay, and then the yellow indicates 10-to-20 feet. The
8 dark -- the large dark gas symbols indicate the coal wells
9 that BHP has drilled and drilled to date. Those symbols are
10 marked with the well number and under the well number the
11 test rate.

12 Q. Would you please describe the risk factors in
13 drilling the 390 and 391 wells?

14 A. To date, BHP has drilled 19 coal wells that --
15 we've completed and tested 17, all but 390 and the 391.
16 Most -- all of the wells have between 16 and 30 feet of net
17 pay. And you can look at the rates on this map and tell
18 that the rates vary widely from the worst well tested at ten
19 MCF per day -- it's the 392 well which is directly south of
20 the 390 well. And I think that is Section 26, Township 29
21 North, Range 13 West. That is a noncommercial well. We
22 don't have plans to hook it up.

23 The best well tested at 827 MCF per day. That is
24 the 389 well. It's over to the far right. It's in Section
25 21, Township 29 North, Range 12 West. Those two wells have

1 approximately the same coal thickness, about 20 feet.

2 And looking at those tests, you can see anything
3 between ten MCF and 800 MCF that you might find, so the risk
4 in drilling and producing coal is not finding the coal, it's
5 being able to make a commercial completion out of it. You
6 don't know if it's going to be commercial or not until you
7 drill it and test it.

8 Q. If you successfully complete a well, is that
9 indicative of the well paying out?

10 A. No. We only have two wells that are producing in
11 this field. They've only been producing since November of
12 1990, so the history of the coal production in this area is
13 not very well-known. It can't be predicted with
14 conventional means, and it's a risk.

15 Q. Are there any economic risks in today's market?

16 A. Yes. With low gas prices, some of these wells
17 that we are planning to hook up, such as the 388, which is
18 up on the -- to the north and to the right of -- well, it's
19 to the left of 389 and north of 389. That well tested at 50
20 MCF per day. If that well does not incline, or if we don't
21 get some classical coal behavior with inclining production,
22 it could become noncommercial.

23 Q. What penalty do you recommend against the
24 nonconsenting interest owner if she elects to go nonconsent
25 under the pooling orders?

1 A. Cost plus 156 percent.

2 Q. Do you understand that figure to be a standard
3 one for coal wells in the San Juan Basin?

4 A. Yes.

5 Q. Please describe how Exhibit 9 was prepared, if
6 you will. Did you prepare it yourself?

7 A. The wells were drilled according to this map. I
8 did not produce the map, but as the wells were drilled, I
9 verified the thicknesses that the coal -- that we saw in the
10 coal according to the logs. As you can see from the dots
11 all over this map, there have been many, many wells drilled
12 in this area, so the mapping -- we have very good well
13 control for the mapping. I spotted all the coal completions
14 on that.

15 Q. So you reviewed all the pertinent materials
16 regarding coal thickness on this map and you'd agree with
17 them?

18 A. Yes.

19 Q. In your opinion, will the granting of these
20 applications be in the interest of conservation, the
21 prevention of waste and the protection of correlative
22 rights?

23 A. Yes.

24 MR. BRUCE: Mr. Examiner, at this time I'd move the
25 admission of Exhibit 9.

1 MR. CARR: No objection.

2 HEARING EXAMINER: Exhibit 9 will be admitted into
3 evidence at this time.

4 Mr. Carr, your witness.

5 CROSS-EXAMINATION

6 BY MR. CARR:

7 Q. Ms. Torbet, I looked at your Exhibit Number 9.
8 You're the one that spotted the coal wells on this exhibit?

9 A. Uh-huh.

10 Q. And do you know when these wells were drilled?
11 Were these coal wells drilled also in 1990?

12 A. Yes, sir.

13 Q. As part of the Amoco farmout arrangement, do you
14 know?

15 A. Not all of them. Some of them are drilled inside
16 the Pictured Cliffs PA, and they were not part of the Amoco
17 farmout.

18 Q. You've got the test information on these wells.
19 What kind of tests were they?

20 A. These were tests performed after completing the
21 well, portable test equipment.

22 Q. Immediately after completion?

23 A. Yes.

24 Q. And they had not produced at all at that time?

25 A. No.

1 Q. If we look at Section 28 on this exhibit, it's
2 got the Tycksen Number 1, and below it it says, "pooled
3 unit." Is this just a map you were using, or did you have
4 any involvement in placing that term on there?

5 A. I didn't have any involvement in putting that on
6 there.

7 Q. You're not the right person to ask what "pool
8 unit" means?

9 A. No.

10 Q. Mr. Bruce asked you if you knew that 156 percent
11 was a standard figure used for penalties in the Fruitland
12 coal.

13 A. Yes.

14 Q. Do you know how that 156 percent was arrived at?

15 A. No.

16 Q. Did you use it just because it was a standard
17 that is used?

18 A. Yes.

19 Q. You didn't look behind that and determine that
20 maybe 125 percent of that formula was related to drilling
21 costs and other factors related to completion and things of
22 that nature?

23 A. Was the question did I look into that?

24 Q. Yes.

25 A. No.

1 Q. And you weren't aware of that?

2 A. No.

3 Q. You're going to connect the 388; is that correct?

4 A. Correct.

5 Q. And see if the production inclines?

6 A. Correct.

7 Q. Have other wells already been connected up in

8 this area?

9 A. Yes, two, the 377 and the 378.

10 Q. And are they showing an incline in their

11 producing rate?

12 A. No.

13 Q. They're not?

14 A. No.

15 Q. Is this area performing in a fashion that is not

16 typical for Fruitland coal wells?

17 A. I have not worked the entire San Juan Basin, so

18 -- but I did attend all the spacing hearing -- spacing

19 hearings, and I know from testimony given by Meridian, Amoco

20 and Union that some wells exhibit that and some wells

21 don't. So, you know, at the time these were drilled, we

22 were hoping for that, but we don't know if we're going to

23 see it or not.

24 Q. How many wells of the Fruitland coal wells shown

25 on this map are connected at this time?

1 A. Right now three are connected, but one was just
2 connected the day before yesterday.

3 Q. You connect at the same time you complete?

4 A. No.

5 Q. I think you testified all but the two wells in 23
6 have been completed.

7 A. Right.

8 Q. But only several are connected.

9 A. Right.

10 Q. Was there any typical reason why the two wells in
11 23 were the last ones to be completed?

12 A. Well, they have not been completed, and the
13 reason they have not been completed is because when we got
14 ready to complete, I got a call from Don Reinhardt saying,
15 "Don't complete the wells. There is a problem with the
16 land."

17 Q. Are you the person I should talk to about how you
18 go about completing a well?

19 A. Yes.

20 Q. Certain information was produced to us by your
21 attorney in response to a request, and it included some
22 information on the -- call it "completion prognosis," I
23 think it was called, on the 390. There wasn't one on the
24 391. Is there any difference or different approach you use
25 well by well, or could we expect a similar completion

1 prognosis?

2 A. Both of those wells have completion procedures
3 written, and I think the fact you didn't get the one for the
4 391 was just an oversight of whoever was copying the
5 material. Those two wells had essentially identical
6 completion procedures.

7 Q. And you'd be fracture stimulating both of them?

8 A. Correct.

9 MR. CARR: That's all I have. Thank you.

10 HEARING EXAMINER: Mr. Bruce, any redirect?

11 MR. BRUCE: I have no redirect.

12 HEARING EXAMINER: One clarification. There's some
13 horizontal-vertical lines on this map. What is the
14 significance in them, the dash lines?

15 THE WITNESS: Horizontal and vertical?

16 HEARING EXAMINER: The box, looks like a boundary line
17 or something.

18 THE WITNESS: The dark outline is the Gallegos Canyon
19 Unit. The dotted line is the Pictured Cliffs participating
20 area.

21 HEARING EXAMINER: And there are many other wells in
22 this area that are producing from deeper horizons.

23 THE WITNESS: Yes, the Atoka, Pictured Cliffs, some
24 Fruitland. There -- I don't think there's any Mesaverde
25 completions within the Gallegos Canyon, but there are some

1 surrounding it.

2 HEARING EXAMINER: The wells that are your coal gas
3 wells, it doesn't appear that -- you have just centered them
4 into the orange area for the most part because you do have a
5 few in the, I guess, shallower -- the thinner ones.

6 THE WITNESS: That's correct.

7 HEARING EXAMINER: Especially the one way down there in
8 the south, the 378.

9 THE WITNESS: That's correct.

10 HEARING EXAMINER: It has good production, it appears.

11 THE WITNESS: That's correct. That was -- when these
12 wells were proposed, using conventional estimates of, of
13 course, what a well would produce, you would want to drill
14 for the largest net pay you could obtain. However, because
15 it's coal and net pay is not necessarily indicative of a
16 good rate or a commercial completion, that well was put to
17 the south deliberately to test the southern half of the
18 Gallegos Canyon Unit to see if it would be coal productive.
19 But we just put one well down there because there was a lot
20 of concern over that because the coal was Stanolind.

21 HEARING EXAMINER: Do you oversee the completion
22 techniques on these wells in the coal gas?

23 THE WITNESS: Yes.

24 HEARING EXAMINER: What techniques have been utilized in
25 these wells?

1 THE WITNESS: These are all perforated and fractured
2 with -- typically, we always use different fracturing
3 fluids. Most of the wells were treated with 70 quality
4 nitrogen foam, 20-40 sand, 30 sand, fracked, I guess, sizes,
5 anywhere from 40 to 90,000 pounds.

6 HEARING EXAMINER: And your perforations are confined
7 then to the coal itself?

8 THE WITNESS: Yes.

9 HEARING EXAMINER: Are there any acid frack jobs in
10 this area?

11 THE WITNESS: We have not tried that.

12 HEARING EXAMINER: Are there any other questions of
13 this witness?

14 EXAMINATION

15 BY MR. STOVALL:

16 Q. Open hole or cased hole?

17 A. These are all cased hole.

18 Q. Any water production of the ones that you've --

19 A. Yes, we have -- that varies pretty widely too.
20 We had anywhere from one barrel a day to about 100 barrels a
21 day was the highest.

22 Q. Now, if I remember all the -- whether you're
23 going to get the incline in production is going to be kind
24 of a product of dewatering; is that not correct?

25 A. Well, I know Meridian showed some testimony that

1 those two were not necessarily related. They had wells
2 incline without necessarily producing a lot of water.

3 MR. STOVALL: No further questions.

4 HEARING EXAMINER: Are there any other questions of Ms.
5 Torbet? If not, she may be excused.

6 Mr. Bruce, how much longer on your next witness?

7 MR. BRUCE: Mr. Examiner, I would propose ceasing my
8 direct examination. I may call a witness in rebuttal, but
9 I'm through with my direct.

10 HEARING EXAMINER: In that case, why don't we take a
11 ten-minute recess at this time?

12 (Recess, 3:11 p.m. to 3:30 p.m.)

13 HEARING EXAMINER: Mr. Carr?

14 MR. CARR: At this time we call Mr. Walsh.

15 EWELL N. WALSH

16 the witness herein, having been first duly sworn, was
17 examined and testified as follows:

18 DIRECT EXAMINATION

19 BY MR. CARR:

20 Q. Will you state your name for the record, please?

21 A. My name is Ewell N. Walsh.

22 Q. Where do you reside?

23 A. Farmington, New Mexico.

24 Q. By whom are you employed?

25 A. I've been employed as a consultant by the

1 Locke-Taylor Drilling concern in this case.

2 Q. And who is Locke-Taylor Drilling?

3 A. Locke-Taylor Drilling is the owner and operator
4 of the Tycksen Number 1, subject -- one of the subject wells
5 in this case, and really involves one individual, Mrs.
6 Louise Locke.

7 Q. Have you previously testified before this
8 division and had your credentials as a petroleum engineer
9 accepted and made a matter of record?

10 A. Yes.

11 Q. Are you familiar with the applications filed by
12 BHP in this case?

13 A. Yes.

14 Q. Are you familiar with coal seam gas development
15 in the San Juan Basin?

16 A. Yes.

17 Q. Are you familiar with the acreage which is the
18 subject of this particular case?

19 A. Yes, I am.

20 MR. CARR: Mr. Stogner, are the witness' qualifications
21 acceptable?

22 HEARING EXAMINER: Mr. Bruce?

23 MR. BRUCE: No objection.

24 HEARING EXAMINER: Mr. Walsh's qualifications are
25 acceptable. What's your first name, Mr. Walsh?

1 THE WITNESS: Ewell.

2 HEARING EXAMINER: Mr. Carr?

3 Q. (By Mr. Carr) Mr. Walsh, what does Louise Locke
4 or Locke-Taylor Drilling Company seek by appearing in this
5 case?

6 A. Insofar as my part in the engineering is to
7 prevent damage, irreparable damage, to her Tycksen Number 1.

8 Q. And is Locke also requesting that no penalty be
9 assessed against the interest of Louise Locke?

10 A. No penalty? Yes.

11 Q. Have you prepared certain exhibits for
12 presentation in this case?

13 A. Yes, I have.

14 Q. Would you refer to what has been marked for
15 identification as our Exhibit Number 1?

16 A. Exhibit Number 1 is a map indicating the location
17 of the wells that I utilized in this area for determining
18 coal development. In addition to the wells utilized for
19 coal development, there's also indicated the Locke-Taylor
20 Tycksen Number 1 in the northeast quarter of Section 23,
21 Township 29 North, Range 13 West.

22 Adjacent to the Locke-Taylor Tycksen Number 1 is
23 the Gallegos -- BHP Petroleum Gallegos Canyon Unit 391. In
24 the southwest quarter of Section 23 is located the BHP
25 Gallegos Canyon Unit 390.

1 Q. Would you now go to Exhibit Number 2 and identify
2 that?

3 A. Exhibit Number 2 is what I call a well bore
4 schematic. On the left-hand side of the exhibit there's a
5 heading, "Locke-Taylor Drilling Company Tycksen Number 1,"
6 and the location of the well. Under that heading is
7 indicated with vertical lines the casing strings that were
8 run in the well at the time the well was drilled.

9 In the lower portion of the schematic, the "X"
10 designation is for the portion of the well that was
11 considered open hole. The slash portion within the lower
12 portion of the open hole is to indicate that a cement plug
13 was set in that open hole from 1,230 feet to approximately
14 1,070 feet.

15 The middle portion of Exhibit 2 is to indicate,
16 based upon BHP Petroleum Gallegos Canyon Unit Number 391,
17 the formation analysis log, the depths or top and bottom of
18 the producing interval for the Tycksen Number 1 and the
19 Fruitland coal interval that was drilled through by BHP
20 Petroleum. In this case, the Fruitland sand indicated on
21 this log is -- top of it at 896 feet, the bottom at 919
22 feet. The top of the Fruitland coal or basal coal that BHP
23 will complete in is located at -- top of it at 1,152 feet,
24 the bottom at 1,182 feet.

25 The right-hand portion is a well bore schematic

1 of the BHP Petroleum Gallegos Canyon Unit Number 391, with
2 its location indicated. The same thing is indicated there
3 as far as the casing strings and cementing programs. The
4 distance between these wells, using the calculated distance
5 by virtue of location footages, is 121 feet. The distance
6 from the top of the -- the estimate top of the cement plug
7 to the top of the coal interval is 82 feet. In addition,
8 the Tycksen Number 1, which is a producing well, the
9 Fruitland sand is producing down the back side or outside of
10 the seven-inch casing around the seven-inch casing shoe and
11 then to the surface.

12 Q. Mr. Walsh, have you had an opportunity to review
13 how BHP proposes to stimulate the Gallegos Canyon Unit Well
14 Number 391?

15 A. As our request did not -- we did not receive a
16 completion prognosis on the 391. We did receive a
17 completion prognosis on the 390 well, and I believe Ms.
18 Torbet testified that they proposed to complete 391 in a
19 similar fashion to the 390.

20 Q. And what impact do you see, potentially, for the
21 Tycksen Well Number 1 as a result of the proposed completion
22 of the Gallegos Canyon 391 well?

23 A. In all probability, the stimulation or frack job
24 of the magnitude to be utilized on the 390 will intersect
25 the well bore of the Tycksen Number 1.

1 Q. And what effect, in your opinion, would that have
2 on that well bore?

3 A. The effect on that well bore, that it could prove
4 to be irreparable damage to the present producing interval
5 in the Tycksen Number 1, and there would be a loss of
6 current production, plus reserves, that could not be
7 recovered by this well.

8 Q. What is the current status of the Tycksen Number
9 1?

10 A. A producing commercial well.

11 Q. From the Fruitland sand?

12 A. From the Fruitland sand.

13 Q. All right, sir. Let's go to Exhibit Number 3.
14 Could you identify that, please?

15 A. Exhibit Number 3 was an attachment to the
16 completion prognosis for the Gallegos -- BHP Petroleum
17 Gallegos Canyon 390. The Exhibit 3 is a calculation
18 performed by the Western Company concerning a nitrogen
19 foam-fractured job.

20 I'd like to direct your attention to page two of
21 Exhibit 3 under the title of "West Foam Analysis Profit
22 Profile Study," and then to the column about the middle that
23 says "Location in Fracture Feet," and under that,
24 "From/To." This indicates, in my opinion, that the
25 fracture created by stimulation with the type of foam job

1 they were -- they will do on the 390 and perform on the 391
2 will intersect the well bore of the Tycksen Number 1 because
3 the fracture length is indicated to be 693 feet, and the
4 wells are only 121 feet apart.

5 Q. Now, Mr. Walsh, do you have an opinion as to
6 whether or not the processed fracture treatment would have
7 any effect on the plugging that has previously been done on
8 the well?

9 A. The cement plug that was placed in this well,
10 what, some 37 -- 39 years ago -- and being familiar with the
11 cementing practices at that time because I was in that area,
12 was performed with sack cement, cementing equipment that
13 really is aging now, but the ACVP pumps. There was no
14 densitometers. All you had was a mud weight scale to see
15 what you were doing. Hopefully, the operator would keep the
16 proper water flow.

17 In my estimation, this cement plug that's been
18 down there for all these years could be in a condition that
19 although under static, low-pressure conditions that have
20 been present in this well, that any stresses put on it by a
21 fracture treatment with a fracture especially intersecting
22 the well bore may not withstand these forces and allow
23 fluids to enter into the open portion of the well bore and
24 reach the producing sand in the Tycksen Number 1.

25 Q. Do you have an opinion as to whether or not

1 approval of the application of BHP for the east half unit
2 and the Gallegos Canyon Unit Well 391 will have an adverse
3 impact on the property interest of Mrs. Locke?

4 A. Yes, it will have an adverse impact.

5 Q. Do you believe it will damage her property
6 interest in the north half of this section?

7 A. By completion of this well, yes.

8 Q. Have you been out personally and inspected the
9 well sites?

10 A. I have been on the surface of the well sites.

11 Q. If a well was to be drilled in the north half of
12 this section to the Fruitland coal, in your opinion, are
13 there other locations that would be available that would not
14 be in such close proximity to the Tycksen well?

15 A. Yes.

16 Q. And that if the wells had been drilled at those
17 locations this problem might not exist?

18 A. It might not exist.

19 Q. Have you had personal experience with the
20 completion of Fruitland coal gas wells in the San Juan
21 Basin?

22 A. Yes, I have.

23 Q. What is the nature of that experience?

24 A. The nature has been mainly in plug back of
25 Pictured Cliff wells for completion in the Fruitland coal.

1 In addition, I have -- on request of clients have prepared
2 prognosis and cost estimates for drilling of Fruitland coal
3 wells.

4 Q. Have you also been involved in the drilling of
5 wells that go through the Fruitland coal?

6 A. Hundreds of them.

7 Q. Basically, when you're plugging back a Pictured
8 Cliffs well to recomplete in the Fruitland coal, you're
9 working with an existing well bore; isn't that correct?

10 A. That is correct.

11 Q. And that effort then is focusing just on the
12 completion practice?

13 A. It's basically a completion practice.

14 Q. Do you have an opinion as to how much risk is
15 actually associated with the completion process in one of
16 these field coal wells?

17 A. I'd say very little or none.

18 Q. Are you prepared to make a recommendation to the
19 Examiner as to the risk factor that should be assessed
20 against Louise Locke if, in fact, these applications are
21 granted?

22 A. First off, I'd say I don't believe a risk factor
23 should be applied. However, if the commission sees fit to
24 apply a risk factor, it should only be on those costs
25 attributable to the completion only, not on prior costs to

1 this point. They drilled a well, they logged it, saw they
2 had the coal seam encased and cemented it, so that risk is
3 out of the way.

4 Q. Do you have anything further to add to your
5 testimony?

6 A. No.

7 Q. Were Exhibits 1 through 3 prepared by you?

8 A. Yes.

9 Q. At least Exhibit 3 is a --

10 A. Three is a copy.

11 MR. CARR: At this time, Mr. Stogner, we move the
12 admission of Locke Exhibits 1 through 3.

13 HEARING EXAMINER: Are there any objections?

14 MR. BRUCE: None.

15 HEARING EXAMINER: Exhibits 1, 2 and 3 will be admitted
16 into evidence.

17 MR. CARR: That concludes my direct examination of Mr.
18 Walsh.

19 HEARING EXAMINER: Thank you, Mr. Carr.

20 Mr. Bruce, your witness.

21 CROSS-EXAMINATION

22 BY MR. BRUCE:

23 Q. Mr. Walsh, did I understand you to say that the
24 Tycksen Number 1 well is producing from the Fruitland sand?

25 A. Yes.

1 Q. What are the current daily production rates on
2 the well?

3 A. Current daily, approximately 10 to 15 MCF a day.

4 Q. Is that an economical rate?

5 A. Based upon the gas price they're getting, it very
6 much 'so is.

7 Q. Has production from the Tycksen Number 1 well
8 been affected to date from the drilling of the 391?

9 A. I haven't plotted complete production history to
10 determine that, so I can't answer it.

11 Q. What is the fracture orientation in this area of
12 the San Juan Basin?

13 A. Fracture orientation? You're going to have to
14 clarify that because there are systems of fractures within
15 the basin that you can put on probably almost any degree.
16 I'm not understanding your question.

17 Q. Well, in the Fruitland coal, do you know the
18 orientation of the fractures in this immediate area?

19 A. I never heard of a definite orientation for
20 fracture in the Fruitland coal because if -- your production
21 is basically of your cleavage and fractures, therefore, the
22 frack job is going to follow your least resistance, and I
23 can't say if there is one.

24 Q. But it's also possible that it won't -- a
25 fracture from the 391 well would intercept the Tycksen well.

1 A. Just as much -- it's possible.

2 Q. Are the fractures vertical or horizontal?

3 A. In the Fruitland coal?

4 Q. Yes.

5 A. You have cleavage of basically vertical.

6 Q. Vertical. What did you say the top of the sand
7 was in this area?

8 A. Top based upon the formation analysis log of the
9 391?

10 Q. Yes.

11 A. Fruitland sand I take at 896 feet.

12 Q. Between the bottom of the Fruitland sand and the
13 top of the Fruitland coal there's about 230 feet?

14 A. Base of Fruitland sand, top of coal, 233 feet.

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

16 HEARING EXAMINER: Thank you, Mr. Bruce.

17 Mr. Carr, any redirect?

18 MR. CARR: No, I do not have any redirect.

19 HEARING EXAMINER: Mr. Walsh, I'm looking at your
20 Exhibit Number 2, and you have the Fruitland sand between
21 896 and 919.

22 THE WITNESS: Yes.

23 HEARING EXAMINER: Am I to understand that's the
24 producing interval of the Fruitland sand?

25 THE WITNESS: This is what I call the equivalent

1 producing interval for the Tycksen Number 1. The Tycksen
2 Number 1 had no logs run on it. However, utilizing a well
3 bore 121 feet away, I think we can very much say that this
4 is the producing interval.

5 HEARING EXAMINER: Now, what's below the 919?

6 THE WITNESS: 919?

7 HEARING EXAMINER: Yes.

8 THE WITNESS: Seven-inch casing, no cement around the
9 outside of the seven-inch casing, then down to your open
10 hole, which is indicated as part of the open hole.

11 HEARING EXAMINER: But am I going to find any producing
12 sand below the 919?

13 THE WITNESS: Producing sand, I would seriously doubt
14 it. Looking at the logs, no sands.

15 HEARING EXAMINER: Although it is open, it's not a
16 producing interval.

17 THE WITNESS: I don't consider it a productive
18 interval.

19 HEARING EXAMINER: Is it a tight sand, a shale?

20 THE WITNESS: You have interbedded sands and shales.

21 HEARING EXAMINER: And you have your one-inch tubing
22 producing the water?

23 THE WITNESS: This well currently produces very little
24 water. The one-inch siphon string is there on occasion.
25 The well is blown to remove what small amount of water it

1 is. It's not even an amount you'd collect in a pit. It's a
2 vapor that goes into the air.

3 HEARING EXAMINER: What year was this well completed?

4 THE WITNESS: 1952.

5 HEARING EXAMINER: And it is dedicated 160 acres?

6 THE WITNESS: I believe the current record in the OCD
7 files at Aztec indicate 320.

8 HEARING EXAMINER: What pool is it in?

9 THE WITNESS: West Coots Farmington Salem.

10 HEARING EXAMINER: Farmington?

11 THE WITNESS: Fruitland sand, excuse me.

12 HEARING EXAMINER: And that's based on 320.

13 THE WITNESS: No, the spacing there is 160.

14 HEARING EXAMINER: I'm really confused now, Mr. Walsh.

15 THE WITNESS: This evidently dwells back from the
16 original drilling of the well in which there's a 320-acre
17 unit basically dedicated to the well. Over the process of
18 the years, neither the operator or the Oil Conservation
19 Division has noticed it, and it has not been corrected.

20 HEARING EXAMINER: It's in an unprorated gas pool?

21 THE WITNESS: Yes.

22 HEARING EXAMINER: I'm going to take administrative
23 notice on the well file on this well here.

24 Any other questions of Mr. Walsh?

25 EXAMINATION

1 BY MR. STOVALL:

2 Q. It's pretty heavy-duty casing at the top of this
3 well, isn't it?

4 A. Mr. Stovall, this well was drilled back in '52.
5 It was drilled with a cable tool rig, so the reason you see
6 all these strings of casing that are called water strings in
7 that they would drill so far, then run casing and allow it
8 to set on the bottom, drill out from underneath it, just to
9 shut off any waters coming above.

10 Then they drilled below, and then normally pulled
11 them. They got so far, they'd run another one and pull that
12 one. The ten and three-quarters is the only one that's
13 cemented; therefore, your eight and five/eighths and seven
14 inch were what we call water strings.

15 Q. If BHP is allowed to continue to complete its
16 well 391, do you have an opinion of a manner in which that
17 could be done without posing a risk to the Tycksen well?

18 A. The only thing I could see would possibly just
19 perforate the coal, get what you can out of it. Any
20 stimulation could intersect -- any stimulation that would be
21 necessary to give proper producing characteristics and
22 recover the reserves would intersect the well bore -- in all
23 probability intersect the well bore in the Tycksen
24 Number 1.

25 HEARING EXAMINER: Could this well --

1 MR. STOVALL: Go ahead.

2 HEARING EXAMINER: Mr. Walsh, could this well -- let me
3 rephrase it. Is the Fruitland sand water sensitive, and if
4 it was shut down for repair could it come back on?

5 THE WITNESS: I would not -- I would say like a month
6 or so, like two months, I would anticipate no problem. Any
7 great length of time, six months to a year, there might be.

8 HEARING EXAMINER: You want to go into a little more
9 detail on how that would occur?

10 THE WITNESS: The one month or two months shut down
11 what the body of the water well produces essentially is not
12 creating any volume which can probably fill up and reach
13 that sand because you have your open hole beneath that
14 casing.

15 At that time too you would have gas moving out of
16 that sand which would tend to prevent any water from
17 stabilizing in it. However, the longer shutdown might allow
18 accumulation which could cover the sand, and then any
19 additional pressure applied on top of that water by gas
20 moving up through the water and increasing the dome-like --
21 it could push the water back into the sand and create
22 damage.

23 HEARING EXAMINER: What are the fresh water zones in
24 this area? Do you know?

25 THE WITNESS: Any fresh water zones would be, in my

1 opinion, down probably through the first four or 500 feet,
2 would be about it.

3 Q. (By Mr. Stovall) Is that Ojo Alamo?

4 A. I'm not so sure the Ojo would be -- I don't think
5 it's present on this area.

6 HEARING EXAMINER: I'm going to throw this question out
7 to you, Mr. Walsh, and if your technical witness can answer
8 this too, I'm throwing this question out for both. Are
9 there any water wells that you know of in this area, either
10 one of you?

11 THE WITNESS: Not to my knowledge.

12 MS. TORBET: Don't know of any.

13 THE WITNESS: I have not researched the record per se
14 for that.

15 HEARING EXAMINER: Does the Fruitland sand have any
16 pressure on it?

17 THE WITNESS: Oh, yes, this well has a surface shut in
18 pressure of, depending on the amount of time, anywhere from
19 maybe 200, 250 pound surface.

20 HEARING EXAMINER: Any other questions of this
21 witness?

22 Q. (By Mr. Stovall) Would there be anything that
23 could be done to the Tycksen well, for example, to run --
24 cement the casing and perforate or do something like that
25 that could protect that well?

1 A. I do not believe so at this point in time, with
2 the age of the well. The problem being is they attempted to
3 pull the seven-inch casing out when they wanted to complete
4 this well. The seven-inch casing was stuck. They -- in
5 this -- according to the OCD records well files, it was
6 determined after -- over a period of days that they had no
7 gas flow up the back side of the seven inch to the surface.

8 And the Oil Conservation Division allowed them to
9 leave that seven inch in this stuck position, indicating
10 that the position that there was no gas coming from the
11 formation up the back side; it would be produced around the
12 bottom and then to the surface.

13 Q. Who actually physically operates the Tycksen
14 well?

15 A. On -- as far as a switcher, you mean?

16 Q. No. Well, I'm thinking more in terms of
17 supervision, not the actual person out there switching the
18 well.

19 A. Don Locke converses with his switcher, maintains
20 contact with the switcher for the well.

21 Q. Don Locke with whom BHP --

22 A. Yes.

23 Q. Does Locke-Taylor Drilling operate any other
24 wells?

25 A. The only other well, to my knowledge, and it's

1 noncommercial, that's shut-in -- nonproducing, let me say
2 that, nonproducing, a Pictured Cliff well.

3 Q. If the commission were to deny BHP's
4 applications, what would Mrs. Locke or Locke-Taylor propose
5 to do? Do you have any idea?

6 A. I don't believe I can answer that right now.

7 Q. You're not quite that close to them as a
8 consultant?

9 A. That's right.

10 Q. Are you a regular consultant, or are you just
11 hired particularly for this case for Mrs. Locke? Do you
12 advise them in general on operation here?

13 A. No, I wasn't really hired as a consultant until
14 about April.

15 Q. So you're not privy to their operations?

16 A. I have made myself somewhat familiar over this
17 period of time, yes.

18 Q. You don't participate in decision making with
19 them.

20 A. No, no, I do not.

21 Q. If these applications were denied, then
22 conceivably Mrs. Locke could end up with no Fruitland coal
23 well on her Fruitland coal interest; is that correct?

24 A. I'm sorry, I'm not quite following you.

25 Q. In other words, if BHP were told -- if we told

1 BHP -- denied their application to force pool, I'm going to
2 make an assumption here that they would then have to go to a
3 south half unit for one well?

4 A. Yes.

5 Q. And they'd have to make some other determination
6 about the other well?

7 A. Correct.

8 Q. But effectively there would not be a well
9 producing Mrs. Locke's north half coal gas.

10 A. That could be the case.

11 Q. So she would then either have to arrange to buy
12 the BHP well, or successfully obtain possession of it
13 through litigation, or drill her own well; is that correct?

14 A. That would be, in my limited experience, along
15 that line, yes. I'll answer that as yes.

16 Q. If I understand your testimony correctly, though,
17 you have not testified -- your testimony did not state that
18 the application should be denied, but rather that as far as
19 any penalty, there should be essentially no penalty or
20 limited to the cost effect; is that correct?

21 A. May I correct that now?

22 Q. I guess I've given you that opportunity, if
23 that's what you want to do.

24 A. In my opinion, the application of BHP Petroleum
25 insofar as especially the forced pooling, west half of

1 Section 23, Township 29 North, Range 13 West, should be
2 denied, based upon my engineering knowledge that completion
3 of this well at this time could bring around irreparable
4 damage to the Tycksen Number 1 and prevent Mrs. Locke from
5 having her current production and income and recovering what
6 reserves she has coming to her in the Tycksen Number 1.

7 Q. Did you say west half or east half?

8 A. East half.

9 Q. And you are not testifying in the capacity of
10 somebody knowledgeable about land matters in general or
11 specifically land matters in this case, are you?

12 A. No, sir.

13 Q. So you're not in a position to give an opinion as
14 to whether or not BHP had a legal right to drill a well,
15 based upon the testimony that --

16 A. If I made any opinion, it would probably almost
17 be hearsay because of what I've heard. But I'm not, I
18 think, qualified to answer that question.

19 Q. Be about as competent as my engineering opinion,
20 I suppose.

21 A. All right, I'll believe that.

22 Q. What is Mrs. Locke's position then, or what is
23 your understanding of Mrs. Locke's position with respect to
24 the application for the west half unit to be dedicated to
25 the 390 well?

1 A. In my opinion, I think it should be a north
2 half-south half. There should not be an east or west half
3 by virtue of -- getting into another little area -- by
4 virtue of the ownership.

5 MR. STOVALL: I don't think I have any more questions.

6 HEARING EXAMINER: Mr. Walsh, are there any rules and
7 regulations that you know of in this area which stipulate
8 the distance of well bores, such as this, where one well is
9 producing from a different interval than another?

10 THE WITNESS: I know of no regulations stipulating
11 distance of well bores.

12 HEARING EXAMINER: Do you have any knowledge -- no, I'm
13 not going to ask that question.

14 Are there any other questions of Mr. Walsh?

15 MR. STOVALL: No. I may want to recall one of BHP's
16 witnesses.

17 MR. BRUCE: I am planning on recalling my engineer.

18 MR. STOVALL: If you're going to do that, then I don't
19 need to have any discussion with the Examiner. I have no
20 further questions of Mr. Walsh.

21 HEARING EXAMINER: You may be excused.

22 Mr. Bruce.

23 MR. BRUCE: Recall Ms. Torbet to the stand.

24 HEARING EXAMINER: Do you have any objection to that,
25 Mr. Carr?

1 MR. CARR: No.

2 HEARING EXAMINER: Mr. Bruce.

3 REDIRECT EXAMINATION

4 BY MR. BRUCE:

5 Q. Ms. Torbet, you were previously sworn. Have you
6 reviewed materials regarding the Tycksen Number 1 well, or
7 as it's referred to in the OCD well file, the Tycksen Pool
8 Unit Number 1 Well?

9 A. Yes, I have.

10 Q. What were those materials -- or to short-circuit
11 this, were they contained in a report prepared by Mr.
12 Walsh? Are those the materials you examined?

13 A. The materials that I examined in order to
14 construct the well bore diagram were primarily OCD records
15 of what -- of drilling and completion and a plug back.

16 Q. And you were here and listened to Mr. Walsh
17 testify, did you not?

18 A. Yes.

19 Q. Do you agree with Mr. Walsh that this well is
20 producing from the Fruitland sand?

21 A. Yes.

22 Q. Do you agree or disagree with Mr. Walsh regarding
23 any potential harm to the Tycksen Number 1 Well from
24 completing the 391 well?

25 A. I disagree.

1 Q. First let's go into the fracturing. What is the
2 fracture orientation in this area of the basin?

3 A. In this area of the basin, we believe the
4 fracture orientation to be vertical. This is based on
5 tracer logs that we have run. We've run a radioactive
6 tracer in the frack sand as well as being fractured and then
7 a lot of the wells to determine the fracture height based on
8 numerous fracture height logs that we've run in our coal
9 wells in the Gallegos Canyon Unit that the fractures appear
10 to be vertical.

11 And in addition, we believe the orientation is
12 northeast to southwest, and that is based primarily on the
13 coal methane study performed by this office, also just on
14 the literature in general about the coal GRI studies and
15 literature.

16 Q. What has been BHP's experience in completing and
17 fracturing the other wells it has in the Gallegos Canyon
18 Unit, the Fruitland coal wells?

19 A. As far as fracturing, we haven't really had any
20 problems fracturing out of zone. All the wells that we have
21 fractured in the coal and traced have remained in the coal.
22 And due to the distance between these well bores and
23 orientation of northeast southwest, I think it is highly
24 unlikely, or almost any other orientation is highly unlikely
25 to fracture our well and intersect another well 120-odd feet.

1 away with only a four-inch or eight-inch well bore --
2 five-inch well bore.

3 Q. So do you believe that completing the 391 well
4 will interfere with the Tycksen well?

5 A. No.

6 Q. Are there any other wells in the immediate
7 vicinity of the 391 well?

8 A. Yes. Our well was drilled on an existing Amoco
9 Dakota pad, an Amoco Dakota well.

10 Q. So it's right next door.

11 A. It's right next to us.

12 Q. In your opinion, could the Tycksen well be
13 replugged to do away with any problems envisioned by Mr.
14 Walsh?

15 A. As far as communication between the Fruitland
16 sand and the Fruitland coal within that well bore, I would
17 say yes, I think it could be worked over to isolate those
18 two zones. And whether or not they're isolated in that well
19 bore, they are isolated in our well bore. Our well bore was
20 cemented to surface, and the two zones are hydraulically
21 isolated within the 391 well.

22 Q. Finally, the Examiner previously asked a question
23 about water wells in this area. Have you specifically
24 looked for any water wells?

25 A. No, I haven't.

1 Q. There's always a potential there may be some?

2 A. That's correct.

3 MR. BRUCE: I think that's it, Mr. Examiner.

4 HEARING EXAMINER: How many other well bores are there
5 in this immediate area? I think if there's another one -- I
6 have 'two, the 391 and the Tycksen 1. Is there another one
7 in there?

8 THE WITNESS: Yes, there's a Dakota well. This little
9 -- my little symbol kind of covers it up, but it's the 94E,
10 and it's an Amoco well that produces from the Dakota.

11 MR. STOVALL: That's the one where you can just barely
12 see the "E" above your gas well symbols?

13 THE WITNESS: Yeah.

14 HEARING EXAMINER: Do you know the footage location on
15 that one?

16 THE WITNESS: As far as how close it is to our well? I
17 don't know that, but it is drilled on the same pad, so I'm
18 sure it's close.

19 HEARING EXAMINER: Any other questions of this
20 witness?

21 MR. STOVALL: I have one other question.

22 EXAMINATION

23 BY MR. STOVALL:

24 Q. Your map, Exhibit 9, you show a Number 2 Tycksen
25 Pool Unit Well that's in that -- see that little symbol down

1 there? "NL" means logged; is that correct? Are you
2 familiar with it?

3 A. I know that's on that map, but I didn't spot that
4 well. I'm not familiar with that well.

5 Q. Okay. And if this application were denied, do
6 you have an opinion as to what either you'd recommend or
7 what BHP might do as far as the 391 well?

8 A. Well, I think if the 391 were definitely -- well,
9 I won't say definitely because this is the oil patch, but I
10 think it has potential to be much more productive than the
11 Tycksen well, and I think it would be foolish to plug it and
12 lose those reserves as opposed to the Tycksen well which is
13 most probably pretty close to depleted, the Fruitland sand
14 reserves.

15 Q. But if the -- and I'm assuming -- let's assume
16 both applications would be denied in this situation, would
17 BHP then go form a south half unit, do you think, and
18 dedicate the 390 to it?

19 A. I don't know. That's a land problem. I'm a
20 farmer.

21 Q. So you don't know what they -- if, in fact, they
22 weren't able to receive the production from the 391, they
23 would have to make some decision on that, wouldn't they?

24 A. I suppose.

25 HEARING EXAMINER: Do you have a definition of

1 "correlative rights"?

2 THE WITNESS: No. I have heard that term before.

3 HEARING EXAMINER: I would suggest you look it up after
4 this hearing today.

5 MR. STOVALL: I don't think I have any other questions.

6 MR. CARR: I do. I didn't get to cross-examine this
7 witness.

8 CROSS-EXAMINATION

9 BY MR. CARR:

10 Q. Ms. Torbet, did you pick the location for the
11 Gallegos Canyon Well 391?

12 A. No.

13 Q. You were not involved in that decision?

14 A. No.

15 Q. When you talk about the fracture orientation in
16 the area being northeast-southwest, that's a general
17 fracture orientation?

18 A. Yes.

19 Q. Have you actually looked or been out on the
20 site? Do you know the relationship of the Locke well as it
21 relates to the Gallegos Canyon 391?

22 A. It is slightly southwest.

23 Q. It's southwest of the Gallegos Canyon well, is it
24 not?

25 A. Slightly, I believe.

1 MR. CARR: That's all I have.

2 HEARING EXAMINER: Any other questions?

3 The witness may be excused.

4 Anything further?

5 MR. BRUCE: Nothing further.

6 HEARING EXAMINER: Are we ready for closing arguments?
7 And I assume you're going to repeat your motion?

8 MR. CARR: I think I'll do that just at the end of
9 closing, just for the record, because I sense it might be a
10 better time to do it that way.

11 HEARING EXAMINER: Mr. Carr, do you care to make a
12 statement at this time?

13 MR. CARR: Yes. I think since Jim is the applicant, I
14 probably should go first.

15 Louise Locke is before you today because BHP has
16 drilled two wells which affect her property interest. They
17 drilled them before they properly came before you and took
18 care of the land situation.

19 We have basically three concerns. The first
20 concern relates to damage to the property. The Oil and Gas
21 Act places on you a duty to assure the wells will be drilled
22 and operated so as not to damage offsetting property. And
23 we find ourselves today trying to defend the Tycksen Number
24 1, which is only 120 feet away from the well bore that has
25 been drilled and which BHP is proposing to fracture

1 stimulate.

2 I don't have to tell you that you don't need to
3 have rules that set distances between wells to still have
4 the duty to assure that properties are developed in a
5 fashion that doesn't damage offsetting properties.

6 Where Mrs. Locke finds herself today is she
7 currently receives income from the well, and she's concerned
8 that if the applications of BHP are granted, if they
9 complete the wells as proposed, that she's going to be moved
10 from an income receiver to a person who will be in a
11 nonconsent posture on two Fruitland coal wells.

12 And if BHP gets their way, she won't see any
13 revenue at all from those wells unless she can find the
14 money to pay for her 50 percent of the costs until they've
15 paid out plus 156 percent of those costs. For that reason
16 we request that you deny the application for the east half.

17 We think that "correlative rights" mean the
18 opportunity for each interest owner to produce without waste
19 its just and fair share of the reserves in the pool. We're
20 asking you to give Mrs. Locke the opportunity to continue to
21 produce her just and fair share of the reserves from the
22 north half without committing waste.

23 Now, I also would submit in that regard that
24 waste is not a balancing act. You don't look at the cost
25 associated with drilling a Fruitland well when that well was

1 drilled by BHP on its own before it even came to the
2 commission seeking approval and order.

3 We also have the question that's the basis for
4 our motion to continue indefinitely which is related to the
5 rights to drill. It's obvious from the evidence presented
6 that we believe that Stanolind, because there was not
7 pooling authority in the lease, didn't just have by some
8 implied act or there's some implied right for Stanolind to
9 commit the working interest in this tract to a unit, that
10 their authority to act would come from a lease document
11 itself.

12 That's not a question I'm asking you to decide
13 because the Oil and Gas Act directs you to identify property
14 interests, not decide it. We believe that BHP has no
15 operating rights in the north half. They have no right to
16 be there, we believe, and no right to drill. But that is a
17 question that has to be resolved by the courts. As long as
18 that issue stands out there, the order that you enter in
19 this case, if you do, could be void. We, therefore, ask
20 that you continue this case indefinitely, if you don't deny
21 it outright because of the damage to the Tycksen Number 1
22 Well, until title is established, until once and for all the
23 question as to operating rights is determined.

24 Then there's a question of penalty. We really
25 don't like addressing the question of penalty because we

1 think you shouldn't approve the lands in the first place,
2 but the penalty question, I think is of significance should
3 you decide to grant the application to BHP.

4 Remember, they drilled the well six months before
5 they sought a pooling order from the division. It was
6 drilled, and then six months later they filed an
7 application. The wells were at total depth. They took that
8 risk. Now they're just waiting completion until they find
9 out what you do.

10 You should note in determining what risk is
11 appropriate that from their Exhibit Number 9 the two wells
12 they decided not to complete actually are offsetting the
13 thickest portion of the reservoir. And if you look at the
14 numbers, they're going ahead and connecting a well that
15 tested 50 MCF per day. I submit that there's perhaps only
16 one well that was poorer than that on the test. You can
17 count the numbers and determine how much risk there actually
18 is associated with this well.

19 Ms. Torbet talked about a 156 percent penalty as
20 being what they recommended you adopt if you grant their
21 application because that's a standard. Mr. Stogner, that
22 standard was developed in a series of cases where Meridian
23 came before you and presented some detailed damage
24 calculations, penalty calculations, penalty analyses.

25 One of those cases is case 9593, and I would ask

1 you to take notice of that and the order that resulted,
2 Order Number R-8877, and in particular Order Number R-8877
3 dated February 22nd, 1989, and particularly Exhibit Number 8
4 because that -- it was offered by Meridian -- that's the
5 basis of this penalty. And when you look at that, you will
6 see there were a number of various factors that Meridian had
7 compiled, and they had assessed various risk percentages to
8 each of those factors. And the division looked at those
9 factors and entered an order under operating risks. There
10 were completion operations set out, and the division
11 allocated to those, we submit, 23.3 percent.

12 If you penalize this well -- if you grant the
13 application and if you decide you need to grant a risk
14 penalty, we believe you should follow the precedent set in
15 that case, and the penalty should not exceed 23.3 percent.

16 At this time I would move that the applications
17 of BHP be continued indefinitely.

18 HEARING EXAMINER: Before I rule on that motion, I want
19 to hear Mr. Bruce's closing argument.

20 MR. BRUCE: Mr. Examiner, BHP seeks to force pool these
21 two wells because we believe it will protect everyone's
22 property interests. The existing Tycksen Number 1 Well is a
23 Fruitland sand well. It's based on 160 acres, therefore,
24 just looking at the spacing, there's no bar to the drilling
25 of a Fruitland coal well in the northeast quarter of Section

1 23. Furthermore, the north half of Section 23 has never
2 been dedicated to any Fruitland coal well, and apparently
3 Mrs. Locke never had any intention of drilling a Fruitland
4 coal well on that north half.

5 You have before you a pooling designation and
6 some other documents. Well, what's the effect of that
7 designation? Really, there's no effect as far as BHP is
8 concerned, and I'll get into this in a minute.

9 Let me first get into the items Mr. Carr
10 mentioned about authority to pool. The pooling clause in a
11 lease only concerns the lessee's authority to pool the
12 interests of a lessor. It has nothing to do with the
13 lessee's authority to pool his own interests. The lessee
14 can pool his interests without the lessor's consent into any
15 sized unit, into any drilling unit or into any size
16 development unit, like the Gallegos Canyon Unit. And only
17 because I like the name of this case, I'll cite it to you.
18 It's called Bruce v. Ohio Oil Company, a Tenth Circuit
19 case. And that -- there are other cases out there that
20 establish that principle.

21 The pooling decision does not control. The OCD
22 is authorized to pool this acreage by compulsory process
23 despite the pooling designation because when these leases
24 were executed, the State of New Mexico Conservation Act had
25 already been enacted, and the compulsory pooling -- the laws

1 in existence at the time of making a contract become part of
2 that contract.

3 The oil and gas conservation laws are an exercise
4 of the police power. I know this sounds old to you -- I
5 think Bill and Bob and I have been litigating this for
6 several years now, and these conservation laws are
7 incorporated into the leases into the various contracts
8 entered into by the parties as a matter of law.

9 There are a number of cases that hold that a
10 compulsory pooling will supercede any prior voluntary
11 agreement. Once again, I would point out that that prior
12 voluntary agreement had nothing to do with a Fruitland coal
13 well and, therefore, the north half was never dedicated to
14 that well. Because Stanolind validly committed the working
15 interest of this 137-acre drill site lease to the Gallegos
16 Canyon Unit, the working interest was committed to that
17 unit; and BHP, as the Fruitland coal operator, has the right
18 to drill the well where it's located.

19 As we've stated before, BHP does not contest Mrs.
20 Locke's ownership of the working interest in the north half
21 of the section, but her interest and her correlative rights
22 are protected because she will receive her pro rata share of
23 production from the two wells if pooling is authorized.

24 Now, even if the lease -- the drill site lease is
25 not committed to the Gallegos Canyon Unit, the OCD can still

1 authorize pooling. I don't think there's any dispute that a
2 pooling order may authorize drilling on someone else's
3 lease, on a nonoperator's lease. Without that, it would do
4 away with the OCD's authority to pool or to space wells. In
5 effect, the wells would be spaced and developed based upon
6 the lessors and lessees and their arrangements, and there
7 would be no state authority to order that drilling.

8 Pooling can also occur after the drilling of a
9 well. New Mexico's compulsory pooling statute expressly
10 provides for pooling after drilling. Therefore, the fact
11 that BHP is coming here after the wells are drilled and not
12 completed is really immaterial as long as the other factors
13 involved in compulsory pooling have been shown. Because New
14 Mexico expressly -- New Mexico law expressly provides for
15 pooling after drilling, a pooling order should not be a
16 prerequisite to drilling, even though this well is not on a
17 lease specifically owned by BHP.

18 Now, BHP has made a good faith effort to get Mrs.
19 Locke's interest committed to the well. They attempted to
20 buy her interests. They haven't come to terms. Therefore,
21 we believe the requisite good faith effort has been made.
22 BHP does operate a number of wells in this area and should
23 be named the operator of the two wells due to its
24 experience.

25 As to well location, the location is proper

1 because it complies with Fruitland coal pool rules. And
2 especially with respect to the 391 well, BHP's witness
3 testified it will not have an adverse effect on the Tycksen
4 Number 1 Well. And if the OCD thinks there could be a
5 problem, steps can be taken to insure that no damage will be
6 done to the Tycksen well. In fact, in the BHP Exhibit
7 Number 2 I would point out that in the first letter from Mr.
8 Tully to BHP, he specifically requested that the well be
9 completed, that the 391 well be completed.

10 As to the penalty, as Mr. Carr stated, that 156
11 percent penalty resulted from a couple of Meridian forced
12 pooling cases, I think one of the first ones I was involved
13 in. I frankly don't recall how the penalty was derived, but
14 that penalty of 156 percent was assessed in a case where
15 Meridian admitted on the record that 130 of 131 wells it
16 drilled were commercial producers. Now, if Meridian can get
17 156 percent in that situation, I think 156 percent is proper
18 in this case.

19 Overall, just looking at the west half in
20 abstraction, I don't think there's any question that if BHP
21 had come in, proposed the drilling of the 390 well in the
22 southwest quarter, came in to force pool that section, it
23 could have done so. As to the east half of Section 23, as
24 an interest owner, BHP proposed and drilled that well
25 because the west half had been properly designated as a

1 standup unit, and because there was no Fruitland coal well
2 in the north half, we assert that there's no doubt BHP could
3 have sought voluntary or compulsory pooling of the east half
4 before OL was commenced, could have been named operator and
5 could have drilled that well on a lease owned by another
6 lessee.

7 The question is whether drilling before pooling
8 bars BHP from legally pooling the acreage. Because of the
9 statutes I referred to and because it complied with pool
10 rules -- the operator specifically designated standup units
11 -- it should be allowed to dedicate the east half to the
12 391 well. To do otherwise will result in waste.

13 If the OCD does not allow it, BHP will surely
14 seek reimbursement from Louise Locke for the costs of the
15 well that is already drilled in the northeast quarter. That
16 effort will be unnecessary if BHP is allowed to dedicate the
17 east half to the 391 well.

18 As I stated before, there really was no effort by
19 Mrs. Locke to develop her acreage beforehand, and we think
20 it's both to her benefit and to her lessor's benefit that
21 her acreage will be developed. Her correlative rights will
22 not be adversely affected. She will receive her pro rata
23 share of production from the two wells. And, hopefully,
24 these will be good wells, both of them. And Mrs. Locke will
25 be entitled to not half, approximately -- well, depending on

1 the override situation, roughly 42 to 44 percent of
2 production from two wells that, based on past history, will
3 have production much higher than the current production she
4 is receiving from the Tycksen Number 1 Well. We do not
5 believe BHP should be penalized for developing the state's
6 resources.

7 Thank you.

8 HEARING EXAMINER: Thank you, Mr. Bruce.

9 Mr. Carr, I'm going to deny your motion to
10 dismiss this case.

11 MR. STOVALL: To dismiss or continue?

12 MR. CARR: To continue indefinitely? I guess you'll
13 deny that one too?

14 HEARING EXAMINER: That one too. In my opinion, it
15 appears that BHP does have a right to operate in this
16 section. Therefore, I'm denying whatever your motion was.

17 Is there anything else to come before this case
18 at this time? If not then, I'm going to take case numbers
19 10245, 10346, 346 -- 345 and 346 under advisement. I'm
20 going to ask that both of you submit me a rough draft
21 order. When do you think you might have that? A week or
22 two?

23 MR. BRUCE: I will have mine by Friday.

24 MR. CARR: Mine too.

25 MR. STOVALL: Mr. Examiner, before you close the record

1 on this, are you requesting a single order in both cases
2 or --

3 HEARING EXAMINER: Whatever you feel is appropriate.

4 MR. STOVALL: Give you the choice.

5 MR. CARR: We'll do it.

6 HEARING EXAMINER: I'll take these two cases under
7 advisement at this time.

8 Hearing adjourned.

9 (The foregoing hearing was adjourned at the
10 approximate hour of 4:35 p.m.)
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STATE OF NEW MEXICO)
:
COUNTY OF SANTA FE)

I, FREDA DONICA, RPR, a Certified Court Reporter, DO
HEREBY CERTIFY that I stenographically reported these
proceedings before the Oil Conservation Division; and that
the foregoing is a true, complete and accurate transcript of
the proceedings of said hearing as appears from my
stenographic notes so taken and transcribed under my
personal supervision.

I FURTHER CERTIFY that I am not related to nor employed
by any of the parties hereto, and have no interest in the
outcome hereof.

DATED at Santa Fe, New Mexico, this 16th day of
September, 1991.


Freda Donica
Certified Court Reporter
CCR No. 417

I do hereby certify that the foregoing is
a complete report of the proceedings in
the Examiner hearing of Case Nos. 10345 & 10346
heard by me on 25 July 1991.

Examiner
Oil Conservation Division