

1 NEW MEXICO OIL CONSERVATION COMMISSION

2 STATE LAND OFFICE BUILDING

3 STATE OF NEW MEXICO

4 CASE NOS. 10345 & 10346

5
6 IN THE MATTER OF:7 The Application of BHP Petroleum
8 Americas, Inc., for compulsory
pooling, San Juan County,
9 New Mexico.10 The Application of BHP Petroleum
11 Americas, Inc., for compulsory
pooling, San Juan County,
12 New Mexico.

13 BEFORE:

14 WILLIAM J. LeMAY, CHAIRMAN
15 WILLIAM WEISS, COMMISSIONER
16 JAMI BAILEY, COMMISSIONER17 State Land Office Building
18 Morgan Hall
19 Thursday, November 14, 199120
21 REPORTED BY:22 DEBBIE VESTAL
23 Certified Shorthand Reporter
24 for the State of New Mexico
25

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A P P E A R A N C E S

FOR THE NEW MEXICO OIL CONSERVATION DIVISION:

ROBERT G. STOVALL, ESQ.

General Counsel

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Santa Fe, New Mexico 87504

FOR THE APPLICANT:

CAMPBELL, CARR, BERGE & SHERIDAN, P.A.

Post Office Box 2208

Santa Fe, New Mexico 87504-2208

BY: WILLIAM F. CARR, ESQ.

1 CHAIRMAN LeMAY: Case No. 10377.

2 MR. STOVALL: In the matter of the
3 hearing called by the Oil Conservation Commission
4 for the purpose of considering gas allowables for
5 the prorated gas pools in New Mexico for October
6 1991, through March 92. Opened solely for the
7 purpose of hearing the application for rehearing
8 filed by Hallwood Petroleum regarding the
9 allowable established for the Catclaw Draw Morrow
10 Pool in Eddy County, New Mexico.

11 CHAIRMAN LeMAY: Let's back up in case
12 there is anyone here on Case 10345 and 10346. I
13 have a note to have those continued. So if we
14 could just insert those cases before we get to
15 10377.

16 Case 10345.

17 MR. STOVALL: Application of BHP
18 Petroleum Americas, Inc., for compulsory pooling,
19 San Juan County, New Mexico.

20 CHAIRMAN LeMAY: And case 10346.

21 MR. STOVALL: Also the application of
22 BHP Petroleum Americas, Inc., for compulsory
23 pooling, San Juan County, New Mexico.

24 CHAIRMAN LeMAY: I have a note here
25 that these cases were to be continued to

1 January. Is that the wishes --

2 MR. CARR: May it please the
3 Commission, my name is William F. Carr. I'm an
4 attorney for Louise Locke. We filed the
5 application for hearing de novo, and we would
6 request the cases be continued today.

7 CHAIRMAN LeMAY: Is there any objection
8 to those cases being continued to January? If
9 not, the cases 10345 and 10346 will be continued
10 to the January 16 hearing.

11 (And the proceedings were concluded.)

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1 CERTIFICATE OF REPORTER

2
3 STATE OF NEW MEXICO)
4 COUNTY OF SANTA FE) ss.
5

6 I, Debbie Vestal, Certified Shorthand
7 Reporter and Notary Public, HEREBY CERTIFY that
8 the foregoing transcript of proceedings before
9 the Oil Conservation Commission was reported by
10 me; that I caused my notes to be transcribed
11 under my personal supervision; and that the
12 foregoing is a true and accurate record of the
13 proceedings.

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

19 WITNESS MY HAND AND SEAL NOVEMBER 17,
20 1991.
21
22

23 
24 _____
25 DEBBIE VESTAL, RPR
Certified Shorthand Reporter No. 400

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November 4, 1991

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William J. LeMay, Director
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New Mexico Department of Energy,
Minerals and Natural Resources
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Santa Fe, New Mexico 87503

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OIL CONSERVATION DIVISION

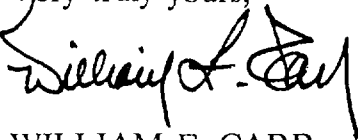
Re: Oil Conservation Division Case Nos. 10345 and 10346
In the Matter of the Applications of BHP, Petroleum (Americas) Inc. for
Compulsory Pooling, San Juan County, New Mexico

Dear Mr. LeMay:

Each of the above-referenced cases is currently scheduled for hearing before the Oil Conservation Commission on the application of Louise Locke d/b/a Locke-Taylor Drilling Company for hearing De Novo. Locke hereby requests that each of these cases be continued to the next scheduled Commission hearing. Jim Bruce, attorney for BHP, Petroleum (Americas) Inc. does not oppose this request.

Your attention to this matter is appreciated.

Very truly yours,



WILLIAM F. CARR

WFC:mlh

cc: Richard T. C. Tully, Esq.
James Bruce, Esq.

NEW MEXICO OIL CONSERVATION COMMISSION

STATE OF NEW MEXICO

CASE NOS. 10345 and 10346

(CONSOLIDATED)

IN THE MATTER OF:

The Application of BHP Petroleum
(Americas), Inc., for compulsory
pooling, San Juan County, New Mexico.

BEFORE:

WILLIAM J. LeMAY, CHAIRMAN
WILLIAM WEISS, COMMISSIONER
GARY CARLSON, COMMISSIONER

State Land Office Building
Morgan Hall
February 27, 1992

REPORTED BY:

DEBBIE VESTAL
Certified Shorthand Reporter
for the State of New Mexico

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BY: WILLIAM F. CARR, ESQ.

1 CHAIRMAN LeMAY: I want to call the
2 next case, but before we do, I'd like the
3 attorneys for those two cases to come up and
4 discuss a little bit the time frame we're
5 operating under.

6 (A discussion was held off the record.)

7 CHAIRMAN LeMAY: We'll now call cases
8 No. 10345 and 10346.

9 MR. STOVALL: I don't have my docket
10 with me. Both cases are the application of BHP
11 Petroleum Americas, Inc., for compulsory pooling
12 in San Juan County, New Mexico.

13 Mr. Chairman, these are companion
14 cases. They involve forced poolings in proration
15 units, which are in the same section on 320
16 acres, and therefore it's necessary, I believe,
17 to consolidate and hear these cases together.

18 In off-the-record discussion, counsel
19 for the parties have explained to the Commission
20 that they anticipate that by lawyer standard
21 time, these cases would take a conservative
22 three-and-a-half hours, which translates
23 generally anywhere up to twice that.

24 Parties have agreed that they would get
25 a better hearing if this case is continued to the

1 March 12th Commission hearing and that the
2 Commission has agreed to set it as the first case
3 on the docket to commence at 9:00 in the morning
4 of the 12th.

5 In order to expedite, particularly
6 since there are legal issues involved in the
7 case, substantial legal issues, we have requested
8 the parties provide and they have agreed to
9 provide one week from tomorrow, that would be I
10 guess the 8th -- 6th, Friday the 6th, a brief of
11 the legal issues involved in the case, a summary
12 of the Division Examiner case from which this
13 case is being heard de novo, a summary of the
14 proposed testimony in the upcoming case and their
15 presentation for the following week, and copies
16 of the exhibits which they propose to present.
17 And those documents will all, of course, be
18 exchanged with each other and provided to
19 Commission counsel.

20 With that in mind, we believe that we
21 can then hear this case more clearly and perhaps
22 more concisely by having these issues clearly
23 outlined. And I could be prepared at that time
24 to better advise the Commission on some of the
25 legal issues with which they won't be familiar.

1 I believe that summarizes the
2 off-the-record discussion.

3 CHAIRMAN LeMAY: Call for appearances,
4 I think, and find out on the record who the
5 parties are.

6 MR. BRUCE: Mr. Examiner, Jim Bruce,
7 from the Hinkle law firm, representing the
8 applicant, BHP Petroleum.

9 MR. TULLY: Mr. Chairman, members of
10 the Commission, I'm Richard Tully from
11 Farmington, New Mexico. I will be cocounsel with
12 William F. Carr from Santa Fe representing
13 Locke-Taylor doing business as Locke-Taylor
14 Drilling Company.

15 CHAIRMAN LeMAY: Additional appearances
16 in the case?

17 Was Mr. Stovall's summary of the
18 off-the-record discussions, was that your
19 understanding of what we're going to do in a
20 couple weeks, or is there anything you wanted to
21 add?

22 MR. BRUCE: Yes, Mr. Chairman, except I
23 would like an exchange of each party's exhibits
24 today. Since we're going to have to brief those,
25 I would like the exhibits that we plan to use to

1 be exchanged today.

2 CHAIRMAN LeMAY: Mr. Tully and Mr.
3 Carr, any objections to that?

4 MR. TULLY: No objections. And just
5 one further statement of clarification, and that
6 is, even though we are having the exchange of
7 these exhibits and that type of thing, the
8 parties recognize we are not foreclosed if
9 additional exhibits should be exchanged between
10 the parties or discovered, we would not be
11 foreclosed from having those potential exhibits
12 also be used at the hearing.

13 CHAIRMAN LeMAY: Fine.

14 Anything else concerning the summary,
15 Mr. Stovall, to put forth?

16 MR. STOVALL: Only with respect to Mr.
17 Tully's statement that if they decide they need
18 additional exhibits, I think the parties should
19 provide each other and the Commission with those,
20 so this is pretty much an open case prior to the
21 hearing, so it's consistent throughout.

22 Is that agreeable to counsel?

23 MR. BRUCE: That's fine with me.

24 MR. TULLY: No objection.

25 CHAIRMAN LeMAY: Fine. Are we pretty

1 well in agreement?

2 COMMISSIONER WEISS: Amen.

3 CHAIRMAN LeMAY: Amen. Separation of
4 church and state.

5 This case will be continued to 9:00 on
6 Thursday, March 12th. Thank you, gentlemen.

7 (The proceedings were concluded.)

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CERTIFICATE OF REPORTER

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

I, Debbie Vestal, Certified Shorthand Reporter and Notary Public, HEREBY CERTIFY that the foregoing transcript of proceedings before the Oil Conservation Commission was reported by me; that I caused my notes to be transcribed under my personal supervision; and that the foregoing is a true and accurate record of the proceedings.

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

WITNESS MY HAND AND SEAL March 11,
1992.



DEBBIE VESTAL, RPR
NEW MEXICO CSR NO. 3

NEW MEXICO OIL CONSERVATION DIVISION
STATE LAND OFFICE BUILDING
STATE OF NEW MEXICO
CASE NOS. 10345 and 10346 (Consolidated)

IN THE MATTER OF:

The Application of BHP Petroleum
(Americas) Inc., for Compulsory
Pooling, San Juan County,
New Mexico

BEFORE:

CHAIRMAN WILLIAM LEMAY
COMMISSIONER GARY CARLSON
State Land Office Building
MARCH 12, 1992

REPORTED BY:

CARLA DIANE RODRIGUEZ
Certified Shorthand Reporter
for the State of New Mexico

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1. DONALD REINHARDT

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2. MELISSA TORBET

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1. RICHARD DAVID SIMMONS

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1 CHAIRMAN LEMAY: And we will now call
2 Cases Nos. 10345 and 10346.

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

7 CHAIRMAN LEMAY: Is there any objection
8 to the consolidation of these two cases for
9 hearing? If not, they shall be consolidated and
10 I'll call for appearances in both case.

11 MR. BRUCE: Mr. Chairman, my name is
12 Jim Bruce from the Hinkle Law Firm in
13 Albuquerque, representing the Applicant in both
14 cases. I'm here in association with John Bowden,
15 who is the General Counsel of BHP Petroleum.

16 CHAIRMAN LEMAY: Thank you.

17 MR. TULLY: Mr. Chairman, I'm Richard
18 Tully from Farmington, New Mexico, acting as
19 co-counsel with William F. Carr of Santa Fe, New
20 Mexico, representing Louise Locke doing business
21 as Locke-Taylor Drilling Company.

22 CHAIRMAN LEMAY: Thank you, Mr. Tully.
23 Additional appearances in the case? If not, will
24 all those witnesses who will be giving testimony
25 in the case please rise and raise your right

1 hand, and Counsel will swear you in.

2 [The witnesses were duly sworn.]

3 CHAIRMAN LEMAY: Okay. Let's begin.
4 Do you care to make opening statements or get
5 right into it? Mr. Tully?

6 MR. TULLY: Yes, I would like to make a
7 brief opening statement, if I could.

8 I'm not sure I followed the correct
9 procedure in providing the summary of facts and
10 issues to the Commission. Hopefully you've had
11 an opportunity to review Mrs. Locke's summary
12 statement of facts and issues pertaining to this
13 matter.

14 Just real briefly, Mrs. Louise Locke,
15 who lives in Rifle, Colorado, does business as
16 Locke-Taylor Drilling Company. She's the owner
17 of the working interest from the surface to the
18 base of the Pictured Cliffs in the north half of
19 Section 23, Township 29 North, Range 13 West.

20 In 1952, the Howard Tycksen Pool Unit
21 No. 1 well was drilled. It was completed in the
22 Fruitland Formation and it has been producing
23 since 1954, since that time.

24 There are four fee oil and gas leases
25 covering the north half of this particular

1 section. There is a dispute insofar as a
2 commitment to the Gallegos Canyon Unit pertaining
3 to what's called the Zimmerman oil and gas lease,
4 or Tract 102. It's the position of Louise Locke
5 that the surface to the base of the Pictured
6 Cliffs, in the entire north half, is not
7 committed to the Gallegos Canyon Unit. It's the
8 position of BHP that the Zimmerman lease is
9 committed to the Gallegos Canyon Unit, and that
10 they have the right to drill on the Zimmerman
11 tract as a result of their being a sub-operator,
12 from the surface to the base of the Pictured
13 Cliffs, from Amoco Production Company, who is the
14 unit operator of this unit.

15 Benson and Montin were the original
16 unit operators of the Gallegos Canyon Unit. They
17 own 50 percent of the working interest of the
18 Zimmerman tract. Stanolind Oil & Gas Company,
19 the predecessor to Amoco Production Company,
20 owned the remaining 50-percent working interest.

21 Benson and Montin and Stanolind farmed
22 out the Zimmerman tract, or Tract 102, to
23 Locke-Taylor to drill the Tycksen well, and there
24 was a recognition at that time that Stanolind had
25 previously committed Tract 102 to the Gallegos

1 Canyon Unit. When they farmed that acreage out,
2 they farmed it out with the intention that
3 Tycksen would go ahead and drill--or, excuse me,
4 that Locke-Taylor would drill the Tycksen well
5 and would make whatever arrangements were
6 necessary to withdraw Tract 102 from the Gallegos
7 Canyon Unit.

8 There is a letter from Benson and
9 Montin as the unit operator, on behalf of itself
10 as 50-percent working interest owner and as unit
11 operator, and also on behalf of Stanolind,
12 requesting the withdrawal of Tract 102 from the
13 Gallegos Canyon Unit.

14 At that particular time, back in the
15 early 50s, when that was going on, it was the
16 procedure and the practice to go ahead and
17 have--and it was also the intent of the
18 parties--that Tract 102 was withdrawn. It has
19 only been in the last couple of years that the
20 question has been raised on whether or not Tract
21 102 was committed or not committed to the
22 Gallegos Canyon Unit from the surface to the base
23 of the Pictured Cliffs. That's the primary issue
24 we have here.

25 In addition to that, we also have BHP

1 going and drilling what's called the Gallegos
2 Canyon Unit No. 391 well, approximately 120, 130
3 feet away from the wellbore of the Tycksen No. 1
4 well.

5 We've had two different expert
6 witnesses, petroleum engineers, that have looked
7 at the situation, and in their expert opinion
8 there's a good probability that any stimulation
9 of the 391 well is going to go over and intersect
10 the wellbore of the Tycksen well and it's going
11 to damage that well.

12 So we have another issue here and that
13 is, if there is a completion of the 391 well,
14 will there be damage to the Tycksen well? Our
15 experts say there is a good probability of
16 damage. We're sure that the BHP engineers are
17 going to say, no, there's not going to be any
18 damage when there's stimulation and completion of
19 the 391 well.

20 Both of these are the primary issues
21 that we have before you today. Now, there is
22 litigation that has been initiated concerning
23 these two same basic issues, and it's in the
24 Federal District Court in front of the Honorable
25 Judge Mechem. It's a jury trial. The trial is

1 currently scheduled for August of this year. We
2 will have a judge and a jury that will be making
3 these same determinations on these two issues:
4 Whether or not there's a commitment to the unit
5 and also whether there's going to be damage to
6 the Tycksen well if the 391 well is completed.

7 Now, BHP did not ever notify or request
8 the joinder of Mrs. Locke prior to the spudding
9 of the 390 well and the 391 well, even though
10 they knew or had reasonable notice that she was
11 the working interest owner of the entire north
12 half. They went ahead and proceeded, drilled the
13 well. Subsequently, then, they started talking
14 about, "Well, let's go ahead and get together."
15 They attempted to purchase Mrs. Locke out. That
16 did not succeed. They never offered her a
17 farmout agreement. And finally they provided
18 AFEs on May 29, 1991, which was over
19 five-and-a-half months after they drilled these
20 two wells.

21 On May 29th they provided AFEs to Mrs.
22 Louise Locke to join in the drilling of the
23 well. Those AFEs were not received until June
24 3rd. In the interim, there was a pending
25 settlement offer going on that was going to

1 expire on June 15th. On June 13th, BHP, before
2 the settlement offer was over, filed their force
3 pooling applications, so they got to the NMOCD
4 before Louise Locke got to the courthouse,
5 because Louise Locke was not going to the
6 courthouse until after June 15th. So we have a
7 situation where the force pooling was filed
8 before the lawsuit was entered.

9 Anyway, what we're here today to ask is
10 that we have the same pending issues before a
11 Federal District Court as we have here. We
12 recognize that you have the right to pool these
13 interests. We just don't think that it's prudent
14 at this particular time for these interests to be
15 pooled, and there are several reasons that we
16 don't think it's prudent at this time to pool
17 these interests by this Commission.

18 One is, of course, these issues can be
19 resolved by a judge and a jury in just a couple
20 of months. The wells were spud back in December
21 of 1990, the applications weren't filed until
22 June of 1991. There have been no completion
23 attempts at this time and there doesn't seem to
24 be any compelling reason to go ahead and try and
25 complete these wells at this time. Gas prices

1 are down. BHP has indicated that if they had
2 known now what they were relying upon back then,
3 they wouldn't have even drilled the wells. So,
4 there's no compelling reason at this time to
5 proceed forward here at the Commission level,
6 when we have a jury trial coming up in August.

7 The two issues, one, commitment or not
8 commitment to the unit, and also damage or not
9 damage to the Tycksen well, are going to be
10 resolved in the court situation.

11 Now, BHP has also indicated that if
12 this Commission enters an order force pooling
13 these interests, then that makes moot the
14 question in the court hearing. Whether that's
15 correct or not will probably ultimately be
16 determined by the Court; but, by the same token
17 now, if that is correct and this Commission's
18 action in pooling these interests at this time
19 before the Court hears the case and makes these
20 issues moot, then what that has, in fact, done,
21 it has allowed an operator to go in and drill on
22 somebody else's lands without notification to
23 them, trespass on those lands, and then it can
24 set the precedent for any other operators to come
25 to the Commission when they have illegally

1 entered upon other people's lands, and they can
2 get it resolved at the Commission level instead
3 of at the court level.

4 That seems to us to be a very dangerous
5 precedent that this Commission should probably
6 not try to get itself involved in now because it
7 could have long-range effects if other operators
8 decide that they want to drill on somebody else's
9 lands and they don't provide notice to them, they
10 go in and drill the wells and then they come here
11 to the Commission and they say, "Hey, go ahead
12 and give us a force pooling order. You have the
13 jurisdiction. This will make everything moot,"
14 but it will also ratify and confirm their
15 unilateral, arbitrary and illegal acts.

16 Anyway, it also turns out that we don't
17 believe it's prudent at this time is because,
18 let's just assume that Mrs. Locke is successful
19 in the court trial, and let's also assume that
20 you go ahead and issue force pooling orders at
21 this time. Well, if the Court ultimately says
22 Mrs. Locke is successful in the court trial, we
23 will be back here for further hearings on behalf
24 of Louise Locke, and we're going to request that
25 these proration units, which are currently

1 proposed as an east-half/west-half by BHP, that
2 it be changed to a north-half/south-half and also
3 that Locke-Taylor Drilling Company become the
4 operator of the well because she's the owner of
5 the entire north half and she would prefer to be
6 100-percent-working-interest owner in the north
7 half, operate this well, versus 50 percent in the
8 east half and 50 percent in the west half.

9 In summary, the lawsuit in the federal
10 court will be litigated in the next couple of
11 months, there's no urgent need to complete these
12 wells at this time, and there hasn't been any
13 urgent need in the past to complete these wells.
14 There could be a dangerous precedent set by
15 issuing a force pooling order at this particular
16 time, and it could have a disruptive impact upon
17 the industry, and also that there is a good
18 possibility of further hearings back here at the
19 Division and back here at the Commission if Mrs.
20 Locke wins at the federal court level.

21 Anyway, thank you, very much. If you
22 have any questions, I'll be glad to try to answer
23 them.

24 CHAIRMAN LEMAY: Thank you, Mr. Tully.

25 Mr. Bruce?

1 MR. BRUCE: Briefly, Mr. Chairman,
2 these issues were addressed at Mr. Stovall's
3 request and he has that brief. I would just
4 merely point out that BHP briefed the issues and
5 Mr. Tully supported his assertions with a total
6 lack of legal authority.

7 I think the Commission has the
8 exclusive jurisdiction on a number of the issues
9 today, well orientation, who operates the well
10 and force pooling penalty.

11 Secondly, Mr. Tully's own documents
12 show that the Zimmerman lease, one of the leases
13 in issue in the northeast quarter of Section 35,
14 is committed to the Gallegos Canyon Unit and BHP
15 as sub-operator has the right to drill under the
16 Unit Agreement for the Gallegos Canyon Unit.

17 Mrs. Locke's main complaint seems to be
18 that she has been denied her right to drill, in
19 the northeast quarter, the Fruitland Coal well.
20 We'll submit a document that shows that she had
21 absolutely no plans to drill a well up there.

22 Furthermore, as I just noted, the
23 acreage is committed. There are several
24 tracts--there are at least two tracts in the
25 northeast quarter which are committed to the

1 Gallegos Canyon Unit, and therefore BHP had the
2 right to drill.

3 Now, as far as making a decision, what
4 Mr. Tully said is correct. If the Commission
5 decides these matters in favor of BHP, in our
6 opinion it does away with the court action. If
7 the Commission authorizes force pooling, there
8 can be no legally actionable trespass. We don't
9 think there's a trespass anyway, because the
10 acreage was committed to the unit, but it does
11 away with the court hearing. And regardless of
12 what the court rules, BHP would be back here
13 asking--if this case was not heard--BHP would be
14 back asking for force pooling regardless, so we
15 think you should go forward.

16 We think it would serve judicial
17 economy in the long run, it will cause less
18 expense to the parties, it will get the wells on
19 line faster, and overall it will be economical to
20 the parties.

21 BHP isn't asking for the Commission to
22 rule on the issues that Mr. Tully is interested
23 in, damages for trespass and, if you've seen the
24 Complaint, there's some other complaints for
25 damages. We don't think that's within the

1 Commission's jurisdiction and they don't have to
2 consider that as part of the hearing today.

3 Finally, I would like to point out that
4 Mr. Tully has a gloom and doom scenario that
5 everybody is going to be force drilling on other
6 people's leases and it's going to cause a big
7 to-do in the Commission. I don't think very many
8 people will willingly go forward and risk a
9 lawsuit by drilling on other people's leases when
10 they don't have the right.

11 I think your experience up here, Mr.
12 Chairman, and with the Commission's counsel, has
13 been that virtually everyone goes forward and
14 tries to negotiate with the lease owner before
15 force pooling. There are some circumstances that
16 we'll explain in the testimony today as to why
17 BHP didn't do that before drilling the wells, but
18 really that's irrelevant to the issue of force
19 pooling.

20 In the first case, BHP seeks to force
21 pool the west half of Section 23. That well is
22 located on a lease that BHP has farmed out from
23 Amoco. It obviously had the right to drill that
24 well, it had the right to orient a stand-up unit
25 under the Fruitland Coal rules. There was no

1 evil intent. It just oriented stand-up units.
2 There's often no reason for the orientation of
3 the unit when they're stand-up or lay-down.

4 In Case 10346, BHP seeks to force pool
5 the east half of Section 13 and dedicate it to
6 the 391 well. We admit that that lease is owned
7 by Mrs. Locke. Again, it's committed to the
8 Unit. BHP made a good-faith effort to purchase
9 all of her interest, both in the west half and
10 the east half, a very fair offer, which they
11 rejected.

12 And I think that's the only
13 prerequisite to force pooling, making a fair
14 offer. There's no need to force pool before a
15 well is drilled. The statute expressly allows
16 drilling or, I should say, force pooling after a
17 well is drilled, and that's what we're asking you
18 to do today. We think BHP has met all the
19 requirements for compulsory pooling of these
20 wells, we think you should go forward. In the
21 long run, it will save the parties' money and
22 time, and it will get these wells on line
23 faster. Thank you.

24 CHAIRMAN LEMAY: Thank you, Mr. Bruce.
25 Mr. Tully, you may proceed.

1 MR. TULLY: Mr. Chairman, at this time,
2 based upon the opening statements and also the
3 material that has been presented by both parties,
4 whether briefing or summary of facts in issue, we
5 would move at this time for a continuance of this
6 hearing until after the court proceeding is
7 over.

8 MR. BRUCE: We would object, for the
9 record.

10 MR. STOVALL: Mr. Chairman, I have
11 reviewed the matters which Counsel have referred
12 to and submitted. I'm not sure that I follow Mr.
13 Tully's basis for recommending that we continue
14 the case. Probably the best precedent the
15 Commission has before it is the Hermann case, in
16 which the federal court gave great deference, in
17 fact preclusive effect, to a decision of this
18 Commission with respect to matters within its
19 expertise.

20 It would be my opinion that, in fact,
21 the Commission has full jurisdiction, no court
22 has given any instruction or direction or
23 injunction to this Commission directing it not to
24 proceed with the case, and that in fact if this
25 Commission proceeds with this case it is quite

1 possible that the federal district court could
2 use this Commission's action in an area in which
3 it has expertise as part of its decision-making
4 process.

5 Therefore, I can see no reason why the
6 Commission, unless it chooses to do so for its
7 own reasons, there's no legal obligation on the
8 Commission, to defer this case until the federal
9 trial has been scheduled. The Applicant has
10 filed and it's properly within the procedure, I
11 think it's within our jurisdiction to hear the
12 case, and therefore I think it's purely a
13 discretionary decision on the part of the
14 Commission and there's certainly no legal
15 authority which would indicate that the
16 Commission should continue the case until the
17 federal case is heard.

18 CHAIRMAN LEMAY: Do you want to add to
19 that, Mr. Bruce?

20 MR. BRUCE: No, sir.

21 CHAIRMAN LEMAY: Mr. Tully?

22 MR. TULLY: Just one comment, Your
23 Honor, and that is, the legal issue of whether or
24 not this Tract 102 is committed to the Gallegos
25 Canyon Unit, rests properly with the federal

1 district court. That legal issue is there's a
2 possibility that you could be determining a legal
3 issue if, in fact, you grant the compulsory
4 pooling orders by allowing them the right to come
5 in and drill on the Zimmerman tract, if in fact
6 it turns out that the Zimmerman tract is not
7 committed to the Gallegos Canyon Unit.

8 So we're very much concerned that this
9 Commission could possibly be making a legal
10 determination, and we don't believe that this
11 Commission can make that legal determination. We
12 think that properly resides with the Court and
13 not this Commission.

14 CHAIRMAN LEMAY: Thank you. Let's take
15 a two-minute recess while we discuss this
16 matter.

17 [A recess was taken.]

18 CHAIRMAN LEMAY: We have discussed the
19 issue of continuance and have decided to rule
20 against it. We will hear the case today. We
21 feel we have jurisdiction.

22 You may continue, Mr. Bruce.

23 MR. BRUCE: I would call Mr. Reinhardt
24 to the stand; and, preliminarily, Mr. Chairman, I
25 would move to incorporate the record of the

1 Examiner Hearing.

2 CHAIRMAN LEMAY: Is there any objection
3 to the incorporation of the Examiner Hearing
4 record?

5 MR. TULLY: No, Your Honor--Mr.
6 Chairman. I'm sorry.

7 CHAIRMAN LEMAY: I've been called lots
8 of things, Mr. Tully. Both of those are
9 acceptable. The Examiner Hearing record will be
10 incorporated.

11 DONALD REINHARDT

12 Having been first duly sworn upon his oath, was
13 examined and testified as follows:

14 EXAMINATION

15 BY MR. BRUCE:

16 Q. Would you please state your name for
17 the record.

18 A. My name is Donald Reinhardt.

19 Q. Where do you reside?

20 A. Houston, Texas.

21 Q. At all pertinent times in this matter,
22 were you a landman for BHP Petroleum?

23 A. Yes, sir.

24 Q. Have you previously testified before
25 the Oil Conservation Division as a landman and

1 had your qualifications as an expert accepted as
2 a matter of record?

3 A. Yes, sir.

4 Q. Are you familiar with the land matters
5 involved in these two cases?

6 A. Yes, sir.

7 MR. BRUCE: Mr. Chairman, I move that
8 Mr. Reinhardt be recognized as an expert
9 petroleum landman.

10 CHAIRMAN LEMAY: He's so qualified.

11 Q. Mr. Reinhardt, would you look at BHP
12 Exhibit 1 and, just very briefly for the
13 Commission, outline the land ownership in Section
14 23.

15 A. Exhibit 1 is a plat that I supervised
16 the drafting of. It's a land plat. It indicates
17 the leasehold ownership in each tract depicted
18 there.

19 The south half of the southwest quarter
20 and the southwest quarter of the southeast
21 quarter, are lands subject to a farmout agreement
22 between BHP and Amoco Production Company.

23 The north half of the southwest is
24 leasehold interest owned by BHP.

25 The north half of the southeast and the

1 southeast of the southeast is leasehold presently
2 owned by Meridian Oil Production, Inc., and the
3 north half is leasehold owned by Louise Locke.

4 That plat also depicts the location of
5 certain wells.

6 Q. Now, looking at this map, the Amoco
7 farmout tract, is that committed to the GCU, the
8 Gallegos Canyon Unit?

9 A. Yes, it is, as well as the Meridian Oil
10 tract in the southeast quarter. In addition to
11 that, there's 133 acres in the northeast quarter
12 that are partially committed, and another 12-acre
13 lease also in the northeast quarter that is fully
14 committed to the Gallegos Canyon Unit.

15 Q. Referring to Exhibit 2, is that the
16 Zimmerman lease people have been talking about?

17 A. Exhibit 2 is the Zimmerman lease. It
18 covers 133 acres there in the northeast quarter.

19 Q. Does this Exhibit 2 also contain the
20 leasehold chain of title?

21 A. Yes, it does. It includes a series of
22 assignments conveying the working interest in
23 that lease, the last of which is conveyed into
24 Locke-Taylor Drilling Company.

25 Q. Did Amoco commit that--or at that time

1 Stanolind Oil & Gas--commit the working interest
2 of that lease to that unit?

3 A. I don't have a full complete copy of
4 Exhibit 2. The leasehold in question was
5 assigned to Amoco Production Company in 1947.
6 Stanolind executed a ratification and joinder to
7 the Unit Agreement, and that unit was
8 subsequently approved.

9 Q. Okay. So Amoco did sign the unit
10 agreement for the GCU?

11 A. Yes.

12 Q. Is that Exhibit No. 3?

13 A. Exhibit 3 contains a copy of the Unit
14 Agreement for the Gallegos Canyon Unit.

15 Q. And was that signed by Stanolind?

16 A. It was signed by Stanolind and the unit
17 operator.

18 Q. Benson and Montin?

19 A. Benson and Montin.

20 Q. Looking at Exhibit 2-A, what is that
21 exhibit?

22 A. Exhibit 2-A is a copy of an oil and gas
23 lease dated April 21, 1951, between B. E. Dustin
24 and his wife, and Louie Dustin, in favor of
25 Albert R. Greer, and it purports to cover the

1 mineral interest in a 15-acre tract located in
2 the northeast quarter of Section 23.

3 Q. Does Exhibit 2-A also contain
4 assignments of that lease?

5 A. Yes, it does. It contains an
6 assignment from Albert R. Greer and his wife to
7 Earl Benson and William V. Montin, and that's
8 dated January 24, 1952.

9 Following that is an assignment from
10 Earl Benson and his wife and William Montin and
11 his wife, to Locke-Taylor Drilling Company.

12 Q. Is it your understanding that that
13 lease was committed to the GCU?

14 A. Yes, sir.

15 Q. Now, is it also your understanding that
16 at one time Benson and Montin asked the U.S.G.S.
17 how to withdraw the Zimmerman lease from the GCU?

18 A. Yes, sir, I remember having read a
19 letter that was drafted and sent to the BLM, or
20 the U.S.G.S. in this case. It was dated November
21 8, 1952.

22 Q. To your knowledge, was withdrawal ever
23 accomplished?

24 A. No, sir.

25 Q. Now, this became a main issue in these

1 compulsory poolings in the lawsuit, didn't it,
2 Mr. Reinhardt?

3 A. Oh, yes.

4 Q. Would you please refer to BHP Exhibit
5 4-A, describe what it is for the Examiner and
6 tell us how that came about.

7 A. Certainly. 4-A is a letter from the
8 Department of Interior, Bureau of Land
9 Management, addressed to BHP Petroleum. It's a
10 letter written in response to a telephone inquiry
11 from BHP as to the status of the Zimmerman lease
12 and whether or not--actually, I should say the
13 status of Tract 102 to the unit, and whether or
14 not that tract was committed.

15 And the BLM responded with this letter
16 of February 12, 1992, advising that according to
17 their records, Tract 102 is committed to the
18 unit.

19 Q. Now, you refer to Tract 102. Does
20 Tract 102 and the Zimmerman lease cover the same
21 land?

22 A. Yes, sir. The Zimmerman lease covers
23 the same lands as described in Tract 102.

24 Q. Now, referring to Exhibit 4--well, I'll
25 take a step back. Regarding the Zimmerman lease,

1 Tract 102, did the royalty interest owners ever
2 execute the GCU?

3 A. No, sir. The royalty owners never
4 committed their royalty interests to the Unit
5 Agreement.

6 Q. Now, referring to Exhibit 4, even
7 though the royalty interest owners did not sign
8 the Unit Agreement, is unit drilling still
9 permissible on a tract like that?

10 A. Yes, sir.

11 Q. And what is Exhibit 4?

12 A. Just a second. Exhibit 4 is a copy,
13 first, of a cover memo from the BLM to BHP.

14 Attached to this cover memo was a page
15 out of the Bureau of Land Management Unit
16 Handbook, as they call it, and it describes in
17 here different categories of commitment status.
18 Among these types of commitment is one labeled
19 "Partially Committed" or "PC," and a partially
20 committed tract indicates that the lessor or the
21 mineral interest owner has not signed but the
22 lessee and working interest owner has committed
23 its interest to the unit.

24 And it goes on down further in the
25 definition and it states in here that unitized

1 drilling is permissible on a partially committed
2 tract.

3 Q. Mr. Reinhardt, please refer to Exhibits
4 4-B and 4-C.

5 A. 4-B is a copy of a revised Exhibit B to
6 the Gallegos Canyon Unit Agreement. And it
7 describes various tracts that are committed to
8 the unit, including Tract 102. That would be on
9 exhibit page 19, labeled Tract 102.

10 It describes the acreage covered by the
11 lease, the number of acres committed to the unit,
12 and the number of acres in the unit area, those
13 being 133 acres.

14 Q. And that was Exhibit 4-B?

15 A. Yes, sir.

16 Q. And what is the date of that exhibit?

17 A. That exhibit is dated effective, I
18 believe it's April 1, 1960. It's not
19 particularly legible, but it is a date in 1960.

20 Q. Now also, what is Exhibit 4-C?

21 A. 4-C is a copy of another revised
22 Exhibit B to the Unit Agreement. I cannot make
23 out the date on this copy, but it also describes,
24 on the second page of this copy, Tract 102, and
25 indicates in here there being 133 acres in the

1 unit area.

2 Q. Now, referring back to Exhibit 4-B and
3 looking at the third page of that exhibit, it
4 also refers to Tract 104. Is that the lease that
5 we submitted as Exhibit 2-A?

6 A. Yes, sir, that is the Dustin lease.

7 Q. What does it indicate regarding
8 commitment to the unit?

9 A. It indicates there also that there are
10 15 acres in the unit area and 15 acres committed
11 to the unit.

12 Q. One thing on Exhibit 4-B again, Mr.
13 Reinhardt, regarding Tract 102, this exhibit
14 shows Locke-Taylor Drilling Company as owning an
15 interest in Tract 102, doesn't it?

16 A. Yes, it does, as well as Tract 104.

17 Q. Now, I'm sure Mr. Tully will have a few
18 questions for you about that, but did you rely on
19 the ownership, as set forth on these exhibits, in
20 drawing your original?

21 A. I was not willing to myself.
22 Generally, when we look through these 30- to
23 40-year-old exhibits, we tend to find a number of
24 parties who have since either sold their interest
25 or had their interest merged with someone else.

1 I tended not to put any reliance on these ancient
2 exhibits.

3 Q. As far as lease ownership?

4 A. As far as lease ownership, yes. It
5 just so happens in this case, with regard to
6 Locke-Taylor's interest, it happened to be
7 correct as we later learned.

8 Q. Now, Mr. Reinhardt, please refer to
9 Exhibit 5, and just briefly identify it for the
10 Commission.

11 A. Exhibit 5 was submitted as a package of
12 correspondence between myself and Mrs. Locke's
13 attorney.

14 Q. Did you testify about this in more
15 detail at the Examiner Hearing?

16 A. Yes, sir.

17 Q. Now, what was BHP's final offer to Mrs.
18 Locke?

19 A. Well, the final piece of correspondence
20 from BHP was a letter dated May 29, 1991,
21 addressed to Mrs. Locke's attorney. That letter,
22 among other things, restated our earlier offer to
23 purchase Mrs. Locke's leasehold interest in the
24 north half of Section 23 for the sum of \$450 per
25 net acre, with her reserving a 7-1/2 percent

1 overriding royalty.

2 Q. Was this for all of her interests?

3 A. Actually, this was just for her
4 Fruitland Coal rights. The Pictured Cliffs and
5 the Fruitland Sandstone rights would have
6 remained in Mrs. Locke.

7 Q. And this correspondence and your
8 discussions with Mrs. Locke or her
9 representatives continued for a number of months,
10 did it not?

11 A. Yes. It continued from early December
12 until this last letter of May 29, 1991.

13 Q. Mr. Reinhardt, please refer to Exhibits
14 6 and 6-A, and identify them for the Commission.

15 A. Exhibit 6 is a copy of an AFE. It was
16 prepared by BHP personnel. It sets out the
17 estimated cost to drill and complete--

18 Q. Which well is this for?

19 A. --the GCU 390.

20 Q. Which is in the southwest quarter?

21 A. Yes, sir, it's in the southwest
22 quarter.

23 Exhibit 6-A is a schedule of actual
24 costs incurred to date for the drilling of the
25 Gallegos Canyon Unit 390 well, and it indicates

1 in here that BHP is presently approximately
2 \$12,000 over AFE.

3 Q. And that would be just for the drilling
4 costs, would it not?

5 A. The drilling and the cost to drill and
6 case the well.

7 Q. Completion activities have not been
8 undertaken on the well yet, have they?

9 A. No, sir.

10 Q. Now, Mr. Reinhardt, look at Exhibits 7
11 and 7-A?

12 A. 7 and 7-A, likewise, Exhibit 7 is a
13 copy of the BHP's AFE for the Gallegos Canyon
14 Unit 391 well, Exhibit 7-A is another cost detail
15 for that well indicating the moneys spent to date
16 to drill and case the well, and BHP is
17 approximately \$30,000 over AFE.

18 Q. Finally, Mr. Reinhardt, what is Exhibit
19 8?

20 A. Exhibit 8 is a pleading from a court
21 action, and included in that on page 2 is a
22 statement indicating that Mrs. Locke had no plans
23 to drill a Fruitland Coal well in the north half.

24 Q. Were Exhibits 1 through 8 prepared by
25 you or compiled from company records?

1 A. Yes, sir.

2 Q. In your opinion, is the granting of
3 this application in the interests of
4 conservation, the prevention of waste, and the
5 protection of correlative rights?

6 A. Yes, sir.

7 MR. BRUCE: Mr. Chairman, I move the
8 admission of Exhibits 1 through 8.

9 CHAIRMAN LEMAY: Without objection,
10 Exhibits 1 through 8 will be admitted into the
11 record. Thank you, Mr. Bruce.

12 Mr. Tully?

13 EXAMINATION

14 BY MR. TULLY:

15 Q. Mr. Reinhardt, if you would refer to
16 the Zimmerman oil and gas lease. I believe it's
17 Exhibit No. 2-A? Excuse me, No. 2?

18 A. Okay.

19 Q. This lease is dated when?

20 A. It says the 20th of February, 1947.

21 Q. And does this lease have a pooling
22 clause in it?

23 A. No, it does not.

24 Q. Do you know what a pooling clause is?

25 A. Yes, I do.

1 Q. What is a pooling clause?

2 A. A pooling clause is a provision found
3 in certain oil and gas leases. It gives the
4 mineral lessee the right to combine their present
5 oil and gas lease with other leases, to form a
6 pooled unit.

7 Q. So at the time this lease was entered
8 into, there was not a pooling clause, is that
9 correct?

10 A. That's right.

11 Q. Would that mean that a well had to be
12 located upon these lands in order to extend it
13 past its primary term?

14 A. Yes.

15 Q. Do you happen to know whether or not
16 Charles Newbold, or any of his successors,
17 drilled a well on these lands during the primary
18 term of this lease?

19 A. Yes. The Tycksen well was drilled in
20 1952.

21 Q. The Tycksen well was drilled in 1952 by
22 who?

23 A. Locke-Taylor, I believe. Locke-Taylor
24 Drilling Company.

25 Q. I believe you indicated that the

1 royalty interest owners have never committed
2 their interest in the Gallegos Canyon Unit on
3 Tract 102, is that correct?

4 A. That's right.

5 Q. Why don't we refer now to the Unit
6 Agreement. Could you please tell us which
7 exhibit that is? .

8 A. The Unit Agreement is included in
9 Exhibit 3.

10 Q. Now, does your copy of the Unit
11 Agreement contain a complete recitation of all of
12 the terms and provisions of that Unit Agreement?

13 A. To the best of my knowledge it does.

14 Q. Could you please refer to page 17,
15 paragraph number 24?

16 A. Page 17? Okay.

17 Q. Do you have the full page 17 in front
18 of you?

19 A. Yes, I do.

20 Q. Now, let's talk a little bit about
21 nonjoinder to units or subsequent joinder to
22 units.

23 Could you please review this paragraph
24 24 and advise us how this particular paragraph
25 affects the nonjoinder of the royalty interest

1 owners on the Zimmerman lease?

2 A. I'm sorry. What was the question
3 again? What are you looking for?

4 Q. I'm asking you to review this paragraph
5 and tell me what happens in the event that the
6 royalty interest owners of the Zimmerman tract do
7 not commit their interest to the Gallegos Canyon
8 Unit.

9 A. Well, the only thing in here that I see
10 that would directly pertain to that, there is a
11 provision in here, if I can read it, it says,
12 "Prior to final approval hereof, joinder of any
13 nonworking interest must be accompanied by
14 appropriate joinder of the owner of the
15 corresponding working interest in order for the
16 interest to be effectively committed."

17 If I could refer back to this BLM
18 handbook--

19 Q. No, I don't want you to refer to the
20 BLM handbook, I want you to look specifically at
21 the terms and provisions of the Unit Agreement
22 itself.

23 What does that state insofar as
24 nonjoinder or subsequent joinder to the unit?

25 A. Nonjoinder or subsequent joinder?

1 Q. That's the heading on paragraph number
2 24, of this paragraph.

3 A. Well, there's a provision in here that
4 provides for withdrawal of the tract if the owner
5 of any interest in the tract or unit fails or
6 refuses to subscribe or consent to the agreement.

7 Q. Was this done in this case?

8 A. Not to my knowledge.

9 Q. Didn't Benson and Montin, on behalf of
10 itself as unit operator, and also on behalf of
11 Stanolind, issue a letter dated November 8, 1952,
12 requesting withdrawal?

13 A. Well, they wrote a letter.

14 Q. Let me hand you, so that you'll have it
15 in front of you, what we'll call Locke Exhibit A.

16 A. It says here that Benson and Montin
17 would like--

18 Q. Do you have that in your package? I
19 don't remember seeing it?

20 A. I don't know. It was among the
21 exhibits you provided Mr. Bruce.

22 Q. Has it been given to you earlier today?

23 A. It was provided to Mr. Bruce a couple
24 of weeks ago.

25 Q. No. I mean, has it been given to you

1 today as one of your exhibits?

2 A. Not a BHP exhibit. I just happen to
3 have a copy of it.

4 Q. Let me go ahead and give you Locke
5 Exhibit A so that you can refer to it, all
6 right?

7 MR. TULLY: Mr. Bruce, do you have a
8 copy?

9 MR. BRUCE: Yes.

10 Q. Now, isn't Locke Exhibit A a request by
11 Benson and Montin and Stanolind Oil & Gas to
12 withdraw Tract 102 from the Gallegos Canyon Unit?

13 A. Well, on page 2 of the letter it
14 advises here that "Accordingly, we," I assume
15 Benson and Montin and perhaps Stanolind, "we wish
16 to follow Mr. Duncan's suggestion and request
17 herewith instructions as to how we may proceed to
18 remove Tract 102." That doesn't sound like an
19 outright request to me.

20 Q. What does the very first sentence of
21 Exhibit A state?

22 A. It says, "Benson and Montin would like
23 to withdraw Tract 102 from the Unit," and then it
24 comes down here to the end of the letter where
25 they're asking for instructions on how to go

1 about doing that.

2 Q. They've indicated that they want to
3 withdraw, haven't they?

4 A. Apparently they've contemplated the
5 idea.

6 Q. They specifically state, do they not,
7 they would like to withdraw Tract 102 from the
8 Gallegos Canyon Unit? It's the very first
9 sentence in this letter, isn't it?

10 A. That's what it reads.

11 Q. Thank you. All right, so now let's go
12 back to paragraph 24 again. Are there any other
13 provisions in here pertaining to nonjoinder and
14 subsequent joinder that affect this situation
15 pertaining to the royalty interest owners and the
16 working interest owners of Tract 102?

17 A. Well, it provides that any oil and gas
18 interest not committed prior to submission of the
19 agreement may thereafter be committed by
20 subscribing or consenting to the agreement if the
21 working interest or owner of such interests also
22 subscribe.

23 It also provides that the right of
24 subsequent joinder by a working interest owner is
25 subject to such requirements or approvals, if

1 any, pertaining to such joinders, may be provided
2 in the Operating Agreement.

3 And then it goes on to provide that,
4 "After final approval, joinder to this agreement
5 of a nonworking interest owner must be consented
6 in writing by the working interest owner hereto
7 and responsible for payment of any benefits that
8 may accrue in behalf of such nonworking interest
9 owner."

10 Q. Okay, Mr. Reinhardt. Let's put it back
11 in our mind what the particular facts and
12 circumstances were concerning Tract No. 102.

13 Tract No. 102 had been committed to the
14 Gallegos Canyon Unit by the working interest
15 owner. We then have the royalty interest owner
16 who had not agreed to commit their interest to
17 the Gallegos Canyon Unit. Now, we have final
18 approval of the unit and we've got the working
19 interest owner committed on Tract 102, but we do
20 not have the royalty interest owner committed.

21 So let's look here down about mid-way
22 through and it says, "After final approval
23 hereof," and, of course, that's the Gallegos
24 Canyon Unit, "joinder to this agreement by a
25 nonworking interest owner, must be consented to

1 in writing by the nonworking interest owner."

2 Okay. In that particular situation we
3 do not have a nonworking interest owner that's
4 trying to commit itself to the Gallegos Canyon
5 Unit, so therefore we do not have to secure the
6 consent of the working interest owners, is that
7 correct?

8 A. Say that again.

9 Q. Okay. The Gallegos Canyon Unit has
10 been approved.

11 A. Yeah.

12 Q. All right? We have the working
13 interest owner committed. We have the royalty
14 interest owner not committed. Under this
15 sentence right here it says, "After final
16 approval hereof," and that's where we're at now,
17 we've got final approval of the Gallegos Canyon
18 Unit, the working interest owners committed, the
19 royalty interest owners not, "joinder to this
20 agreement by," and I'm going to say the Zimmerman
21 royalty interest owner, because they're a
22 nonworking interest owner, "must be consented to
23 in writing by the working interest owner"?

24 A. Right.

25 Q. Okay. Now, that didn't occur, did it?

1 We did not have the royalty interest owner
2 request to join the unit, so we didn't have to go
3 secure the written consent of the working
4 interest owner, did we?

5 A. No. To my knowledge, the royalty
6 interest owner never came forward and offered to
7 join.

8 Q. Okay. Now, let's go to the next
9 sentence. And it says, "Prior to final approval
10 hereof, joinder by any owner of a nonworking
11 interest must be accompanied by an appropriate
12 joinder by the owner of the corresponding working
13 interest in order for the interest to be regarded
14 as effectively committed hereto"?

15 A. Right.

16 Q. Well, we don't have that situation
17 here, do we, because we've already got final
18 approval?

19 A. "Effectively committed" indicates that
20 both the royalty and working interest owners have
21 committed their interests to the Unit Agreement.

22 Q. So then it would be effectively
23 committed, because you have both the royalty
24 interest owner and the working interest owner,
25 correct?

1 A. Well, effectively committed as defined
2 in the BLM--

3 Q. No, no, we're looking here--

4 MR. BRUCE: I'm going to object to
5 this. The document speaks for itself; and,
6 frankly, "effectively committed" is talking about
7 the royalty interest. We're not talking about
8 the royalty interest here today. We want to know
9 if the working interest is committed.

10 Mr. Reinhardt, if the Commission so
11 desires, can go ahead and testify, but I think
12 the document speaks for itself. And by the clear
13 language of the document, they're talking about
14 effectively committing the royalty interest.
15 They are not talking about committing the working
16 interest.

17 CHAIRMAN LEMAY: What point are you
18 trying to make, Mr. Tully?

19 MR. TULLY: We're going to the next
20 sentence and then we'll tie it all together.
21 What I'm trying to do is showing that under the
22 express terms and provisions of this Operating
23 Agreement, there has not been an effective
24 agreement of Tract 102 to the Gallegos Canyon
25 Unit under these particular circumstances.

1 CHAIRMAN LEMAY: You may proceed if you
2 can tie that together.

3 MR. TULLY: Okay.

4 Q. (BY MR. TULLY) Now, we don't have a
5 situation prior to final approval hereof, because
6 we have now final approval, correct? and we don't
7 have a joinder of the royalty interest owner
8 that's being requested, do we?

9 A. The royalty owner has not joined--did
10 not join prior to--well, has never joined the
11 unit.

12 Q. Now, let's go to the last sentence here
13 on page 17. Now, what does that state insofar as
14 this particular circumstance is concerned?

15 A. It says, "A subsequent joinder shall be
16 effective the first day of the month following
17 the filing with the supervisor of the duly
18 executed counterparts of all and any papers
19 necessary to establish effective commitment to
20 any tract to this agreement, unless objection to
21 such joinder is duly made within 60 days by the
22 director."

23 Q. Okay. Now, this last sentence says
24 that in the event that the royalty interest
25 owners subsequently want to join this unit, they

1 can do so, and it will be effective as of the
2 first day of the month following the filing, is
3 that correct?

4 A. The royalty owners were always free to
5 come forward and commit their interest to the
6 Unit Agreement.

7 Q. Okay. But if the Zimmerman royalty
8 interest owners had come forward subsequently and
9 elected to join or to commit their interest to
10 the unit, that would be effective as of the first
11 day of the month following the filing, is that
12 correct?

13 A. That's what it says.

14 Q. But then it says, "of all or any papers
15 necessary to establish effective commitment of
16 any tract to this agreement." Now, we're not
17 talking just about specifically the royalty
18 interest owners or the working interest owners.
19 Now we're talking about whether or not there has
20 been an effective commitment of the tract?

21 A. Effective commitment is predicated on
22 the joinder of both the royalty and the working
23 interest owner. If the royalty owner does not
24 wish to join, then the tract is considered
25 partially committed.

1 Q. Wait a minute. That's not what this
2 says. It says it's not effectively committed.
3 Doesn't say it's fully or not committed or
4 partially committed, it says it is effectively
5 committed.

6 So, under these circumstances, isn't
7 the language fairly clear here, that as a result
8 of this last sentence in here, since there was no
9 subsequent joinder by the royalty interest owner
10 after there's been approval, that there has not
11 been established an effective commitment of Tract
12 102 to this agreement?

13 A. No, it's not been effectively committed
14 as defined by BLM.

15 Q. Doesn't this also say that since the
16 owner of the nonworking interest owner, after the
17 final approval, since they never subsequently
18 joined, therefore has been no effective
19 commitment of Tract 102?

20 A. Not effective commitment as defined by
21 BLM.

22 Q. No, I'm not asking for the BLM
23 definition, I'm asking for--

24 A. Well, that's what's pertinent.

25 Q. I'm asking you what this agreement

1 says. Does the language in this agreement say--

2 A. That's all it says.

3 Q. Is that what it says?

4 A. That's all it says.

5 Q. Okay. All right. So now we've got
6 possibly two--bear with me here--we have probably
7 two interpretations of this paragraph. We have
8 one interpretation, and that is that under the
9 express terms of the provisions by a nonjoinder
10 of the royalty interest owner, and there's been
11 no subsequent joinder, therefore Tract 102 has
12 not been effectively committed to the unit, isn't
13 that correct? Isn't that one possible
14 interpretation?

15 A. Well, as the term was used by BLM.

16 Q. No, I'm not asking about BLM. Was BLM
17 even in existence in 1951?

18 MR. BRUCE: I object to this. They're
19 just arguing back and forth.

20 CHAIRMAN LEMAY: I think he answered
21 the question. I don't see what you're trying to
22 get at, Mr. Tully.

23 MR. TULLY: Okay. What I'm trying to
24 do is either the express terms and provisions of
25 this agreement show that Tract 102 has not been

1 effectively committed here, or there's ambiguity
2 in these terms and the provisions here that are
3 going to require a legal interpretation on what
4 this means.

5 CHAIRMAN LEMAY: He may have a witness
6 that might testify to that. This witness has
7 effectively, effectively addressed your question.

8 Q. Let's go ahead and go now to those BLM
9 guidelines and rules and regulations. What
10 exhibit is that?

11 A. Well, it is--

12 MR. STOVALL: "4," did you say, Mr.
13 Bruce?

14 A. It was Exhibit 4, and attached to that
15 Exhibit 4 was a page from the Bureau of Land
16 Management Unit Handbook.

17 Q. Okay. So, the Bureau of Land
18 Management Handbook. What was the effective date
19 of this handbook?

20 A. I don't know.

21 Q. Okay. Well, do you know if it was
22 recently or do you know if it was in effect in
23 1951?

24 A. I don't know.

25 Q. So, basically, Exhibit No. 4 is

1 guidelines established by the Bureau of Land
2 Management, and you do not know if they were
3 effective at the time that the Unit Agreement was
4 entered into, is that correct?

5 A. That's correct.

6 Q. Now, was the Bureau of Land Management
7 in effect when this Gallegos Canyon Unit was
8 established?

9 A. I don't believe it was.

10 Q. Okay. Who was the regulatory agency
11 for the federal government insofar as overseeing
12 the Gallegos Canyon Unit when it was established?

13 A. Apparently the U.S.G.S.

14 Q. Okay. Now, do you have any guidelines
15 or rules and regulations pertaining to these type
16 of definitions at the time that the Unit
17 Agreement was entered into?

18 A. No, I don't.

19 Q. So these were subsequently? Would that
20 be a fair statement? Or you just don't know?

21 A. I'm sure the handbook was printed
22 afterwards. I don't know that they're not
23 effective.

24 Q. But you don't know for sure that these
25 particular guidelines were in effect as of the

1 time that the Gallegos Canyon Unit was
2 established, do you?

3 A. Not with certainty.

4 Q. Yes or no. You just don't know or yes
5 or no?

6 A. I said, "Not with certainty."

7 Q. Okay. Would it be a fair statement to
8 stay that the U.S. Geological Survey was the
9 United States governmental entity that had the
10 regulatory authority over the Gallegos Canyon
11 Unit when it was established? Would you agree
12 with that?

13 A. Yes.

14 Q. I am now going to hand you what we will
15 call Locke Exhibit B. Would you please identify
16 Locke Exhibit B?

17 A. It's a memo, office memorandum, says
18 United States Government, from a district
19 engineer in Farmington to an oil and gas
20 supervisor in Roswell. The subject of it is two
21 units, and then, in a hyphenated phrase it says,
22 "Offset and nonunit wells within unit areas."

23 Then it goes on to state that "Attached
24 plats," and there's a plat attached, "show wells
25 offsetting the subject units with the measured

1 production of the wells. The attached list gives
2 the operator well name and number, location tie
3 in and first delivery date.

4 Q. Down at the bottom it says
5 "enclosures," and what is that?

6 A. It says, "Attached list of units, and
7 it states a couple of unit numbers, and in
8 parentheses it says "nonunit wells."

9 Q. It says "nonunit wells." Now, is the
10 attached list of units, I-Section No. 844, does
11 that refer to the Gallegos Canyon Unit up in the
12 subject heading category?

13 A. Yes.

14 Q. Let's go to the second page of this
15 memorandum. Now, do you see under the column
16 operator, whether or not Locke and Taylor are
17 listed?

18 A. They're listed twice, as operators of
19 two wells, one of which was not producing, one of
20 which was. And it gives the location of those
21 wells.

22 Q. Okay. Now, was one of these wells the
23 Tycksen No. 1 well?

24 A. Yes.

25 Q. Is that one of the wells we're talking

1 about here today?

2 A. Yes.

3 Q. And doesn't the cover page of this
4 indicate that the United States Geological Survey
5 states that this is either an offset or a nonunit
6 well within a unit area?

7 A. Well, it states that the wells are
8 wells offsetting the units.

9 Q. It says off--

10 A. But then up in the subject line it says
11 "offset and nonunit wells."

12 Q. But under the enclosure thing it says
13 nonunit wells, and in the first sentence says
14 "wells offsetting the subject unit," is that
15 correct?

16 A. Okay.

17 Q. Now, let me ask you one other question,
18 and that is: Are you familiar with the Faust No.
19 1 well that's operated by Locke-Taylor?

20 A. Yes.

21 Q. Do you happen to know whether the Faust
22 No. 1 well is located within the unit boundaries
23 of the Gallegos Canyon Unit?

24 A. It's within the expanded outline of the
25 unit.

1 Q. Do you happen to know what tract number
2 the Faust No. 1 well is?

3 A. No.

4 Q. Are you the sub-operator from the
5 surface to the base of the Pictured Cliffs
6 Formation of the Gallegos Canyon Unit?

7 A. BHP is.

8 Q. BHP is. I'm sorry. Is that correct,
9 your company is the sub-operator?

10 A. Yes.

11 Q. Are you aware that Tract No. 102 of the
12 Gallegos Canyon Unit encompasses the lands of the
13 Faust No. 1 well?

14 A. No. The Faust No. 1 well is in another
15 township than from where Tract 102 is located.

16 Q. Okay, but are you aware that
17 Locke-Taylor operates the Faust No. 1 well within
18 the unit boundaries of the Gallegos Canyon Unit
19 and that that's located on Tract #162 of the
20 Gallegos Canyon Unit?

21 A. I know the Faust well is located within
22 the present unit boundary for a Gallegos Canyon
23 Unit. I didn't know what the tract number is.

24 Q. But know it's operated by Locke-Taylor?

25 A. Apparently it is.

1 Q. Let's go to the last page of Exhibit
2 B. If you would look up, and hopefully you can
3 read it, in Section 23, it looks like there's
4 some notations up there, and what does it show
5 there?

6 A. There's a gas symbol and it says
7 "Fruitland well," and then adjacent to that is a
8 statement about "not a unit well."

9 Q. And below that, underneath that little
10 symbol, what does it say?

11 A. There's an open circle.

12 Q. In between the open circle, can you
13 read that?

14 A. I can see "370 Mcf."

15 Q. Mcf? Is that what it says?

16 A. I guess that's an "f."

17 Q. And underneath that what does it say?

18 A. It's an open circle.

19 Q. What does that stand for?

20 A. I can't read that. Adjacent to it it
21 says the word Farmington.

22 Q. Can you read the rest?

23 A. It says, "Not a unit well."

24 Q. So the U.S.G.S., insofar as this
25 exhibit is concerned, would it be a fair

1 statement to say that the Tycksen No. 1 well is a
2 well that either offsets the Gallegos Canyon Unit
3 or it's a nonunit well? Would that be a fair
4 statement?

5 A. It would appear that way.

6 Q. It would appear that way or is that
7 what it states?

8 A. It says there, "Not a unit well."

9 Q. It speaks for itself, doesn't it?

10 A. Well, it speaks for itself if you have
11 an understanding of what BLM or the U.S.G.S.
12 considers a unit well, which it doesn't state.

13 Q. Now, do you happen to have a copy of
14 the assignment from Benson and Montin and
15 Stanolind to Lloyd Locke and Lloyd Taylor, in
16 your exhibits? I believe it's part of Exhibit
17 No. 2. Do you find it? Let me see if I can help
18 you out here.

19 CHAIRMAN LEMAY: While you're looking
20 we'll take a minute break. Go ahead and approach
21 the witness.

22 [Discussion off the record.]

23 Q. (BY MR. TULLY) Were you able to find
24 the assignment from Benson and Montin and
25 Stanolind to Lloyd Locke and Lloyd Taylor?

1 A. I have a copy.

2 Q. Is it a full copy, can you tell?

3 A. It's not marked as an exhibit.

4 Q. Isn't it part of your package of
5 Exhibit 2, though?

6 A. Let me see if I have it.

7 MR. STOVALL: Mr. Tully, to speed this
8 up, which assignment are you looking for?

9 MR. TULLY: It's an assignment from
10 Benson and Montin and Stanolind--

11 THE WITNESS: Oh, here it is.

12 MR. TULLY: It's about in the middle of
13 the package of the chain of title pertaining to
14 the Zimmerman lease.

15 Q. Now, Mr. Reinhardt, if you would please
16 refer to page 3, paragraph 6?

17 A. Page 3?

18 Q. Yes. And excuse me while I approach.
19 I think I left my Exhibit 2 up here with you.

20 CHAIRMAN LEMAY: Is the number at the
21 top of that page 107-C?

22 MR. TULLY: It's 107-B, paragraph 6.

23 CHAIRMAN LEMAY: "B"?

24 Q. Does that basically state that this
25 assignment is subject to the terms and conditions

1 of the Zimmerman lease?

2 A. Yes, it says so in the first sentence
3 of paragraph 6.

4 Q. Now, at the time that this assignment
5 was made, had there been any type of a pooling
6 provision added to the Zimmerman lease?

7 A. No.

8 Q. All right. Referring now to page 4,
9 about the fifth or sixth line down, does that
10 indicate that Locke and Taylor were accepting
11 this assignment without prejudice to their right
12 to contend that the Zimmerman lease is not
13 subject to the provisions of the Gallegos Canyon
14 Unit and the unit accounting agreement?

15 A. The assignees accepted the assignment
16 without prejudice to their rights to contend that
17 the lease acreage assigned is acquired free of
18 the provisions of the unit accounting agreement,
19 but in no event said lease acreage shall be found
20 to be subject to the terms of said agreement.
21 Assignees accept said lease subject to all the
22 terms and provisions of said agreement.

23 Q. Okay. But that basically says, does it
24 not, that Locke-Taylor could challenge whether or
25 not this lease is committed to the Unit

1 Agreement?

2 A. Well, apparently they could. And it
3 also states earlier in that paragraph that the
4 assignors heretofore executed this Unit Agreement
5 for the development and operation of the Gallegos
6 Canyon Unit, dated November 1, 1950.

7 Q. So if subsequently it was determined
8 that the tract was not committed to the unit,
9 then Locke-Taylor agreed to be bound by the Unit
10 Agreement? Is that what that last phrase pretty
11 much indicates?

12 A. Say that again.

13 Q. If the Zimmerman lease is found to be
14 committed to the Gallegos Canyon Unit, then
15 Locke-Taylor have agreed to be bound by the terms
16 and provisions of the Unit Agreement? Is that
17 what that last phrase pretty much states?

18 A. Well, it doesn't say anything about if
19 the lease is committed, it just says that they
20 accept the assignment without prejudice to
21 contend that the lease is assigned not subject to
22 the agreement.

23 Q. All right. Let's go now to a pooling
24 designation. Do you happen to have a pooling
25 designation within your Exhibit 2?

1 Your counsel has indicated that you do
2 not have a copy of the Pooling Designation in
3 your Exhibit 2, so I will hand you what we'll
4 call Locke Exhibit C.

5 In your review of this matter, Mr.
6 Reinhardt, have you had an opportunity to review
7 this Pooling Designation?

8 A. I have reviewed it.

9 Q. Is this Pooling Designation after the
10 effective date of the Gallegos Canyon Unit?

11 A. Yes.

12 Q. Okay. Now, does this Pooling
13 Designation recognize that Locke-Taylor is the
14 owner of the Zimmerman lease from the surface to
15 the base of the Pictured Cliffs Formation, as
16 well as the owner of some other leases?

17 A. Yes. It states that they are owners
18 and holders of certain oil and gas leases
19 executed by Helen and R. J. Zimmerman.

20 Q. Now, referring to page 3--at the top of
21 that it would be 23-B--if you would refer to that
22 page.

23 A. Okay.

24 Q. Now, does Locke-Taylor Drilling Company
25 agree to unitize and pool the north half of

1 Section 23 from the surface to the base of the
2 Pictured Cliffs Formation?

3 A. Well, it states here that Lloyd Locke,
4 Lloyd Taylor, joined by Stanolind, and Earl
5 Benson and William Montin and their wives, have
6 elected to pool or unitize all lands embraced in
7 said several respective leases under a
8 drilling--under a unitized drilling unit,
9 embracing the north half of Section 23 to conform
10 with spacing rules and regulations.

11 Q. I don't see that in there. I see that
12 they have agreed to one drilling unit and acreage
13 pool for the purpose of operating and drilling,
14 producing and marketing, gas and hydrocarbon
15 substance from said lands embracing the
16 above-mentioned leases, embracing and covering
17 all of the following described lands situate in
18 San Juan County, New Mexico, as one drilling unit
19 or pool.

20 CHAIRMAN LEMAY: I think he's referring
21 to the paragraph above, Counsel. The end of that
22 sentence, the paragraph above it, "To conform
23 with spacing rules and regulations."

24 MR. TULLY: Oh, I see.

25 Q. I'm sorry. You're looking at the

1 "whereas" clause and I'm looking at the "now
2 therefore" clause.

3 A. It says, "Now, Therefore," Locke and
4 Taylor, and Stanolind, and Benson and Montin, "by
5 these presents unitize and pool all and singular
6 the lands embraced in the respective oil and gas
7 leases as hereinabove particularly described in
8 one drilling unit and acreage pool, for the
9 purpose of operating and drilling, producing and
10 marketing, gas and hydrocarbon substances from
11 the lands embraced in the above-mentioned leases
12 covering all and singular the following described
13 lands, and it describes the north half of Section
14 23.

15 Q. Okay. And then go on to the next
16 paragraph. Is there a surface limitation insofar
17 as this pooling designation is concerned?

18 A. It's limited. It embraces and pertains
19 to only those formations in and above the
20 Pictured Cliffs formation.

21 Q. Now, let's go to the next page and look
22 at the top paragraph there, and come down about
23 five lines to the phrase, "Provided, however."
24 If you would review that, please?

25 A. It says that "The unitization shall

1 apply only to the Pictured Cliffs formation and
2 other formations of lesser depths than the
3 Pictured Cliffs formation, insofar as it pertains
4 to the lands embraced in the aforesaid leases"--

5 Q. "Aforesaid lease" or "leases"?

6 A. "aforesaid lease to said Stanolind Oil
7 & Gas Company, and the lands embraced in said
8 lease to Earl Benson and William Montin."

9 Q. Now, is that referring to the Zimmerman
10 lease? Is that particular phrase referring to
11 the Zimmerman lease?

12 A. Well, it says the lease to Stanolind
13 Oil & Gas Company.

14 Q. Up in the whereas clause, as the first
15 part of this, is the Zimmerman lease the only
16 lease that concerns the Stanolind or the Benson
17 and Montin lease?

18 A. I believe it refers back to the--I
19 believe it's intended to refer back to the
20 Zimmerman-Dustin lease.

21 Q. Thank you.

22 A. And as all other leases.

23 Q. Are you aware that there was an
24 amendment to the Zimmerman lease that added a
25 pooling clause?

1 A. Yes.

2 Q. Do you know at this particular time
3 whether or not that amendment to the Zimmerman
4 oil and gas lease, that added pooling clause, was
5 in effect at the time this pooling designation
6 was executed by Stanolind, by Benson and Montin,
7 and Locke-Taylor? Do you have a copy of the
8 amendment to oil and gas lease, Mr. Reinhardt?

9 A. Let me check.

10 Q. Your counsel has indicated that you do
11 not have a copy of the amendment to oil and gas
12 lease, so I will hand you what we'll identify as
13 Locke Exhibit D.

14 So that we don't get confused, I'll
15 mark through at the bottom where it says Exhibit
16 F, and it will now be Exhibit D at the top of the
17 page.

18 Now, Mr. Reinhardt, have you had an
19 opportunity to review this Amendment to Oil and
20 Gas Lease, pertaining to this matter, before
21 today's hearing?

22 A. I have. I have seen it.

23 Q. Now, if you will refer to that
24 Amendment to Oil and Gas Lease, would you please
25 describe for us what that amendment to Oil and

1 Gas Lease does?

2 A. It amends and supplements the oil and
3 gas lease described there in the first paragraph,
4 the Helen Zimmerman and R. J. Zimmerman oil and
5 gas lease to Charles Newbold.

6 Q. And it adds a pooling clause, is that
7 correct?

8 A. Yes.

9 Q. Let's go back again to the Pooling
10 Designation. At the time of executing this
11 Pooling Designation by Stanolind Oil & Gas and by
12 Benson and Montin, who was the unit operator of
13 the Gallegos Canyon Unit?

14 A. In 19--

15 Q. 53, 54. Would it have been either
16 Stanolind or Benson and Montin as the unit
17 operator of the Gallegos Canyon Unit?

18 A. Yes, one or the other.

19 Q. Okay. And would it also be that
20 Stanolind and Benson and Montin were 50-percent
21 working interest owners at that time, or each one
22 of them, below the base of the Pictured Cliffs
23 formation? because the assignment had already
24 been made to Locke-Taylor, is that correct?

25 A. Yeah, they would have already assigned

1 their interest to Locke and Taylor. I think they
2 did that in 1953.

3 Q. Now, this pooling designation
4 specifically says that it's a unitization that
5 applies only to the Pictured Cliffs formation and
6 above, is that correct?

7 A. Yes.

8 Q. Is this a modification or a changing,
9 then, by the unit operator, Stanolind and or
10 Benson and Montin, of their interest in the
11 Gallegos Canyon Unit?

12 MR. BRUCE: I would object insofar as
13 it calls for a legal conclusion by the witness.

14 CHAIRMAN LEMAY: I think that's
15 correct. It's a very technical issue and is not
16 something this witness would be qualified to
17 answer.

18 MR. TULLY: Thank you.

19 Q. Now let's go to the Amendment to Oil
20 and Gas Lease, Locke Exhibit D. Let's look now,
21 just confirm for me one more time, if you would,
22 that this Amendment to Oil and Gas Lease does
23 pertain to the Zimmerman lease, is that correct?

24 A. Yes. It recites in the first paragraph
25 the particulars of the Zimmerman lease, and its

1 recording information.

2 Q. Can you tell whether or not this
3 Amendment to Oil and Gas Lease was in effect at
4 the time the Pooling Designation was entered
5 into?

6 A. Well, it was executed October 1, 1954,
7 recorded December 3rd, which would have been
8 after Locke and Taylor and Benson and Montin
9 executed the Pooling Agreement, but prior to the
10 execution of Stanolind Oil & Gas.

11 Q. As a matter of fact, we have a
12 substantial period of time between the excution
13 by Locke-Taylor and Benson and Montin before
14 Stanolind signed this, isn't that correct?

15 A. I guess a certain amount of time, yeah.

16 Q. It would be over a year, wouldn't it?

17 A. Over a year.

18 Q. Okay. Thank you. Now, does the
19 Amendment to Oil and Gas Lease specifically
20 recognize Locke-Taylor Drilling Company as being
21 an owner of the Zimmerman lease?

22 A. I see there in paragraph two it states
23 that the lease is presently owned by
24 Locke-Taylor, Stanolind, and Benson and Montin,
25 so it would appear that all three companies owned

1 an interest in the lease.

2 Q. Let's go into the quoted paragraph,
3 below the "Now, Therefore," clause, where it
4 starts, "Lessee is hereby given the power," and
5 so on.

6 A. Okay.

7 Q. Does that indicate that Locke-Taylor
8 Drilling Company, as a lessee, at any time during
9 the term of the lease, as to all or any part of
10 the Zimmerman lease and as to any one or more of
11 the formations, may, at its option and without
12 Zimmerman's joinder or further consent, pool and
13 unitize the leasehold estate?

14 A. Yes, it says it can unitize the
15 leasehold estate and lessor's royalty estate,
16 created by the lease, with any other land or
17 lands, lease or leases, mineral royalties, et
18 cetera.

19 Q. So Locke-Taylor could, under this
20 Amendment to Oil and Gas Lease, adding a pooling
21 clause, could go ahead and pool and unitize from
22 the surface to the base of the Pictured Cliffs of
23 the Zimmerman lease, is that correct?

24 MR. BRUCE: Well, I would object again
25 insofar as it calls for a legal conclusion. Pool

1 what interest?

2 MR. TULLY: Pool the Zimmerman lease.

3 MR. BRUCE: Pool what interest in the
4 Zimmerman lease?

5 MR. TULLY: Pool its interest.

6 A. Whose interest?

7 Q. Locke-Taylor's.

8 CHAIRMAN LEMAY: Repeat the question
9 again, Mr. Tully.

10 Q. Referring now to the quoted paragraph
11 which says, "Lessee is hereby given the power and
12 right," we have the recognition that Locke-Taylor
13 Drilling Company is a lessee of the Zimmerman
14 lease.

15 Now, pursuant to this pooling clause,
16 can Locke-Taylor, is it given the power and the
17 right at any time during the Zimmerman lease, as
18 to all or any part of these lands described
19 above, pool and unitize those lands with other
20 lands, and also they can pool the Zimmerman
21 royalty estate without further joinder of the
22 royalty interest?

23 A. It says there that they have the right
24 to pool and unitize the leasehold estate and the
25 royalty estate.

1 Q. Okay. I don't know if you answered my
2 question or not, did you?

3 CHAIRMAN LEMAY: Well, I would say
4 yes. He said you have the right to pool. He
5 read that in the pooling clause.

6 Q. I guess I didn't understand your
7 answer. I'm having trouble getting some of your
8 answers and I'm not sure what you're answer, Mr.
9 Reinhardt. I guess maybe it's my fault and I
10 apologize to the Commission. I guess I need to
11 listen closer.

12 Do you know, of your own knowledge,
13 whether or not the north half of Section 23 was
14 ever committed to a participating area of the
15 Gallegos Canyon Unit?

16 A. No, it was not.

17 Q. Do you happen to know, of your own
18 knowledge, when the Pictured Cliffs participating
19 area was established?

20 A. I don't know the exact date. I know it
21 was prior to 1960.

22 Q. Do you happen to know when the
23 Fruitland participating area of the Gallegos
24 Canyon Unit was established?

25 A. Well, there are several Fruitland

1 participating areas.

2 Q. The initial Fruitland participating
3 area, do you know when it was established?

4 A. I don't remember the exact date,
5 either. I think it was in the early 60s.

6 Q. In the early 1960s?

7 A. Yes.

8 Q. And the Tycksen No. 1 well was never
9 put into a participating area for either the
10 Fruitland or the Pictured Cliffs participating
11 area when they were first established? I
12 understood you correctly on that?

13 A. That's right.

14 Q. Do you think when the Tycksen well was
15 drilled?

16 A. 1952.

17 Q. Do you know when it first started
18 producing?

19 A. 19--sometime in 1954.

20 Q. Okay. So it was producing from the
21 Fruitland formation from 1954 until some time in
22 1960, when the initial Fruitland participating
23 area was established, is that correct?

24 A. Yes.

25 Q. Okay. Now--

1 A. I don't know for a fact that it
2 produced continuously, but--

3 Q. Okay.

4 A. I don't know that the well produced
5 continuously from 1954 to 1960, but--

6 Q. Are you aware that the well has
7 produced to the present time since its first
8 delivery in 1954?

9 A. I'm aware that it has produced up until
10 a few months ago. I understand it has been shut
11 in.

12 Q. Now, it seems strange that we have this
13 Tycksen No. 1 well located within the unit
14 boundaries but it's not been put in a
15 participating area for the Fruitland when it was
16 drilled and started producing back in 1954.

17 Have you reviewed any materials to
18 determine whether or not a commercial
19 determination was made by the U.S.G.S. or by the
20 unit operator at this time to declare this well
21 commercial or noncommercial?

22 A. I'm not aware of any.

23 Q. Would it be reasonable to assume that
24 since the well has produced since 1954 to the
25 present time, that it's a commercial well?

1 A. Not necessarily.

2 Q. Why not necessarily?

3 A. Well, I don't know that it would be
4 considered a paying well.

5 Q. But would an operator make that
6 determination on whether a well is commercial or
7 not?

8 A. If there was a need to.

9 Q. So, if you have an operator that's
10 producing a well from 1954 to the present time,
11 couldn't we assume that that operator believes
12 that well is commercial?

13 A. Not necessarily.

14 MR. BRUCE: I'm going to object. Mr.
15 Reinhardt is a landman and he's not an engineer.

16 CHAIRMAN LEMAY: I think that's true.
17 We're getting into a lot of assumptions that bear
18 on a lot of factors that Mr. Reinhardt is really
19 not privy to.

20 MR. TULLY: May it please the Chair,
21 Mr. Reinhardt testified in previous hearing,
22 under oath, insofar as the commerciality nature
23 of this well. And that's why I'm following this
24 line of questioning, because he opened the door
25 insofar as whether or not this well is

1 commercial.

2 He stated in the previous hearing that
3 this well was noncommercial, and I'm asking him
4 now for the basis of that whether it's his
5 opinion or whether it's because of the regulatory
6 agency or the unit operator.

7 CHAIRMAN LEMAY: If he's testified
8 before, I'll allow the question.

9 A. What was the question again?

10 Q. Okay. Would it be reasonable to assume
11 that an operator who has produced a well from
12 1954 to the present time, would consider a well
13 being commercial because it's produced it that
14 long?

15 MR. BRUCE: I object because I don't
16 think that's what Mr. Reinhardt testified. He
17 didn't testify as to the well being produced for
18 that amount of time. I think he made comments in
19 the prior hearing about unit and non-unit wells
20 and a determination of commerciality as far as
21 forming a participating area.

22 Q. Mr. Reinhardt, let me go a little bit
23 different way, and that is, let's take this
24 hypothetical: You're an expert witness, you're a
25 land person, you're familiar with unit

1 operations, you're familiar with participating
2 areas and that type of thing.

3 Let's just assume that the Tycksen well
4 is a commercial well, it's located within the
5 unit boundaries, but it's never been put into a
6 participating area. Why not?

7 A. I don't know.

8 Q. Would it be reasonable to assume that
9 that's a recognition that the lands upon which
10 that well is located have been withdrawn from
11 that unit?

12 MR. BRUCE: That's again calling for a
13 legal conclusion, Mr. Examiner.

14 CHAIRMAN LEMAY: That's supposition. I
15 won't allow that question.

16 Q. I'm now going to hand you what we will
17 identify as Locke Exhibit E. Let me confirm with
18 you, however. This is the "Plan of Development
19 for the Calendar Year 1955." Do you have that
20 included amongst the exhibits that have already
21 been admitted?

22 Mr. Reinhardt, have you ever reviewed
23 this exhibit before this hearing?

24 A. No.

25 Q. Referring to page 2 of this exhibit,

1 does that provide us with a resume of all of the
2 wells that have been drilled in the Gallegos
3 Canyon Unit as of the time this was prepared?

4 A. Well, it indicates the wells that have
5 been drilled in Gallegos Canyon Unit, refers to
6 current status. And the title, it's titled "Past
7 Development History of the Pictured Cliffs Zone,"
8 so I don't know if it's just specifically a
9 Pictured Cliffs test or just wells that
10 penetrated the Pictured Cliffs towards evaluating
11 other formations or exactly what, but apparently
12 they have tested the Pictured Cliffs.

13 Q. Are you aware that prior to the date of
14 this Plan and Development for the Year 1955, that
15 the Tycksen well had, in fact, been drilled to
16 the Pictured Cliffs formation and was located
17 within the Gallegos Canyon Unit?

18 A. Yes, it was within the unit boundary.

19 Q. Do you see any recitation in here
20 pertaining to the Tycksen well insofar as the
21 1955 Plan and Development is concerned?

22 A. I don't see it included in Stanolind's
23 list of wells.

24 Q. Do you see any land description here
25 that would indicate that maybe the Tycksen well

1 might have been called a Gallegos Canyon Unit
2 well?

3 A. I don't recognize any other wells
4 having been drilled at that location or reference
5 to another well at that location.

6 Q. Would you please review the exhibits
7 that have previously been admitted in your direct
8 testimony and advise us whether the 1961 Plan of
9 Development was part of your exhibit?

10 A. 1961?

11 Q. Yes.

12 A. I don't seem to have that.

13 Q. Your counsel has indicated that you've
14 not included that in your exhibit. I'll hand you
15 Locke-Taylor Exhibit F. Go ahead and review that
16 briefly. Have you ever seen this before?

17 A. I don't recall having seen it before.

18 Q. If you will look in about the middle
19 part of the first page, it says, "History of Past
20 Development."

21 A. Okay.

22 Q. Now, is there a discussion there of the
23 wells that have been drilled in the Gallegos
24 Canyon Unit at that particular time?

25 A. A total of 86 wells drilled within the

1 unit.

2 Q. And then does it describe what wells
3 have been completed in different formations?

4 A. Yes.

5 Q. Does it have the recitation there about
6 any type of a Fruitland or Pictured Cliffs well?

7 A. It says one Fruitland completion.

8 Q. Okay. And 11 wells that are either dry
9 holes or abandoned Pictured Cliffs wells?

10 A. That's what it says.

11 Q. Now, there's another paragraph that
12 talks about the Gallup participating area, and
13 then it comes down and it says, "A noncommercial
14 determination application has also been made for
15 the Fruitland formation in the Gallegos Canyon
16 Unit No. 177." Do you see that?

17 A. In the next to the last paragraph?

18 Q. Yes.

19 A. It says the Gallegos Canyon Unit No.
20 77.

21 Q. I'm sorry. Excuse me. 77. So, as of
22 1961, there had been one Fruitland completion in
23 the Gallegos Canyon Unit, and there had been a
24 noncommercial determination for a Fruitland well
25 called the Gallegos Canyon No. 77? Is that

1 basically what this says?

2 A. That's what it indicates.

3 Q. Okay. Now, up above where it says
4 "History of Past Development," it says one
5 Fruitland completion. Do you have any idea what
6 well that is?

7 A. No.

8 Q. Would that well have been a commercial
9 or a noncommercial well?

10 A. It doesn't say.

11 Q. Would you assume it was a commercial
12 well because of the paragraph down below that
13 says that there's been a noncommercial
14 determination for one well?

15 MR. BRUCE: I would object just because
16 the document speaks for itself.

17 CHAIRMAN LEMAY: I think the
18 determination of commercial versus noncommercial,
19 you're trying to get the witness here to indicate
20 if he thinks it's commercial or if the U.S.G.S.
21 thinks it's commercial, or if Stanolind thinks
22 it's commercial or Pan American?

23 MR. TULLY: Excuse me, Mr. Chairman,
24 I'm probably am going down a path I didn't mean
25 to go. What I'm basically getting around to with

1 this witness is a confirmation that there was
2 never a determination made as to whether the
3 Tycksen well was commercial or noncommercial by
4 the regulatory agency or by the unit operator.

5 I'm going to lay the history showing
6 that when there's past development and that type
7 of thing, that there's a recognition that there
8 were other Fruitland wells that were drilled in
9 the Gallegos Canyon Unit, that those
10 determination were made, and that those
11 determinations were made either commercial or
12 noncommercial and that the Tycksen well was not
13 ever determined to be commercial or
14 noncommercial.

15 MR. BRUCE: Mr. Chairman, the witness
16 has already testified he doesn't know. If Mr.
17 Tully wants to prove that, why not get someone
18 from the BLM or someone who is knowledgeable on
19 the determination of whether that determination
20 was made.

21 CHAIRMAN LEMAY: I think we're getting
22 past the witness's expertise. Not, he may have
23 testified--I'm looking through the record--but in
24 so testifying he would be quoting some other
25 source and not his own expertise in that area.

1 Q. (BY MR. TULLY) Are you quoting, in
2 your previous testimony at the July hearing, are
3 you quoting any regulatory source or any unit
4 operator source, that the Tycksen No. 1 well was
5 commercial or noncommercial?

6 A. No. Hearsay.

7 Q. Thank you. Let's jump a couple of
8 years now and go to 1989 and 1990, and could you
9 please advise us whether or not BHP's 1989 Plan
10 of Development, dated August 18, 1989, is
11 included in the exhibits that have previously
12 been admitted under your direct examination?

13 A. I don't have a copy of it in front of
14 me.

15 MR. STOVALL: Mr. Bruce, are you
16 stating as counsel that it has not been
17 submitted?

18 MR. BRUCE: It has not been previously
19 submitted.

20 Q. I'll hand you Locke Exhibit G and ask
21 for you to review that, please. Have you ever
22 reviewed this exhibit before, Mr. Reinhardt?

23 A. I have read through it. I can't
24 remember exactly when, but I have read through it
25 once.

1 Q. If you'll refer to the last page of
2 this Exhibit G, it looks like we've got some
3 diagrams and some lines and some different color
4 type of areas. Do you know what that represents?

5 A. The last page is a plat of the unit.

6 Q. Yes. The last page is a plat, but--

7 A. It looks like a contour map of some
8 type.

9 Q. Do you happen to know what those
10 different colors or lines represent?

11 A. No.

12 Q. You don't?

13 MR. BRUCE: If he's asking Mr.
14 Reinhardt to testify as a geologist, I would
15 object.

16 CHAIRMAN LEMAY: This looks like a
17 geological exhibit, to me. He's a landman,
18 Counsel.

19 Q. Do you have any knowledge of what this
20 plat is attempting to show?

21 A. Well, if it's indeed a thick--well,
22 it's a contour map of some formation, but I don't
23 know what formation. No, I really don't know
24 what they're trying to depict.

25 CHAIRMAN LEMAY: On the bottom does it

1 say, "Isopach, 1st Coal Above Pictured Cliffs"?
2 Is that what it says? I mean, my eyesight
3 isn't--

4 A. Isopach, 1st Coal Above--yeah.

5 CHAIRMAN LEMAY: It's a poor
6 reproduction, but that's what my eyes seem to say
7 it says.

8 A. And as I understand it, an isopach map
9 would indicate thickness of a particular
10 formation, as I know it.

11 Q. Can you tell, from your own information
12 and knowledge or your own experience, can you
13 tell what these different lines represent insofar
14 as thickness is concerned?

15 MR. BRUCE: If he wants to bring up a
16 geologist, fine, Mr. Chairman, but--

17 CHAIRMAN LEMAY: I think that is a
18 geological question. This gentleman is qualified
19 as a landman, not a geologist.

20 MR. TULLY: Okay. We'll go now to
21 Locke Exhibit H.

22 Q. Are you familiar with Exhibit H?

23 A. Yes. I've read through this once
24 before.

25 Q. Please identify what this exhibit is.

1 A. Well, it's a 1989 Review of Operations
2 and 1990 Plan of Development, Gallegos Canyon
3 Unit, for Pictured Cliffs, Fruitland and
4 Farmington formations.

5 Q. This was dated when?

6 A. It's dated April 16, 1990.

7 Q. How many wells was BHP proposing to
8 drill in 1990?

9 A. It says BHP proposes to drill 37 wells.

10 Q. Now, were two of these proposed wells
11 the Nos. 390 and 391 wells?

12 A. Yes.

13 Q. So, as of at least April 16, 1990, BHP
14 planned to drill the No. 390 and 391 wells, is
15 that correct?

16 A. Yes, that was their plan.

17 Q. And the Nos. 390 and 391 wells are
18 specifically described in this Plan of
19 Development, is that correct?

20 A. They're included on Table II under
21 "Proposed Drilling Wells."

22 Q. Now, as a landman, are you familiar
23 with the operating procedures and practices or
24 the custom in the industry, the oil and gas
25 industry, as far as securing title opinions for

1 drilling purposes?

2 A. Yes.

3 Q. What is your understanding as far as
4 the industry custom for securing title opinions
5 for drilling of wells?

6 A. Generally, you like to have the title
7 examined prior to the drilling of the well, if
8 that's what you're getting at.

9 Q. That's the industry standard?
10 Generally prior to the drilling of the well?

11 A. It's the custom.

12 Q. What about BHP? Is it its operating
13 procedure and practice to secure title opinions
14 prior to the drilling of wells?

15 A. Yes, we prefer to do it that way.

16 Q. Do you do it in most circumstances?

17 A. Yes.

18 Q. Did you, insofar as the 1990 Plan and
19 Development is concerned, can you tell us which
20 of these wells, of these 37 wells, you ordered
21 drilling title opinions on before they were spud?

22 A. I had requested title be examined on
23 381, 382, 383, 384.

24 Q. Let's slow down. 381, 382.

25 A. 384, 385.

1 Q. No 383?

2 A. No, 383. 384, 385, 386, 387, 388 389,
3 390, 391, and then all of the series 500 wells.

4 Q. Now, when did you request these title
5 opinions to be done?

6 A. I can recall placing that order
7 sometime in mid-August.

8 Q. August of?

9 A. 1990.

10 Q. August of 1990 you ordered drilling
11 title opinions to be prepared for all of these
12 wells?

13 A. Yes.

14 Q. Okay. Who did you order those title
15 opinions from?

16 A. Hinkle-Cox.

17 Q. The Hinkle-Cox law firm?

18 A. Yes.

19 Q. Okay. Now, did you do these all at the
20 same time or did you do them sporadically?

21 A. I made one blanket request and asked
22 that they be prepared. I pretty much left it up
23 to the attorneys to do them in the order in which
24 they could be done most quickly.

25 Q. Did you give them a priority list

1 insofar as when you wanted particular wells to be
2 drilled, or was it just blank?

3 A. When I placed the original order, there
4 was no list of specific priority.

5 Q. So the No. 390 and 391 wells, you
6 ordered drilling title opinions to be prepared in
7 August of 1990, is that correct?

8 A. Yes.

9 Q. Did you ever elevate the priority for
10 those title opinions with your title examiner, to
11 have them done sooner?

12 A. Well, as we got on to late November, I
13 had a telephone conversation indicating
14 that--actually, it was after Thanksgiving,
15 indicating that I still hadn't received a written
16 title opinion and I would need to have some sort
17 of indication as to present ownership in the
18 north half of 23.

19 Q. So in late November, you wanted to know
20 the ownership, is that correct, on these two
21 wells?

22 A. Well, on the lands in the north half of
23 23.

24 Q. The north half of 23?

25 A. In particular.

1 Q. Now, you requested that in late
2 November. When did you receive the title opinion
3 for the north half of Section 23?

4 A. Actually, the written opinion, the
5 actual written opinion was not delivered until
6 after the first of the year.

7 Q. Do you recall when?

8 A. I don't remember the exact date, but it
9 was--

10 Q. Do you remember the month?

11 A. It was delayed considerably. It was,
12 like, April or May.

13 Q. April or May? Okay. Now, did you
14 receive any type of an oral report?

15 A. Yes.

16 Q. Okay. When was that?

17 A. That was in early December.

18 Q. Early December?

19 A. Yes.

20 Q. You received an oral report pertaining
21 to the title pertaining to the north half of
22 Section 23?

23 A. Yes.

24 Q. Now, was that limited to the Fruitland
25 Coal formation?

1 A. I didn't limit it to the Fruitland
2 Coal. I just asked to know the leasehold
3 ownership in the north half of 23, above the base
4 of the Pictured Cliffs.

5 Q. Which would have included the Fruitland
6 Coal, is that correct?

7 A. Yes.

8 Q. So you got an oral report report in
9 early December insofar as who owns the surface to
10 the base of the Pictured Cliffs for and the north
11 half of Section 23?

12 A. Yes.

13 Q. What was the opinion? Who owned that?

14 A. I was told that the northwest quarter
15 was owned by Louise Locke and I was told that the
16 northeast quarter was still owned by--well, it
17 was owned then by Amoco Production Company as the
18 successor as to Stanolind. As it turns out, of
19 course, that was incorrect.

20 Q. When you proposed the drilling of the
21 390 and 391 wells, were you aware of any other
22 working interest owners, besides BHP and Amoco,
23 in all of Section 23?

24 A. I was aware that Meridian Oil
25 Production, Inc., had a leasehold interest in

1 some lands in the south half of Section 23.

2 Q. How did you become aware of that?

3 A. That was contained in a lease takeoff
4 existing in the file. It was dated in 1985. At
5 that time it was still credited to a prior owner,
6 but we were aware that the prior holder of the
7 interest had sold an interest to Meridian. We
8 had that much information.

9 Q. So based upon that information, did you
10 contact Meridian to see if they wanted to join
11 you in the drilling of the well?

12 A. Sure.

13 Q. What wells did you approach Meridian to
14 join in the drilling of the wells? I'm only
15 talking about the 390 or 391 wells.

16 A. They owned an interest in numerous
17 wells in the unit, but in Section 23 we
18 approached them to participate in the Gallegos
19 Canyon Unit No. 391.

20 Q. I would like to hand you Exhibit I.
21 Are you familiar with Exhibit I?

22 A. Yes.

23 Q. You wrote it I guess, huh?

24 A. Yeah.

25 Q. The 391 well is a well that you

1 indicated Meridian owns a leasehold interest on,
2 is that correct?

3 A. That's correct.

4 Q. The date of this letter is in July of
5 1990.

6 A. Right.

7 Q. Did you submit AFEs for the 391 well to
8 Meridian at this time?

9 A. Yes.

10 Q. Now, do you happen to recall when
11 Meridian responded back to you and agreed to
12 either join or not join in the drilling of the
13 391 well?

14 A. I believe it was in October,
15 mid-October, maybe.

16 Q. And did they agree to drill or not
17 drill?

18 A. They agreed to participate in the
19 drilling of the well.

20 Q. Mid- to late-October, 1990, is that
21 correct?

22 A. Something like that, as best as I
23 remember.

24 Q. So we're now in October. You've
25 received back AFEs from Meridian for them to join

1 in their proportionate share of the drilling of
2 these wells. You're aware that Louise Locke is
3 the owner of the northwest quarter, when?

4 A. I'm thinking late September.

5 Q. Late September?

6 A. Late September. That was in
7 conjunction with the 390 well.

8 Q. But not the 391 well?

9 A. The 391 well, at that time, I still
10 believe that Amoco was the holder of the
11 leasehold interest in the northwest quarter and
12 continued with that belief until sometime in the
13 next year.

14 Q. Did you have exhibits, though, to the
15 Gallegos Canyon Unit, that indicated the
16 northeast quarter above the base of the Pictured
17 Cliffs was owned by Locke-Taylor Drilling
18 Company?

19 A. I had seen that. I didn't know whether
20 I could rely on it or not, being with the age of
21 the document.

22 Q. But insofar as the northwest quarter,
23 did these same exhibits also indicate that
24 Locke-Taylor was 100 from the surface to the base
25 of the Pictured Cliffs?

1 A. Say that again.

2 Q. Insofar as the northwest quarter is
3 concerned, do these same exhibits show that
4 Locke-Taylor owns from surface to the base of the
5 Pictured Cliffs?

6 A. In the northwest quarter?

7 Q. In the northwest quarter, yeah.

8 A. I believe that they did.

9 Q. Okay. But you elected to not
10 acknowledge the northeast quarter but elected to
11 acknowledge the ownership in the northwest
12 quarter about that time?

13 A. That's right.

14 Q. And that was based upon?

15 A. Oh, preliminary title information that
16 came to me.

17 Q. From what source?

18 A. Well, from Hinkle-Cox, the Hinkle Law
19 Firm.

20 Q. And when was that?

21 A. That would have been, as to the
22 northwest quarter, that would have been in late
23 September; Late September, early October.

24 Q. And as far as the northeast quarter, in
25 the next year, apparently, is that correct?

1 A. Well, I was of the belief that it was
2 owned by Amoco up until the time we spudded the
3 well. It really wasn't until after February that
4 we came to the realization that she, indeed, also
5 owned the interest in the northeast quarter.

6 Q. Would you look through your exhibits,
7 and I believe this one is part of your previous
8 exhibits. It's the letter dated October 31, 1990
9 to Louise Locke in Rifle, Colorado, Exhibit 5.

10 A. October?

11 Q. 31, I believe.

12 A. I have a copy of it.

13 Q. Is it part of Exhibit 5?

14 A. It's just a copy.

15 MR. STOVALL: It's marked on this copy
16 as Exhibit 5. The offer to purchase, Mr. Tully?

17 MR. TULLY: Yes.

18 A. The October 31st letter was an offer to
19 purchase Mrs. Locke's interest in the northwest
20 quarter.

21 Q. Now, you put this--and that would have
22 been committed to which well in the northwest
23 quarter?

24 A. 390.

25 Q. So BHP knew, in April of 1990, it was

1 planning on drilling the 390 well. It sent out
2 AFEs to other working interest owners in July of
3 1990, that is Meridian, but it then communicates
4 at the end of October to Louise Locke offering to
5 purchase her interest, is that correct?

6 A. Well, yes. The letter was written
7 after a couple of telephone discussions with her
8 son. I called him in early October to advise him
9 of the fact that we were considering drilling a
10 well, and to let him try and open some forum for
11 communication as to just how he and his mother
12 would want to go about dealing with their
13 interest.

14 After a couple of weeks I didn't get
15 any response, I called him again and he said he
16 was still examining the matter and trying to
17 verify just what they owned in the north half. I
18 didn't hear back from him for a couple of weeks,
19 so I went ahead and prepared an offer letter in
20 the hopes that it might spur him along and
21 perhaps bring the matter to some conclusion.

22 Q. This is an offer to purchase, is that
23 correct?

24 A. Right.

25 Q. It's not a request for joinder?

1 A. No, not at that point.

2 Q. It's not a farmout--

3 A. Not at that point.

4 Q. --request?

5 A. Not at that point. It was just an
6 offer to purchase.

7 Q. And what was that purchase price per
8 acre?

9 A. It came out to, well, something like
10 \$20,000 for 160 net, so it would have been
11 something in excess of \$100.

12 Q. \$125 per acre?

13 A. \$125.

14 Q. Any reservations of any overriding
15 royalty interest or anything like that?

16 A. No. At that point I believe it was
17 just a straight cash offer.

18 Q. For all interests from the surface to
19 the base of the Pictured Cliffs?

20 A. Yes.

21 Q. Did you ever offer up farmout terms and
22 provisions to Louise Locke pertaining to the 390
23 or 391 well?

24 A. I don't recall offering to farmout
25 their interest, and I don't recall receiving

1 any--I just didn't have any indication that that
2 was anything something they might want to do.

3 Q. When was the first time you submitted
4 an AFE to Louise Locke requesting her to join in
5 the drilling of these wells?

6 A. That was included in a letter in May
7 1991.

8 Q. May 29, 1991, wasn't it?

9 A. Yes. Up until then we hadn't received
10 any indication that Mrs. Locke wished to join.

11 Q. Or not join, either?

12 A. Excuse me?

13 Q. You didn't have any indication whether
14 she wanted to join the well, but you also didn't
15 have any indication that she didn't want to join,
16 did you?

17 A. Well, I'm just saying that we didn't
18 have any indication she wanted to join. She had
19 made demands for other compensation.

20 Q. Let's talk a little bit now about the
21 Amoco farmout. Can you briefly describe for us
22 the drilling obligations of the Amoco farmout?

23 A. The agreement provided for BHP to drill
24 a total of five wells in calendar year 1989,
25 followed by--all of which had to be completed in

1 the Fruitland Coal, followed by the continuing
2 right to drill and earn on a schedule of 15 wells
3 in calendar year 1990, 10 wells in calendar year
4 1991, and 10 wells per year thereafter, in order
5 to perpetuate the agreement. Amoco farmed out
6 with no back in.

7 Q. But you had a 15-well drilling
8 obligation in the 1990 calendar year?

9 A. 1990, that's right.

10 Q. Do you happen to recall how many wells
11 you staked and permitted under the Amoco farmout
12 of 1990?

13 A. Well, I don't remember the exact
14 number. I know we permitted more wells than what
15 were required because we were entitled to--in the
16 farmout agreement there was a carryover provision
17 that would allow us to carryover wells drilled in
18 1990 and credit those towards the 1991
19 obligation. Consequently, we drilled in excess
20 of 15 wells?

21 A. In 1990?

22 Q. No, actually, some of those were
23 drilled in 1991, but we had their concurrence
24 that those would be considered, that certain
25 wells would be considered 1990 obligation wells

1 and certain wells would be considered 1991.

2 Q. Notwithstanding they were spud in 1991,
3 they would still count for the 1990 obligation?

4 A. Well, they would count for the 1990
5 obligation if there was some reason for delay,
6 but in our case we managed to spud all the
7 requisite number of wells in 1990.

8 Q. You spud at least 15 wells in 1990?

9 A. As I recall we did.

10 Q. And did you spud any more than 15?

11 A. We spud more than 15, but there were
12 certain wells in which Amoco did not own an
13 interest.

14 Q. But insofar as the Amoco farmout was
15 concerned, you did spud 15 of the wells?

16 A. We met their obligation.

17 Q. You also had an agreement with them
18 that in case you didn't do that, there could be a
19 carryover to 1991?

20 A. Well, if you drilled in excess of 15
21 wells, you could carryover certain wells into
22 1990.

23 Q. Do you recall if you had any carryover
24 from 1990 to 1991?

25 A. I don't remember there being any

1 carryover. I remember there being certain wells
2 in the program were 1991 wells, but I remember
3 that we met the drilling obligation for 1990.

4 Q. I am now going to hand you what we will
5 identify as Locke Exhibit J. Are you familiar
6 with this letter, Mr. Reinhardt?

7 A. Yes.

8 Q. What's the date of this letter?

9 A. August 10, 1990.

10 Q. And, basically, what does this letter
11 describe?

12 A. Under the farmout, we were required to
13 notify Amoco of wells that we planned to drill
14 that would comply with the farmout, and I sent
15 them a list of all of the wells that we planned
16 to drill that would comply.

17 Q. How many wells are listed here, total
18 number?

19 A. 21.

20 Q. Now, any of these wells have any
21 problems in getting their applications for permit
22 to drill approved in 1990?

23 A. I don't recall.

24 Q. So all 21 wells here received approved
25 APDs for you to go ahead and proceed to drill, is

1 that correct?

2 A. At some point, yeah, they were
3 permitted.

4 Q. So any or all of these 21 wells could
5 have been drilled in 1990, is that correct?

6 A. Well, certain of the wells had to be
7 commenced in 1990. The wells mentioned under
8 "Objective," those Fruitland Coal wells had to
9 be commenced in 1990 in order to comply with the
10 farmout.

11 Q. Now, is that pursuant to the farmout
12 agreement or an amendment to the farmout
13 agreement?

14 A. No, that's what I said. It was in
15 conjunction with the farmout.

16 Q. There was an obligation to drill so
17 many Fruitland Coal wells and an obligation to
18 drill so many Pictured Cliffs wells under the
19 farmout?

20 A. There was just an obligation to drill
21 five Fruitland Coal as well as. The other 10
22 wells could either be Fruitland completions or
23 Pictured Cliffs completions.

24 Q. Now, the 500 series wells, I guess, are
25 all Pictured Cliffs wells and the 300 series are

1 Fruitland Coal wells?

2 A. That's right.

3 Q. In any of your 500 series wells, did
4 you change it from Pictured Cliffs to Fruitland
5 Coal?

6 A. No.

7 Q. In any of your Fruitland Coal, did you
8 change that to Pictured Cliffs?

9 A. No.

10 Q. This was August 10, 1990, correct, when
11 you advised Amoco of the wells that you planned
12 to drill before the end of the year?

13 A. Right.

14 Q. What are the terms and the provisions
15 pertaining to securing title data from Amoco
16 under the farmout agreement?

17 A. I don't recall that provision.

18 Q. You don't recall any provision at all
19 in the Amoco farmout agreement pertaining to an
20 obligation to check title and who has that
21 obligation?

22 A. I don't recall that the point was
23 addressed in the farmout agreement. I just don't
24 remember.

25 Q. That's all right. Do you happen to

1 recall insofar as what type of assignments were
2 going to be made to BHP after the wells were
3 drilled and completed and you had satisfied the
4 farmout terms and provisions?

5 A. What type of assignments?

6 Q. Yes. Were you going to drill them and
7 not get an assignment?

8 A. No. BHP was entitled to an assignment
9 if they drilled and completed the well as a
10 producer.

11 Q. What type of an assignment were you
12 going to get?

13 A. It would have been an assignment of all
14 of Amoco's leasehold interest in the spacing unit
15 for the particular well, from the surface down to
16 the stratigraphic equivalent of the total depth
17 drilled, but in no event below the base of the of
18 the Pictured Cliffs.

19 Q. Do you know what warranty provisions
20 are?

21 A. Amoco did not warrant title.

22 Q. They did not warrant any title to you,
23 is that correct?

24 A. No, they did not warrant title.

25 Q. Okay. I am now going to hand you a

1 plat that we will identify as Exhibit K, and I
2 would ask for you to identify Exhibit K.

3 A. Exhibit K is a plat of the northeast
4 quarter of the northeast quarter, along with some
5 adjacent lands. It indicates different parties
6 owning different tracts, owning some type of
7 interest in those tracts, and indicates the
8 location of wells and pits and a pipeline
9 right-of-way, and some routes.

10 Q. Do you know who prepared this plat?

11 A. I believe it was prepared by BHP's
12 field supervisor.

13 Q. And who is that?

14 A. His name was Chuck Williams.

15 Q. Chuck Williams? There's a date down
16 here at the bottom, says it was sent by BHP
17 Petroleum, October 29, 1990, 11:58 a.m. Were you
18 the recipient of this plat?

19 A. I don't recall that it was sent to my
20 attention, but I eventually received a copy of
21 it.

22 Q. Do you happen to recall when you first
23 looked at this plat?

24 A. I would say probably early November.

25 Q. Do you happen to know who this plat was

1 sent to originally?

2 A. No, I don't remember.

3 Q. On this plat, does it show that there's
4 an existing well called the Tycksen No. 1 well
5 located immediately adjacent to the proposed BHP
6 Well No. 391?

7 A. Yes, it does.

8 Q. So, when you looked at this plat, you
9 had notice, didn't you, that the Tycksen well was
10 located very close by to your 391 well?

11 A. Yes, I was aware that apparently there
12 was some type of well located nearby, but I
13 didn't know what the status of that well was, or
14 the ownership.

15 Q. When did you become aware of the
16 Tycksen No. 1 well being located here?

17 A. Well, apparently it was located there,
18 I just didn't know what the status of the well
19 was.

20 Q. When did you get that knowledge that
21 you had a well there?

22 A. It would probably have been in early
23 November 1990, sometime after this was faxed to
24 BHP.

25 Q. But not before you received this plat?

1 A. I don't recall.

2 Q. All right. So we'll go ahead and
3 although these may be duplicates, I am going to
4 hand you two more exhibits. We will call these
5 L-1 and L-2.

6 Q. If you would, please, review these
7 exhibits. Have you seen these exhibits before,
8 Mr. Reinhardt?

9 A. Yes.

10 Q. What are these exhibits?

11 A. These are authorities for expenditure
12 prepared by BHP, setting out the estimated cost
13 of drilling to complete the Gallegos Canyon Unit
14 No. 390 and No. 391 wells.

15 Q. When were these prepared?

16 A. Well, they're dated May 14, 1990.

17 Q. And they were approved?

18 A. June 5th.

19 Q. 1990?

20 A. 1990.

21 Q. So they were ready to be used insofar
22 as requesting joinder of other working interest
23 owners in these wells, is that correct, at that
24 time?

25 A. Yeah, as soon as management was ready

1 to seek working interest owner approval.

2 Q. But didn't these AFEs go out to
3 Meridian in July?

4 A. In July they went out. By then we had
5 received approval to go forward with the program.

6 Q. You could have submitted an AFE to Mrs.
7 Locke in early September, couldn't you, when you
8 were aware that she was the owner of the
9 northwest quarter?

10 A. Well, in late September.

11 Q. Late September.

12 A. Late September, early October.

13 Q. You could have submitted an AFE to her
14 at that time, couldn't you?

15 A. It would have been possible.

16 Q. Okay. Exhibit L-2 indicates that
17 Meridian signed off on the No. 391 well on
18 October 17, 1990.

19 Now, at the top of these AFEs, there is
20 a provision that says, "Project must be commenced
21 by." Now, the 391 well has a date inserted there
22 but the 390 well does not have a date on when
23 this project must be commenced.

24 Would you describe the reasons that we
25 have this difference between the AFEs?

1 A. I don't know why Mr. Bertoglio did not
2 put a date in that blank.

3 Q. But as far as the 391 well, it says
4 December 31, 1990?

5 A. Yes.

6 Q. As far as the 390 well, though, there
7 is no date that the project must be commenced by,
8 isn't that correct?

9 A. It's blank.

10 Q. And that received management approval,
11 didn't it?

12 A. Both AFEs received approval.

13 Q. Help me out a little bit. I believe
14 somewhat similar copies of these exhibits were
15 given to you during your direct examination.
16 Were you asked at that time whether or not these
17 costs were reasonable and also whether the actual
18 well costs that are part of the other exhibits
19 that you had, did you also indicate that you
20 thought that those were reasonable?

21 A. Yes, I remember being asked whether or
22 not the costs were reasonable. The costs are in
23 line with other Fruitland Coal wells that were
24 drilled in the area.

25 Q. Do you have, in your exhibits that have

1 previously been admitted, a facsimile
2 transmission dated December 11, 1990, from you to
3 myself?

4 A. I have a copy of that.

5 Q. Is it part of the exhibits, though?

6 A. No, it was in these copies you provided
7 Mr. Bruce a couple of weeks ago.

8 Q. I'll leave two things with you so we
9 can save some time here. I'll hand you what
10 we'll mark as Exhibits M-1 and M-2.

11 Mr. Reinhardt, are you familiar with
12 these exhibits?

13 A. Yes.

14 Q. You prepared them, didn't you?

15 A. Oh, yes.

16 Q. Would you please briefly describe for
17 us these two exhibits?

18 A. After sending Mr. Locke the offer to
19 purchase, that letter dated October 31, 1990, it
20 went for quite a while, the whole month of
21 November and into December without any response
22 from him.

23 I called him in early December and
24 asked if he was any further along in making or in
25 having some idea about what he wanted to do with

1 his mother's interest, and he advised me that he
2 didn't but he advised that he was having title
3 examined to his mother's interest on his own
4 accord.

5 We talked about what sort of
6 instruments were of record and so forth, and he
7 indicated that he did not have copies of any of
8 that, and asked me to send him copies. And, at
9 the same time, send copies of certain instruments
10 to his attorney, which I did.

11 Q. And, at any time during that
12 discussion, did you ever give Louise Locke an
13 opportunity to join in the drilling of the well?

14 A. It wasn't the purpose of the
15 conversation. I was calling to--well, let me
16 back up.

17 In my first conversation with Mr. Locke
18 in early October, I indicated then that
19 participation was among the alternatives
20 available to him, but he had indicated to me that
21 he was really unfamiliar with what interest his
22 mother owned and really wasn't prepared to
23 comment on it, so I agreed to give him some time
24 to make some determination and give some thought
25 to how he might want to handle the interest. And

1 I never heard back until late in February.

2 But at this point in December we were
3 still of the mind set to go ahead and try and
4 purchase her interest, and there really wasn't
5 any conversation given to farmout.

6 Q. Or to joinder?

7 A. Well, there wasn't any conversation
8 about joinder, you know, since my first contact
9 was back in early October.

10 Q. Did you advise Mr. Locke, in your
11 telephone conversations up to this time, that the
12 wells had been permitted and that they were ready
13 to be drilled?

14 A. I think I did. I don't remember. I
15 don't remember exactly stating that to him. But
16 I indicated that we had, you know, in the first
17 conversation I had with him, the earlier
18 conversations, that we had wells that we wanted
19 to drill by the end of the year.

20 Q. On December 11th, when you provided
21 copies of title documents and also contacted Mr.
22 Don Locke, did you tell him that you were under a
23 drilling obligation that these two wells had to
24 be drilled by the end of the year?

25 A. I don't recall advising him of that.

1 Q. Do you happen to recall specifically
2 what instruments were attached to the facsimile
3 transmission dated December 11th?

4 A. I believe--well, one was a copy of the
5 Allen lease covering the northwest quarter of
6 Section 23, and then there were some conveyances,
7 conveyancing instruments affecting that lease,
8 that involved Locke and Taylor, and it seems as
9 though there's a quitclaim deed included in that.
10 In that package were Locke quitclaims of certain
11 interest to Mr. Taylor.

12 Q. Referring to your BHP Exhibit No. 2, do
13 you have that in that front of you?

14 A. Yes. It's the Zimmerman lease and
15 assignments.

16 Q. If you will look at the back of those
17 two packages, they're two quitclaim deeds, the
18 last four pages of this exhibit, yes, the last
19 four pages.

20 The top right-hand corner of one of
21 them says 265-86, next page says quitclaim deed,
22 and then the next one says 265-81. Are we
23 looking at the same exhibits, Mr. Reinhardt?

24 A. Yes, they're here.

25 Q. Do you recall whether or not copies of

1 these two specific quitclaim deeds accompanied
2 this facsimile transmission dated December 11th?

3 A. I believe they did.

4 Q. Now, in these two quitclaim deeds, is
5 there a recitation in there that there's an
6 assignment of the Tycksen No. 1 well located in
7 the north half of Section 23, and that it
8 contains 320 acres?

9 A. Yes.

10 Q. And these quitclaim deeds, the first
11 one is entitling to Lloyd D. Locke and Louise Y.
12 Locke, his wife, that's the one 285-86?

13 A. Yes.

14 Q. The second quitclaim deeds, the one
15 that says 265-81, was there also a gas well known
16 as the Tycksen No. 1 well located in the north
17 half of Section 23, and that's from Lloyd D.
18 Locke to Louise Y. Locke?

19 A. Yes.

20 Q. So at the time you sent this facsimile
21 transmission, you had in your possession two
22 deeds that showed that Louise Locke had a claim
23 of some type of title to the northwest half of
24 Section 23, didn't you?

25 A. Some type.

1 Q. Now, let's go to your letter dated
2 December 11. That's Exhibit M-2. Now, are the
3 copies of the instruments that were sent by
4 facsimile transmission also sent with this letter
5 to Mr. Don Locke?

6 A. Yes.

7 Q. And are these copies of instruments
8 affecting Mrs. Locke's working interest in the
9 northwest quarter?

10 A. Yes.

11 Q. But the deeds say the north half,
12 though, don't they?

13 A. They did.

14 Q. It also says that these instruments
15 were copied for your company by its New Mexico
16 attorney for material being examined for a title
17 opinion which is yet unfinished?

18 A. Yes.

19 Q. Now, your New Mexico attorney was the
20 Hinkle Law Firm?

21 A. Yes.

22 Q. Any particular attorney in that law
23 firm?

24 A. Mr. Bruce.

25 Q. Jim Bruce?

1 A. Yeah.

2 Q. Now, when was the Gallegos Canyon Unit
3 No. 391 well, located in the northeast quarter of
4 Section 23, spudded?

5 A. I believe that was spudded on or about
6 December 19th.

7 Q. When was the Gallegos Canyon Unit No.
8 390 well spud?

9 A. It was on or about December 13th, I
10 believe.

11 Q. Maybe just to refresh your memory, the
12 No. 391 well was spud on December 12th, and the
13 No. 390 well was spud on December 19th.

14 A. Oh, okay.

15 Q. You sent this facsimile transmission
16 out on December 11th, relating to Section 23, you
17 spud the well the next day, the 391 well in the
18 northeast quarter, and then one week later you
19 then spud the 390 well in the southwest quarter,
20 is that correct?

21 A. Yes, that's right.

22 Q. And you still had not given Mrs. Locke
23 the opportunity to join in the drilling of the
24 well, have you, either well?

25 A. She always had the opportunity to join.

1 Q. How did she know, though, what the
2 status was if you didn't tell her?

3 A. I told her son the first time or two I
4 talked to him, that that was among the
5 alternatives.

6 Q. That was back when?

7 A. In October.

8 Q. October. We're now in December.

9 You've got a rig waiting to move on the location,
10 and you don't tell Don Locke about the status of
11 the well, that it's going to be drilled?

12 A. We had an obligation to drill the well
13 before the end of the year, and we felt that they
14 had to go forward.

15 Q. It was your obligation of the farmout
16 that was so important that these wells were
17 drilled without title examination, is that
18 correct?

19 A. Title examination was underway.

20 Q. It was underway but it wasn't
21 completed, was it?

22 A. Well, it was underway.

23 Q. It wasn't completed until three or four
24 months later, was it?

25 A. It wasn't completely finished until

1 after the first of the year.

2 Q. It was your company's decision to
3 proceed forward and drill those wells, wasn't it?

4 A. We went forward with the drilling of
5 those wells.

6 Q. You assumed the risk of drilling those
7 wells, then, didn't you, whatever that risk may
8 be?

9 A. There was a certain amount of risk
10 involved.

11 Q. And you did that without benefit of
12 title examination?

13 A. We had preliminary information.

14 Q. But not final?

15 A. Not final, preliminary.

16 Q. But you knew in your preliminary
17 examination that Louise Locke was at least the
18 owner of the northwest quarter, though, didn't
19 you?

20 A. Yes.

21 MR. TULLY: We're to "N" now?

22 Q. Mr. Reinhardt, would you look at your
23 Exhibit 2 and see whether or not you have the May
24 29, 1991 letter as part of Exhibit 2?

25 Excuse me. That might be part of

1 Exhibit 5. Excuse me. Do you have that exhibit,
2 BHP Exhibit 5 in front of you, Mr. Reinhardt?

3 A. No, I don't. I have a copy of a letter
4 but, it's not here.

5 Q. Maybe if I could show you what is my
6 Exhibit 5, you may be able to locate it from
7 there. The May 29, 1991 letter, went out,
8 basically, rejecting the settlement offer that
9 had been made by Louise Locke, and you
10 reaffirming a previous settlement offer, is that
11 correct?

12 A. Well, the letter was written in
13 response to a settlement offer from Mrs. Locke.
14 We wrote back to advise that the terms she was
15 proposing were not acceptable. We went on to
16 advise--restate our previous offer of \$450 a net
17 acre and seven-and-a-half-percent overriding
18 royalty, and if that was not acceptable, then we
19 advised also that it was still her right to join
20 in the well, and we included copies of the AFE
21 and offered to enter into a separate operating
22 agreement, if that was desirable.

23 Q. Was this the first time that you had
24 submitted an AFE to Louise Locke and requested
25 her joinder in the well?

1 A. Yes.

2 Q. The well was spud in December? Both
3 these wells were spud in December?

4 A. Yes.

5 Q. Almost six months previous to this?

6 A. Yes, about five months.

7 Q. Now, do you happen to have Exhibit No.
8 5 handy? I want to go to the letter just before
9 this May 29th.

10 This is a letter from my law firm to
11 you dated May 14, 1991.

12 A. All right.

13 Q. If you would refer to the next to the
14 last paragraph on page 2?

15 A. Okay.

16 Q. What does that state? It says, "If
17 this settlement agreement"--

18 A. --"is not completed by June 15, 1991,
19 then legal action requesting a jury trial will be
20 initiated."

21 Q. You responded on May 29, 1991, and
22 submitted AFEs--

23 A. That's right.

24 Q. --for the joinder of those wells? When
25 did your company file its force pooling

1 applications?

2 A. I was thinking on or about June 13th or
3 14th.

4 Q. One to two days prior to the deadline
5 imposed for initiating litigation, isn't that
6 correct?

7 A. We had already advised that the offer
8 was unacceptable and restated our offer, and
9 asked to be advised within 10 days.

10 Q. Now, the May 29th letter went out,
11 received thereafter Memorial Day weekend, that
12 type of thing, the first part of June, 1991.

13 The company then filed force pooling
14 applications on June 13, less than two weeks,
15 almost 10 days after this went out. Why were you
16 so quick to file the force pooling applications?

17 A. Just felt an urgency to get on with
18 reaching some conclusion to the matter. It had
19 been an ongoing matter for several months and we
20 just wished to bring the thing to conclusion and
21 get on with completing the wells and hopefully
22 putting them on stringer.

23 Q. Let's refer now to your Exhibits 6 and
24 7, and I believe it's 6-A and 7-A.

25 (Discussion off the record.)

1 CHAIRMAN LEMAY: Let's break right now
2 and come back at 1:15 p.m.

3 (The noon recess was taken.)

4 CHAIRMAN LEMAY: We shall continue. I
5 would like to remind Mr. Reinhardt that he is
6 still under oath.

7 Mr. Tully, you may continue with your
8 cross-examination.

9 MR. TULLY: Thank you, Mr. Chairman.
10 There's good news and bad news after the lunch
11 hour. The good news is I've gone through the
12 topics and subjects I want to cover with this
13 witness, and I've got it narrowed down real
14 well. The bad news is, I ended up preparing a
15 couple more exhibits.

16 CHAIRMAN LEMAY: That's why I debated
17 breaking for lunch.

18 EXAMINATION (RESUMED)

19 BY MR. TULLY:

20 Q. Mr. Reinhardt, I think just before
21 lunch we were getting ready to discuss BHP's
22 Exhibits 6, 6-A, 7 and 7-A, which are the AFEs
23 for the 390, 391 well, and also the actual well
24 cost schedules for those two wells. Do you have
25 those in front of you?

1 A. Yes.

2 Q. Now, I believe your testimony earlier
3 today was that, in your opinion, these were
4 reasonable well costs that were either projected
5 or had been incurred and expended for these two
6 wells, is that not correct?

7 A. To the best of my knowledge they are.

8 Q. Now, do you happen to know, of your own
9 information and knowledge, whether or not another
10 witness today will be able to testify as to the
11 reasonable nature of these charges, or are you
12 the person that's going to be testifying to the
13 reasonableness of these charges?

14 A. Frankly, I don't know.

15 Q. Well, let's go ahead and proceed
16 forward, then, since you've indicated that these
17 are reasonable charges. If we could, let's go to
18 the actual well costs and, if you would, take
19 both Exhibit 6-A and 7-A and put them alongside
20 of each other or up on top of each other, because
21 we're going to be looking at specific items and
22 comparing them between the two wells.

23 Now, are you familiar with the
24 locations of these two wells in and around
25 Farmington, New Mexico?

1 A. How do you mean?

2 Q. Do you know where they're located?

3 A. I don't know where the 390 is.

4 Q. Do you know where the 391 well is?

5 A. Roughly.

6 Q. Are you familiar with the roads and the
7 streets and the highways that provide access in
8 to these locations?

9 A. I'm familiar with the 391, not the 390.

10 Q. Why don't you describe for us how a
11 person could get to the 391 well.

12 A. As I recall, I drove out to the
13 location of the 391 out of my own curiosity, not
14 on any type of company business. I remember
15 driving out Highway 64, out of Farmington, and
16 turning onto a paved street adjacent to a gas
17 station, and driving down that paved street and
18 off to the side to where I thought the well
19 should be located. I didn't have a plat or
20 anything to locate them, and I didn't stay there
21 very long.

22 Q. Would it be fair to say that the well
23 site location for the Tycksen well and the 391
24 well are within several hundred yards of Highway
25 64?

1 A. I suppose they are.

2 Q. And, on the 390 well, though, you don't
3 know where the location of it is?

4 A. Never been to it.

5 Q. Do you happen to know if it's on the
6 north side or the south side of the San Juan
7 River?

8 A. I don't know.

9 Q. Let's look at Exhibits 6-A and 7-A,
10 and, in particular let's look over on the
11 left-hand side where it says "budget," and it has
12 "original," and the first line says drilling
13 contract, "Footage IDC," and that same line also
14 look at Exhibit 7-A. Now, drilling contract
15 footage IDC for the 390 was 14,760 feet, and then
16 on the 391 well it's \$12,150. Now, it indicates
17 here that we're looking at doing the drilling of
18 this well on a day-work basis instead of on a
19 footage basis, is that correct?

20 A. That's the way it looks.

21 Q. Now, why would you want to drill these
22 two particular wells on a day-work basis instead
23 of on a footage basis? They're shallow wells.

24 A. It looks like one was drilled on a
25 footage basis and one wasn't. I really don't

1 know why they--

2 Q. If you'll look over here on the
3 right-hand column where it says actual variance,
4 it shows that the expenditures on one of the
5 wells is on a day-work basis and the other, is it
6 on a footage basis?

7 A. One appears to be on a footage and one
8 appears to be--well, one has costs attributable
9 to both categories and the other only has costs
10 attributable to one.

11 Q. Do you happen to know of your own
12 information and knowledge whether or not these
13 wells were drilled with the same rig?

14 A. I'm not sure.

15 Q. You don't know?

16 A. I don't know.

17 Q. Now, the drilling costs for one well,
18 the 390 well, is 20,700-and-some dollars, and on
19 the 391 well it's \$12,307. Can you explain the
20 difference to us?

21 A. No.

22 Q. These wells were drilled within one
23 week of each other, is that correct?

24 A. Yes.

25 MR. BRUCE: Mr. Chairman, I think in

1 prior hearings Mr. Reinhardt testified that these
2 well costs were comparable to other well costs in
3 the area. He's not an engineer and, frankly, I'm
4 having trouble figuring out where Mr. Tully is
5 going.

6 I mean, the costs are the costs.
7 Obviously if the force pooling were granted, they
8 would have the right to come back in and
9 challenge whether those costs were reasonable. I
10 don't think this hearing is the proper place to
11 challenge whether the costs are reasonable.

12 MR. TULLY: We have actual well costs
13 at this time, and he has made the statement that
14 these costs were reasonable, and I think we can
15 save another hearing and save more time by just
16 going through it. And I don't have very many of
17 these that I would like to go through that are
18 actual well costs and find out why they're
19 reasonable or why they're not reasonable.

20 Now, if there's another witness here
21 that BHP is planning on putting up here that has
22 more information than Mr. Reinhardt, you're
23 welcome to put him up there; but so far all I
24 know is Mr. Reinhardt is the one that can answer
25 these questions.

1 CHAIRMAN LEMAY: I'll allow the
2 questions as long as it's not belabored. If it's
3 too long, I'll ask what your point is or where
4 you're going with it all.

5 MR. TULLY: As you know, Mr. Chairman,
6 we had asked requested that this hearing be
7 continued, for different reasons, and it's not
8 being continued so what we're doing now is just
9 basically challenging the actual costs and
10 whether they're reasonable or not. Ultimately,
11 down the road, if you enter an order, then we
12 would like to have this as part of the record.

13 CHAIRMAN LEMAY: Sure, and you would
14 have an opportunity to challenge those costs down
15 the road, also.

16 MR. TULLY: If it's okay, I'll just
17 quickly go through these.

18 CHAIRMAN LEMAY: Sure. Since they're
19 his exhibits, I'll allow that.

20 Q. (BY MR. TULLY) Now, let's go into the
21 line, "Moving Rig IDC," it's the fourth line
22 down. On the No. 390 well, actual cost \$2,131.
23 The 391 well is the one you've not been to, and
24 for your purposes and I think it's probably a
25 matter of record in all the exhibits, that well

1 is located south of the San Juan River.

2 Now, if you'll look at the Moving Rig
3 IDC for the 391 well, which is located a couple
4 hundred yards from a paved road, we have
5 \$13,507. Which is reasonable?

6 A. Which number?

7 Q. Yes.

8 A. I don't know what went into the \$13,000
9 figure.

10 Q. You, of your own information and
11 knowledge, don't know that?

12 A. No.

13 Q. Thank you. All right, let's go on here
14 and in particular let's look at the cement and
15 cementing for the 391 well. Approximately 10
16 lines down there's a figure there of \$5,819. We
17 then, if we continue on down further, almost to
18 the bottom, about six lines back up, we have
19 another cement and cementing IDC--and this is
20 under the completion category--of \$3,939.

21 Now, if my mathematics is correct on
22 that, that's about \$9,800 or \$9,900 for
23 cementing, and if we come over here to the 390
24 well and look at the same situation, we then have
25 the top figure \$6,258 and when we come down to

1 the bottom figure we have a zero under the
2 completion category.

3 Of your own information and knowledge,
4 do you know why there's a difference of almost
5 \$3,000 between cementing of these two wells?

6 A. No.

7 Q. Let's go to the 390 well, and
8 underneath the first category it says,
9 "Engineering and Consulting, IDC, \$2,237," and
10 then we have "Company Labor, Supervision, IDC,
11 \$1,499, Contract Labor \$2,667," and down here on
12 the completion we have Company Labor/Supervision
13 \$881."

14 If we look at those similar categories
15 on the No. 391 well, we then have \$4,170 under
16 the first item as compared to \$2,237 on the 390
17 well; we then have, coming down further under
18 "Company Labor/Supervision IDC," we have zero
19 for the 391 well, but we have \$1,499. If we look
20 underneath that on the 390 well, we have \$2,667,
21 but we have, under the 391 well, \$3,082.

22 Now, if we come all the way down here
23 to the bottom under completion, we have under the
24 391 well where it was Company Labor/Supervision,
25 IDC of \$881, and that's on the 390 well, we now

1 have \$3,218 for the 391 well and we also have
2 Contract Labor IDC, under the 391 well, of \$486.

3 Now, why is this 391 well so much more
4 expensive than the 390 well?

5 A. I don't know. I didn't compile the
6 costs.

7 Q. Of your own information and knowledge,
8 you just don't know the answer to that?

9 A. That's not a land department function.

10 Q. Okay. This may be a land department
11 function. Don't put away those exhibits yet. We
12 now have drilling permits, bonds, IDC, under the
13 391 well, \$8,934, and on the 391 well we have
14 \$1,710. Do you know the reason for the
15 difference between the 391 well and the 390 well?

16 A. Bonds and permitting weren't handled in
17 the land department, either. Those are handled
18 out of the operations department.

19 Q. So, of your own information and
20 knowledge, you don't know why there's that big
21 difference?

22 A. No.

23 Q. Let's go to the next line, "Drilling,
24 Title Opinion, IDC." The 390 well is \$3,170 and
25 the drilling title opinion for the 391 well is

1 \$3,267. Did you approve those invoices for
2 payment?

3 A. I probably would have, yes, I probably
4 would have approved those.

5 Q. Now, these are shown as being actual
6 costs that have been expended, and they're on
7 both the 390 and 391 well?

8 A. Right.

9 Q. Now, what did those title opinions
10 cover? Did they cover all of Section 23 or what,
11 exactly, did they cover?

12 A. Well, we had ordered the title opinions
13 on all of Section 23.

14 Q. So you would assume that these title
15 opinions cover all of Section 23?

16 A. Yeah. We would have asked for a title
17 opinion for the entire section.

18 Q. Okay. Now, these title opinions that
19 were prepared and the costs that have been
20 expended, are you expecting the other working
21 interest owners to pay their proportionate share
22 of those drilling title opinion costs?

23 A. Well, I would say yes, unless they can
24 demonstrate that they have some adequate title of
25 their own. Normally we would charge it back to

1 the joint account.

2 Q. It's charged back to the joint account?

3 A. Yeah.

4 Q. So, therefore, that title opinion,
5 then, is paid by all of the working interest
6 owners because it's charged back to their
7 account?

8 A. Yes.

9 Q. They pay their proportionate share?

10 A. Yes.

11 Q. Do you happen to know whether these
12 costs for these title opinions, are they going to
13 be flowed through to Mrs. Locke for repayment for
14 her proportionate share?

15 A. I would think so.

16 Q. And the same thing with Meridian, who
17 is a working interest owner with you in the 391
18 well?

19 A. Yes.

20 Q. Now, were you involved in a discovery
21 request in the federal lawsuit that's called a
22 Request for Production of Documents?

23 A. Yes.

24 Q. Do you know whether or not these title
25 opinions were made available and produced,

1 pursuant to that Request for Production, to Mrs.
2 Locke?

3 A. I don't remember if they are.

4 Q. Would there be any reason that they
5 would not have been produced?

6 A. The only reason I can think of is if
7 BHP had invoked some claim of--I can't think of
8 the term--there's a legal term for it. I'm
9 drawing a blank now. Unless BHP thought it was
10 something that they couldn't release that was
11 proprietary or confidential. I don't know.

12 Q. If all of the working interest owners
13 are going to be paying a proportionate share of
14 it, then how can BHP assert some type of a
15 privilege?

16 A. I don't know that they did or didn't.
17 I don't know.

18 Q. All right. But insofar as you're
19 concerned, there would be no objection to
20 producing copies of those title opinions to all
21 the working interest owners?

22 A. Well, what's--

23 MR. BRUCE: I would object insofar as
24 he's being asked to give an opinion on behalf of
25 BHP, and I don't think Mr. Reinhardt has the

1 authority to do so.

2 CHAIRMAN LEMAY: He can express that
3 opinion, if he wants, but he doesn't have that
4 authority.

5 A. Well, I'm no longer on the payroll.
6 I'm no longer a company employee, so I think
7 that's best left to those who are still employed
8 by BHP.

9 CHAIRMAN LEMAY: You're not with BHP
10 anymore?

11 THE WITNESS: No. My job was
12 eliminated a month ago.

13 CHAIRMAN LEMAY: Sorry to hear that.

14 THE WITNESS: So I think someone else
15 from BHP might be better able to answer that.

16 CHAIRMAN LEMAY: That's understandable.

17 Q. (BY MR. TULLY) Okay. Thank you. I
18 think that's all I am going to be going through
19 on these particular exhibits.

20 Okay. Let me clarify one area real
21 quickly. I am going to hand you what we'll call
22 Locke Exhibit N. While I'm passing this out, if
23 you would quickly review Exhibit N.

24 MR. TULLY: By the way, this is a new
25 exhibit that has not been exchanged between

1 counsel previously, until just a few minutes
2 ago.

3 Q. Mr. Reinhardt, have you ever reviewed
4 this exhibit?

5 A. Yes.

6 Q. And what is this exhibit?

7 A. This is BHP's Farmout Contract with
8 Amoco, covering its interest in the--

9 Q. What is the date on it?

10 A. This is the 20th of October, 1989.

11 Q. Now, Mr. Reinhardt, so we don't spend a
12 lot of time on this, I'm trying to clarify some
13 of your earlier testimony, if you would refer to
14 page 5, paragraph 7 called "Titles"?

15 CHAIRMAN LEMAY: Is it safe to say,
16 Counsel, that this only has certain pages of the
17 contract in it?

18 MR. TULLY: Yes. This is select pages
19 of the contract.

20 CHAIRMAN LEMAY: Select pages? Okay.

21 Q. Now, Mr. Reinhardt, have you reviewed
22 paragraph 7, "Titles"?

23 A. Yes.

24 Q. Previously you could not recall about
25 the obligation of BHP insofar as determining

1 title to the lands that were committed or farmed
2 out by Amoco. Now that you've had an opportunity
3 to review paragraph 7, could you please advise us
4 what obligation there was on Amoco to clear title
5 or to provide title and also what obligation
6 there was on BHP to secure title?

7 A. Well, the responsibility for securing
8 title is obviously on the farmee.

9 Q. And who is the farmee?

10 A. In this case it was BHP's
11 responsibility to clear title. Amoco didn't
12 warrant title. They offered to provide certain
13 information, but it was ultimately BHP's
14 responsibility to clear title. There's no
15 dispute about that.

16 Q. Now also, if you would, just look to
17 the assignment which is attached as Exhibit B to
18 the Farmout Contract, and in particular there, if
19 you would look at page 4 of Exhibit B, paragraph
20 8.

21 MR. TULLY: And again, there are only
22 select portions of Exhibit B that are attached to
23 this exhibit.

24 A. Paragraph 8.

25 Q. Paragraph 8, what does that state?

1 A. It states that the assignment is made
2 without warranty of any kind, expressed or
3 implied.

4 Q. Without warranty?

5 A. I think I testified earlier to that.

6 Q. So the farmouttee, or BHP in this
7 situation, was receiving whatever title Amoco
8 had, if any?

9 A. That's true.

10 Q. Are you aware whether BHP has ever
11 sent any material to Louise Locke, as a working
12 interest owner in the Gallegos Canyon Unit?

13 A. Any material?

14 Q. Anything having to do with unit
15 operations, other than, specifically, these two
16 wells?

17 A. Well, in the four years that I've
18 worked on the unit, I can't recall ever having
19 mailed anything to her.

20 Q. Do you recall whether or not
21 Locke-Taylor Drilling Company, or Louise Locke,
22 were ever listed, as a working interest owner in
23 the Gallegos Canyon Unit, for those lands and
24 leases in which BHP was sub-operator?

25 A. Oh, I think if you go back into some

1 older Exhibit B's to the Unit Agreement, I think
2 you'll find Locke-Taylor's name listed.

3 Q. But insofar as BHP recognizes them as a
4 working interest owner from the surface to the
5 base of the Pictured Cliffs, are you aware of any
6 time?

7 A. Well, BHP or BHP's predecessors only
8 purchased interest within the Pictured Cliffs
9 participating area, and Locke-Taylor never owned
10 any interest in the Pictured Cliffs participating
11 area.

12 Q. Did they ever own any interest in the
13 Fruitland participating area?

14 A. No.

15 Q. BHP is the sub-operator from the
16 surface to the base of the Pictured Cliffs, is it
17 not?

18 A. Yes.

19 Q. Isn't it BHP's claim that the north
20 half of Section 23 is located within the unit
21 boundaries of the Gallegos Canyon Unit?

22 A. It is within the unit boundaries.

23 Q. Now, of your own information and
24 knowledge, why did BHP have stand-up proration
25 units? That is, east-half and west-half for the

1 390 well and 391 well, instead of north-half,
2 south-half?

3 A. It was just a matter of--it was just a
4 pattern that had been adopted for the area.

5 Q. It was just a pattern?

6 A. It was just a pattern. All of the
7 spacing units around Section 23 were done on
8 stand-up 320s.

9 Q. They were done on stand-up insofar as
10 who was concerned? What operator?

11 A. The spacing order leaves orientation up
12 to the operator.

13 Q. Can the operator change that
14 orientation if it so desires?

15 A. I don't have any experience in that. I
16 really don't know.

17 Q. Well, let's look now here in December
18 of 1990, okay? December 12th the 391 well was
19 spud, December 19th the 390 well was spud. The
20 390 well was located in the southwest quarter;
21 there's a dedication of the west half there. BHP
22 knew that Louise Locke owned the northwest
23 quarter because you were negotiating at that
24 time.

25 Why did not BHP change the proration

1 unit to the south half for the 390 well and not
2 have to worry them about the title problem in the
3 northwest quarter that it was aware of?

4 A. I think the primary reason was that the
5 wells were required to be drilled and in a
6 farmout and there wasn't time to go back and
7 re-orient those and re-permit them, particularly
8 in the case of the 390, since it was on federal
9 lands and the permitting process would have to be
10 started over, which would have put BHP way behind
11 in drilling a well and not been in compliance
12 with the farmout.

13 Q. But let's go back now to our AFEs for
14 these wells. We have, these are L-1 and L-2. We
15 have, up at the top on these AFEs--are you
16 looking at these with me?

17 A. I know what you're talking about.

18 Q. Okay. On the 391 well, we say "Project
19 must be commenced by December 31, 1990." We look
20 at the No. 390 well and it says, "The project
21 must be commenced by," and it's specifically left
22 blank.

23 A. Okay.

24 Q. Okay. So, again my question is, there
25 didn't seem to be any, at the time of the AFE and

1 also at the time of knowing there were title
2 problems in the northwest quarter, any obligation
3 as far as the AFE was concerned, to just not
4 change the proration unit or not drill the wells?

5 A. It was common knowledge around the
6 company that those wells had to be spudded by the
7 end of the year, and that December 31st date was
8 just omitted from that AFE. It was common
9 knowledge.

10 Q. So your company felt the drilling
11 obligation was more important than title
12 problems, and proceeded to drill the wells, is
13 that correct?

14 A. I don't know that it was more
15 important. It was certainly a consideration.

16 Q. Well, what would the other
17 considerations be?

18 A. Complying with the farmout.

19 Q. That's the obligation to drill, but
20 what else?

21 A. Well, there's, they had a rig
22 contracted. That would come into play. They
23 wouldn't want to get to a point of having to
24 release the rig and not know when they would get
25 it back. It could be any number of things.

1 Q. Are you aware that this particular rig
2 that was used on both of these wells was taken
3 out of moth balls and used specifically for the
4 drilling of these wells?

5 A. No.

6 Q. Now I'm now going to hand you what
7 we're going to identify as Exhibit O.

8 While I'm doing that, didn't we have a
9 discussion a little earlier today about you had
10 21 wells on that list that you had provided to
11 Amoco as the wells to be drilled in 1990?

12 A. Yes.

13 Q. Didn't you have an obligation to drill
14 15 of them?

15 A. The farmout agreement required that 15
16 wells be drilled in calendar year 1990.

17 Q. You had six extra wells you could have
18 drilled, didn't you?

19 A. They weren't projected as Fruitland
20 Coal completions.

21 Q. Didn't you also testify earlier today
22 that you had an agreement with Amoco that you
23 could go ahead and carry some wells over if you
24 needed to?

25 A. Well, the five Fruitland Coal

1 completions had to be made in 1990, or those
2 wells had to be commenced in 1990 if they were
3 projected as Fruitland Coal completions. A lot
4 of those projected Pictured Cliffs wells had no
5 potential for Fruitland Coal.

6 Q. If you drilled 12 Pictured Cliffs wells
7 and three Fruitland wells, which represents line
8 15, would you anticipate that Amoco would have
9 any objections to rearranging the drilling the
10 program that way?

11 MR. BRUCE: I object. He's asking for
12 Amoco's opinion.

13 CHAIRMAN LEMAY: Yes. I don't think
14 that's germane.

15 Q. Let's look to Exhibit O. Have you ever
16 signing Exhibit O before, Mr. Reinhardt?

17 A. Yes. Yesterday.

18 Q. Yesterday was the first time? You had
19 never seen this in the files of BHP before?

20 A. I hadn't paid any attention to it, if
21 it was there. It may very well have been--it was
22 in the files, but I never paid much attention to
23 these.

24 Q. But it was in the file?

25 A. Probably.

1 Q. You're aware that it was in the file?

2 A. Yes.

3 Q. Let's go over here to the last page.
4 There's a column there that says "Note." Under
5 this "note," does this indicate that there has
6 been notice since at least August 22nd of 1983
7 that a few tracts located within the Gallegos
8 Canyon Unit have never been committed to the
9 Gallegos Canyon Unit?

10 A. Well, it speaks for itself.

11 Q. Does it also indicate that an extensive
12 land review was made in 1980 pertaining to open
13 acreage, review of leases, and that type of
14 thing?

15 A. That's what it indicates.

16 Q. Is there anything in this brief to
17 indicate that there had been any supplemental
18 extensive land review since 1980?

19 A. I don't see it.

20 Q. I am now going to hand you what we'll
21 identify as Exhibit P. Mr. Reinhardt, have you
22 ever reviewed Exhibit P before?

23 A. Yes, I've seen a copy of this.

24 Q. Would you please identify what Exhibit
25 P is?

1 A. It is a letter dated July 12, 1991,
2 from the Bureau of Land Management, addressed to
3 yourself. Apparently it is being written in
4 reply to a letter you sent BLM dated June 20,
5 1991, asking that an order to cease all
6 operations on Well Nos. 390 and 391 be issued.
7 And it goes on to say that they're not able to
8 comply with your request for the stated reasons
9 therein.

10 Q. Doesn't it specifically state in this
11 letter that these patented lands are not
12 committed to the Gallegos Canyon Unit, referring
13 to the north half of Section 23?

14 A. That's what it says.

15 Q. If you would refer now to Exhibit 4-A
16 of BHP. Now, Mr. Reinhardt, this is a letter
17 addressed to you from the same BLM office, dated
18 February 12, 1992. Could you please advise us of
19 the circumstances surrounding the issuance of
20 this letter?

21 A. Let me find the letter. This February
22 12th letter was written to BHP pursuant to a
23 telephone inquiry that BHP made of the BLM,
24 questioning whether or not this statement here,
25 whether or not a statement in this July 12th

1 letter, that statement being the one reading,
2 "These patented lands are not committed to the
3 Gallegos Canyon Unit," was correct.

4 BHP had reason to believe that Tract
5 102 was, in fact, committed to the unit, at least
6 partially committed to the unit, and asked that
7 BLM review its records and advise whether or not
8 that was correct.

9 They issued this February 12th letter
10 to BHP and said, "You," BHP, "asked us to
11 determine if Tract 102 is committed to GCU. We
12 have determined that the Tract 102 is committed
13 to the unit; however, our records are not clear
14 if the royalty owner committed to the unit."

15 Q. Now, have you ever been in the records
16 of the Bureau of Land Management in Farmington,
17 New Mexico?

18 A. No, I haven't.

19 Q. Have you ever been in the records of
20 the BLM in Albuquerque, New Mexico?

21 A. No.

22 Q. Are you aware that there's different
23 materials and instruments filed in one office but
24 not filed in the other office?

25 A. No.

1 Q. Why didn't you direct your inquiry to
2 the Albuquerque office instead of the Farmington
3 office?

4 A. I was most familiar with those
5 personnel at Farmington. I had dealt with them
6 in the past on other matters relating to Gallegos
7 Canyon Unit, and I was of the opinion that that
8 was the correct office to which this type of
9 inquiry should be made.

10 Q. Now, I am going to hand you what we
11 will identify as Exhibit Q. Would you please
12 identify Exhibit Q?

13 A. This is a letter dated March 10, 1992,
14 from the Bureau of Land Management, addressed to
15 yourself. And the letter speaks to
16 contradictions set out in the two previous
17 letters we just discussed, and it goes on to
18 advise that BLM has subsequently determined that
19 the tract was partially committed to the unit and
20 has notified BHP of this finding in the February
21 12th letter.

22 Q. But isn't that a misstatement? Doesn't
23 the letter dated February 12th say, "We have
24 determined that Tract 102 is committed to the
25 unit," and doesn't say fully or partially, does

1 it?

2 A. No, it doesn't state "fully" or
3 "partially," but I don't see that that's either
4 here nor there.

5 Q. Don't we have now three inquiries to
6 the BLM office? One of them, the first one says
7 the patented lands are not committed to the
8 Gallegos Canyon Unit, and the second one, which
9 was by you, says that the lands are committed to
10 the unit, and now we have a third one saying
11 they're partially committed to the unit.

12 I wonder how many other responses we'll
13 get if we keep writing letters? I'm sorry, that
14 was not a question but a rhetorical comment.

15 So, would it appear to you that based
16 upon these letters from the BLM, that there may
17 even be some confusion in their records in the
18 Farmington office whether or not Tract 102 was
19 committed?

20 A. I don't have any reasons to believe
21 that.

22 Q. You don't have any reason to believe
23 that, with three different answers to three
24 different letters?

25 A. It stays in here, in responding to your

1 initial request, it says here that they
2 regretfully did not do any research on the
3 issue. It goes on to say, "BHP subsequently
4 requested our determination of the commitment
5 status," and then they spell out there just what
6 that commitment status is, that commitment status
7 being partially committed. It speaks for itself.

8 Q. This goes back to the original question
9 we had earlier, and that's the guidelines on the
10 BLM on the same things, fully committed,
11 partially committed or not committed at all. We
12 don't know when those were adopted, do we?

13 A. I don't know that that's particularly
14 important. I think it's my understanding that
15 once they're adopted they're retroactive and
16 effective.

17 Q. If we have express terms and provisions
18 in the Unit Agreement, however, that state it's
19 either committed or not committed, wouldn't that
20 override any guidelines?

21 MR. BRUCE: I object to that legal
22 characterization. That is not what the Unit
23 Agreement says.

24 Q. I believe I indicated that by, if the
25 Unit Agreement has express provisions in it that

1 says it's either fully committed or not committed
2 at all, then why are we looking at the BLM
3 guidelines, that we don't know when they're
4 enacted?

5 MR. BRUCE: He's asking for conjecture
6 again, Mr. Chairman. He's asking for a legal
7 conclusion by the witness again, and I think the
8 documents speak for themselves.

9 MR. TULLY: Thank you.

10 Q. If you would refer now to BHP's Exhibit
11 No. 8, that's the court pleading called
12 Plaintiff's Response to Defendant's First Request
13 for Admissions. I believe you really didn't pay
14 much attention to page 1, you just went to page 2
15 and then gave some answers there, is that
16 correct, earlier in your direct examination?

17 A. I answered a question regarding a
18 specific question.

19 Q. And wasn't that pertaining to whether
20 or not Mrs. Locke had any plans to drill a well
21 or deem it reasonable or necessary to test the
22 Basin-Fruitland Coal Gas Pool?

23 A. Yes. It was stated in here that she
24 apparently had no plans and did not deem it
25 reasonable or necessary to test the coal.

1 Q. Now, we've gone through this chronology
2 of events about the negotiations and your
3 notification and your attempts to purchase and
4 submit us out AFEs, and that type of thing.

5 Didn't BHP, when it went in and drilled
6 the 390 and 391 wells in December, without
7 notification to Mrs. Locke, stop her from
8 exercising any type of prerogative to drill her
9 own well in the north half?

10 MR. BRUCE: What? Once again, I think
11 that's a determination for the Commission.

12 CHAIRMAN LEMAY: I don't know if you're
13 asking a question or stating a fact, Counselor.

14 MR. TULLY: I'm asking a question.

15 CHAIRMAN LEMAY: What's the question?

16 MR. TULLY: The question is this: We
17 have a situation where they knew of Mrs. Locke's
18 interest in August. They tried to purchase her
19 interest out. They never notified her that they
20 were going to be immediately drilling a well.

21 If they had notified her of an
22 immediate drilling of the well, she could have,
23 if she so desired, proposed the drilling of her
24 own well. When BHP went in and spud this well in
25 the north half, it stopped her from exercising

1 any right she had to drill a Fruitland Coal well
2 and dedicate the north half.

3 MR. BRUCE: Well, he can make that
4 statement.

5 CHAIRMAN LEMAY: It seemed like a
6 statement. You're asking if he agrees with that
7 statement?

8 MR. TULLY: That's basically where we
9 were going, yes.

10 MR. BRUCE: Number one, as I outlined
11 in my brief, I don't think Mrs. Locke has a right
12 to drill. She has a correlative right to her
13 share of production from a certain tract; she
14 doesn't have, necessarily, the absolute right to
15 drill a well. It's just like, why do we force
16 pool people? Because not everybody has a right
17 to drill, they have a right to proportionate
18 share of production under a tract.

19 I think they're asking Mr. Reinhardt,
20 once again, to agree with their own legal
21 conclusions, and I would object to that.

22 CHAIRMAN LEMAY: I think you need to
23 phrase your questions carefully when you're
24 asking for a legal opinion of the witness.

25 MR. TULLY: Which I probably wouldn't

1 get an answer to, I'm sure. The reason I made
2 that statement is because you asked where I was
3 going.

4 CHAIRMAN LEMAY: I understand where
5 you're going. I just don't know if--

6 MR. TULLY: I was getting there?

7 CHAIRMAN LEMAY: Well, Mr. Bruce is
8 correct. It sounds as though you're asking the
9 witnesses to agree or not agree with your legal
10 conclusion, and that puts him in a spot where
11 he's really not qualified.

12 MR. TULLY: In asking for a legal
13 conclusion?

14 CHAIRMAN LEMAY: Yes.

15 MR. TULLY: Thank you.

16 Q. (BY MR. TULLY) Mr. Reinhardt, if Mrs.
17 Locke wanted to drill a Fruitland Coal well,
18 could she drill a well in the north half of
19 Section 23?

20 A. She could have drilled a well providing
21 that BHP, as sub-operator, was willing to
22 relinquish operatorship, because she was drilling
23 on a committed tract.

24 Q. She was drilling on a committed tract;
25 however, if the designation pooling superseded

1 the unit and that tract was, in fact, not
2 committed to the unit, would she have a right to
3 drill?

4 If the north half was not committed to
5 the unit, would she have a right to go in and
6 drill?

7 CHAIRMAN LEMAY: I think we're getting
8 back to the same legal areas that requires a
9 legal opinion of the witness, whether she has a
10 legal right to drill or not. I'm not sure he's a
11 lawyer.

12 Are you a lawyer?

13 THE WITNESS: No.

14 CHAIRMAN LEMAY: Okay, then, be careful
15 with it.

16 Q. Is Locke-Taylor the lessee of these
17 four-feet oil and gas leases covering the north
18 half of Section 23?

19 A. Oh, yes. There has never been any
20 dispute that she owns the interest.

21 Q. As a lessee, does she have the right to
22 drill on her lands?

23 A. There again, two of those leases--or
24 the drill site lease in this case is committed to
25 the unit and, as such, the sub-operator has the

1 first right to opperate, drill that well at that
2 location. Plus she had never come forward and
3 expressed an interest in any interest to drill
4 the well, so I don't know if she would.

5 Q. If she would have known of your plans,
6 she might have had the opportunity to come
7 forward and propose a well?

8 A. Well, we had indicated to them in
9 October that we planned to drill a well there,
10 and her lands in the northwest quarter had been
11 included in the 390. And they never offered up
12 any type of--they never brought forth any type of
13 discussion.

14 Q. They were checking time, weren't they?

15 MR. BRUCE: Mr. Chairman, once again
16 he's asking Mr. Reinhardt what Louise Locke was
17 doing, what Louise Locke's opinion was, or
18 whether she was considered in drilling. He's
19 testified that he doesn't, to the best of his
20 knowledge, they weren't planning on drilling.

21 CHAIRMAN LeMAY: That may be best
22 answered by someone who--by Louise Locke, if you
23 have her as a witness.

24 Q. (BY MR. TULLY) Let me ask you one
25 other question. We have the Tycksen well that's

1 located, okay?

2 A. Yeah.

3 Q. Does Mrs. Locke have the right to
4 reenter the Tycksen well and attempt a completion
5 in the Fruitland Coal?

6 MR. STOVALL: Mr. Chairman, if I might
7 throw some guidance on this issue, I'm not sure
8 where Mr. Tully is going, but the fact that there
9 is more than one person that might have the right
10 to do it, one person is first to exercise, I'm
11 not sure if that's relevant to whatever orders
12 you would issue. You don't have competing-force
13 pooling applications.

14 Perhaps it would be more useful to you
15 if Mr. Tully explained why it makes a difference
16 whether or not she had a right to drill on it and
17 at what point since there is not a force
18 competing application before you.

19 MR. TULLY: I'm talking specifically
20 now about an existing well, the Tycksen No. 1
21 well, that's operated by Louise Locke doing
22 business as Locke-Taylor.

23 CHAIRMAN LeMAY: Okay.

24 Q. Do you know anything that would stop
25 Louise Locke from reentering that well and

1 attempting the completion in the Fruitland Coal
2 or even in the Pictured Cliffs if she wanted to?

3 A. Well, as it is now, there is already
4 a--I don't know what the OCD would do about
5 that. There's already a permitted well there in
6 the northeast quarter. I don't know if they
7 would subsequently permit another well or not.

8 Q. Isn't the Tycksen well an already
9 permitted well, been in existence since 1952?
10 There's a wellbore there. She owns from the
11 surface to the base of the Pictured Cliffs,
12 that's acknowledged.

13 What would keep her from from having
14 the right to go in there and reenter that well
15 and attempt a recompletion in the Pictured Cliffs
16 or even go ahead and complete in the Fruitland
17 Coal?

18 MR. STOVALL: Mr. Chairman, I hate to
19 interrupt again, but if I might be useful, Mr.
20 Bruce, would you agree, that assuming Mrs. Locke
21 has operating rights, that she would have the
22 right to do a completion unless that right was
23 preempted by somebody else who had equal rights?
24 Would you agree with that question as a legal
25 question?

1 MR. BRUCE: As a legal, question, yes,
2 like if somebody else who had legal rights or, as
3 I argued in my brief, if the Oil Conservation
4 Division or Commission could, under a forced
5 pooling order, authorize the drilling of a well
6 on someone else's lease.

7 MR. TULLY: See, we're back to the
8 legal issue.

9 MR. STOVALL: The question is whether
10 or not did they both have a right to do it? is
11 the first question, Mr. Tully and Mr. Chairman,
12 as I'm hearing. And then the second question is
13 if they both have the right, did BHP violate any
14 duty to Mrs. Locke by not asking her if she
15 wanted to drill the well first?

16 That sounds to me like the question
17 you're asking. Is that what you're trying to get
18 to?

19 MR. TULLY: That was my next question
20 was to ask Mr. Reinhardt if there had ever been
21 any discussions amongst the BHP people to go in
22 and reenter the existing Tycksen well to attempt
23 a recompletion in the Fruitland Coal.

24 CHAIRMAN LEMAY: I think that's a fair
25 question. Now we're getting into something he's

1 qualified to answer. Thank you.

2 A. I don't recall there being any interest
3 in reentering that Tycksen well.

4 Q. By your company?

5 A. Well, yeah, by BHP. There again, I
6 think it gets into matters of well condition and
7 well design and things like that that I don't
8 know about.

9 Q. So would it be a fair statement that a
10 lot of these questions that I've been asking, you
11 could not really answer them because they require
12 a legal determination?

13 A. No. I said engineering.

14 Q. Excuse me. That last part may be yes,
15 but I mean these other questions about the right
16 to reenter a well and the right to recomplete a
17 well and that type of thing? You cannot answer
18 those questions; is that a fair statement?

19 CHAIRMAN LEMAY: I don't know if that's
20 characterizing the previous questions. Whether
21 they have a right or not may be a legal
22 determination. I thought you were asking whether
23 Mrs. Locke did certain things or should have or
24 could have. And that requires supposition on his
25 part that he knows what Mrs. Locke's position

1 would be.

2 MR. TULLY: Well, I'm asking him if he
3 knows of anything that would keep her from
4 exercising those rights.

5 MR. BRUCE: I think he's already
6 answered that. He said the GCU, the unit
7 agreement under which they're a sub-operator.
8 He's already stated that a couple of times.

9 MR. TULLY: They did that on the 391
10 well. I don't think I understood him to say that
11 on the Tycksen well.

12 CHAIRMAN LEMAY: Can you rephrase the
13 question? I'm getting confused what the initial
14 question really was or where we are.

15 MR. TULLY: Okay. We'll go back a
16 couple of steps.

17 Q. Do you know of anything that would keep
18 any claim or any right or anything at all that
19 would keep Louise Locke from reentering her
20 existing Tycksen well and attempting a
21 recompletion in the Pictured Cliffs or a
22 completion in the Fruitland Coal gas?

23 A. Well, I can think of two things, not
24 really land related. One thing would be the
25 existing condition of the hole which a petroleum

1 engineer would have to speak to more than
2 myself. And the other thing would be a matter of
3 economics since the Pictured Cliffs had already
4 been tested and be deemed to be noncommercial.

5 There again, it's kind of getting
6 outside of my expertise.

7 Q. Who deems that the Pictured Cliffs is
8 noncommercial?

9 A. I assume whoever drilled the well.

10 Q. What difference does that make at this
11 particular point on whether she wanted to
12 recomplete the Pictured Cliffs or not?

13 A. Well, if she doesn't have an
14 expectation of getting her money back and making
15 a profit, she may be discouraged from deepening
16 the well again. Her engineering consultant would
17 have to advise her on that.

18 Q. Now, BHP never did proposed to
19 recomplete the Tycksen well in the Fruitland
20 Coal, or to the best of your knowledge?

21 A. No.

22 Q. As far as you know, there was little or
23 no discussion about that; is that correct?

24 A. No. BHP seemed content to drill a new
25 well and have some control over how it was

1 drilled and how it was cemented and completed and
2 so forth. It was just an overlying preference
3 there just to drill a new hole instead of
4 reentering a 40-year-old one.

5 Q. Now, when do you recall the commitment
6 of Tract 102 or the Zimmerman lease to the
7 Gallegos Canyon Unit was going to be used as a
8 defense for this trespass claim by Mrs. Locke?
9 Was it before your title opinion was rendered,
10 oral title opinion was rendered? Was it after
11 the written title opinion?

12 MR. BRUCE: And I would object to any
13 disclosure of any attorney/client
14 communications. It's obvious that's where it
15 came from.

16 Q. When the commitment of the Zimmerman
17 lease became a defense to the trespass claim, did
18 you have communications with your attorney at
19 that time?

20 A. Well, yes.

21 Q. When were those communications?

22 A. I would venture to say after the suit
23 was filed.

24 Q. After the lawsuit was filed?

25 A. Yes.

1 Q. Do you remember when the lawsuit was
2 filed?

3 A. I believe it was filed last July.

4 Q. So BHP went ahead and drilled the well,
5 all these things happened, forced pooling
6 applications, the lawsuit was filed, and that
7 type of thing. And then, all of a sudden, the
8 light bulb comes on and it's now a commitment to
9 the unit is now our defense; is that what you're
10 saying?

11 A. Well, no. There again, my attorney
12 might want to answer that, but I don't know that
13 that's a cornerstone kind of a thing.

14 CHAIRMAN LEMAY: I might say something
15 that our hearings aren't normally offense and
16 defense. In a court of law you might
17 characterize something in those terms, Mr. Tully.
18 But normally what we're trying to do is produce
19 findings of fact and rule on those findings of
20 fact, but not necessarily the advocacy
21 proceedings you're referring to, offense and
22 defense and lawsuits and so forth.

23 MR. TULLY: If I could have just a
24 second to confer with my cocounsel.

25 No further questions. Thank you for

1 your patience. It took a long time.

2 CHAIRMAN LEMAY: Additional questions
3 of the witness?

4 MR. BRUCE: Yes, Mr. Chairman. And
5 I'll try to be quick.

6 FURTHER EXAMINATION

7 BY MR. BRUCE:

8 Q. First off, Mr. Reinhardt, BHP's Exhibit
9 4-A and Locke Exhibit Q, do you have them both
10 before you?

11 A. Yes.

12 Q. Don't they both say that the working
13 interest of Tract 102 is committed to the unit?

14 A. Yes, it does.

15 Q. Do you see any conflict between those
16 two letters?

17 A. Personally, no.

18 Q. Now, Mr. Tully also asked about you
19 some questions about a pooling clause in a
20 lease. The Zimmerman lease didn't have one
21 originally and later on one was added. In your
22 opinion, does the presence or absence of a
23 pooling clause in a lease prevent committing a
24 working interest to a well unit or a pool-wide
25 unit like the GCU?

1 A. No.

2 Q. Now, referring to Exhibit 3, which is
3 the unit agreement for the GCU, and Article 24 on
4 page 17--

5 A. All right.

6 Q. Page 17, Mr. Reinhardt. Now, if I can
7 paraphrase, if no one has any objection, doesn't
8 the first sentence of Article 24 state that if
9 only the working interest owner of the tract is
10 committed to the unit, then it can be withdrawn
11 prior to approval of the agreement by the
12 director of the U.S.G.S.?

13 A. Yes.

14 Q. Now, moving on about five pages
15 further, when did the director of the U.S.G.S.
16 approve the unit agreement?

17 A. The unit was approved on July 25, 1951.

18 Q. Okay. And the letter from Benson and
19 Montin asking how to withdraw was in 1952, wasn't
20 it?

21 A. That's correct.

22 Q. Now, regarding your communications with
23 Mrs. Locke, I think you said your first
24 communication was with Don Locke, and I don't
25 know if you identified who that is. Who do you

1 understand Don Locke to be?

2 A. Don Locke I understand him to be Louise
3 Locke's son.

4 Q. Your first communication was sometime
5 in October?

6 A. Early October.

7 Q. Did Don Locke or Louise Locke or Mr.
8 Tully, on Louise Locke's behalf, ever indicate
9 any willingness to join in the well?

10 A. No, sir.

11 Q. Did they ever ask you for farmout
12 terms?

13 A. No, sir.

14 Q. I think you previously stated that your
15 offer to purchase her Fruitland Coal rights was
16 \$450 an acre?

17 A. Yes, sir.

18 Q. With an override?

19 A. With 7-1/2 percent override.

20 Q. Has BHP purchased other interests in
21 this pool?

22 A. Yes, we had purchased the interest of
23 Oryx Energy in approximately 1300 acres, paying
24 them \$450 a net acre, without reservation of any
25 overriding royalty.

1 Q. Was that only for the Fruitland Coal
2 rights?

3 A. No. That was for all rights from the
4 surface to the base of the Pictured Cliffs
5 participating area.

6 Q. What about the north half of the
7 southwest quarter?

8 A. The north half of the southwest quarter
9 was purchased for--it was 80 net acres, and it
10 purchased for \$312.50 an acre with a reservation
11 of a 2 percent override.

12 Q. Is it fair to say that the offer to
13 Mrs. Locke was the highest made by BHP in this
14 pool or in this unit?

15 A. Yes, sir.

16 Q. Is there currently any Fruitland Coal
17 participating area in the unit?

18 A. No, there's not.

19 Q. Now, there's been some discussion about
20 commercial and noncommercial wells, et cetera.
21 Does BHP have any wells in the unit that are not
22 considered unit wells?

23 A. Yes, there are several of them located
24 in different parts of the unit that were drilled
25 and were deemed to be nonpaying wells.

1 Q. Deemed by who?

2 A. By BLM.

3 Q. Are some of these on tracts that are
4 committed to the unit?

5 A. Yes, they are.

6 Q. Mr. Reinhardt, do you have Locke
7 Exhibit F?

8 A. I don't know.

9 Q. And I think under Mr. Tully's
10 questioning you said this was a 1961 plan of
11 development. Does the front page of this letter
12 indicate that was mailed to the working interest
13 owners in the unit?

14 A. The front page, the first page of the
15 letter shows that it's addressed to U.S.G.S., Oil
16 Conservation Commission, Commissioner of Public
17 Lands, and all working interest owners, Gallegos
18 Canyon Unit, and it refers to an attached
19 addressee list.

20 Q. Turning to the final pages of that
21 exhibit, is Locke-Taylor listed as one of the
22 working interest owners in the unit?

23 A. Yes, sir, they are.

24 Q. This is a number of years after the
25 tract was supposedly withdrawn from the unit

1 allegedly?

2 A. Allegedly.

3 Q. Have you reviewed other unit documents
4 from the 1960s where Mrs. Locke was listed as an
5 addressed working interest owner in the GCU?

6 A. Yes, sir, I have.

7 Q. Do you know why she doesn't show up
8 later?

9 A. No, I don't. I know she didn't show up
10 on--I think I testified to this earlier--but she
11 didn't show up on BHP's list because her
12 interests in the unit were outside of the
13 participating areas in which BHP operated.

14 Q. BHP's operations were initially limited
15 to certain participating areas; is that correct?

16 A. Yes. They were -- initially they were
17 limited to just the Pictured Cliffs participating
18 area.

19 Q. Now, could you refer to Locke Exhibit
20 I, Mr. Reinhardt? It's your letter, I believe,
21 dated July 23, 1990.

22 A. Yes, sir.

23 Q. There's six or eight Fruitland Coal
24 wells listed?

25 A. Yes, sir.

1 Q. Those are all stand-up units, aren't
2 they?

3 A. Yes, they are.

4 Q. No particular reason that a stand-up
5 pattern was chosen?

6 A. No particular reason.

7 MR. BRUCE: I don't have any further
8 questions, Mr. Chairman.

9 CHAIRMAN LEMAY: Go ahead.

10 MR. TULLY: I'll have a couple real
11 quick recross.

12 FURTHER EXAMINATION

13 BY MR. TULLY:

14 Q. We previously had a discussion about an
15 U.S.G.S. memorandum back in 1952 pertaining to
16 some identification of some nonunit wells
17 offsetting the Gallegos Canyon Unit. One of
18 those wells was called the Locke No. 1 well.

19 Do you happen to know when the acreage
20 dedicated to the Locke No. 1 well was included in
21 the Gallegos Canyon Unit as Tract No. 164?

22 A. You mean the Faust well?

23 Q. Did I say Locke?

24 A. Yes.

25 Q. I'm sorry, I meant the Faust well.

1 A. Actually, I can't remember the exact
2 date. I think it was sometime in the early 60s.

3 Q. About the time that these 1960
4 development programs started showing Locke-Taylor
5 as being a working interest owner, wasn't it?

6 A. Well, I don't recall.

7 Q. Do you recall Locke-Taylor, previous to
8 1960, being listed as a working interest owner in
9 the Gallegos Canyon Unit and the available
10 material?

11 A. Well, I haven't researched that. It's
12 possible that they could have.

13 Q. If you haven't researched it, then I
14 guess you can't answer the question; is that
15 correct? Or do you want to perform the search
16 now?

17 A. No. I don't know.

18 Q. Now, under the sub-operator instrument
19 that was given to BHP by Amoco Production
20 Company, is it limited to just participating area
21 acreage, or is it all acreage included within the
22 Gallegos Canyon Unit?

23 A. The designation of sub-operator
24 instrument?

25 Q. Uh-huh.

1 A. The original designation of
2 operatorship was executed by Amoco to cover those
3 lands included within the boundaries or
4 coincident with the boundaries of the Pictured
5 Cliffs participating area. As I recall, that was
6 to cover from the surface to the base of the
7 Pictured Cliffs.

8 Q. Was that the sub-operator that was
9 given to Clinton and Energy Reserves, or was that
10 the sub-operator instrument that was given to
11 BHP?

12 A. I think the original sub-operator--I'm
13 trying to remember. The original sub-operator
14 agreement, I believe, was executed in favor of
15 Clinton Oil. And Clinton, of course, merged into
16 ERG, and ERG merged into BHP.

17 Q. Are you aware, though, that there are
18 three separate designations of sub-operator
19 agreements?

20 A. I know of at least one more, and it was
21 executed in 89.

22 Q. It's been a long day, and this may be a
23 question I've asked before. But let me ask it
24 again, and just tell me if you've answered it
25 before. Do you know of any determination by the

1 U.S.G.S. at about the time the Tycksen well was
2 drilled whether that well was determined to be
3 commercial or noncommercial?

4 A. I can't recall having seen anything,
5 anything submitted to BLM in support of a paying
6 well determination.

7 Q. That's the U.S.G.S. we're talking
8 about?

9 A. Right, U.S.G.S. Back then it was
10 U.S.G.S..

11 MR. TULLY: Thank you.

12 CHAIRMAN LEMAY: Do you have anything
13 else?

14 MR. BRUCE: Not really, Mr. Examiner--
15 or Mr. Chairman. I do have one comment that the
16 designation of sub-operator to BHP should be in
17 the OCD's file, signed by Roy Johnson, on
18 February 6, 1990, regarding the operatorship of
19 the entire PCU. And if you want that in the
20 record, I have one copy that I could throw in.

21 CHAIRMAN LEMAY: Fine. Put it in.

22 Commissioner Carlson?

23 EXAMINATION

24 BY COMMISSIONER CARLSON:

25 Q. On BHP, the two exhibit B's to the unit

1 agreements, BHP Exhibits 4-B and 4-C, are there
2 more recent Exhibit B's to the Unit Agreement?
3 Why are these introduced?

4 A. As I recall, those were introduced
5 because they indicate on there how many acres out
6 of each described lease were committed to the
7 unit. I can think of one later, Exhibit B to the
8 Unit Agreement dated 1962, that was filed after
9 the last unit expansion.

10 Q. And that's the most recent Exhibit B,
11 1962?

12 A. Yeah.

13 Q. Does the 1962 Exhibit B show Tract 102
14 on it?

15 A. Yes, it does.

16 Q. Who is the original unit operator?

17 A. Benson and Montin, Inc.

18 Q. And then the successor unit operator
19 became--who was that?

20 A. Stanolind Oil & Gas Company.

21 Q. Stanolind is a predecessor to Amoco?

22 A. They're a predecessor to Pan American
23 Petroleum, who then was, I believe, Pan Am
24 executed a name change to Amoco Production
25 Company.

1 Q. The pooling agreement, which is Locke
2 Exhibit C, that was entered into in 53, was it?
3 September 53?

4 A. Right.

5 Q. Was Stanolind Oil the unit operator in
6 September of 1953?

7 A. Yes, sir. I believe they had succeeded
8 to Benson and Montin by that time actually. And
9 they executed, Stanolind executed this in 1954,
10 but I believe they had succeeded to Benson and
11 Montin as unit operator.

12 Q. If Stanolind believed that Tract 102,
13 or the north half of Section 23 was in the unit,
14 would there have been any reason for them to
15 enter into this pooling designation agreement?

16 A. Well, I think they recognize that there
17 were some tracts, there were two tracts in the
18 north half that were not committed. I can only
19 speculate why they joined in on this instrument
20 since they had already executed an assignment to
21 Locke-Taylor.

22 Q. Is it customary for unit operators to
23 enter into pooling arrangements for land within a
24 unit?

25 A. It's--well, I don't think of it as

1 being customary in the sense that it's done very
2 often. But I think that they--and it is my since
3 that they probably went ahead and executed a
4 pooling designation because there were certain
5 uncommitted tracts in the unit and felt there was
6 a need to designate those as some type of pooled
7 unit.

8 Q. On the Tycksen No. 1 well, that was
9 drilled in what year?

10 A. As I recall, 1952.

11 Q. That was after the effective date of
12 the unit; is that correct?

13 A. That's correct.

14 Q. Was that drilled at--I guess, do the
15 records show that that was drilled at the entire
16 expense of, I guess it was Locke-Taylor at that
17 time?

18 A. That's my understanding. Locke-Taylor
19 entered into some type of farmout arrangement
20 with Standlind and Benson and Montin and went in
21 and drilled this well in satisfaction of that
22 farmout agreement and paid for it, also.

23 Q. Is there any record that there was ever
24 an attempt to include that within a participating
25 area within the unit?

1 A. No. And, of course, as I recall, the
2 well was drilled to the Pictured Cliffs. It was
3 deemed noncommercial and plugged back to the
4 Fruitland Sand, and I don't know why the parties
5 never came forward to establish a PA. That would
6 be just conjecture on my part.

7 COMMISSIONER CARLSON: That's all I
8 have.

9 EXAMINATION

10 BY CHAIRMAN LEMAY:

11 Q. There has been a lot of testimony
12 involving the time frame of December 1990. One
13 thing they hadn't brought up, do you think some
14 of the preferences of Amoco to get the Fruitland
15 wells drilled and the preference of BP to drill
16 those, say, in contrast to some the PC wells was
17 at that time there was slated to expire Section
18 29 tax credit unless extended by Congress on an
19 1/1/93 date?

20 A. I know from dealing with Amoco, I know
21 they seemed to be extremely anxious to see the
22 Fruitland Coal rights developed within the unit,
23 but they weren't willing to take a working
24 interest in the project. So, I don't know that
25 they would have benefitted from those tax

1 credits.

2 Q. Do they have an override under the
3 farmout terms?

4 A. They have a nonconvertable 9-1/2
5 percent override in each well that's nondiluted
6 in the event a PA is performed.

7 Q. Wouldn't that make them an interest
8 owner in the well and, therefore, being able to
9 participate in the tax credit longer than any
10 other working interest or royalty owner?

11 A. That's possible. I was--I guess I had
12 been under the impression that you had to be a
13 working interest owner. Perhaps they could.

14 Q. Well, the timing, December, do you
15 happen to know how many rigs were operating up
16 there? Was there a scarcity of rigs in the
17 basin? Just trying to characterize the time,
18 November, December 1990?

19 A. Yeah, I know that it was before the--I
20 don't remember if Congress had extended the
21 deadline, by that time they had extended the
22 deadline for the drilling of those wells or not.
23 I don't remember exactly when that occurred.

24 I know, from BHP's standpoint, it had
25 been brought out in meetings at BHP about

1 Gallegos Canyon that they were used to using a
2 certain type of rig. It was considerably cheaper
3 than other types of rigs that were rated for
4 deeper depths. And I know they wanted to use, to
5 keep that rig employed.

6 Q. Well, in fact, they spudded both wells,
7 the 390 and 391, in December of 1990. I don't
8 know exactly when Congress officially extended
9 that. It was somewhere in that period of time.
10 I just wondered if some of that concern to drill
11 those wells in that month, or at least spud them
12 and start them, was to take advantage of the
13 Section 29 tax credit?

14 A. At that time BHP was still
15 investigating whether or not they, themselves,
16 could use it. I guess their tax people have gone
17 back and forth over time as to whether or not
18 even BHP could utilize those tax credits. We
19 were in a period then when the company felt like
20 they could. And naturally we wanted to make sure
21 that they didn't lose it.

22 Q. You testified that the stand-up 320's
23 were what you used throughout that area where you
24 had the option?

25 A. Yes.

1 CHAIRMAN LEMAY: That's all I have.

2 Thank you.

3 Additional questions of the witnesses?

4 MR. TULLY: Based upon questions of the
5 Commission, just a couple of real quick ones.

6 FURTHER EXAMINATION

7 BY MR. TULLY:

8 Q. Mr. Reinhardt, have you made a review
9 of the proration units that have been established
10 in Section 23 for other wells that are located
11 there?

12 A. Well, the only wells there were Dakota
13 wells besides the Tycksen well. We had never
14 concerned ourselves with Dakota production since
15 we had no interest in it.

16 Q. The Dakota production, the proration
17 units for those Dakota wells in Section 23 are
18 north-half/south-half, aren't they?

19 A. Like I said, I didn't investigate it.

20 Q. I'm not sure that I understood the
21 answer to the question that the chairman had, and
22 that was on the Section 29 tax credits. I
23 understood you to say that BHP was investigating
24 whether or not those tax credits could be used by
25 BHP and that at different times there was

1 investigation being done.

2 In December of 1990 was BHP, in its
3 investigation, did it determine that it could use
4 the tax credits at that time or not?

5 A. As I recall, they did. They could use
6 them.

7 Q. Now, subsequently, has that opinion
8 changed?

9 A. Oh, yeah. It's's changed to not being
10 able to use them back to being able to use them.
11 It's gone back and forth over the last--well,
12 until February. It had gone back and forth
13 several times.

14 Q. Do you happen to know what the current
15 status is, whether BHP can use the tax credits?

16 A. The last I heard, as I recall, I
17 believe it had been determined that they could
18 not.

19 Q. They could not use the tax credits.
20 Were the tax credits the primary motivation for
21 BHP to proceed forth and drill the 390 and 391
22 wells, even though there were title problems?

23 A. I would say--well, I don't know.

24 MR. BRUCE: I would object to the
25 allegation of title problems. He can make his

1 own argument.

2 Q. Was the primary motivation to go ahead
3 and drill the 390 and 391 wells in December based
4 upon the Section 29 tax credits potentially
5 expiring December 31?

6 A. I don't know that that was the primary
7 consideration. It went into the decision to go
8 forward, I'm sure.

9 MR. TULLY: Thank you.

10 CHAIRMAN LEMAY: One quick question for
11 clarification.

12 FURTHER EXAMINATION

13 BY CHAIRMAN LEMAY:

14 Q. Even if they couldn't use the tax
15 credits, do you know if that tax credit has a
16 carry-forward nature to it? If you don't use it
17 this year, you can use it in future years?

18 A. I'm sorry, I just don't know the anser
19 to that.

20 Q. I think, with the extension of the tax
21 credit, I believe, for the record, that you can
22 use it. But whether their decision is based upon
23 the use of the tax credit, it has a carry-over
24 feature to it, so they might not be able to use
25 it one year. But if the tax situation allowed

1 them to in a future year, that might be a
2 different decision?

3 A. And then there's quite a bit of
4 discussion throughout industry of using those tax
5 credits in some other type of deal to spin them
6 off to some third party who can use them.
7 There's quite a bit of discussion.

8 MR. BRUCE: Mr. Bowden could answer
9 that, if you want him to.

10 CHAIRMAN LEMAY: Would that be
11 acceptable, Mr. Bowden, to answer that question?
12 I think there's some confusion on Section 29.

13 MR. TULLY: Mr. Chairman, I would
14 object to that. We're now back into the question
15 of legal opinions and legal determinations.

16 CHAIRMAN LEMAY: That's fine.

17 MR. STOVALL: Mr. Chairman, I don't
18 think the tax credit is particularly relevant to
19 the right-to-drill issue.

20 CHAIRMAN LEMAY: It really isn't. It
21 was more of a clarification for the record. If
22 there's an objection, we won't address it any
23 further. It's not a pertinent question.

24 Are there any further questions of the
25 witness?

1 MR. BRUCE: One final thing, and this
2 is to answer one of Commissioner Carlson's
3 questions.

4 FURTHER EXAMINATION

5 BY MR. BRUCE:

6 Q. Mr. Reinhardt, could you just briefly
7 identify what that is?

8 A. It's an instrument titled, "Declaration
9 of Unitization," executed by Pan Am Petroleum
10 Corporation, dated April 11, 1962.

11 Q. That covers the north half of the
12 section?

13 A. That covers the north half of Section
14 23, 29 North, 13 West.

15 Q. For which formation?

16 A. This affects the Dakota formation.

17 Q. Does it not state that Amoco is
18 executing it both as an operator in the GCU and
19 as a working interest owner, if the lease is not
20 committed to the unit? Take a minute and look at
21 it, Mr. Reinhardt.

22 A. Well, yes, Pan Am states in here that
23 they're representing various interest owners
24 understand the unit agreement dated November 1,
25 1950, and a unit operator agreement, and also is

1 representing itself as owner in certain oil and
2 gas leases described on Exhibit A.

3 MR. BRUCE: Thank you. I would move
4 the admission of Exhibit 4-D.

5 CHAIRMAN LEMAY: Without objection,
6 Exhibit 4-D will be admitted into the record.
7 Does that conclude your examination?

8 MR. BRUCE: Yes.

9 CHAIRMAN LEMAY: Additional questions?

10 MR. TULLY: At this time, no. I would
11 move for the introduction of Locke Exhibits A
12 through Q at this time.

13 MR. BRUCE: No objection.

14 CHAIRMAN LEMAY: Without objection,
15 Locke Exhibits A through Q will be admitted into
16 the record. The witness may be excused. Thank
17 you. We'll take a 15-minute break.

18 [A recess was taken.]

19 CHAIRMAN LEMAY: Okay. We shall
20 resume.

21 MR. BRUCE: I would call Melissa Torbet
22 to the stand, Mr. Chairman.

23 MELISSA TORBET

24 Having been first duly sworn upon her oath, was
25 examined and testified as follows:

EXAMINATION

BY MR. BRUCE:

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

A. Melissa Torbet, T-O-R-B-E-T, and I live in Houston, Texas.

Q. Who are you employed by?

A. BHP Petroleum.

Q. In what capacity?

A. I'm a senior production engineer.

Q. Have you previously testified before the Division as a petroleum engineer and had your credentials accepted as a matter of record?

A. Yes.

Q. Are you familiar with engineering matters related to these two applications?

A. Yes.

MR. BRUCE: Mr. Chairman, I tender Ms. Torbet as an expert petroleum engineer.

CHAIRMAN LEMAY: Her qualifications are acceptable.

Q. Ms. Torbet, would you please refer to BHP Exhibit 9 and briefly outline its contents for the Chairman?

A. Exhibit 9 is a net isopach map of the

1 Fruitland Coal in the Gallegos Canyon Unit. The
2 colors represent different thicknesses of coal.
3 The dark orange is 30-plus feet of pay. The
4 lighter orange is 20 to 30 feet of pay, and the
5 yellow is 10 to 20 feet of pay.

6 The large, dark gas symbols represent
7 coal wells that BHP has drilled to date. They're
8 marked with the well number and also the test
9 rate underneath the well number.

10 The purpose of this map is to show the
11 risk associated with drilling coal--one of the
12 risks. There are numerous dots, squares,
13 triangles on this map. Those represent other
14 wells that have been drilled, so we have very
15 good well control in this area.

16 Looking at the rates, you can see how
17 highly variable it is, and this has already been
18 a well-established fact before this Commission
19 that thickness of coal does not indicate a good
20 coal rate, as far as a test rate.

21 Our best well, which was the 389 well
22 over on the far right, tested at 827 Mcf a day.
23 The worst well was the 392, which is on the far
24 left, which tested at 10 Mcf per day. Those two
25 wells had pretty close to the same coal

1 thickness.

2 Q. Okay. Now, if you successfully
3 complete a well, is that indicative of the well
4 paying out?

5 A. No, not necessarily. What you hope for
6 when you're producing the coal is what we had
7 planned for, was classical inclining rates. If
8 some of these wells, such as the 388, which is in
9 the northern part of the Gallegos Canyon Unit, it
10 tested at 50 Mcf per day.

11 Especially with the current gas price
12 situation, if that well does not incline, it may
13 never pay out.

14 Q. Now, skip down a few exhibits, Ms.
15 Torbet, to BHP Exhibit 11-A, please. Would you
16 please describe for the Commission the contents
17 of Exhibit 11-A?

18 A. Exhibit 11-A consists of three
19 production plots for three of our Fruitland Coal
20 wells. We only have, of the 17 wells that we
21 have tested to date, only four of those wells
22 have been on production for more than two
23 months.

24 These are production plots from three
25 of those four wells. These are all up in the

1 northern part of the Gallegos Canyon Unit. The
2 closest ones to the 390 and 391, one of them is
3 the 377. It shows gas and water production in
4 barrels per month and Mcf per month along a time
5 line, by month and by year.

6 The purpose of these three exhibits are
7 just to show that so far we haven't seen any
8 inclining coal behavior.

9 Q. Now, besides the risks, you talked
10 about initial rates and producing
11 characteristics. Are there other risks
12 associated with coal gas production?

13 A. In addition, there are reservoir risks
14 associated with the gas content, the diffusivity
15 of the coal, the desorption characteristics of
16 the coal. There's also economic risk. Even if
17 the well is a very good well, as far as
18 production and reservoir performance, especially
19 given the state of the U.S. gas market today,
20 there may be no market or no demand for the gas.
21 And there's also operational risks associated
22 with mechanical operation.

23 Q. Based on all these factors and before
24 you get into each factor individually, what
25 penalty does BHP recommend if these applications

1 are granted and a risk penalty is assessed?

2 A. 150 percent. Cost plus 150 percent.

3 Q. Would you please refer to BHP Exhibits
4 10 and 11, and discuss the basis of your risk
5 assessment?

6 A. Exhibit 10 is an exhibit from Case 9593
7 which was a force pooling case brought by
8 Meridian. I'm not sure who the other party was,
9 but my understanding is this case set somewhat of
10 a precedent or set a standard of 156 percent for
11 coal bed methane penalties. We're just using
12 this exhibit for comparison purposes, because we
13 used the same methodology to establish a risk
14 penalty for our wells, the 390 and 391.

15 Q. Would you then go through these
16 exhibits and discuss the different factors and
17 the percentages you've used for your risk
18 assessment?

19 A. I have four risk factors listed, which
20 are the same ones that were listed by Meridian:
21 Geological risk, reservoir risk, economic risk
22 and operations risk.

23 The geological risk has to do with
24 cleat spacing, how well the cleats are
25 interconnected, the intensity of fracturing, the

1 water content, whether or not the cleats or the
2 fractures are mineral filled, and all of these
3 things relate to permeability.

4 These are rock properties that are not
5 known until the well is actually tested. Even
6 after you drill and log the well, you may have a
7 thickness of coal but you don't know how well the
8 well is going to test until you flow it, and then
9 you get the first indication of how permeable the
10 rock is.

11 We assigned a risk factor of 40 percent
12 to this, geological risk. That is based on the
13 actual wells that we have tested to date. Seven
14 of those 17 wells, or 40 percent, tested at rates
15 less than 200 Mcf per day, which BHP would not
16 drill a well that tested less than 200 Mcf a day.
17 That's a marginal well for us. So, that 40
18 percent is based on actual production data or
19 actual test data of seven of the 17 wells testing
20 less than 200.

21 Under reservoir risk, I have listed
22 sustained deliverability, reserve recovery,
23 undefined coal producing characteristics, which
24 these are some of the same risks that Meridian
25 listed. These have to do with the desorption

1 characteristics, the diffusivity of the coal, how
2 long the well is going to sustain production,
3 whether or not it's going to incline and how long
4 it's going to last.

5 The risk factor I associate with that
6 is 50 percent, which is a pretty high number.
7 These types of numbers, I guess, reserve
8 estimates and production characteristics, are
9 critical to the economic viability of the
10 project.

11 And given the fact that the coal is a
12 very unconventional reservoir, it's not well
13 understood, we assign a high risk factor there,
14 50 percent, and that is an actual risk factor
15 that we've actually used when we've run
16 economics.

17 Under economic risks, I have marketing,
18 which is price and demand. I assigned it a
19 50-percent risk factor. We think that this is
20 the largest risk that we're facing today, given
21 the state of the U.S. gas market and the San Juan
22 Basin in particular. Basically, we think we have
23 a 50/50 chance now of making money with our coal
24 development.

25 Operations risk is the last risk

1 factor. I've rated it low, at only 10 percent,
2 in contrast to Meridian's 70 percent. Our wells
3 are--any time you run perforating guns to
4 packers, anything like that in the well, you
5 stand a risk of permanently damaging the well or
6 losing the well. But I feel like for these wells
7 that's a relatively low risk, so I only gave it
8 10 percent. So the total is 150 percent.

9 Q. Plus costs?

10 A. Plus costs.

11 Q. Now, getting into some other issues,
12 you were at the original hearing in this matter,
13 weren't you, Ms. Torbet?

14 A. Yes.

15 Q. And you heard Mrs. Locke's engineer
16 testify about potential damage to the Tycksen
17 well?

18 A. Yes.

19 Q. Let's get into that a little bit.
20 First of all, where is the Tycksen well in
21 relation to the GCU 391 well?

22 A. It's slightly southwest of the GCU
23 well. It's about 120 feet due west, and then 15
24 feet south from that point, which puts it at
25 approximately seven degrees south of due west.

1 Q. Almost straight west?

2 A. Yes.

3 Q. Now, referring to Exhibit 11-B, would
4 you please discuss the producing formation of the
5 Tycksen well?

6 A. The Tycksen well is believed to be
7 producing from the Fruitland Sand, which is,
8 according to 11-B, 11-B is just a diagram of the
9 two well schematics showing where casing has been
10 set, the depths of the casings and of the
11 horizons, the producing horizons, and the
12 distances between the wells and also the
13 distances between the two horizons, and also
14 indicates where cement has been circulated.

15 The Tycksen well is believed to be
16 producing from the Fruitland Sand, around the
17 seven-inch shoe. The seven-inch casing is not
18 cemented in this well.

19 Q. You also have the 391 well on there.
20 That has not been completed yet?

21 A. That's correct, it has not been.

22 Q. What are BHP's proposed completion
23 operations? What are you going to do?

24 A. We plan to perforate the coal, and the
25 perforations will be contained in the coal

1 interval, and fracture-stimulate the Fruitland
2 Coal with a 70 quality foam and sand.

3 Q. In your opinion, with completing the
4 391 well damage, in any way, the Tycksen well?

5 A. I don't think so.

6 Q. And why not?

7 A. I would like to refer to 11-C.

8 Q. Okay, let's move on to Exhibit 11-C.

9 A. --while I do this. 11-C is a spatial
10 orientation of the two wells, the Tycksen well
11 and the GCU No. 391 well, showing distances
12 between the wells and angles. This drawing is
13 not to scale; however, I think I've put enough
14 distances and angles that anyone could reproduce
15 it.

16 The two fans that are emanating from
17 GCU 391 are the predominant face cleat strike, or
18 that is the range of face cleat strike direction
19 in this area of the basin.

20 Q. That's 30 to 50 degrees east and north?

21 A. That's correct. So we would expect the
22 fracture to propagate any induced fractures, to
23 propagate in the same direction as the natural
24 fractures or the face cleats emanate.

25 As you can see, if we don't anticipate

1 the angle to intersect the Tycksen No. 1
2 wellbore--I should back up a little bit and talk
3 about fracture geometry.

4 We believe the fractures to be
5 vertically oriented in these wells based on
6 tracer log analysis, and also just on general
7 industry knowledge. So the fractures appear as
8 wings, they're vertical, and they're only about a
9 quarter to half-an-inch wide at the widest
10 point.

11 We don't expect the fracture to look
12 like these fans, but that it would fall somewhere
13 within this 30- to 50-degree angle. So, number
14 one, I think it's very unlikely that a fracture
15 would intersect the wellbore. Even if it did
16 intersect the wellbore, that foam or the fluid
17 would have to migrate up through approximately 82
18 feet of cement and debris in order to get into
19 the Tycksen well, which is also, I think, highly
20 unlikely.

21 Q. What is the path of least resistance
22 for the fracture?

23 A. Well, we believe it would be the coal.
24 The coal is a very soft rock. It's very easy to
25 fracture. We haven't seen fractures growing out

1 of the coal in any of our wells. And so--

2 Q. What type of--well, go ahead.

3 A. I just wanted to further elaborate that
4 even if we did--even if the foam did migrate up
5 through 82 feet of cement plug and somehow get
6 into the well, it's a foamed fluid. It looks
7 like shaving cream. You could blow it off your
8 hand if you had a pile of it. It's a very
9 undense or a very lightweight fluid and it's the
10 same fluid we use when we stimulate our Fruitland
11 Sand well.

12 So, I think the idea of permanent
13 damage, we wouldn't pump this fluid in our
14 Fruitland Sand wells if we thought we would get
15 permanent damage. I think it's very unlikely
16 that stimulation of the 391 well would interfere
17 with the Tycksen well, because it would take a
18 whose string of events, all of which are very
19 unlikely to occur.

20 Q. Very briefly, what is Exhibit 11-D?

21 A. 11-D is a structure map of the San Juan
22 Basin that was presented in a coal bed methane
23 workshop that I attended in Denver, sponsored by
24 the Gas Research Institute.

25 As far as I know, the Gas Research

1 Institute has pretty much done the definitive
2 study or the most study on geology of the San
3 Juan Basin with regard to just about everything
4 affecting geology: Face cleats strike,
5 hydrology, all of those things.

6 We are--it would be in what is labeled
7 Domain 2a. I think the 391 is actually within
8 the city limits of Farmington. And, in this
9 direction, the face cleat strike is very well
10 established and it's a very tight spectrum.

11 The face cleat strike directions that
12 are listed along the bottom are based on outcrops
13 of the coal. The line labeled number three and
14 the line labeled number six, were based on
15 oriented subsurface core. One of these cores,
16 the number three, was from the Mesa Hamilton No.
17 3 well, and I know it was used in the coal bed
18 methane study this office funded to determine
19 face cleat strike. And this is what I based my
20 drawing on.

21 Q. Moving on to a slightly different
22 subject, would you please refer to BHP Exhibits
23 12, 12-A and 13, and identify them and tell us
24 what they represent?

25 A. 12 and 12-A and 13 are all gas

1 analyses. Number 12 is a gas analysis from the
2 Tycksen No. 1 well, which is producing from the
3 Fruitland Sand.

4 Number 12-A is a Fruitland Sand
5 analysis from one of the GCU wells, No. 341. You
6 can see that those are very similar?

7 A. Are those both Fruitland Sand wells?

8 A. Yes, they are both Fruitland Sand.

9 Exhibit 13 is a Fruitland Coal gas analysis, and
10 this is just to show the difference between
11 Fruitland Sand gas and Fruitland Coal gas.

12 A Fruitland Coal gas is very high in
13 methane, almost--well, 99 percent in this well,
14 so these are being shown. There was a concern on
15 the part of Locke-Taylor that the Tycksen well
16 was, at this point, or could be communicated with
17 the Fruitland Coal within their wellbore, and
18 based on these gas analyses, we don't think that
19 that is correct.

20 Q. Okay. Please move on to Exhibit 14,
21 and discuss that briefly and identify it for the
22 Commission.

23 A. Exhibit No. 14 is a letter from Mr.
24 Ewell Walsh to Mr. Tully, basically giving the
25 estimated value of natural gas on a present worth

1 basis, or the Fruitland Coal horizon in the
2 Tycksen well.

3 Q. For the north half of Section 23?

4 A. Yes.

5 Q. What value does Mr. Walsh place on
6 that, without tax credit?

7 A. Without tax credit, he had a value of
8 approximately--he had a range of approximately
9 \$222,000 to \$266,000.

10 Q. Now, there's already been some
11 discussion, but is BHP, to the best of your
12 knowledge, entitled to use the tax credit?

13 A. No, we're not.

14 Q. What was the value of BHP's final offer
15 back in May of 1990--well, I shouldn't say "final
16 offer," but it was back in May of 1990 which was
17 the one that Mr. Reinhardt discussed?

18 A. We estimated it at approximately
19 \$200,000.

20 Q. So it's pretty similar to Mr. Walsh's
21 evaluation?

22 A. That's correct.

23 Q. Now, if BHP's offer had been accepted,
24 BHP still would have had the risk of drilling and
25 completing a successful well there, would it not?

1 A. That's correct.

2 Q. Mrs. Locke wouldn't have had that risk,
3 would she?

4 A. No.

5 Q. Finally, Ms. Torbet, there has been
6 some discussion of AFE costs. As far as
7 completion costs go, do you expect those to match
8 AFE costs?

9 A. Yes. I don't expect any
10 overexpenditure based on the 17 wells that have
11 been drilled and completed. We have, on average,
12 been under AFE with respect to total cost to
13 drill and complete.

14 Q. Were Exhibits 9 through 14 prepared by
15 you, compiled from company records, or compiled
16 from public domain information?

17 A. Yes.

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

22 A. Yes.

23 MR. BRUCE: Mr. Chairman, I would move
24 the admission of BHP Exhibits 9 through 14.

25 CHAIRMAN LEMAY: Without objection,

1 Exhibits 9 through 14 will be admitted into the
2 record.

3 CHAIRMAN LEMAY: Mr. Carr.

4 EXAMINATION

5 BY MR. CARR:

6 Q. Ms. Torbet, let's go to your Exhibit
7 No. 9, please. If I understood your testimony,
8 you used this exhibit to compare test rates with
9 coal thickness, is that correct?

10 A. That's correct.

11 Q. When you talk about test rates, are you
12 talking about initial potentials? Is that what
13 we're talking about?

14 A. Yes, I think. I'm not sure the
15 definition of initial potential, but these were
16 the rates that the wells were initially tested at
17 after completion.

18 Q. Now, when you complete these wells, do
19 you generally fracture-stimulate all of them?

20 A. Yes.

21 Q. Have you experienced any problems in
22 stimulating the wells in this area?

23 A. Problems?

24 Q. Have you had any of the wells screen
25 out or lock up?

1 A. Yes, we have had wells screen out.

2 Q. Do you fracture-stimulate them before
3 you run these initial tests and establish the
4 test rate?

5 A. Yes, we do. We stimulate and then
6 test.

7 Q. If you have problems
8 fracture-stimulating the well, that would
9 adversely impact the test rate, would it not?
10 You would have a lower test rate if you've had
11 trouble and your wells locked up?

12 A. Well, the wells that we did screen out
13 on and thus were not able to get the fracture
14 geometry that we had designed for, we went and
15 refractured those wells. And, on all of these
16 wells that we have had to refracture, we have
17 successfully placed the fracture on the second
18 attempt.

19 So, I guess the answer to the question
20 is I don't believe that is the case.

21 Q. Your testimony is that to date, even
22 when you've had trouble frac'ing a well, you've
23 been able to go back and overcome that problem?

24 A. Yes.

25 Q. So you're not expecting any problem in

1 completing the wells, in terms of
2 fracture-stimulating?

3 A. No.

4 Q. Now, this exhibit shows no direct
5 correlation between test rates and thickness, is
6 that correct?

7 A. That's correct.

8 Q. If you were trying to determine where
9 to drill a well out in this area, you would
10 prefer to drill in the thickest portion of this
11 formation possible, would you not?

12 A. Yes. Probably.

13 Q. Probably?

14 A. Since the coal is in an unknown
15 reservoir, we tend to, I guess, use what we know
16 about conventional reservoirs to make our
17 decisions. And that is a true statement of a
18 conventional reservoir. You would tend to drill
19 in the thickest portion.

20 Q. Would that not apply here, to your
21 knowledge? Would you be trying to drill in the
22 thickest portion of the reservoir you could find?

23 A. Yes.

24 Q. The thicker the reservoir, it tends to
25 show more ultimate recoverable reserves in that

1 area? Isn't that what it tends to show?

2 A. I don't know that we can say it tends
3 to show anything yet because we've had no
4 production history, but we would hope that would
5 be the case.

6 Q. And the wells you've drilled in Section
7 23 are in the thicker portions of the reservoir?

8 A. That's correct.

9 Q. Let's go to your Exhibit No. 11-A.
10 This exhibit just shows some limited production
11 information on three of, I believe you said, four
12 wells that have any production history to date?

13 A. That's correct.

14 Q. Can you tell me why there are spikes in
15 the producing rate? Why, in late 1990, on the
16 Gallegos Canyon 377, the rate drops way down in,
17 I think it is, July or August?

18 A. No, I couldn't address that particular
19 spike.

20 Q. The three wells that are in this
21 exhibit, all of these are wells that you would
22 expect to pay out, isn't that true?

23 A. Well, we would hope they would.

24 Q. If there is, are you able to sell all
25 of the gas that you can produce from these wells?

1 A. Well, as a matter of fact, right now
2 most of the field is shut in because we can't
3 sell the gas.

4 Q. Why are you unable to sell the gas?

5 A. Because the gas price is so low.

6 Q. Is that a decision that BHP has made,
7 not to enter spot-market contracts while the
8 price is this low?

9 A. Well, I can't really answer that
10 because I was not, you know, I didn't make that
11 decision.

12 Q. Is there capacity in the pipeline to
13 move the gas if you delivered it into the
14 gathering line?

15 A. I don't know.

16 Q. When we talk about market being a
17 factor in risk, in trying to find out, when
18 you're talking about market, that there is no
19 market available to you if you're willing to
20 sell, or if you're making a decision for price or
21 other reasons not to sell, do you know why you're
22 not able to sell today or why you're not selling
23 today?

24 A. Well, no, I can't say that I know all
25 the facts regarding that, except that the price

1 is very low.

2 Q. Let's go and take a look at your
3 Exhibits 10 and 11. I am going to ask you some
4 questions about risk factor, and I want you to
5 understand that I'm looking at a risk factor
6 that's authorized by a statute that says the
7 pooling orders you're seeking may include a
8 charge for the risk involved in the drilling of
9 such wells.

10 I'm talking about the drilling of these
11 wells, and it says it may not exceed 200 percent
12 of the nonconsenting working interest owner's
13 share of the cost of drilling and completing a
14 well. So we're talking about drilling and
15 completing, under this statute.

16 If I look at what the you presented as
17 Exhibit No. 10, if I understood it, this was just
18 for comparative purposes an exhibit offered by
19 Meridian in a case which resulted in a
20 156-percent penalty being imposed on a well, is
21 that correct?

22 A. That's correct.

23 Q. I believe you testified that you
24 understood this to be the normal penalty that was
25 imposed on Fruitland Coal wells?

1 A. I understood it to be somewhat of a
2 standard.

3 Q. In obtaining Exhibit 10 from Case 9593,
4 did you look at the transcript of that case?

5 A. Yes.

6 Q. And a 156-percent penalty resulted in
7 that case, did it not?

8 A. Yes.

9 Q. Those wells had not been drilled, had
10 they?

11 A. The risk penalty analysis performed by
12 Meridian, as I understand it, was based on, not
13 particularly the wells that they were trying to
14 force pool, but on their operating experience in
15 other wells that they had. They based their risk
16 on their experience, not on the particular wells
17 that were being force pooled.

18 Q. Now, in your Exhibit 11, you're basing
19 this on the particular well, is that right?

20 A. No. We're basing ours on the wells
21 that we have drilled today, which is not as many
22 as Meridian had, but we have 17.

23 Q. Both of you, though, were basing these
24 calculations on your experience in drilling
25 Fruitland Coal wells?

1 A. That's correct.

2 Q. And in the case that Meridian presented
3 to the Division, the well had not been drilled at
4 that time that was involved in Case 9593,
5 correct?

6 A. To my knowledge, yes, that's correct.

7 Q. And they got a 156-percent penalty in
8 that case?

9 A. Correct.

10 Q. Now, we're talking about pooling
11 applications where the wells have already been
12 drilled to total depth, correct?

13 A. That's right.

14 Q. They're drilled in and about the city
15 of Farmington in the Gallegos Canyon Unit area,
16 is that correct?

17 A. Yes.

18 Q. That's a much shallower area, is it
19 not, than where the wells that were being
20 discussed in this Meridian case were actually
21 proposed to be located?

22 A. Yes.

23 Q. So there were actually more risks
24 associated with drilling deeper, as Meridian was
25 proposing to do, than out where you are with a

1 relatively shallow well?

2 A. That's correct, and that's why they had
3 70 percent on mechanical risk, where we only have
4 10 percent on mechanical risk because,
5 mechanically speaking, we're in a much less risky
6 environment.

7 Q. And yet with the wellbore already
8 drilled, you're asking for a penalty just six
9 percent less than the Meridian well that had not
10 been drilled in a mechanically more risky area?

11 A. That's correct.

12 Q. Let's look at these two. You've used
13 the same four basic categories, correct?

14 A. Yes.

15 Q. Let's go to geological risk. The first
16 item in the Meridian analysis is coal
17 stratigraphy and thickness. You've taken that
18 out, haven't you?

19 A. Yes.

20 Q. You know that now, don't you?

21 A. We know the thickness.

22 Q. Because the wellbore is already there?

23 A. Right.

24 Q. And you know the stratigraphy?

25 A. I'm not sure.

1 Q. You know where the zones are stacked,
2 one in regard to the other?

3 A. That's correct.

4 Q. The other two items are cleating
5 fractures. You did log the wells?

6 A. That's correct.

7 Q. Did you do any micrologs to determine
8 or gain information that might help you predict
9 how these fractures might be located within the
10 formation?

11 A. No.

12 Q. Coal characteristics. You didn't
13 discuss that. What does the term "coal
14 characteristics" mean to you?

15 A. Cleat spacing, fracture intensity.

16 Q. Does it mean the same thing as cleating
17 and fractures?

18 A. Well, the fracture intensity is a
19 little bit different from whether or not
20 fractures are--I mean, the cleating and fractures
21 encompasses--I don't know how to say this.

22 Whether or not the cleating
23 characteristics in the fractures are present,
24 whether or not they're innerconnected, how
25 intense the fracturing is, whether they're filled

1 with water or whether they are lined with mineral
2 deposits which will affect productivity, those
3 are all what I consider to be cleating
4 characteristics, cleating fractures and coal
5 characteristics. I was not necessarily trying to
6 assign--

7 Q. 20 percent to one and 20 percent to the
8 other?

9 A. Right. I was just listing some of the
10 characteristics that are under geological risk.

11 Q. How do these characteristics differ
12 from reservoir risks?

13 A. Well, even if the well is--even if you
14 have a good rock, in other words, it's highly
15 permeable with respect to cleating and fractures,
16 what I consider to be reservoir risk is more to
17 do with the desorption characteristics of the
18 coal, the diffusivity of the coal, how the well
19 is going to respond with respect to production
20 over time, and the ultimate recovery of the well.

21 Q. If we look at the reservoir risk, what
22 information do you have on this reservoir at this
23 time? Do you know the desorption characteristics
24 of the coal?

25 A. We have cores that we took in several

1 wells, but that kind of gets into another subject
2 altogether, but my opinion is that, as an
3 industry, nobody knows what the coal desorption
4 characteristics are. We test in a certain way
5 that is not reflective of actual reservoir
6 conditions.

7 Q. Before you drilled the wells, the 390
8 and the 391, you actually had a--drilled some
9 pilot wells, did you not?

10 A. Yes.

11 Q. And you took--what were they?--side-
12 wall cores?

13 A. These were hole cores.

14 Q. And you got some desorption data on
15 those cores, did you not?

16 A. That's correct.

17 Q. The result was that they showed maximum
18 case gas content values when they were actually
19 desorbed, isn't that right? Do you know what
20 kind of a result you got when these were actually
21 desorbed, or when you tried to--

22 A. I've seen the coal desorption curves.

23 Q. How well did they perform in terms of
24 desorbing?

25 A. Are you talking with respect to

1 pressure decline, or what do you mean?

2 Q. What sort of gas content values did you
3 get when you desorbed these cores?

4 A. I couldn't tell you right now. I
5 didn't bring that data.

6 Q. When the 390 and 391 were drilled, you
7 didn't attempt to take any side-wall cores, did
8 you?

9 A. No.

10 Q. That would have given you some
11 information as it relates to reservoir risk,
12 isn't that correct?

13 A. Probably, yes.

14 Q. Did you have a geologist on the
15 location to take coal samples as they came up?

16 A. I'm not aware if we did or not.

17 Q. Do you know if any samples were taken
18 or efforts were made to see what sort of
19 desorption you could get from those?

20 A. No.

21 Q. Why wasn't that done? Did you feel
22 like you didn't need that information on that
23 well?

24 A. We took, I think, three or four cores
25 in the pilot analysis and we used those. We

1 extrapolated the results from those wells to the
2 other wells, to estimate those parameters.

3 Q. And those parameters you have really
4 tell you what sort of a reservoir risk you're
5 looking at, isn't that right?

6 A. No, that's not right.

7 Q. Why is that not the case?

8 A. The way coal or gas desorbs from coal
9 and the way we test for that are two totally
10 different things.

11 The way that the tests are done, pieces
12 of coal are ground up. They are put into
13 deionized water and then pressure--gas release
14 are monitored.

15 That's not the way it occurs in the
16 reservoir. You're not crushing the core. You
17 have salt water as opposed to deionized water.
18 In my opinion, desorption data may be good for
19 total gas content, but the way that the reservoir
20 actually performs over time is not understood.

21 We use that in the industry for
22 relative--I mean, you can tell if you have one
23 coal that has a certain behavior, it looks better
24 than another coal that has a certain other
25 behavior, but how it's going to perform when it

1 actually produces, it may not perform on an
2 isotherm that you get from core data.

3 Q. Isn't it true that the reason you would
4 try and obtain desorption data is to enable you
5 to evaluate reservoir risk?

6 A. That's correct.

7 Q. And in this case you obtained
8 desorption data in the pilot project?

9 A. That's correct.

10 Q. You did not obtain it here?

11 A. That's correct.

12 Q. You could have if you had determined to
13 do that?

14 A. Yes, we could have.

15 Q. Now, let's go to economic risk. In
16 your penalty calculation, you put 50 percent on
17 what you've labeled marketing, price and demand,
18 correct?

19 A. Yes.

20 Q. Marketing, price and demand, none of
21 these actually relate to the drilling of the
22 well, isn't that fair to say?

23 A. Well, I would disagree with that. The
24 wells are being drilled under certain--all the
25 risk factors relate to the viability of the

1 project economically, so--

2 Q. Let's suppose the price goes down and
3 you get a well like your 389, okay?

4 A. Okay.

5 Q. And you decide not to sell. It stays
6 in the ground, does it not?

7 A. Yes.

8 Q. And these pricing factors really relate
9 to time of pay out, do they not?

10 A. Yes.

11 Q. Not to ultimate recovery?

12 A. I don't know if I can address that. I
13 don't know if it relates to ultimate recovery or
14 not. I know there are some reservoirs that are
15 sensitive to withdrawal rate, but I don't know
16 that the coal is.

17 Q. Aren't the elements of marketing and
18 price and demand something that is, at least to
19 some extent, within the control of BHP after the
20 well is drilled? These are not drilling risks
21 but are things that you have some input and can
22 control, to some extent, after drilling, isn't
23 that right?

24 A. We can't control the market and we
25 can't control the demand.

1 Q. Can you control whether or not you're
2 selling it under a long-term contract or making
3 spot sales?

4 A. Yes.

5 Q. And you're selling this in the spot
6 market now, are you not? When you sell?

7 A. I don't know how these are being sold.

8 Q. You can determine if you are selling in
9 a spot market whether you're going to sell this
10 month or shut in, isn't that right?

11 A. That's correct.

12 Q. So you would have control over that. I
13 guess demand could depend on what facilities are
14 there to take the gas, isn't that right?

15 A. Demand?

16 Q. If there's inadequate facilities to
17 move the gas, that would be--

18 A. --a restriction, yes, that's correct.

19 Q. Do you know if there is any restriction
20 at the gathering lines to take the gas?

21 A. There was at one time, and I'm not sure
22 if it's still is there or not. El Paso did have
23 some restrictions in their lines at one time.

24 Q. Hasn't BHP in fact acquired these lines
25 from El Paso--the gathering lines?

1 A. No, we haven't acquired them.

2 Q. Have you been attempting to negotiate
3 the control of these lines from El Paso?

4 A. Yes, we have discussed it with El Paso.

5 Q. Does BHP Gas Marketing purchase in this
6 area?

7 A. Excuse me?

8 Q. Are you familiar with a company called
9 BHP Gas Marketing?

10 A. No.

11 Q. Would you know if that's the
12 spot-market company that purchases gas from this
13 field?

14 A. No.

15 Q. The bottom line is though, isn't it,
16 Ms. Torbet, what you're labeling as economic risk
17 is really, in large part, things that occur after
18 drilling that are partially within BHP's control?

19 A. Would you please repeat that?

20 Q. Isn't it really true that what you have
21 labeled as economic risk are marketing items
22 that, one, occur really after you've drilled and
23 completed a well?

24 A. Yes, that's true. However, the
25 drilling--the decision to drill is based on

1 those--

2 Q. Isn't it true that if you can control
3 and decide to sell and leave it in the ground
4 until the price comes up, or attempt to gain
5 control of the gathering lines or select which
6 marketing company, whether your own or somebody
7 else's you sell this to, aren't those all things
8 that are partially within your control?

9 A. I would say that, yes, whether to sell
10 or not is within our control, assuming that there
11 is no restriction in line or other restriction.

12 Q. And those are all factors that fall
13 under what you've grouped together as a
14 50-percent increase in penalty entitled market,
15 is that right?

16 A. Yes, I think so.

17 Q. You're recommending just a 10-percent
18 risk as it relates to the actual completion
19 operation?

20 A. That's correct.

21 Q. The well has been drilled but you still
22 have not completed it?

23 A. That's correct.

24 Q. If we look at your Exhibit 11-C, what
25 these fans show, as you said, are the predominant

1 face cleat strike. Now, tell me, when you
2 fracture a well, do you expect them to be
3 relatively straight factors or do they meander?

4 A. I wouldn't say they're perfectly
5 straight. They may meander somewhat.

6 Q. When you called this fan the
7 predominant strike, is it possible it could drift
8 outside this fan when you actually fracture the
9 coal, due to the nature of the coal itself?

10 A. Well, Mr. Carr, anything is possible.

11 Q. But is it possible to the extent that,
12 it's not like winning the Publisher's Clearing
13 House sweepstakes, is it, Ms. Torbet, but it's
14 possible that that could happen?

15 A. Yes, it's possible, but improbable.

16 Q. Why do they run in this particular
17 direction? Do you, as an engineer, have an
18 opinion as to why they are oriented in this
19 direction?

20 A. It has to do with the--and I'm not a
21 geologist so I don't want to pretend to be an
22 expert geologist, but I know it has to do with
23 the stress, the tectonic stress of the rock.

24 Q. Does that relate to the general slope
25 or shape of the formation? Maybe we could move

1 to Exhibit 11-D.

2 A. Okay.

3 Q. Neither of us are geologists. If we
4 look at 11-D, how do you know that these
5 particular frac cleat strikes are as depicted on
6 this particular exhibit?

7 A. How do I know?

8 Q. Yes.

9 A. I guess I'm--

10 Q. We have an exhibit here, and it shows
11 the area in which these wells are located,
12 identified as Domain 2a, that these face cleat
13 strikes run as you have shown on your diagram,
14 which is--

15 A. 11-C.

16 Q. How do you know they run in that
17 direction?

18 A. Well, like I said, this is published
19 data. The GRI did an extensive study. I've
20 talked to Neil Whitehead who works for the New
21 Mexico Bureau of Mines. He did this study on the
22 outcropping coal, face cleat directions; and also
23 I've talked with Mr. Walt Ayres who, at the time,
24 was working for the Bureau of Economic Geology,
25 and he was involved with the subsurface core,

1 oriented core data.

2 Q. If you look at this, don't they appear
3 to run sort of perpendicular to the slope of the
4 formation?

5 A. In some areas they do.

6 Q. Do you know whether or not that might
7 be a factor in the orientation of these faults or
8 fracs?

9 A. I don't. I do know, from talking with
10 the geologist who prepared this study, it's very
11 consistent through Domain 2a.

12 Q. When we move up north, right below the
13 Colorado/New Mexico line, we have one that's
14 virtually east/west, isn't that true?

15 A. That is true.

16 Q. Isn't that an area where actually the
17 formation is contoured in more of a north/south
18 direction?

19 A. That's true.

20 Q. If we look around the city of
21 Farmington, aren't the contours starting to turn
22 up toward the north, as we come through that
23 area?

24 A. North of Farmington they do.

25 Q. When you go kind of south and west,

1 don't you see an actual turn?

2 A. Well, there's a gradual change, but I
3 don't know that I would necessarily call that a
4 turn.

5 Q. Is it your testimony that you don't
6 know the basis behind this particular
7 orientation? You're just accepting this paper?

8 A. That is correct.

9 Q. Is it also fair to say that you're
10 really not going to know, in fracturing the
11 Gallegos Canyon 391 well, you're not going to
12 know whether or not you've intersected the
13 Tycksen well until you actually go out there and
14 try it?

15 A. That's correct.

16 Q. That's when we'll really know?

17 A. That's true. You don't ever really
18 know until it happens.

19 Q. And then, if we did that, you said
20 there would be foam that would get into the
21 Tycksen well?

22 A. I think that there could be a small
23 amount of foam, assuming that the foam can
24 migrate up through 82 feet of cement, sand and
25 other debris, which is also a very unlikely

1 event. That's why I think it's unlikely, because
2 a whole stream, not just one unlikely event,
3 would have to occur, but the whole stream of
4 unlikely events would have to occur.

5 Q. That would be followed by sand, would
6 it not, if that happened?

7 A. I doubt it, because the crack would be
8 so small that the sand would bridge at the
9 crack. Also, during the pumping of the job, if
10 something--if some radical loss in pressure or a
11 loss in fluid occurred during the pumping of the
12 job, it would most likely screen the well out at
13 that point and there would be no further
14 communication between the zones.

15 Q. If the foam can get into the Tycksen
16 well, gas could also migrate through that same
17 channel, isn't that true?

18 A. Well, if it's not cropped, it's
19 unlikely that it would. Assuming that it created
20 a crack, if there's nothing to hold the crack
21 open, then the crack will close and you won't
22 have communication.

23 Q. So you have to conclude that the foam
24 will go but the sand won't go, before you have
25 that situation?

1 A. I think it would be unlikely that the
2 sand would.

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

4 MR. BRUCE: Very briefly, Mr. Chairman.

5 FURTHER EXAMINATION

6 BY MR. BRUCE:

7 Q. Mr. Carr mentioned taking some cores in
8 the wells. Would that increase the cost of the
9 wells?

10 A. Yes.

11 Q. If you took those cores, would it be
12 definitive of the well's capability?

13 A. No.

14 Q. Regarding economic risk, BHP has no
15 control over price?

16 A. No, unfortunately.

17 Q. I mean, If the prices were extremely
18 low, BHP could continue to produce the well and
19 conceivably never recover well costs, isn't that
20 correct?

21 A. We would just produce ourselves out of
22 business.

23 Q. Regarding the face cleat strike
24 orientation, do you know of any other data?

25 A. Beyond the GRI study, as far as I know

1 there is no other geological data available.

2 MR. BRUCE: Thank you.

3 FURTHER EXAMINATION

4 BY MR. CARR:

5 Q. Ms. Torbet, you don't control the price
6 but you do control if you sell, isn't that right?

7 A. Yes.

8 Q. And if you don't sell, the gas is in
9 the ground?

10 A. Yes.

11 Q. And it can be sold at a later date?

12 A. Well, that was a point that I don't
13 know. I don't know the sensitivity of withdrawal
14 from the coal. I don't know if anybody else
15 does, either.

16 Q. The longer it takes to produce the gas,
17 the longer it would take to pay off the well,
18 isn't that right?

19 A. That's correct.

20 Q. If the Locke tract is pooled in, it
21 would just slow down the pay out, isn't that
22 right? They would be in a nonconsent posture
23 longer?

24 A. That's correct.

25 Q. Whether you put it on the market or

1 sell it today or not is a decision BHP makes,
2 isn't that right?

3 A. Although I would say with the wells
4 that we drilled recently, these are the only
5 wells that are not shut in right now. We are
6 producing our coal wells at maximum rate. The
7 rest of the field is shut in, so we don't plan to
8 complete it and shut it in.

9 MR. CARR: That's all.

10 MR. BRUCE: I have nothing further, Mr.
11 Chairman.

12 CHAIRMAN LEMAY: Commissioner Carlson?

13 EXAMINATION

14 BY COMMISSIONER CARLSON:

15 Q. On your Exhibit 14, you stated that Mr.
16 Walsh's number without the tax credits is
17 comparable to the offer that you made Mrs. Locke?

18 A. Yes.

19 Q. Do you agree that if BHP could take
20 advantage of those tax credits, that the gas
21 could be worth as much as Mr. Walsh said it was,
22 \$423,000 to \$495,000?

23 A. I don't know. I don't know that we
24 have actually evaluated this particular well for
25 that.

1 Q. What is your understanding--and I
2 recognize you're a petroleum engineer and not a
3 tax attorney--but what is your understanding why
4 BHP cannot take the tax credit?

5 A. And I would also like to say I'm not a
6 tax attorney, so the things that I know are just
7 what I've heard, but my understanding is that BHP
8 is in an alternative minimum tax situation and so
9 we cannot use the tax credits.

10 Q. Is it your understanding, though, that
11 those tax credits can be carried forward?

12 A. No. My understanding is that they have
13 to be taken in the year they were earned or the
14 year that the gas was produced, or whatever.
15 They are not--we're not able to carry them
16 forward, is my understanding.

17 Q. Has BHP drilled any dry holes in the
18 Fruitland Coal formation?

19 A. Well, if you could define what a dry
20 hole in a coal well is for me, then I might be
21 able to answer that, but--

22 Q. Have they plugged and abandoned any?

23 A. We have not plugged and abandoned any
24 wells. We did have one well that tested 10 Mcf a
25 day which, by most standards, would be a dry

1 hole. We haven't had any that produced a hundred
2 percent water for a year or something like that,
3 which is all so common in the coal. That's why
4 the definition of a dry hole in a coal well is
5 tough.

6 Q. Are you familiar with the AFEs for
7 these two wells?

8 A. Yes.

9 Q. The AFEs, Locke Exhibits L-1 and L-2,
10 they're from the BHP AFEs and they have a project
11 justification at the bottom, which I assume has
12 been whited out by BHP. Are you familiar with
13 that project justification?

14 A. I haven't read that in a long time.
15 Could I get a copy of the-- I have read--there
16 was an entire report associated with the project
17 justification for these wells, which I am
18 familiar with.

19 Q. Now, those project justifications, they
20 both show a payout in 1.922 years. Do you know
21 what price of gas that was based on?

22 A. I think it was based on a
23 dollar-fifty-four. \$1.54 per Mcf. And there
24 were also certain rate producing characteristics
25 associated with that.

1 I think we assumed an initial rate of
2 200 Mcf declining to a rate, and I'm not--I can't
3 remember this exactly, but somewhere between 300
4 and 500 Mcf per day, holding that rate for
5 approximately two years, and then an exponential
6 decline. And there was a certain reserve amount
7 associated with it also.

8 Q. On those project justifications where
9 it says net increase in current production, and
10 you go over to the gas side and on one of the
11 wells it's 99 Mcf per day and the other one is
12 154 Mcf per day, is that the estimated flow for
13 those wells?

14 A. This would be the estimated flow--BHP's
15 share of the flow. We look at economics based on
16 our share of the production.

17 Q. And future cash flow before investment,
18 I assume that's before tax?

19 A. Before tax.

20 Q. And it compares that to the net cash
21 flow after investment and apparently after tax?

22 A. Right.

23 Q. It shows a net cash flow of \$410,000,
24 and I assume, again, that that is exclusive of
25 the Section 29 tax credits, is that correct?

1 A. Yes, that is correct.

2 Q. And you concluded at the bottom, F & D
3 costs, which I assume is finding and development
4 costs, \$1.18 per barrel of oil equivalent?

5 A. Right.

6 Q. Which translates to roughly, what, 20
7 cents an Mcf?

8 A. Yes. I'm not very good with--

9 COMMISSIONER CARLSON: Thank you.
10 That's all.

11 EXAMINATION

12 BY CHAIRMAN LEMAY:

13 Q. Just a clarification, Ms. Torbet, on
14 your Exhibits 12, 12-A and 13. Are 12 and 12-A,
15 looks like they're both Fruitland Sand, are
16 they? On 12-A the designation 341 FRT?

17 A. Yes. Both of those are Fruitland Sand
18 gas analyses.

19 Q. And your other comparison on Exhibit
20 No. 13 is, I guess, looks like it's from the east
21 offset there, the 377 on the Fruitland Coal?

22 A. That's correct.

23 Q. So there is significance variation
24 there. You don't have any carbon dioxide,
25 though, in this particular area for Fruitland

1 Coal?

2 A. We have a little bit, .7 percent. A
3 small percent

4 Q. It's almost pure methane, as far as--

5 A. Yes. Generally speaking, we don't have
6 a lot of CO₂ in this area of the Basin.
7 Generally one percent or less.

8 Q. Do you happen to know if that will be
9 pipeline quality when mixed, or do you have to go
10 through one of the plants to extract that small
11 amount of carbon dioxide?

12 A. On our Fruitland Coal wells, we think
13 it will be diluted when mixed, and meet pipeline
14 specifications.

15 Q. You're very close to a thousand BTU;
16 therefore, you think that's pipeline quality
17 without additional processing?

18 A. Correct.

19 Q. Which would affect your economics, I
20 guess, compared to other coal seam gas wells that
21 need to be treated?

22 A. Yes. We're not anticipating--we are
23 going to dehydrate and compress, but we don't
24 anticipate any sweetening. And then we also have
25 disposal costs associated with water production.

1 Q. Do you have enough experience with the
2 water to show that it's decreasing after some
3 production, or not?

4 A. Not really. The water rate on tests in
5 these wells was highly variable, as variable as
6 the gas rates. We saw anywhere from two barrels
7 a day up to over a hundred barrels a day, so it
8 was pretty highly than variable.

9 Q. How are you currently disposing of your
10 water?

11 A. We are disposing into the Mesaverde.
12 We have several disposal wells in the Gallegos
13 Canyon Unit. We just drilled a new one to handle
14 most of the wells located in the northern part of
15 the Basin that we drilled, when we drilled these
16 two, 390 and 391.

17 Q. You treat those costs, then, as
18 operating costs and not as part of your AFE costs
19 for drilling and completing the wells?

20 A. That's correct.

21 CHAIRMAN LEMAY: Thank you. I have no
22 further questions.

23 Anything else?

24 MR. BRUCE: Just one question, Mr.

25 Chairman.

1 CHAIRMAN LEMAY: Sure. Go ahead.

2 FURTHER EXAMINATION

3 BY MR. BRUCE:

4 Q. Ms. Torbet, you mentioned the
5 justifications on these AFEs and you mentioned
6 \$1.54 per Mcf as a gas price. Were there any
7 other assumptions regarding gas price?

8 A. Yes. We had, over time, we have
9 done--we assumed certain escalations, I guess,
10 based on--the gas marketing people come up with
11 escalations. And when this project was done, we
12 were pretty optimistic about gas prices in
13 general, so the escalation factors were pretty
14 good compared to what we were using now.

15 MR. BRUCE: Okay. Thank you.

16 CHAIRMAN LEMAY: Any further
17 questions? The witness may be excused. Thank
18 you very much.

19 Anything else, Mr. Bruce?

20 MR. BRUCE: Nothing at this time, Mr.
21 Chairman.

22 CHAIRMAN LEMAY: Mr. Carr?

23 RICHARD DAVID SIMMONS

24 Having been first duly sworn upon his oath, was
25 examined and testified as follows:

EXAMINATION

BY MR. CARR:

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

A. Richard David Simmons.

Q. Mr. Simmons, where do you reside?

A. In Farmington, New Mexico.

Q. By whom are you employed and in what capacity?

A. Locke-Taylor, Louise Locke, as an oil and gas consultant.

Q. In what capacity as a consultant? Engineer? Geologist?

A. Engineer.

Q. Have you previously testified before the Oil Conservation Commission?

A. No, sir.

Q. Briefly summarize your educational background for the Commission.

A. I was graduated with a B.S. degree in petroleum engineering from Marietta College, in 1971. I continued at Louisiana State University and was graduated with a Master's of Petroleum Engineering in 1973.

Q. Since graduation, for whom have you

1 worked?

2 A. I first worked for Tenneco Oil Company
3 in the Rocky Mountains in the San Juan Basin, and
4 Wyoming, Utah, Colorado. I worked for Northwest
5 Pipeline as drilling and production engineer, and
6 I have been self-employed as a consultant in the
7 San Juan Basin since 1981.

8 Q. How long have you worked in the Basin?

9 A. 19 years.

10 Q. You have been the engineer on how many
11 wells that have actually been drilled in the
12 Basin?

13 A. Over 75.

14 Q. In what formations were these wells
15 completed?

16 A. All formations, from top to bottom.

17 Q. Have you been involved in the drilling
18 of Fruitland Coal wells?

19 A. Yes, sir.

20 Q. Do you operate any Fruitland Coal wells
21 at this time?

22 A. Yes, sir, I do.

23 Q. How many?

24 A. I have two that are directly under my
25 operation, in my name. I control four others

1 that are--I control the pumping operations of
2 those wells.

3 Q. When were you employed in this case?

4 A. Just a little over a month ago.

5 Q. What were you asked to do?

6 A. I was asked to review files put
7 together by Mr. Ewell Walsh and assert to the
8 findings that he had come forth with in a
9 previous hearing.

10 Q. Have you completed that review?

11 A. Yes, sir.

12 Q. Are you familiar with the development
13 of Section 23?

14 A. Yes, sir.

15 Q. Are you familiar with the applications
16 filed in each of these cases by BHP Petroleum?

17 A. Yes, sir, I am.

18 MR. CARR: We tender Mr. Simmons as an
19 expert witness in petroleum engineering.

20 CHAIRMAN LEMAY: Mr. Simmons'
21 qualifications are acceptable.

22 Q. Would you briefly state what Mrs. Locke
23 seeks in these cases?

24 A. She would like to have the denial of
25 both pooling requests in the east half and the

1 west half of Section 23.

2 If the Commission were to agree to the
3 force pooling, she would like to have the 391
4 Gallegos Canyon of BHP not completed, for fear of
5 damaging her well.

6 Q. What sort of a penalty is she
7 suggesting?

8 A. She would like no penalty whatsoever.

9 Q. Could you identify what has been marked
10 Locke Exhibit No. 1 and review that for the
11 Commission?

12 A. This is a 12-section plat, indicating
13 the relative locations of wells in the area. It
14 also shows in Section 23 the location relative of
15 the BHP Gallegos Canyon Unit No. 390 and in the
16 northeast quarter of Section 23, the GCU 391.
17 It's showing it to the west and north, but it's
18 slightly south and west of the 391, as
19 Locke-Taylor's Tycksen No. 1.

20 Q. Let's move to Exhibit 2. I would ask
21 you first to identify that, and then review this
22 for the Commission.

23 A. Exhibit No. 2 was prepared by Mr.
24 Walsh. I have reviewed it. It's a wellbore
25 schematic similar to--although maybe not as

1 detailed as the exhibit previously entered,
2 showing the casing diagrams in the Tycksen well
3 and the Gallegos Canyon well of BHP.

4 Please note in the Tycksen well,
5 showing the casing program and it's tough to
6 read. The 13-3/8 casing is a water string with
7 no cement. There's 10-3/4 casing at 56 feet that
8 was cemented with 25 sacks of cement. 8-5/8
9 casing is shown to be at 520-some feet, no
10 cement. 7-inch casing set at a greater depth. I
11 can't read that. Looks like 962 feet, and it has
12 no cement.

13 Mr. Walsh indicated with an X the
14 openhole section that was drilled in this
15 wellbore and, with a slashed area, he has
16 indicated the plugged back or cement that was put
17 in this well after the PC was tested. There's a
18 1-inch siphon string in there.

19 It shows a total depth of 1230 feet
20 and, although not to scale, this is showing the
21 two wellbores or we wish to show the two
22 wellbores are approximately 121 feet apart.

23 On the right side, indicating the
24 7-inch casing at approximately 187 feet cemented
25 to surface, with 125 sacks of cement, and 4-1/2

1 casing at 1365 feet, and that was circulated with
2 360 sacks of cement.

3 Basically, we are wanting to show the
4 location of the Fruitland Sand formation between
5 approximately 886 to 919, the BHP Fruitland Coal
6 zone at 1152 to 1182.

7 Q. How much vertical separation does that
8 result in between the zone producing in the
9 Tycksen well and the proposed interval for the
10 Gallegos Canyon 391?

11 A. Approximately 233 feet.

12 Q. What's the distance from the top of the
13 cement plug for the top of the coal?

14 A. 82 feet.

15 Q. Let's move now to Exhibits 3 and 4, and
16 I think we probably ought to go first to Exhibit
17 No. 4 and I would have you first explain what
18 this is to the Commission and then point out the
19 relevant portions.

20 A. In Mr. Walsh's records, he had a
21 completion diagram or this program presented by
22 the Western Company for the 70-quality foam. I
23 believe this was specifically for the Gallegos
24 Canyon Unit No. 390. We're assuming that the
25 same pumping schedule would be used for 391.

1 These are for the purposes of showing
2 the length of the fracture away from the
3 wellbore, and what the hoped-for sand
4 concentration will be in that fracture, out away
5 from the wellbore.

6 In the middle of the table there are
7 two columns, location and fracture, (feet) from
8 and to. They're trying to show, if we start at
9 the bottom, there's going to be eight pounds of
10 sand per gallon from the wellbore, out to 109
11 feet, seven-pound-per-gallon sand could be from
12 109 out to 186 feet.

13 You can follow that back up where the
14 fluid would reach 688 feet, and that is the pad
15 and that would probably be nothing but foam.

16 Q. What does that 688-feet figure
17 indicate?

18 A. It is the potential extent of the frac
19 out away from the wellbore.

20 Q. Let's move now to Exhibit 3. Would you
21 review that.

22 A. Mr. Walsh diagramed the location of the
23 Tycksen well relative to the Gallegos Canyon No.
24 391 showing it to be approximately 121 feet from
25 wellbore to wellbore. He has shown the radius of

1 the 688 feet of the potential length of the foam
2 or the extent of the frac.

3 The 121 feet I mentioned, if we go back
4 to the sand concentration, should it break into
5 the Tycksen wellbore, there's a potential,
6 according to this frac schedule, that you could
7 put seven-pound sand into the wellbore of the
8 Tycksen.

9 I believe if you added up the
10 cumulative fluids, if that seven-pound sand
11 should reach the wellbore, there would be quite a
12 bit of fluid that also preceded it, and sand.

13 He has outlined, drawing to the
14 southwest-northeast, an apparent direction of
15 fractures coming very close to the wellbore of
16 the Tycksen.

17 Q. Mr. Simmons, you were present when Ms.
18 Torbet testified about the face cleat strike in
19 the formation, were you not?

20 A. Yes, sir.

21 Q. In your experience, can the orientation
22 of these fractures of these face cleats be
23 plotted with the precision shown on BHP's Exhibit
24 11-C?

25 A. I doubt it.

1 Q. When is it that you're actually going
2 to know whether or not the Tycksen wellbore has
3 in fact been damaged?

4 A. We'll flip the coin. We'll frac the
5 well, and it will either go in there or it won't.

6 Q. Is there any way you can control the
7 direction of these fractures within the
8 formation?

9 A. To my knowledge, no. The fracture will
10 seek the path of least resistance.

11 Q. What do Exhibit 3 and 4 tell you?

12 A. There's a likelihood or good
13 probability that the close proximity of these
14 wellbores and the close proximity to the
15 anticipated apparent direction of the fracture,
16 there's a good likelihood this fracture would get
17 into the wellbore of the Tycksen and damage it.

18 Q. What sort of damage are you talking
19 about?

20 A. The Tycksen well has produced for quite
21 a few years. We could lose what reserves in the
22 Fruitland Sand do exist presently.

23 If we go back to diagram or Exhibit 3,
24 my most major concern perhaps is not the damage
25 to the Fruitland Sand, but there's no cement in

1 the Tycksen wellbore. There are a lot of water
2 strings there. Should that fracture get into it,
3 there's a high likelihood it would travel up
4 behind the strings and could reach surface waters
5 in the area.

6 Q. Are there surface waters in the area?
7 Do you know that?

8 A. Yes, sir, personally.

9 Q. How do you know that?

10 A. There's a home approximately 2- or 300
11 feet to the south of this wellbore. It's owned
12 by a friend of mine. I used to practice softball
13 out in his field. He has fresh water coming up
14 right at the base of the hill behind his home.

15 Q. This is how close to the subject well?

16 A. I think within 500 feet.

17 Q. Is this water being used for domestic
18 purposes?

19 A. They are irrigating with it, and the
20 cattle are drinking the water.

21 Q. What is the current status of the
22 Tycksen No. 1?

23 A. It is currently shut in.

24 Q. Has this well been an economic well?

25 A. It has indeed.

1 Q. And on what do you base that statement?

2 A. They had a contract that was paying \$7
3 per Mcf until 12/31/91.

4 Q. What are the current plans that Mrs.
5 Locke has for the well?

6 A. A reevaluation of the possibility into
7 the Pictured Cliffs formation. My understanding
8 the Fruitland Sand has never been
9 fracture-treated which opens up a possibility
10 there. And if we're not force pooled and she
11 owns the rights to the Fruitland Coal, she could
12 re-enter and make this a coal completion.

13 Q. And that's a use that, in fact, could
14 be made of it?

15 A. Definitely so. This is a viable,
16 sellable wellbore.

17 Q. Is this a valuable property asset for
18 current or future production in natural gas?

19 A. I believe so.

20 Q. You stated that Mrs. Locke seeks no
21 risk penalty if the Commission pools these
22 lands. What are you basing that recommendation
23 on?

24 A. There's always a risk to a completion.
25 BHP admitted that 10 percent on completion would

1 be a risk factor. Any time you drill a well, if
2 you're going to drill it, you don't know what's
3 down there, what you'll end up with, or the
4 trouble that it takes to get there. However,
5 we're there. All we have to do is complete the
6 well. I think there's very little risk.

7 Q. You heard BHP recommend a 150-percent
8 penalty. Do you think that's appropriate in this
9 case?

10 A. Totally inaccurate--inappropriate.

11 Q. If a penalty is imposed, what do you
12 recommend?

13 A. I would go along with their 10 percent
14 for the completion.

15 Q. Let's go to what has been marked as
16 Locke Exhibit No. 5. Could you identify this
17 please?

18 A. Exhibit No. 5 is a memorandum,
19 in-house, from Paul Bertoglio to Cole McGary of
20 BHP Petroleum. Prior to the drilling of the
21 Gallegos Canyon Fruitland Coal from PCs, Mr.
22 Bertoglio put together an extensive evaluation,
23 cost analysis, future cash reserves, and
24 justified the drilling program for management.
25 It was very detailed and a very good job.

1 Q. Basically, what does this report tell
2 us about the pilot project and the desorption of
3 the formation of the cores that resulted during
4 that time?

5 A. On page 2, one comment that I thought
6 was very important is that the results of the
7 project, speaking of the pilot project to date,
8 have been encouraging, especially for the wells
9 drilled in the strip acreage, and it is in the
10 northern area of the PA where the coal seam is
11 the thickest. So he felt confident about that.

12 Q. Is desorption discussed on page 3?

13 A. He speaks in paragraph two, "Three of
14 the four Fruitland Coal Seam wells completed in
15 the pilot project to date have test rates and
16 pressures similar to the best wells completed in
17 the Pictured Cliffs in the PA. These wells, the
18 377, which is an offset direct to the 391, the
19 383 and 385 are all located at the north end of
20 the unit where the majority of the proposed wells
21 are located and where the coal seam is the
22 thickest. Ultimate recoveries for these wells
23 will exceed 2 Bcf per well if, as anticipated,
24 they perform similar to the Pictured Cliffs
25 wells."

1 And above that, "Due to the production
2 characteristics," in the center of that
3 paragraph, "of increasing initial gas rates along
4 with declining water rates, an estimated ultimate
5 recovery is much greater than can be justified by
6 volumetric calculation. It is believed that the
7 Fruitland Coal Seam is also being produced in the
8 large percentage of the newer Pictured Cliffs
9 wells."

10 In general, and I'm speaking down in
11 the reserve section, middle of the paragraph,
12 starting after the word in quotes, strip, "In
13 general, the available desorption data to date
14 from the cores taken in the pilot coal
15 development project supports the maximum case gas
16 content values for both these scenarios."

17 Q. Is the risk associated with the
18 drilling of the Gallegos Canyon wells 390 and
19 391, also discussed in this report of Mr.
20 Bertoglio?

21 A. The risk that Paul, or Mr. Bertoglio,
22 placed on this project was 20-percent probability
23 of a dry hole. We always put some risk of a dry
24 hole in every venture that we risk-analyze in the
25 cash flow analysis. He, afterwards, used

1 80-percent probably of a producer, but he rated
2 those on a distribution curve of a minimum case
3 producer, a most likely case producer, and a
4 maximum case producer. Good economics, as good
5 engineering.

6 He felt like there was 80-percent
7 chance it was going to be a producer. Of that,
8 the minimum would be a 200-a-day well, increasing
9 or inclining to 300 Mcf a day within a six-month
10 period. It's a good well for this depth, I
11 think.

12 Q. Based on this information, do you have
13 an opinion as to whether or not this is a
14 high-risk venture?

15 A. I think it's not a high-risk venture.

16 Q. Do you think it would be consistent,
17 based on this report, to assign a 10-percent risk
18 penalty if one has to be assigned at all?

19 A. Yes, sir.

20 Q. When you present when Ms. Torbet
21 presented BHP Exhibits 12, 12-A and 13, which
22 were gas analyses on Fruitland Sand and Fruitland
23 coal wells in the immediate area?

24 A. Yes, sir.

25 Q. Have you had after opportunity to

1 review those?

2 A. Yes, sir.

3 Q. Do you need copies of those?

4 A. I do not have copies.

5 Q. You're familiar with the BTU figures
6 which are reflected on each of these?

7 A. Yes, sir.

8 Q. Do these BTU figures enable you to
9 definitively state whether or not there has been
10 commingling in the subject wellbores of Fruitland
11 Coal, Fruitland Sand and Pictured Cliffs
12 production?

13 A. I definitely cannot.

14 Q. What do you base that on?

15 A. Even in the two examples, 12-A and 12,
16 1131 and 1206, percentage-wise it's very much
17 different. Those are Fruitland Sands. That's
18 quite a variety there.

19 I have personal knowledge of increasing
20 in my two wells that I've operated for seven
21 years. BTU started below a thousand, and
22 presently is 1034, so it has increased over time
23 and has bounced around during the period.
24 They're sampled, I think, every six months, maybe
25 every three months now, just so we get paid

1 correctly for our BTU consent.

2 You could put a case out that the 1131
3 being less than the 1206, that the gas from the
4 Tycksen is being diluted by coal gas, which we
5 might assume would start around 1000.

6 Q. From this, alone, though, you cannot
7 tell whether or not there has been commingling or
8 segregation of the zone?

9 A. No, I cannot.

10 Q. You were here a few moments ago when
11 Commissioner Carlson was discussing the project
12 justification on the BHP AFE, were you not?

13 A. Yes, sir.

14 Q. You're aware that based on the
15 testimony of Ms. Torbet, it was based on perhaps
16 a higher gas price than what's utilized today in
17 some escalating gas production rates?

18 A. That is correct.

19 Q. Even in view of those things, looking
20 at a payout of 1.922 years, does this, even in
21 view of those changes, would it affect your
22 opinion as to whether or not this was a high-risk
23 venture?

24 A. No, sir.

25 Q. Is this a high-risk venture?

1 A. No, sir.

2 Q. Were Exhibits 1 through 5 either
3 prepared by you or compiled under your direction
4 or supervision?

5 A. 1 through 5 were compiled by Red Walsh,
6 and I reviewed them for the accuracy of his
7 figures.

8 Q. Are you satisfied that they are
9 accurate?

10 A. Yes, sir.

11 MR. CARR: At this time, Mr. Chairman,
12 we would move the admission of Locke Exhibits 1
13 through 5.

14 CHAIRMAN LEMAY: Without objection,
15 Exhibits 1 through 5 will be admitted into the
16 record.

17 MR. CARR: I pass the witness.

18 CHAIRMAN LEMAY: Thank you, Mr. Carr.
19 Mr. Bruce?

20 MR. BRUCE: Thank you, Mr. Chairman.

21 EXAMINATION

22 BY MR. BRUCE:

23 Q. Mr. Simmons, please refer to Locke
24 Exhibit 3.

25 A. Would you give me a copy, please?

1 Exhibit 3?

2 Q. Yes. It says on there, it gives an
3 apparent direction of fractures. What is that
4 derived from?

5 A. Testimony given in the prior hearing, I
6 read where the BHP engineer said it was
7 southwest-northeast.

8 Q. There's no other basis for it?

9 A. No.

10 Q. You haven't conducted any tests?

11 A. No. I'm not a geologist. I'm aware of
12 GRI's opinions. I've read some information in
13 other geological books. I don't know that I
14 could define or depict the proper orientation of
15 the frac in this area or in any area in the
16 Basin. Relative, perhaps, but define, no.

17 Q. So Red Walsh didn't have any knowledge
18 of orientation either, did he?

19 A. I believe Red took this from testimony
20 that he heard, prepared this, and asked--I don't
21 know who he asked.

22 Q. But that's not really
23 northeast-southwest? That's really more--that
24 line goes from south-southwest to
25 north-northeast, doesn't it?

1 A. Fairly relative, isn't it?

2 Q. And you have no basis to challenge the
3 GRI study, do you?

4 A. I have no basis to agree with it.

5 Q. Or to challenge it?

6 A. No, sir.

7 Q. How long has it been since the Tycksen
8 well produced?

9 A. To my knowledge, the end of 91.

10 Q. How many months during 1991 did it
11 produce?

12 A. I do not know.

13 Q. Is it currently receiving that \$7 per
14 Mcf of gas?

15 A. To my knowledge I believe not.

16 Q. Has production from the Tycksen No. 1
17 well been affected by the 391 well?

18 A. The 391 has not been completed, no,
19 sir. It has not been affected, and I couldn't
20 tell you if it had been.

21 Q. You agree it is producing from the
22 Fruitland Sand?

23 A. I agree that it probably is producing
24 from the Fruitland Sand. However, there is a
25 likelihood that the Fruitland Coal is producing

1 with it.

2 Q. What is that likelihood based on?

3 A. The likelihood that the coal would give
4 up the gas and the cement plug, possibly 39 years
5 old, deteriorated. We don't know the validity of
6 that coal--or that plug right now. Just a hunch
7 perhaps.

8 Q. And the two gas analyses on the two
9 Fruitland Sand wells don't sway your opinion?

10 A. No, sir. I've operated and drilled
11 several Fruitland Coal wells throughout the
12 Basin. I operate four wells now that have BTUs
13 over 1265.

14 Q. Now, you talked about the wellbore and
15 the potential of damage. Do you think that
16 completion of the 391 well will damage the
17 Tycksen well?

18 A. What I am really concerned about in
19 that Tycksen wellbore, if you get a frac into it
20 from the 391 and hit those surface water sands,
21 you're in trouble.

22 Q. You say if. There could be a zero
23 percent chance of that?

24 A. Absolutely. We agree with your
25 engineer that we have to frac it and find out.

1 Q. On the other hand, at the same time
2 you're saying, "Hey, this is a viable wellbore
3 and you ought to be using it to drill down to the
4 Pictured Cliffs or the Fruitland Coal"?

5 A. That's correct.

6 Q. That's kind of contradictory--

7 A. No, it isn't.

8 Q. --for such a poor wellbore?

9 A. No, it isn't You have seven-inch pipe
10 hanging in the wellbore. Plenty of room to
11 re-enter that and put 4-1/2, and cement back to
12 surface, making it a better wellbore.

13 Q. Now, when you say fracturing in the
14 Fruitland Coal, what about fracturing a well in
15 the Fruitland Sand? Would that harm the Tycksen
16 well?

17 A. If there were a well about 121 feet
18 away from the Tycksen wellbore and we frac'd it
19 in the Fruitland Sand, would it hurt the
20 wellbore? Is that what you're asking?

21 Q. Yes.

22 A. Are you an engineer? You think that
23 could happen?

24 Q. I'm asking you.

25 A. I think it could damage it, yes. Now,

1 121 feet, the State is not going to let us drill
2 wells 121 feet apart and complete them in the
3 same zone, are they.

4 Q. What if it's 300 feet or 500 feet?

5 A. I'll tell you what. I've drilled and
6 completed a well at 7000 feet, 660 feet away from
7 another well, and the offset operator frac'd the
8 well and killed my well. I made 200 barrels a
9 day flowing, and it went to zero. Yes, you can
10 damage it with an offset frac.

11 Q. Mr. Simmons, are you aware that BHP GCU
12 No. 340 well was completed in the Fruitland Sand
13 in, looks like, the southwest quarter of the
14 northwest quarter of Section 24, immediately to
15 the east of the Tycksen well?

16 A. No, sir.

17 Q. Mr. Simmons, I've handed you BHP
18 Exhibit 15. Would you identify what that appears
19 to be?

20 A. Well Recompletion Report and Log, for
21 the State of New Mexico Oil Conservation
22 Division. Subject: BHP Petroleum (Americas)
23 Gallegos Canyon Unit No. 340. They call it the
24 North Pinon Fruitland Sand in San Juan County.

25 It gives the elevation, gives the

1 location and the date, and all the pertinent
2 information as to the drilling and completion,
3 casing and stimulation of the well. It also
4 indicates the test information at the bottom.

5 Q. And this well is just to the east a few
6 hundred feet of the Tycksen well, isn't it?

7 A. I don't know that.

8 Q. Well, the Tycksen well is in the
9 northeast quarter of Section 23, isn't it?

10 A. Yes, sir.

11 Q. And this completion report indicates
12 that this well is in the northwest quarter of
13 Section 24?

14 A. Yes, sir.

15 Q. 29/13?

16 A. Yes, sir.

17 Q. That would be immediately to the east,
18 wouldn't it?

19 A. Well, you know, in general direction
20 it's immediate. There's quite a few feet between
21 the wellbores.

22 Q. Was this well, how was it completed?

23 A. It appears to have been stimulated by
24 70-quality foam with 33,500 pounds of 12/20 sand
25 and 145,000 cubic feet of nitrogen at 20 barrels

1 per minute.

2 Q. Have you noted in your study of the
3 Tycksen well any adverse effect on the Tycksen
4 well from the fracturing and stimulation of this
5 Gallegos Canyon Unit No. 340 well?

6 A. I don't have a calculator. How far
7 apart are they.

8 Q. Well, I would say they're about--what
9 is it, 990 plus 475?

10 A. 1300, 1400 feet?

11 Q. 1465. Have you noticed anything?

12 A. I wouldn't expect any negative results
13 at that distance, no.

14 Q. But you just said you have noticed in
15 other wells an adverse effect up to 7000 feet?

16 A. I drilled a well that was over 7000
17 feet deep. You understand that? The wellbore
18 that was offsetting us was 660 feet away. Not in
19 the Fruitland Sand, not in the Fruitland Coal, it
20 was in the Gallup.

21 The fracture from that well 660 feet
22 away entered our wellbore.

23 Q. Okay.

24 A. Now, what is the point you're making?
25 This is 1400 feet apart and I'm 660 feet apart.

1 The Gallup is a highly fractured formation. I'm
2 just telling you, they can get between wellbores
3 and 1400 feet is a lot farther than 121 feet.

4 Q. You're saying that it's conceivable
5 that fractures might extend beyond 700 feet?

6 A. It did in that one case, and Western
7 Company is saying that this particular design
8 could go out to 688 feet.

9 Q. Could go further?

10 A. That's very possible.

11 Q. But you haven't seen any effect from
12 the completion of this well on the Tycksen well?

13 A. No, sir, I haven't.

14 Q. Now, looking down at the calculated
15 24-hour flow rate, what is that?

16 A. 550 Mcf.

17 Q. Were you sitting here listening when
18 Mr. Reinhardt testified?

19 A. Yes, sir, all day.

20 Q. Did you hear him testify that the BLM
21 determined that this well was noncommercial for
22 unit purposes?

23 A. No, sir, I don't know that he
24 specifically stated that or I did not pay
25 attention to that fact.

1 Q. Mr. Simmons, what basis do you have for
2 saying that foam will damage the water aquifer?

3 A. I am more concerned at what will come
4 later. If we do communicate to the Tycksen
5 wellbore and create a fracture and we prop it
6 open as the design says we possibly could, if we
7 are all incorrect or one of us is correct and the
8 other one is incorrect about the direction of the
9 fracture pattern and it gets there, eventually
10 we're going to get gas in the wellbore. If the
11 wellbore is shut in, it's going to go up behind
12 the casing. It's just what I would assume. The
13 pressure from that Fruitland Coal will get in
14 behind those surface strings that are not
15 cemented, and get into the surface water.

16 Q. You also testified about Mr.
17 Bertoglio's economics. These are pre-drilling
18 economics, aren't they?

19 A. Yes, sir.

20 Q. So you might risk things differently
21 than Ms. Torbet might?

22 A. Yes. I believe he based his risk on a
23 pilot program.

24 Q. One final question. If Locke-Taylor
25 Drilling Company is concerned about the aquifer,

1 wouldn't it be best for the Tycksen well to be
2 plugged?

3 A. The OCD has not requested that to me.
4 Haven't had any problems thus far, as you can
5 tell.

6 Q. No problems?

7 A. You might create a bigger problem.

8 MR. BRUCE: That's all I have, Mr.
9 Chairman.

10 CHAIRMAN LEMAY: Mr. Carr.

11 FURTHER EXAMINATION

12 BY MR. CARR:

13 Q. To be sure I understand your last
14 point, Mr. Simmons, to date there is no
15 environmental problem you're aware of related to
16 the operation of the Tycksen well?

17 A. That I'm aware of, there's no
18 environmental problem present in the area due to
19 the condition of the Tycksen wellbore.

20 Q. Mr. Bruce asked you at some length
21 about the BHP Gallegos Canyon Unit No. 340, that
22 offsets the Tycksen well to the east?

23 A. Yes, sir.

24 Q. And pointed out you've apparently not
25 seen any problem in the Tycksen well because of

1 the completion in this well?

2 A. That's correct.

3 Q. Just because there is not a problem
4 between two wells 1465 apart, does it have any
5 bearing on whether or not you'll have potential
6 problems when a well is completed, or other wells
7 are completed in close proximity to one another?

8 A. Logically, I think you have a higher
9 probability of a problem occurring, the closer
10 you get together.

11 Q. This morning, Mr. Reinhardt testified
12 that the BLM ultimately declared that after this
13 well's producing rate declined, it was declared
14 noneconomic for unit purposes. You heard Mr.
15 Bruce raise that point with you?

16 A. Yes, sir.

17 Q. Aren't economic factors and what makes
18 an economic well, dependent upon the economics of
19 the individual owner or operator?

20 A. Absolutely.

21 Q. Isn't the price you can sell your gas
22 for one of the elements and factors into that?

23 A. Absolutely.

24 Q. The Fruitland Coal wells that are now
25 coming in at 300, which is 250 below this well,

1 they're probably going to be uneconomical too,
2 isn't that right?

3 A. It could be.

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

5 MR. BRUCE: I would move the admission
6 of Exhibit 15.

7 CHAIRMAN LEMAY: Without objection,
8 Exhibit 15 will be admitted into the record.

9 Commissioner Carlson?

10 EXAMINATION

11 BY COMMISSIONER CARLSON:

12 Q. I understand the status of the Tycksen
13 well, it is now shut in.

14 A. Yes, sir.

15 Q. Is it capable of producing gas? Why is
16 it shut in?

17 A. Their contract was abated or ended at
18 12/31/91. They don't have the contract
19 presently.

20 Q. But it still can produce gas now
21 without being worked over?

22 A. Yes, sir. To my knowledge, it can.

23 Q. How much gas is that well capable of
24 producing?

25 A. I don't know. I see in testimony it

1 was making 10, 15 Mcf per day last production. I
2 don't know.

3 Q. When you looked at the risk analysis, I
4 believe you were looking at BHP Exhibit No. 11,
5 you agreed that there was a potential
6 10-percent-completion risk, is that correct?

7 A. I agreed to that, sir. There is always
8 a risk on any completion.

9 Q. But you don't recommend any risk factor
10 for anything else involved with the drilling?

11 A. No, sir, I don't. The well is
12 drilled. We have a wellbore, we have it
13 cemented, and here we are trying to decide
14 whether there is a risk involved to drilling the
15 well. There are no risks to drilling the well.
16 There remains a risk to the completion of the
17 well.

18 Q. What you're saying, then, is this
19 Commission, every time there's a forced pooling
20 case where the well has already been drilled,
21 they should assign no risk whatsoever toward
22 drilling that well if it's successful?

23 A. No, I'm not saying that. I'm saying
24 that if I am going to drill a well which you have
25 a chance to participate in, and I do not come to

1 you personally and ask you if you want to
2 participate, in a timely fashion, and I take the
3 risk upon myself to drill and complete the well,
4 I would love to come to you, especially if I've
5 got a coal seam or any kind of zone there that
6 looks like it could be a good well, and charge
7 you an extra 156 percent. That's good
8 economics.

9 Now, if I asked you ahead of time if
10 you wanted to participate in that well and you
11 duly declined, in a timely fashion, before we
12 drill it, then perhaps you should pay the 156
13 percent or 200 percent. I have held out of some,
14 and I'm paying a 300-percent clause, personally.

15 CHAIRMAN LEMAY: I have a couple of
16 questions here, Mr. Simmons.

17 EXAMINATION

18 BY CHAIRMAN LEMAY:

19 Q. Did you make any evaluation of the
20 value of that Tycksen well, either for its
21 mechanical value or the remaining gas reserves
22 discounted?

23 A. The Tycksen wellbore in the Fruitland
24 Sand, or the--

25 Q. The well today, would it have a market

1 value?

2 A. I did not do a cash flow market
3 analysis of the Tycksen Fruitland Sand, sir. I
4 did not.

5 Q. Do you have any estimate as to its
6 value today in the free market?

7 A. I would hate to offer an opinion.

8 Q. Your Exhibit No. 4, the Western Company
9 frac, does that assume that that distance is
10 horizontal or horizontal-vertical, or a
11 combination of both?

12 A. I think all fractures, the distance
13 away from the wellbore is controlled by the
14 height of the fracture. They may be making an
15 assumption that it's going to stay in the coal
16 completely; i.e., it's going to stop at the top
17 of the coal or stop at the bottom of the coal.
18 Does that happen? Probably not. It probably
19 could get in if there's a sand above it or the
20 Pictured Cliffs below. There's been a lot of
21 assumptions made as to where a frac has gone.

22 We analyze fractures by the shut-in
23 pressures and the fracture gradient, and the
24 fracture gradients typically vary across the
25 Basin in the Fruitland Coal, as they do in the

1 sandstones, Dakota, Gallup, Mesaverde. An
2 assumption is made based on these fracture
3 gradients shown to calculate a shut-in if it
4 stayed in the coal. And sometimes they calculate
5 it much lower and we anticipate they probably
6 went into the Fruitland or in the Pictured
7 Cliffs.

8 Q. When Western put out that table, are
9 they assuming it's a horizontal distance confined
10 to the fracture?

11 A. I believe so.

12 Q. You mentioned you're familiar with the
13 surface area to some extent, I guess; you have a
14 friend that has a house there, and so forth.
15 Looking at Exhibit No. 1, are you familiar,
16 anywhere on the surface here, of currently any
17 gas contamination of fresh water supplies?

18 A. No, sir.

19 Q. You're familiar, are you, that we have
20 had, in the San Juan Basin, some cases of gas
21 contamination of fresh water supplies?

22 A. Yes, sir, I am.

23 Q. Both from old wellbores, deeper gas and
24 from the Fruitland becoming, basically, a gas
25 transportation transformation now and

1 intersecting line?

2 A. I've heard two different opinions.
3 When the claim is of a new wellbore being
4 produced and properly cemented to the surface, if
5 I do that I'm going to claim that I'm not
6 contaminating the surface waters; so a contention
7 to some of these closely related wellbores that,
8 in the past, were not cemented across the
9 Fruitland.

10 You drill a Dakota well, set an
11 intermediate 7-inch string and tack it with 150
12 sacks of cement, a lot of times left the
13 Fruitland Coal open. I've heard a theory that
14 production from the well cemented Fruitland Coal
15 creates this desorbing action which releases gas
16 in the old wellbore, that comes up behind the
17 wellbore. I discussed this with Ernie Busch at
18 the Aztec OCD. It's a good theory, I guess. I
19 don't know whether you could prove it or not, but
20 there's a problem.

21 Q. There have been certain areas, and I
22 was curious whether you were familiar with any
23 problem in this particular area?

24 A. No, nothing that has come about. There
25 was a lot of problems in the Cedar Hill area.

1 I've drilled quite a few wells up north of that,
2 east, and around that area for MacKenzie Methane
3 and other independent operators, and we're very
4 doggone careful as to how we cement those wells.

5 And eve if we do cement them full
6 string, we get honeycomb in the cement, and I've
7 had to go back and squeeze the braidenhead
8 because you circulate cement with a witness there
9 watching it from the BLM, and yet three months
10 later I got 150 pounds on the braidenhead.

11 Where does it come from? It came up
12 through the cement. How do we cut it out?
13 That's yet to be determined. It's a problem.
14 Any cemented well, if there's any gas liberated
15 from the zone as the cement passes, it's possible
16 it will honeycomb it. I've seen that quite a
17 bit. We've changed cement techniques and
18 qualities of cement and types of cement up in the
19 Cedar Hill and the bonded area, to try and
20 eliminate this honeycombing effect.

21 CHAIRMAN LEMAY: That's all the
22 questions I have.

23 Additional questions of the witness?
24 If not, he may be excused.

25 Additional witnesses? Are we

1 finished? Great. Did you want to sum up
2 briefly?

3 (Discussion off the record.)

4 CHAIRMAN LEMAY: All right, Mr. Tully.

5 MR. TULLY: I would like to thank the
6 Commission. It's been a long day. We really
7 appreciate the opportunity to finally have a full
8 hearing on the matter.

9 Also, as you have gathered up, we have
10 numerous issues that need to be resolved, legal
11 issues. I think you probably especially noticed
12 it when I asked, at least five different times,
13 answers to questions pertaining to the commitment
14 or the not commitment and the trespass issues
15 where Mr. Bruce objected because I was asking for
16 a legal conclusion.

17 As you recall, when we first started
18 today's hearing, we made a Motion to Continue
19 because we knew there would have to be legal
20 determinations made.

21 At this time, I would be glad to
22 outline what we think the legal issues are. If
23 you think you've pretty well identified them, I
24 won't spend time doing that. I've got it in
25 summary form, just whatever the pleasure of the

1 Commission is.

2 CHAIRMAN LEMAY: I think what I'll ask
3 for is draft orders from both counsel, anyway,
4 and certainly feel free to summarize in those
5 recommended draft orders.

6 MR. TULLY: That's fine. Why don't we
7 do that. We'll just submit written closing
8 arguments. But I would like to point to the
9 attention of the Commission statutes NMSA 72-12.
10 And in particular I'll talk about the damage to
11 the Tycksen well first, and then conclude with
12 the trespass or commitment issue.

13 Please note that in 72-12(B)(2) that
14 the New Mexico Oil Conservation Division, which
15 is a crfeature of statute, has certain duties and
16 responsibilities that it must comply with.
17 Number two is, it must prevent--and I'm going to
18 summarize this to bring it specifically into
19 these situations, to prevent natural gas or water
20 from escaping from strata in which it is found
21 into other strata.

22 You've heard expert witness testimony,
23 even though it may be contradictory, but we do
24 have that question here. We also have in number
25 4, "To prevent the drowning by water of any

1 stratum or part thereof capable of producing gas
2 and in paying quantities, and to prevent the
3 premature and irregular encroachment of water and
4 any other kind of water encroachment which
5 reduces or intends to reduce the ultimate
6 recovery of gas from any pool.

7 And then, number 7, "To require wells
8 to be drilled, operated and produced in such
9 manner as to prevent injury to neighboring leases
10 or properties. Now, you can see how all of those
11 fit into the situation pertaining to the
12 completion of the 391 well and the Tycksen well.

13 Now, here's, I guess, the most
14 important thing that I want to bring out to you.
15 And you can tell that this title issue, or this
16 trespass issue, is very important, also. But
17 number 8 of this same statute specifies the
18 specific duties of this Commission, to identify
19 the ownership of oil or gas producing leases,
20 properties, wells, tanks, et cetera, et cetera.

21 Notice it says "to identify the
22 ownership." We're here today, and we have
23 different ideas insofar as the right to drill.
24 We also have different ideas as to the ownership
25 of the right to drill and who can drill on

1 these. And so based upon these particular and
2 specific powers that are given by statute to the
3 Oil Conservation Division and to the Commission,
4 at this time we would like to again move to
5 continuing these hearings until after there is a
6 determination made of the legal issues pertaining
7 to the commitment or noncommitment, and also a
8 determination as to the issues pertaining to the
9 damage to the Tycksen well.

10 Thank you. And we will submit our
11 appropriate closing statement.

12 CHAIRMAN LEMAY: Thank you very much,
13 Mr. Tully. Mr. Bruce?

14 MR. BRUCE: First I'll address one of
15 Mr. Tully's points. It says "Identify the
16 ownership," however, you go to the force pooling
17 statute, Section 17(C), and it talks about force
18 pooling. "Where such owner or owners have not
19 agreed to pool their interest or where one such
20 separate owner has drilled or proposes to drill a
21 well," that's the basis of the force pooling
22 statute, together with the good-faith effort to
23 get the party to join.

24 Obviously, the Commission or the
25 Division must, in the first place, determine if

1 the applicant has the right to drill. That's why
2 we think it's proper for the Commission, for the
3 Division in an appropriate case, to make that
4 determination. We think we've supplied enough
5 information to the Commission to show that BHP
6 has the right to drill because the tract is
7 committed to the unit.

8 Mr. Tully's own Exhibit Q even states
9 that Tract 102 is committed to the unit, and
10 under Article 7 of the Unit Agreement, BHP then
11 has the right to drill.

12 One thing I really wanted to refer to,
13 Mr. Tully went on and on about Article 24 of the
14 Unit Agreement. One of the provisions he was
15 talking about, talked about joinder of nonworking
16 interest owners, and one of the specific comments
17 is, "After final approval of this agreement,
18 joinder by a nonconsenting interest owner, must
19 be consented to in writing by the working
20 interest owner committed hereto."

21 Obviously, by express terms of the Unit
22 Agreement, a working interest owner, alone, can
23 commit his interest without the joinder of the
24 royalty interest.

25 We've gone on at length and we can

1 submit our closing arguments, as Mr. Tully said,
2 but I think the exhibits make it clear that
3 although there was some question back in 1952,
4 there is no longer any question that BHP is the
5 sub-operator of Tract 102 because the working
6 interest is committed to the unit.

7 The second issue I would like to
8 address is good faith. Obviously, under Section
9 18 of the statutes, BHP is required to make a
10 good-faith effort to get Mrs. Locke's interests
11 committed to the well. Starting in October of
12 1990 and concluding about seven months later, in
13 May of 1991, BHP attempted to purchase Mrs.
14 Locke's interests. They offered her the highest
15 price they paid to anybody in the field, higher
16 than any price they paid.

17 It's true, BHP didn't offer a farmout;
18 however, a farmout offer isn't required by the
19 statute, it just requires a good-faith offer.
20 Mrs. Locke herself never requested a farmout,
21 never asked to join in the well during that
22 seven-month period. What BHP did offer was a
23 package worth approximately what Mrs. Locke's own
24 engineers evaluate the prospect at, and I didn't
25 hear any testimony today that Mrs. Locke has

1 received a better offer in the interim. In fact,
2 BHP would be glad if she joined in the well.
3 They would probably prefer that now to the
4 purchase offer they made some time ago, although
5 she's never been expressed that interest.

6 Now, most of the testimony today has
7 been directed at the 391 well. Once again, I
8 would like to point out that the 390 well, the
9 one the southwest quarter, there is no dispute
10 that BHP had the right to drill that well. It's
11 on its lease or on a lease it has under farmout
12 from Amoco, it had the right to orient the unit
13 as a stand-up unit. There was no evil intent in
14 the way it oriented the units, it just did
15 stand-up in that part of the field.

16 We urge the Commission to approve the
17 stand-up unit and designate BHP as operator of
18 that well. Once again, we point out that Mrs.
19 Locke's correlative rights will be protected
20 because she will receive her pro-rata share of
21 protection, which is mandated by the force
22 pooling statute.

23 Although it really didn't come out
24 today, as Mr. Stovall remarked once on the
25 record, there aren't competing force pooling

1 applications here, but some comments were made
2 about who should operate the well. In the prior
3 hearing, in which the record was incorporated,,
4 BHP testified it operates 180 wells in the area,
5 Locke-Taylor Drilling Company operates one or two
6 wells. Because these are Gallegos Canyon Unit
7 wells and because of its bigger or better
8 experience in the field, we think BHP should be
9 designated as operator.

10 Finally, Mr. Chairman, regarding
11 alleged damage to the Tycksen well, BHP's witness
12 testified that there would be no damage to the
13 Tycksen well. It would require an incredible
14 string of events. First, the fracture would have
15 to reach the well, it would have to be oriented
16 in that direction, the plug would have to
17 fracture, the fracture would have to go off the
18 plug, et cetera, et cetera, et cetera. We don't
19 think that's likely.

20 If, by some wild stretch of the
21 imagination it happens, we would note that if the
22 well is damaged, of course Mrs. Locke has her
23 remedy in court. We're not here to address that
24 particular issue today.

25 We also find it interesting that a year

1 ago, if you would refer, later on, to Exhibit 5,
2 BHP received a demand from Mr. Tully, on behalf
3 of Mrs. Locke, which made a number of demands,
4 one of which was to go ahead and complete the 391
5 well. Now they're saying, no, no, no, no, no,
6 don't complete it.

7 Frankly, we question why they wanted to
8 complete it then but now they say it might be
9 damaged. They say it might be damaged but,
10 nonetheless, it's still a good wellbore and it
11 should be used to drill down to the Pictured
12 Cliffs. They have conflicting reasons for
13 demanding that the 391 well not be completed. We
14 don't think those reasons have any basis in fact,
15 and we would urge the Commission to approve both
16 of these applications.

17 CHAIRMAN LEMAY: Thank you, Mr. Bruce.

18 Anyone who wants to make a statement or
19 present additional information in this case?
20 Okay. We'll leave the record open for 10 days
21 for additional information, and we'll take this
22 case under advisement. Thank you very much.

23 (And the proceedings concluded.)
24
25

CERTIFICATE OF REPORTER

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

I, Carla Diane Rodriguez, Certified
Shorthand Reporter and Notary Public, HEREBY
CERTIFY that the foregoing transcript of
proceedings before the Oil Conservation
Commission was reported by me; that I caused my
notes to be transcribed under my personal
supervision; and that the foregoing is a true and
accurate record of the proceedings.

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

WITNESS MY HAND AND SEAL March 26,
1992.


CARLA DIANE RODRIGUEZ, RPR
CSR No. 4

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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: FRED DONICA, RPR
DIVISION Certified Court Reporter
CCR No. 417

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

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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?

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

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

THE WITNESS: Yes.

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

THE WITNESS: We have not tried that.

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

EXAMINATION

BY MR. STOVALL:

Q. Open hole or cased hole?

A. These are all cased hole.

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

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

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

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

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

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

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

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

A. In all probability, the stimulation or frack job of the magnitude to be utilized on the 390 will intersect 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

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

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

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

The pooling decision does not control. The OCD is authorized to pool this acreage by compulsory process despite the pooling designation because when these leases were executed, the State of New Mexico Conservation Act had 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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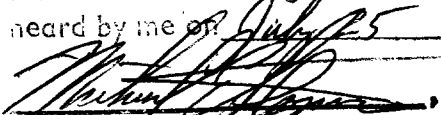
1 STATE OF NEW MEXICO)
2 :
3 COUNTY OF SANTA FE)

4 I, FREDA DONICA, RPR, a Certified Court Reporter, DO
5 HEREBY CERTIFY that I stenographically reported these
6 proceedings before the Oil Conservation Division; and that
7 the foregoing is a true, complete and accurate transcript of
8 the proceedings of said hearing as appears from my
9 stenographic notes so taken and transcribed under my
10 personal supervision.

11 I FURTHER CERTIFY that I am not related to nor employed
12 by any of the parties hereto, and have no interest in the
13 outcome hereof.

14 DATED at Santa Fe, New Mexico, this 16th day of
15 September, 1991.

16 
17 Freda Donica
18 Certified Court Reporter
19 CCR No. 417

20 I do hereby certify that the foregoing is
21 a complete record of the proceedings in
22 the Examiner hearing of Case Nos. 10345 + 10346
23 heard by me on July 25 1991.
24 , Examiner
25 Oil Conservation Division