

NEW MEXICO OIL CONSERVATION DIVISION

STATE OF NEW MEXICO

IN THE MATTER OF CASE NO. 10467:

The Application of Yates Petroleum
Corporation for Compulsory Pooling
and an Unorthodox Gas Well Location,
Eddy County, New Mexico.

(CONSOLIDATED)

IN THE MATTER OF CASE NO. 10473:

The Application of Nearburg Exploration
Company for Compulsory Pooling and an
Unorthodox Gas Well Location, Eddy
County, New Mexico.

BEFORE:

DAVID R. CATANACH

Hearing Examiner

State Land Office Building

April 30, 1992

REPORTED BY:

DEBBIE VESTAL
Certified Shorthand Reporter
for the State of New Mexico

COPY

A P P E A R A N C E S

FOR THE NEW MEXICO OIL CONSERVATION DIVISION:

RAND L. CARROLL, ESQ.
State Land Office Building
Santa Fe, New Mexico 87504

FOR YATES PETROLEUM CORPORATION:

LOSEE, CARSON, HAAS & CARROLL, P.A.
Post Office Drawer 239
Artesia, New Mexico 88211-0239
BY: ERNEST L. CARROLL, ESQ.

FOR NEARBURG EXPLORATION COMPANY:

KEMP, SMITH, DUNCAN & HAMMOND, P.C.
Post Office Box 2796
Midland, Texas 79702-2796
BY: J. RANDY TURNER, ESQ.

I N D E X

	Page Number
Appearances	2

WITNESSES FOR YATES PETROLEUM:

1. MIKE BURCH

Examination by Mr. Carroll	29
----------------------------	----

Examination by Mr. Turner	40
---------------------------	----

Further Examination by Mr. Carroll	48
------------------------------------	----

Examination by Examiner Catanach	51
----------------------------------	----

2. DAVID CROMWELL

Examination by Mr. Carroll	53
----------------------------	----

Examination by Mr. Turner	66
---------------------------	----

Examination by Examiner Catanach	68
----------------------------------	----

3. BRIAN COLLINS

Examination by Mr. Carroll	71
----------------------------	----

WITNESS FOR NEARBURG EXPLORATION:

1.	ROBERT SHELTON	
	Examination by Mr. Turner	89
	Examination by Mr. Carroll	116
	Further Examination by Mr. Turner	146
	Examination by Examiner Catanach	148
	Certificate of Reporter	168

E X H I B I T S

Page Identified

Yates Petroleum:

Exhibit No. 1	31
Exhibit No. 2	32
Exhibit No. 3	34
Exhibit No. 3-A	34
Exhibit No. 3-B	34
Exhibit No. 4	37
Exhibit No. 5	37
Exhibit No. 6	37
Exhibit No. 7	39
Exhibit No. 8	55
Exhibit No. 9	60
Exhibit No. 10	55

E X H I B I T S (CONTINUED)

Page Identified

Yates Petroleum:

Exhibit No. 11	61
Exhibit No. 12	62
Exhibit No. 13	62
Exhibit No. 14	62
Exhibit No. 15	73
Exhibit No. 16	83

Nearburg Producing:

Exhibit No. 1	116
Exhibit No. 2	102
Exhibit No. 3	103
Exhibit No. 4	129
Exhibit No. 5	102
Exhibit No. 6	102
Exhibit No. 7	102
Exhibit No. 8	102
Exhibit No. 9	116
Exhibit No. 10	116
Exhibit No. 11	116
Exhibit No. 12	116
Exhibit No. 13	116

1 EXAMINER CATANACH: At this time we'll
2 call Case 10467, which is the application of
3 Yates Petroleum Corporation for compulsory
4 pooling and an unorthodox gas well location, Eddy
5 County, New Mexico.

6 Are there appearances in this case?

7 MR. CARROLL: Yes, Mr. Examiner. I'm
8 Ernest Carroll of the Artesia law firm of Losee,
9 Carson, Haas & Carroll. I am here representing
10 Yates Petroleum in this application. Mr.
11 Examiner, I will have three witnesses for this
12 application.

13 I would also like to point out to the
14 Examiner at the time we filed these applications,
15 we actually filed, it was really -- it could have
16 resulted in three separate locations for a well.
17 And we would like for the record at this time to
18 point out that with respect to Case 10467, Yates
19 Petroleum will be pursuing the location which
20 would be 660 feet from the north line and 1330
21 feet from the east line of said Section 27.

22 We would also therefor like to give
23 notice that by making this election, Case 10472
24 would then no longer be necessary, and we would
25 dismiss the application made in that particular

1 case.

2 Mr. Examiner, I would also for the
3 record point out that there are competing
4 applications today before the Commission, or the
5 Division, and that other competing case would be
6 of Nearburg Exploration Company in Case No.
7 10473.

8 We would recommend to the Examiner at
9 this time that this Case 10473 be consolidated
10 with 10467 for the purpose of taking evidence
11 today.

12 EXAMINER CATANACH: Okay. Mr. Turner?

13 MR. TURNER: Yes. J. Randy Turner with
14 Kemp, Smith, Duncan & Hammond out of Midland,
15 Texas, entering an appearance on behalf of
16 Nearburg Exploration Company.

17 EXAMINER CATANACH: You have no
18 objection to the consolidation of the cases?

19 MR. TURNER: I have no objection to the
20 consolidation of the cases. However, as we
21 discussed prior to the recess, I at this time
22 would move for a continuance of those cases as
23 consolidated due to the recent discovery of the
24 existence of an operating agreement which creates
25 an agreement between the parties and effectively

1 pools the interests that are being asked to be
2 pooled by the Commission today.

3 It is our position that the interests
4 are pooled by virtue of the operating agreement,
5 and that really the Commission does not have
6 jurisdiction here in this case.

7 MR. CARROLL: Mr. Catanach, Yates
8 Petroleum does not consent to or agree with the
9 motion as posed by Mr. Turner, and we would ask
10 that the Division go ahead and hear evidence in
11 today's case.

12 The agreement, any kind of an
13 agreement, first of all, Yates takes the position
14 that the operating agreement that Mr. Turner
15 makes reference to does not bind Yates, nor can
16 Nearburg lay claim to being an operator under
17 that agreement.

18 The operating agreement that he makes
19 reference to is a 1969 or 67, I'm not sure,
20 operating agreement which makes Sinclair, Arco
21 the operator. The only claim that Nearburg can
22 make would be a successor operator. And we think
23 under the terms of that agreement they cannot lay
24 claim nor have they exercised their rights to be
25 a successor operator.

1 Mr. Turner made the statement that he
2 feels that the Division does not have
3 jurisdiction. Nothing within that operating
4 agreement deprives this Division of jurisdiction
5 to hear this matter.

6 The only grounds of which this Division
7 should consider for continuing a case would be if
8 Mr. Turner was not prepared to hear -- to present
9 this case, and I don't think that allegation has
10 been made. I think both parties are here to
11 present it.

12 The Division is -- it is Yates'
13 position there is no operating agreement.
14 Nearburg has not agreed to the operation of this
15 well by Yates, nor has Yates agreed to the
16 operation of this acreage and proposed well by
17 Nearburg. Therefore, it is a prime case for
18 compulsory pooling and should be heard by the
19 Division at this time.

20 MR. TURNER: Mr. Hearing Examiner,
21 Section 70-2-17 of New Mexico Statutes Annotated
22 is the pertinent statute that grants the
23 Commission the power to compulsory pool. And
24 that provision is very clear. That says that the
25 Commission has the authority to pool in the

1 absence of an agreement of the parties. The
2 parties have an agreement. An operating
3 agreement is in force that covers this tract.

4 Now, if Mr. Carroll needs additional
5 time to satisfy himself as to the existence of
6 the operating agreement, the effect of it, and as
7 to whether or not it's still in force and effect,
8 we think that we're very happy to grant him that
9 opportunity.

10 We think that in itself is grounds for
11 a continuance of this case to provide him the
12 opportunity to investigate the facts, as we have,
13 and we believe that he'll come to the conclusion
14 that it is in fact subject to this existing
15 operating agreement.

16 MR. CARROLL: Mr. Catanach, I have
17 examined the operating agreement and reached the
18 conclusion that it is not binding. I do not need
19 any further time. I don't think Mr. Turner can
20 claim any rights under that agreement. If Mr.
21 Turner wants to claim those rights, he has a
22 forum, not here in the Division.

23 But he can go to the courts and try to
24 seek enforcement of that agreement, which I feel
25 he will be unable to because, one, he is not the

1 named operator, nor has he exercised any of the
2 procedures within that operating agreement to
3 become the successor operator.

4 Therefore, basically what -- this is an
5 old-form operating agreement. There is no
6 agreement. The interests are fifty-fifty. They
7 can't -- neither side can win or appoint
8 themselves. The agreement is silent. It's null
9 and void. I think if Mr. Turner tried to
10 exercise or seek enforcement of it in the courts,
11 that's what he's going to find out, that there is
12 no agreement.

13 We stand by our position that there is
14 no agreement. We need no additional time. Our
15 application is pending, and we ask that our
16 application -- if Mr. Turner doesn't want his
17 application heard, that's fine. We want our
18 application heard because we think we're entitled
19 it to it. And we do not recognize any contract,
20 any operating agreement out here that would bind
21 us with Nearburg.

22 MR. TURNER: Mr. Hearing Examiner, I
23 concur with a lot of what Mr. Carroll says. I do
24 believe that this is not the proper forum for a
25 determination of the effect or existence of this

1 operating agreement.

2 But because the operating agreement has
3 been presented to Mr. Carroll, he has no evidence
4 to indicate that the operating agreement is not
5 in force. We believe that if there is a
6 disagreement about the existence of the operating
7 agreement, that we probably do need to move to
8 another forum to get that resolved.

9 But an order entered by the Commission
10 at this point with that dispute ongoing would be
11 of no force or effect and would not be binding on
12 either party. And we think it would be an
13 exercise that would be premature at this time to
14 undertake this hearing.

15 MR. CARROLL: Mr. Catanach, let me
16 respond to that because, Mr. Catanach, Mr. Turner
17 states that I have no evidence that it's not in
18 effect. It's Mr. Turner's burden to prove that
19 it's in effect. I don't have to. There is no
20 operating agreement. And unless he can show us
21 that there is one that has our name on it and has
22 Nearburg's name on it, then there is no operating
23 agreement.

24 In fact, I think by the fact that there
25 are opposing applications filed today -- they

1 filed an application for pooling -- tells this
2 Division and the Division must accept those
3 filings as conclusive evidence of the fact that
4 there is no operating agreement.

5 Now, if Mr. Turner thinks he has
6 additional rights, he has the court system which
7 he can go to which can stay it. But until he
8 goes to the court system, there is no reason that
9 Yates should be denied its right to have this
10 application heard and to seek this compulsory
11 pooling.

12 Mr. Turner is trying to seek the upper
13 hand here when he has nothing to seek it with.
14 And I think it's totally improper for the
15 Division to grant his request because at this
16 point the burden is on him, and he hasn't
17 sustained the burden. And the proper forum to
18 determine whether or not that agreement is proper
19 is not the Division.

20 He cannot have that sustained. There's
21 no way or procedure by which this Division can
22 determine the bindingness of that operating
23 agreement unless he can show to the parties that
24 our signature is on it, which he cannot, then the
25 Commission must accept at face value the fact

1 that opposing applications were filed, the
2 Commission must accept that.

3 Both parties filed these things. And I
4 think therefor the Division is appropriate to
5 take the evidence today.

6 EXAMINER CATANACH: Mr. Turner, may I
7 see a copy of this operating agreement?

8 MR. TURNER: Yes. The operating
9 agreement was entered into as a result of this
10 farmout agreement, which I have presented Mr.
11 Carroll with. It's attached as Exhibit A to the
12 farmout agreement from John Trigg, who is the
13 predecessor in interest, or actually his family
14 still owns the interest under which Mr. Carroll's
15 client claims an interest and Sinclair Oil & Gas
16 Company, the predecessor to Arco, who we have
17 acquired an assignment from.

18 The assignment from Mr. Trigg to
19 Sinclair that was earned under the farmout
20 agreement, is also in the materials I have
21 furnished Mr. Carroll, assigning 50 percent
22 interest in the land that is the subject of this
23 case.

24 And the operating agreement that was
25 entered into clearly covers -- executed by the

1 parties at the time. Atlantic Richfield Company
2 as the successor in interest to Sinclair Oil
3 Corporation and by Mr. and Mrs. Trigg, executed,
4 acknowledged, clearly covering the north half of
5 Section 27, setting forth equal ownership of the
6 interest. That is the agreement.

7 It's always been my understanding that
8 the Commission does not try to interpret matters
9 of dispute between the parties regarding
10 agreements. That is left for the courts.

11 And at this time what we would ask is
12 that this case be continued so that if we
13 continue to have a disagreement regarding the
14 effect of this operating agreement, that we
15 proceed to district court and have the court
16 interpret the agreement. Very similar to the
17 proceedings that Mr. Carroll said that he was
18 involved in in an earlier case between Yates and
19 Conoco.

20 MR. CARROLL: Mr. Catanach, the
21 procedure that Mr. Turner -- again he's putting
22 the cart ahead of the horse. If Mr. Turner has
23 some rights under that agreement, he has adequate
24 redress. He can go to the district court and get
25 a stay of these proceedings. He can get an

1 injunction against it. That's his proper course
2 of proceeding.

3 We have no agreement. We make a
4 representation to this Division that there is no
5 agreement between the parties. And you have no
6 agreement before you which is signed by either of
7 these two parties.

8 Furthermore, the well that this thing
9 dealt with has been plugged and abandoned back in
10 1982, some ten years ago. This is just a
11 document that's floating around. And
12 furthermore, there are provisions for successor
13 operatorship, which they have not laid claim to.

14 And I would also point out that there
15 is no way that they could ever lay claim to it
16 because it provides that the only way a successor
17 operator can be appointed if the other one quits
18 is that it be done by a majority of the
19 interest. I can tell you that the interest is
20 owned right down the middle by this on
21 fifty-fifty, so there's no way that there could
22 ever be an agreement.

23 That's why the compulsory pooling
24 applications are proper, and they should be
25 heard. We ask that the Division go ahead and, at

1 least with respect to our application, we ask
2 that it be heard and a determination made with
3 respect to it.

4 MR. TURNER: Mr. Catanach, due to the
5 the fact that we discovered the existence of this
6 operating agreement at a very late date, on
7 Tuesday afternoon in fact, which then caused us
8 to have to do additional investigation to
9 determine the effect of the operating agreement.

10 We have an application on file very
11 similar to that of Yates. We could come before
12 you right now and present that application. Our
13 interest is the same as Yates. We're basically
14 asking for the same thing.

15 But I feel that, as an officer of the
16 Court and of the Commission, that because I have
17 discovered the existence of this operating
18 agreement, we have to determine the effect of
19 that operating agreement before we can proceed.

20 And for Mr. Carroll to sit here and
21 tell you that that operating agreement does not
22 exist and is not binding, there's just no way
23 that he can do that given the fact that he has
24 not had the opportunity to investigate the
25 facts.

1 EXAMINER CATANACH: Let's take a
2 five-minute recess, and let's look this document
3 over and we'll go from there.

4 [A recess was taken.]

5 EXAMINER CATANACH: Randy, is it your
6 contention that the Division has jurisdiction
7 over this document, and has jurisdiction in which
8 to make a determination if this is a valid
9 document and the parties are subject to it?

10 MR. TURNER: It's my contention that
11 you really do not have that jurisdiction.

12 EXAMINER CATANACH: And Yates has the
13 same position on the document?

14 MR. CARROLL: That's correct, Mr.
15 Catanach.

16 MR. TURNER: I guess for my further
17 contention, by the presentation of the document
18 to the Commission, that it at least, it makes a
19 case itself in reading the document of the
20 existence of the agreement in that it could well
21 be still in force and effect and, therefore, that
22 the Commission really should not hear a
23 compulsory pooling application until that
24 application is resolved by the appropriate forum,
25 if we can't agree on it short of going to court.

1 EXAMINER CATANACH: Mr. Carroll, why
2 would you want your case heard -- do you think
3 this issue should be resolved before we can
4 proceed with this?

5 MR. CARROLL: No, sir, I do not.

6 EXAMINER CATANACH: Why not?

7 MR. CARROLL: I think the only issue
8 that should concern the Division is the
9 application for forced pooling. Yates' position
10 is that that document has no force and effect.
11 Furthermore, it's also the position that there's
12 not going to be any agreement reached between the
13 parties. That's why there are two forced pooling
14 applications filed.

15 And we feel that this was just a ploy
16 that was sprung on us, as we walked into the
17 building today, just to cause delay in gaining
18 some leverage somewhere. Mr. Turner's client has
19 the burden of proving that that document
20 controls. As Mr. Turner has acquiesced, this
21 Division doesn't have any jurisdiction to
22 determine if it controls.

23 Therefore, the only thing that this
24 Division is concerned with is what it does have
25 jurisdiction with, it has two applications for

1 forced pooling. It should consider those. If
2 Mr. Turner has rights, then he should take them
3 to the jurisdiction or to the forum which has
4 jurisdiction to determine them. And that's what
5 I say to Mr. Turner, if he thinks he's got
6 rights, let him go try to enforce because we
7 don't think he's going to succeed.

8 MR. TURNER: I believe that we have
9 established a prima facie case of the existence
10 of an agreement. And because there appears to be
11 an agreement, the Commission does not have the
12 authority to compulsory pool the tracts because
13 they are already pooled by virtue of the
14 operating agreement.

15 MR. CARROLL: Again Mr. Turner is
16 trying to force the burden of proof on us. He's
17 the one that's claiming the benefit of that
18 document. He needs to prove it. And this
19 Commission doesn't have -- again, he's talking
20 out of both sides of his mouth.

21 One, he says you don't have any
22 jurisdiction to determine the effect of that
23 agreement, but then he turns around and says but
24 you've got the jurisdiction to determine if
25 there's a prima facie case period, therefore,

1 stop yourselves.

2 It's either all or none, Mr. Catanach.
3 And, quite frankly, if you postpone this, I'm
4 going to ask that it be reset. And we're going
5 to show right back up here, whatever it takes,
6 two or three weeks and we're going to demand that
7 we put our case on. In other words, it's a waste
8 of time.

9 Mr. Turner, if he thinks he's got any
10 power, which he says you don't have any
11 jurisdiction to determine, he's going to have to
12 go to court and seek an injunction or something
13 or declaration that that is a binding agreement.
14 Well, he can still do that. That doesn't affect
15 the business of the Commission or anything such
16 as that.

17 He can protect his rights. There are
18 adequate remedies through restraining orders,
19 injunctions, declaratory actions. That's fine.
20 But let him enforce his rights in the proper
21 forum, which he admits, you don't have any
22 jurisdiction for.

23 MR. TURNER: I don't know how the
24 Commission or Mr. Carroll can turn its back on
25 the fact that there is an agreement that has been

1 presented here that if you read it, I think,
2 clearly shows that the only question is that
3 whether the lease that's subject to the operating
4 agreement is still in force.

5 We've presented the agreement. The
6 copy that we've presented is executed. Mr.
7 Carroll has no evidence that it's not a valid
8 agreement. I think because we have at least made
9 a prima facie case, that you have to let us
10 resolve this dispute elsewhere before you can
11 consider the compulsory pooling matter.

12 If Mr. Carroll says an agreement cannot
13 be reached, well, I think our recourse is to the
14 district court. Our course of action would
15 likely be to file a declaratory action in
16 district court to have the court determine
17 whether or not it's valid.

18 Once that issue is resolved, then it
19 can be done quickly. We can come back here if we
20 need to. If the court says that the operating
21 agreement is a good agreement, is in force, then
22 these hearings need not take place.

23 EXAMINER CATANACH: Mr. Turner, are you
24 prepared to present evidence and testimony in
25 this case today?

1 MR. TURNER: Your Honor, we are
2 prepared to present evidence. We think that to
3 present evidence at this point, though, would be
4 premature because we believe without any doubt
5 that the agreement is controlling and that to do
6 so would be a waste of everyone's time and would
7 be inappropriate.

8 And I think it's just outside the
9 parameters of the statute that grants the
10 Commission the authority to grant compulsory
11 pooling.

12 EXAMINER CATANACH: Part of the basis
13 for your request for continuance was to give
14 Yates some additional time to review the document
15 and make their own determination whether they
16 were bound by the agreement. I don't think
17 that's going to happen. Yates has already formed
18 an opinion on that. I don't know that a
19 continuance is going to do anybody any good.

20 And when do you propose to continue
21 this to? I mean, I don't understand.

22 MR. TURNER: We would simply continue
23 it until either we reach an agreement or we get a
24 determination from the district court that the
25 agreement is either valid or it's not valid.

1 MR. RAND CARROLL: Pardon me. Rand
2 Carroll from OCD. When do you intend on filing
3 this action before the district court?

4 MR. TURNER: Immediately.

5 MR. RAND CARROLL: Like today or
6 tomorrow?

7 MR. TURNER: Not today. We would have
8 to get back to Midland and get the documents
9 prepared. It would probably be filed on Monday.

10 MR. RAND CARROLL: When do you expect a
11 determination from the district court then?

12 MR. TURNER: If we file the matter in
13 district court, you never know for sure, but on a
14 matter such as this, we would file a declaratory
15 judgment action. It would take very limited
16 evidence. We think we can get a very early
17 setting and that we think probably in 60 days or
18 so we could have a resolution of this matter as
19 it should be resolved.

20 MR. CARROLL: I totally disagree. Mr.
21 Turner is not at all familiar with the courts. I
22 practice everyday in the courts in Eddy County,
23 and this is where this matter is going to be
24 heard.

25 I can tell you already there's only two

1 judges in Eddy County. One of them has already
2 recused himself from Yates matters because he is
3 a resident of Artesia and is too closely
4 associated and he feels he can't fairly and
5 impartially hear cases involving Yates, which is
6 his prerogative because he grew up and his family
7 has represented Yates at times.

8 That means there's one judge. I can
9 tell you that they just set the docket through
10 late, into the latter part of that year. Judge
11 Shuler is not going to be able to hear this case
12 in 60 days. I can just flat put money on that.
13 It will probably take a year or more.

14 Also you need to be aware that already
15 one of our counties in the Fifth Judicial
16 District has already slowed down its hearing of
17 cases because it's run out of money.

18 Mr. Turner is just -- again, this is
19 improper. The Commission shouldn't even worry
20 about that. He, on the one hand, tells you that
21 you can't tell me whether that's a good agreement
22 or not, and yet he wants you to take action which
23 makes you make a presupposition that it is
24 valid. Well, you do not find Yates' name on that
25 agreement. You do not find Nearburg's name on

1 that agreement.

2 This Commission can only act with
3 respect to its rules and its regulations. We
4 both have asked for a compulsory pooling
5 hearing. If Mr. Turner in fact has rights
6 somewhere else, like he's telling you, then tell
7 Mr. Turner to go to that somewhere else, that
8 other jurisdiction, that other forum, and
9 exercise and seek vindication of his rights.

10 And all I ask is that we get what we're
11 entitled to before the Division. The Division
12 can hear this application. Let us hear it.

13 EXAMINER CATANACH: Mr. Carroll, it
14 appears that either way it's going to the
15 courthouse. Whichever way we go, whether to
16 continue the cases or not --

17 MR. CARROLL: That's possible, Mr.
18 Catanach, but I don't know that the Nearburgs
19 will put their money where their mouth is,
20 because I'm not so sure that they'll be willing
21 to file this court action. The thing is it's
22 their burden; it's not ours. We need to operate
23 with that.

24 Now, it may ultimately, Mr. Catanach,
25 it may ultimately end up in the courthouse. But

1 that's fine. The courthouse is where, if Mr.
2 Nearburg is right, no matter what action the
3 Commission takes, he can get vindication. He can
4 get adjustment of the equities. That can be done
5 in the courthouse.

6 The Division can't do that. All the
7 Division can do is follow its rules and try to
8 manage the oil and gas industry and do that
9 properly. And that's all I'm asking.

10 If Mr. Turner has an argument, he's got
11 adequate grounds for redress. No matter what
12 this Commission does, he can go and take care of
13 it there. He's telling you that that's the only
14 people that can act on this agreement or make a
15 determination, that's fine. You make your
16 determination on the application. And we'll go
17 to court, if that's what he wants.

18 MR. TURNER: In order for the
19 Commission to grant compulsory pooling, as I read
20 the statute, you would have to find that there is
21 no agreement pooling the interests.

22 MR. CARROLL: We can present evidence
23 on it today, Mr. Catanach.

24 MR. TURNER: And we can --

25 MR. CARROLL: And you can make a

1 determination on the basis of that.

2 MR. TURNER: We would consent to a
3 hearing on the question as to whether or not
4 there is an agreement.

5 EXAMINER CATANACH: I think we should
6 have both parties present their cases today. And
7 if you like, Mr. Carroll says you do have another
8 avenue to pursue if you want to do that. That's
9 fine. I think we have all the people here
10 today. Let's do it and get it over with --

11 MR. TURNER: Okay.

12 EXAMINER CATANACH: -- and go from
13 there.

14 Let me take care of a little bit of
15 business. We didn't call case 10473, which is
16 the application of Nearburg Exploration Company
17 for compulsory pooling and an unorthodox gas well
18 location, Eddy County, New Mexico.

19 And I presume the appearances are the
20 same in both these cases?

21 MR. CARROLL: That's correct.

22 EXAMINER CATANACH: Let me go ahead and
23 call Case 10472, which is the application of
24 Yates Petroleum Corporation for compulsory
25 pooling, Eddy County, New Mexico, and as per the

1 previous discussion with Mr. Ernie Carroll, this
2 case will be dismissed.

3 MR. CARROLL: Mr. Examiner, I have
4 three witnesses. The three witnesses will stand
5 up to be sworn in.

6 EXAMINER CATANACH: Mr. Turner, how
7 many witnesses do you have?

8 MR. TURNER: I'll have two witnesses.

9 EXAMINER CATANACH: Can I get all the
10 witnesses to, please, stand and be sworn in. I
11 see four.

12 [The witnesses were duly sworn.]

13 MR. CARROLL: We call Mr. Mike Burch as
14 our first witness, Mr. Examiner.

15 MIKE BURCH

16 Having been duly sworn upon his oath, was
17 examined and testified as follows:

18 EXAMINATION

19 BY MR. CARROLL:

20 Q. For the record, sir, would you, please,
21 state your name and occupation.

22 A. My name is Mike Burch. I work with
23 Yates Petroleum Corporation. I'm a petroleum
24 landman.

25 Q. How long have you been so employed by

1 Yates Petroleum?

2 A. Close to three years now.

3 Q. Mr. Burch, you have had previous
4 occasion to come and testify before the Division
5 with respect to the petroleum land management
6 matters; is that correct?

7 A. That's correct.

8 Q. And at those earlier times of
9 testimony, have you had your credentials accepted
10 with respect to petroleum management and land
11 management and your ability to testify as an
12 expert with respect to those matters?

13 A. Yes, I have.

14 MR. CARROLL: Mr. Catanach, I would
15 tender Mr. Burch as an expert with respect to
16 petroleum land management matters.

17 EXAMINER CATANACH: He is so
18 qualified.

19 Q. (BY MR. CARROLL) Mr. Burch, you are
20 familiar with the application of Yates Petroleum,
21 which is pending in this particular case, are you
22 not?

23 A. Yes, I am.

24 Q. And you have prepared certain exhibits,
25 or at least had under your direction and control,

1 certain exhibits to be presented pursuant to this
2 application?

3 A. Yes, I have.

4 Q. Mr. Burch, let's turn, first of all, to
5 Exhibit No. 1 and ask you to identify what that
6 exhibit is.

7 A. Exhibit No. 1 is a map outlining the
8 acreage including our proposed well along with
9 other acreage in the area that Yates has operated
10 wells on in the past.

11 Outlined in red and then colored in
12 yellow is the described acreage that we're
13 seeking to pool. The red dot is the actual
14 location that we're seeking to pool.

15 Q. Then, Mr. Burch, the acreage that is
16 colored, I believe, red, blue, and orange also is
17 additional acreage where Yates operates similar
18 wells surrounding this proposed pooling site?

19 A. That is correct.

20 Q. And then the area with the green
21 crosshatch, that's a working interest unit, is it
22 not?

23 A. That's a working interest unit that we
24 have that we operate four wells in.

25 Q. All right.

1 A. It's the Rio Pecos working interest
2 unit.

3 Q. All right. With respect to the Yates
4 Petroleum's experience, it has had experience
5 operating these kind of -- this is a Morrow test,
6 but these kind of wells in this particular area;
7 is that correct?

8 A. That's correct.

9 Q. Now, Mr. Burch, I'd ask you to turn to
10 Exhibit No. 2. Would you explain to the Examiner
11 what Exhibit No. 2 is and what it portrays?

12 A. Exhibit No. 2 is a list of the working
13 interest owners in our proposed well in the north
14 half of Section 27 that consists of Yates
15 Petroleum Corporation and other parties, and also
16 listed is their working interest ownership.

17 Q. All right. Now, the first four
18 companies listed, Yates Petroleum Corporation,
19 Yates Drilling Company, Abo Petroleum
20 Corporation, and Myco Industries, Inc., are those
21 related companies?

22 A. Those are all Yates Petroleum related
23 companies. And they represent approximately
24 26.25 percent.

25 Q. All right. And Yates Petroleum is the

1 entity, though, that is seeking operatorship of
2 this particular well?

3 A. That's true.

4 Q. The remaining -- the ownership that is
5 the division out here with respect to this is
6 Nearburg Exploration, who owns 50 percent; is
7 that correct?

8 A. That's correct.

9 Q. And then the other people, the names
10 that appear above Nearburg, they total up 50
11 percent; is that correct?

12 A. That's correct.

13 Q. Now, with respect to Yates' application
14 for this forced pooling, with respect to the 50
15 percent other than Nearburg Exploration, do they
16 support Yates in their application for forced
17 pooling?

18 A. Yes, that's correct. We represent for
19 the Commission today 50 percent.

20 Q. And so really the interest that needs
21 to be forced pooled by this application is just
22 Nearburg Exploration Company; is that correct?

23 A. That's true.

24 Q. Now, Mr. Burch, notice of Yates' intent
25 to drill this well has been sent to Nearburg; is

1 that correct?

2 A. That's correct.

3 Q. I ask you to turn to Exhibits 3-A and
4 3-B. Would you explain what these exhibits are?

5 A. Exhibit 3-A is the March 24, 1992,
6 letter to Nearburg Exploration Company proposing
7 our Chalk "AKH" Federal No. 2 in the north half
8 of Section 27, 18 South, 27 East. Included in
9 that letter were two AFE, authorities for
10 expenditure for drilling of the well.

11 Also enclosed was a copy of the
12 operating agreement. Also included -- well,
13 those were the two things that were included in
14 the letter, our proposal to them on March 24.

15 Q. All right. Let's talk about Exhibit
16 3-B.

17 A. Exhibit 3-B is a letter dated April 2
18 of 1992 to Nearburg Exploration, again, with the
19 proposal on the Chalk "AKH" Federal No. 3 for the
20 north half of Section 27, 18 South, 27 East,
21 making a new proposal, making another proposal
22 for that well. And the difference on it there
23 was the matter of the location.

24 Q. All right. This April 2 letter revised
25 the location to the 660 from the north line 1330,

1 which is in our application today; is that
2 correct?

3 A. That's correct.

4 Q. Now, with respect to both of these
5 exhibits, attached behind 3-A and 3-B are the
6 copies of the return receipt cards; is that
7 correct?

8 A. That's correct.

9 Q. Showing that these were sent to
10 Nearburg Exploration Company?

11 A. That's correct.

12 Q. Now, would you, please, tell the
13 Examiner exactly what kind of responses were
14 obtained with respect to this correspondence from
15 Nearburg?

16 A. After the March 24 letter, there was a
17 phone call received from Bob Shelton to Mecca
18 Mauritsen in our land department inquiring about
19 the letter and the proposal that we did send.
20 Bob asked why they had received the letter and
21 stated the fact that they were going to send that
22 information back to us and wanted us to consider
23 their proposal.

24 Q. All right. Any other responses?

25 A. Well, the only other response we had

1 after our April 2 letter, the only other written
2 response we had was -- we received an attorney's
3 letter indicating a forced pooling --

4 Q. All right.

5 A. -- their intent to force pool.

6 Q. You did receive notice of the other
7 application that is also being heard at this
8 time, Case 10473; is that correct?

9 A. That's correct.

10 Q. That application was filed after our
11 application; is that correct?

12 A. That's correct.

13 Q. With respect to the position of Yates
14 Petroleum at this time, is there any room for
15 negotiation with respect to the issue of who
16 operates this well?

17 A. No.

18 Q. Is it the position of management of
19 Yates Petroleum that they wish to operate this
20 well?

21 A. Yes. We plan to operate this well.

22 Q. Now, with respect to the other owners
23 that we saw on Exhibit 2, the other people that
24 comprise almost a little over 24 percent, you
25 indicated that they supported Yates; is that

1 correct?

2 A. That's correct.

3 Q. I hand you or ask you to turn to
4 Exhibit No. 4. Would you explain what Exhibit
5 No. 4 is for the Examiner?

6 A. Exhibit No. 4 is the return letters to
7 Yates Petroleum Corporation from the other
8 working interest owners in this proposed well,
9 other than Nearburg, supporting us in the fact
10 that we want to be operator in this area in this
11 particular well. These are all the other working
12 interest owners in there.

13 Q. All right. I'd ask you now to turn to
14 your Exhibit No. 5. Could you explain what
15 Exhibit No. 5 is?

16 A. Our Exhibit No. 5 is an application for
17 permit to drill filed for Chalk "AKH" Federal No.
18 2 in the north half of Section 27, 18-27.

19 Q. All right. This has been filed and was
20 filed on April 20, 1992; is that correct?

21 A. That's correct.

22 Q. It has not been returned to Yates
23 Petroleum as of this time; is that correct?

24 A. That's correct.

25 Q. I ask you to turn to Exhibit No. 6.

1 Would you explain what Exhibit No. 6 is, Mr.
2 Burch?

3 A. Exhibit No. 6, because we were seeking
4 an unorthodox location, are waivers from the
5 offsetting parties that we contacted and received
6 waivers from in our application for the
7 unorthodox location.

8 Q. All right. This actually includes
9 waivers from the people that are within -- that
10 are actually working interest owners in our north
11 half of Section 27, and the only other two
12 offsetting operators, which would be Oryx and
13 Baber Well Service; is that correct?

14 A. That's correct.

15 Q. Referring back to our Exhibit No. 1,
16 Yates Petroleum operates most of the acreage
17 surrounding, or at least with respect to the
18 rules, the two closest sides of the proration
19 unit for this unorthodox location?

20 A. That's correct.

21 Q. Baber Well Servicing, they operate a
22 well, it's a shallow well, in the southwest
23 quarter of Section 23; is that correct?

24 A. Yes, sir.

25 Q. And that's why notice was sent to them?

1 A. That's why notice was given to them.

2 Q. However, Yates owns the deep rights
3 which would be affected by this well in that
4 south half of Section 23?

5 A. That's correct.

6 Q. Notice then was sent just as a safety
7 precaution with full compliance with the rules?

8 A. Yes.

9 Q. Then the Oryx would be the remaining
10 half of Section 22 or the west half; is that
11 correct?

12 A. That's correct.

13 Q. All right. And again, while they are
14 not the closest to the unorthodox position, they
15 were included in Section 22, and that's the
16 reason why notice was sent to them?

17 A. That's correct.

18 Q. Would you tell us what Exhibit No. 7
19 is, Mr. Burch?

20 A. Exhibit No. 7 is the certified mail
21 sent to the parties from Losee, Carson, Haas, &
22 Carroll, our representative in this pooling
23 today, notifying all interested parties which are
24 listed on Exhibit A of the pooling proceeding
25 that we are filing and seeking today.

1 Q. All right. Mr. Burch, the other two
2 witnesses will testify as to the request that
3 Yates is making as to the assessment of a penalty
4 and to the overhead operating costs; is that
5 correct?

6 A. That's correct.

7 MR. CARROLL: Mr. Examiner, I would --
8 well, let me ask one question.

9 Q. The Exhibits 1 through 7, Mr. Burch,
10 were those exhibits all prepared by you or under
11 your supervision?

12 A. That's correct.

13 MR. CARROLL: I would at this time move
14 admission of Exhibits 1 through 7, Mr. Catanach.

15 EXAMINER CATANACH: Exhibits 1 through
16 7 will be admitted as evidence.

17 MR. CARROLL: I pass the witness at
18 this time.

19 EXAMINER CATANACH: Mr. Turner.

20 EXAMINATION

21 BY MR. TURNER:

22 Q. Mr. Burch, could you tell me a little
23 bit more about the ownership in the north half of
24 Section 27 and how you arrived at that ownership
25 as reflected in your Exhibit 2?

1 A. The ownership in the north half, we
2 purchased or obtained an interest through a
3 farmout on that interest from the Bettis Group.
4 And they had a 50 percent interest in that.

5 Q. Okay. The Bettis Group, I guess I'm a
6 little unclear as to the nature of your title.
7 If I go to the county records and check the title
8 to this section, will these interests be
9 reflected in those records?

10 A. If everything has been filed. I don't
11 know if the farmout they put of record. I don't
12 know what they put of record on that.

13 Q. You don't, okay. Now, which farmout is
14 it that you're referring to? I'm unclear as to
15 how you acquired your title and how these other
16 parties acquired title as you've reflected here
17 in Exhibit 2.

18 A. Well, Trigg owned a half interest in
19 that north half. And the farmout was taken from
20 Trigg. And then that farmout was subsequently
21 taken to the Bettis Group, who contacted us, and
22 that's how we got our interest. So it's
23 originally a Trigg farmout agreement.

24 Q. Okay. Who was that farmout agreement
25 between?

1 A. The farmout agreement was between Trigg
2 and, as far as the name that it was taken in, I
3 believe it was -- I believe it was -- did they
4 take it in Cromwell?

5 MR. CARROLL: I believe that's who --

6 MR. CROMWELL: Craig Clark.

7 A. Craig Clark, I'm sorry.

8 Q. And how is it again that the interests
9 end up as you've set them out in this Exhibit 2?
10 I'm still unclear. If we've got a farmout
11 agreement from Trigg to Craig Clark, how do we
12 get to the interests as you've set them out?

13 A. Those were the interests that were sold
14 to the parties that have the 50 percent there,
15 letter agreement that was taken on it.

16 Q. Do you have any evidence of the chain
17 of title from Trigg to these parties so that we
18 get to the interest?

19 A. Do I have it with me? No, sir, I
20 don't.

21 MR. CARROLL: We will present Mr.
22 Cromwell as a witness, who is one of the
23 principal parties in obtaining that farmout, and
24 he will testify as to the history.

25 Q. (BY MR. TURNER) But you're telling me

1 that you do not know whether or not you have any
2 record title interest in the north half of
3 Section 27?

4 A. That's in the Eddy County records? No,
5 I can't tell you that it's in the Eddy County
6 records, filed in the Eddy County records.

7 Q. So really there's nothing that you can
8 tell me or refer me to where I could verify that
9 these interests are in fact correct?

10 A. Yes, there is. I don't have it with
11 me.

12 Q. But there's nothing that you can
13 demonstrate here at the hearing today?

14 A. Right now, no, sir, I can't. I don't
15 have anything in my possession to give you.

16 Q. Okay. I notice that on your ownership
17 schedule here you're accrediting an entity,
18 Turnco, Inc., with a 2.91375 interest. Can you
19 tell me who the proprietor of Turnco, Inc., is --

20 A. No, sir, I can't.

21 Q. -- or the individual you dealt with
22 there is? I do not find a letter in here, I
23 guess, from Turnco that supports your
24 operatorship.

25 MR. CARROLL: There is one.

1 A. There is one in Exhibit No. 6, second
2 page of Exhibit No. 6, Turnco, Inc., by Wayne
3 Christian, dated April 2, 1992.

4 MR. CARROLL: H. M. Bettis and Turnco,
5 Inc., are affiliates and you'll find also in
6 Exhibit 4 a letter from Wayne T. Christian, who
7 is also a principal or has authority with Bettis,
8 Boyle, and Stovall, but they represent those
9 interests.

10 MR. TURNER: But there's nothing here
11 that I've seen that indicates we've got a letter
12 here from Bettis, Boyle, and Stovall signed by a
13 guy named Wayne Christian saying that H. M.
14 Bettis, Inc., and Turnco, Inc., approve of
15 operatorship. But we don't have any indication
16 at all that Wayne T. Christian speaks for Bettis,
17 Boyle, and Stovall, or that Bettis, Boyle, and
18 Stovall have any relationship to H. M. Bettis,
19 Inc., or Turnco, Inc.

20 MR. CARROLL: Mr. Burch testified that
21 they did, and you have no evidence that they
22 don't, Mr. Turner.

23 Q. (BY MR. TURNER) Now, Mr. Burch, you
24 testified, I guess, I'm somewhat unclear here
25 about the competing AFEs that were in existence.

1 Can you tell me when you first received notice of
2 a well proposal from Nearburg?

3 A. The first that we received on it was a
4 proposal was February 13 of 1992.

5 Q. February 13, 1992. And that proposal
6 was for a well at what location?

7 A. I don't have that -- wait a minute. I
8 do too. I don't have that letter before me. I
9 thought possibly they called and stipulated to
10 that on their AFE, but they did not.

11 Q. You do not have a copy of their well
12 proposal there?

13 A. Well, I've got a copy of their AFE
14 here, their well proposal. Do you have a copy of
15 that?

16 Q. Yes, I'm sure I do.

17 A. It might state it on there.

18 Q. Was their proposal not at the same
19 location that you subsequently proposed drilling
20 a well?

21 MR. CARROLL: It was at 1320. 660,
22 1320, the February 13 proposal was.

23 Q. (BY MR. TURNER) So on February 13 you
24 received a letter from Nearburg on February 13,
25 1992, proposing a well at 660 from the north,

1 1320 from the east. And what did you then do
2 with that proposal?

3 A. Well, at that time we had a well that
4 we were looking at reentering and taking,
5 drilling in the east half of that Section 22. We
6 made no response at that time to that proposal
7 knowing that the development of the area would be
8 pending what we found in that well on the east
9 half of Section 22.

10 So at that time and the date of their
11 letter, Mr. Turner, we made no response.

12 Q. Okay.

13 A. As I recall, there was a date that
14 Nearburg had indicated possibly doing something
15 sometime around the first of June, 1992, with
16 that.

17 Q. But you did receive the letter of
18 February 13, 1992, proposing a well at that
19 location by Nearburg and then your Exhibit 3-A,
20 which is your letter dated March 24, some five to
21 six weeks later, rather than respond to
22 Nearburg's, you proposed the identical well back
23 to Nearburg; is that correct?

24 A. That's correct. That was our response.

25 Q. So you were aware that Nearburg was --

1 well aware that Nearburg was proposing to operate
2 a well in that half section?

3 A. That's what their February 13 letter
4 indicated, Mr. Turner.

5 Q. Okay. You have also as Exhibit 5 your
6 APD, which you have filed with the Bureau of Land
7 Management, that was filed on April 20, 1992; is
8 that correct?

9 A. I believe that's what I testified to.

10 Q. Okay. And that APD is for a well
11 located 660 from the north and 1330 feet from the
12 east line of that section; is that correct?

13 A. 660 from the north and 1330 from the
14 east.

15 Q. Which is not the same location that you
16 proposed in your letter dated March 24, 1992?

17 A. That's correct.

18 Q. Okay. And you have also filed in
19 another case that's pending before the Commission
20 an application to drill a well at yet another
21 location; is that correct?

22 A. That's correct.

23 Q. And that application was requesting --
24 at what location were you proposing to drill at?

25 A. What case are you referring to?

1 Q. Well, you filed two cases here, Case
2 No. 10467, and 10472.

3 A. That's the one that I believe Mr.
4 Carroll, when we started the proceeding, had
5 dropped.

6 Q. And I understand that. But you did
7 file an application at yet another location. So
8 I guess what I'm trying to get at here is I'm
9 somewhat confused which well it is that you are
10 now proposing to drill.

11 A. Well, the well that we're proposing to
12 drill is in Case No. 10467 in the north half of
13 Section 27, located 660 feet from the north line
14 and 1330 feet from the east line.

15 MR. TURNER: Okay. No further
16 questions at this time, subject to any questions
17 Mr. Carroll may have.

18 FURTHER EXAMINATION
19 BY MR. CARROLL:

20 Q. I just want to make clear, Mr. Burch,
21 in the April letter to Nearburg the fact of the
22 location of this well was clarified, was it not,
23 in the 1330 -- the 660, 1330 location was
24 explained to Nearburg; is that correct?

25 A. That's correct. And in the second

1 paragraph, last sentence, it states, "Please note
2 that we have revised the location of the Chalk
3 No. 2 Well to be 660 from the north line and 1330
4 from the east line."

5 Q. That is the same location that Nearburg
6 is seeking in their location in 10473, Case
7 10473?

8 A. That's correct.

9 MR. TURNER: I just wanted to be sure
10 that we were all talking about the same well at
11 the same location.

12 THE WITNESS: Yeah.

13 MR. TURNER: No further questions.

14 MR. CARROLL: I wasn't quite finished.
15 I had one other question, Mr. Turner.

16 MR. TURNER: I'm sorry.

17 Q. (BY MR. CARROLL) In that February 13,
18 1992, proposal that Nearburg sent to Yates,
19 Nearburg gave Yates Petroleum till the month of
20 June of 1992 to respond; isn't that correct?

21 A. Well, that June 1, 1992, was mentioned
22 as far as some time response, yes.

23 Q. All right. And it was known public
24 knowledge that Yates was completing the well, the
25 north offset to this unorthodox location; is that

1 correct?

2 A. That's correct.

3 Q. As a reentry; isn't that correct?

4 A. That's correct.

5 Q. And that reentry well was actually part
6 of the package that Yates bought when it bought
7 this package from Mr. Craig Clark and David
8 Cromwell; is that correct?

9 A. That's correct.

10 Q. The acreage that was submitted that
11 Yates purchased an interest in, it all came as a
12 package, that being part of the acreage in 22 and
13 the other part of the acreage in 27?

14 A. That's correct. We felt to diligently
15 develop the area, it wouldn't be prudent for us
16 to do anything on that north half acreage until
17 we knew where we stood on our well in the east
18 half of Section 22.

19 Q. Isn't it also reasonable to assume that
20 Nearburg by proposing, wanting to have something
21 done in June, that they knew that well, some
22 results would be in before June?

23 A. I would think that they would like to
24 see some results in that well before they did
25 anything in June.

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

2 MR. TURNER: I have no further
3 questions subject to the right that I may like to
4 ask questions of Mr. Burch at a later time in the
5 hearing.

6 EXAMINER CATANACH: Okay.

7 EXAMINATION

8 BY EXAMINER CATANACH:

9 Q. Mr. Burch, just a couple of things.
10 What is the nature of your agreement with the
11 various small interest owners in that tract? Are
12 they working interest owners who have agreed to
13 participate in a well with Yates?

14 A. That's correct, yes. They approached
15 us to operate the well, to drill and operate the
16 well. And they brought us their 50 percent
17 interest, soliciting us to take a proportionate
18 share of that so that we could get a reentry
19 made. And we had enough interest that we
20 operate, and they wanted us to operate.

21 Q. So you do control all the 50 percent
22 interest?

23 A. Yes. If I made that unclear in my
24 testimony, I want to make it very clear that we
25 do represent the 50 percent interest.

1 Q. Okay. Just one other thing. On the
2 waivers for the unorthodox location, Yates owns
3 the acreage or operates the acreage to the east
4 and the north, which would be -- that's who would
5 be required to be notified of this application
6 since you're encroaching to the east, but you do
7 control that north half of Section 26 or operate
8 that north half; is that correct?

9 A. Yes, that's correct.

10 Q. And the Oryx interest was where again?

11 A. The Oryx interest is actually in the
12 southwest of Section 22. And that is under an
13 interest that actually covers, I believe, the
14 whole west half there. We went ahead and
15 notified, made notification.

16 Q. Okay. The Baber interest was where
17 again?

18 A. The Baber interest is through a shallow
19 well in the northwest of the southwest quarter of
20 Section 23. You'll see on Exhibit No. 1, Baber
21 Well Service. I believe the well is the Artesia
22 State No. 1.

23 EXAMINER CATANACH: I believe that's
24 all I have. The witness may be excused.

25 MR. CARROLL: We next call David

1 Cromwell.

2 Mr. Examiner, the exhibits that we'll
3 now be referring to are all in the gray binder.
4 There will be two other exhibits that are in that
5 other stack that we'll come to with the other
6 witness.

7 DAVID CROMWELL

8 Having been duly sworn upon his oath, was
9 examined and testified as follows:

10 EXAMINATION

11 BY MR. CARROLL:

12 Q. Would you, please, state your name for
13 the record, sir?

14 A. David Cromwell.

15 Q. What is your profession?

16 A. I'm a consulting geologist.

17 Q. Where do you live, Mr. Cromwell?

18 A. In Midland, Texas.

19 Q. Mr. Cromwell, how long have you been a
20 practicing petroleum geologist?

21 A. Since 1974.

22 Q. Mr. Cromwell, you have had during that
23 period of time occasion to testify before the New
24 Mexico Oil Conservation Division, have you not?

25 A. Yes, sir.

1 Q. And you have had your credentials
2 accepted as an expert with respect to the field
3 of petroleum geology?

4 A. Yes, sir.

5 MR. CARROLL: Mr. Catanach, I would
6 tender Mr. Cromwell as qualified to testify as an
7 expert with respect to the field of matters of
8 petroleum geology.

9 EXAMINER CATANACH: Mr. Cromwell is so
10 qualified.

11 Q. (BY MR. CARROLL) Mr. Cromwell, you are
12 very familiar with this application that Yates
13 Petroleum has before the Division today, are you
14 not?

15 A. Yes, sir.

16 Q. And, in fact, Mr. Cromwell, the
17 original idea originated with you; is that
18 correct?

19 A. Yes, sir.

20 Q. Would you briefly acquaint the Examiner
21 with the history of how this project came
22 together, how the interests were acquired, and
23 then how Yates came to be the operator or the
24 chosen operator with respect to this proposed
25 well?

1 A. Yes, sir. If the Examiner will look at
2 Exhibit No. 8 and then also refer to Exhibit No.
3 1 concurrently and then, if you don't mind, we'll
4 look at this exhibit I have on the cross-section,
5 Exhibit No. 10. And this was an idea that I
6 originated a little over a year ago.

7 This is an Oryx well that was drilled
8 in the southwest quarter of Section 22. In
9 between these two wells, it showed a high buildup
10 in the Upper Penn dolomite section. And
11 realizing the potential there for the high
12 structural development in the Penn dolomite, I
13 went to Craig Clark, who was a landman, and asked
14 him to put this acreage together specifically in
15 the east half of 22 and then the acreage in the
16 north half of Section 27.

17 And we did, when we acquired the
18 acreage in the north half of the northeast
19 quarter of Section 22 from Marbob or Bulldog
20 Petroleum, and then Trigg had the acreage in the
21 southeast quarter of Section 22, plus an
22 undivided 50 percent interest in the acreage in
23 the roughly 440 acres in the north half of
24 Section 27 as well.

25 We -- I, myself, as a consultant

1 geologist, we needed an operator to perform this
2 reentry for us. I consulted Nearburg on the 26th
3 of August to participate in this well. They so
4 declined. I went on the 8th of September and
5 talked to Bettis Brothers. Bettis Brothers two
6 days later accepted our proposal and took this
7 acreage, and they subsequently sold the prospect
8 to Yates Petroleum.

9 In, I believe it was February of this
10 year, Yates Petroleum reentered the old Oryx well
11 in the southeast quarter of Section 22. And
12 we're in the process of making a completion there
13 right now. We're waiting on a pipeline
14 connection, electrical connection, as well as
15 other right-of-ways in there to finish our
16 completion of that well.

17 And so with that history in mind, Yates
18 proposed the well in the 660 out of the north and
19 1330 feet out of the east line of Section 27.
20 And according to my map, I felt that that was a
21 fairly risky location for the -- I'm sorry.

22 According to my maps, I felt that the
23 unorthodox location was justified based on the
24 top of the Penn section as well as the Morrow
25 section that is productive 2,000 feet beneath the

1 7800 feet that the Penn dolomite section has
2 encountered.

3 Q. Mr. Cromwell, go ahead and sit down.
4 With respect to the -- you made mention that
5 after you put this prospect together with Mr.
6 Clark, that it was first offered to Nearburg, and
7 that was the 26th of August of 1991; is that
8 correct?

9 A. Yes, sir.

10 Q. And they declined interest; is that
11 correct?

12 A. Yes, sir.

13 Q. Then you went to the Bettis Group; is
14 that correct?

15 A. Yes, sir.

16 Q. Now, on Exhibit 2 there were a number
17 of names, H. M. Bettis Inc., Turnco, Inc., the
18 Bettis Brothers, Inc., and L. E. Opperman, are
19 these part of the Bettis group?

20 A. Yes, sir.

21 Q. Are you familiar with these
22 individuals?

23 A. Yes, sir.

24 Q. In fact, have you had dealings with all
25 of these individuals, Mr. Cromwell?

1 A. Not before this time, no, sir.

2 Q. All right. But with respect to this
3 particular operation and project, you have had
4 contact with these individuals; is that correct?

5 A. Yes, sir.

6 Q. And with respect to the authority that
7 Yates is indicating to the Division that they
8 have to operate this well and the representations
9 that they have 50 percent of the working
10 interest, is that a correct and fair statement,
11 at least with respect to the testimony that Mr.
12 Burch has given?

13 A. Yes, sir. As much as I believe that is
14 correct, yes, sir.

15 Q. Now --

16 A. These were all interest owners that
17 were under the Trigg acreage in the east half of
18 Section 22. And then we all have a working
19 interest in that well that I mentioned, the Yates
20 Chalk No. 1, Chalk "AKH." And by virtue of the
21 Trigg position, we also have the same interest,
22 though somewhat diluted, by 50 percent in the
23 north half of Section 27.

24 Q. All right. With that, Mr. Cromwell,
25 why don't you start through your exhibits. I'm

1 going to let you go through each one of them,
2 starting with Exhibit 8, and explain them. And
3 as you do go through these exhibits, please be
4 careful to identify the exhibit that you're
5 talking from so the Examiner can follow and the
6 record will properly reflect what you're
7 testifying to.

8 A. Okay. I have prepared two structural
9 cross-sections and two isopach maps as well as
10 two structure maps on various horizons in this
11 area that I'm talking about where the proposed
12 well is recommended.

13 The first map I'd like to turn your
14 attention to, as I've already mentioned, is the
15 top of the Penn carbonate, Exhibit No. 8. This
16 map is contoured on the top of the Penn carbonate
17 interval. It shows an anticlinal ridge running
18 in a north-south direction through the east half
19 of Section 22 and down into the east half of
20 Section 27.

21 The wells indicated by the heavy black
22 circles are the deep Morrow penetrations. And
23 the solid red colors are shallow wells that do
24 not have any bearing on this prospect. The well,
25 the No. 1 Chalk "AKH" is the red outlined circle

1 that is a completing well at this time.

2 So in the proposed location of 660 from
3 the north line and 1330 feet from the east line
4 is indicated by the arrow that says "proposed
5 location" on it. And as you can see, there is
6 very little control on the top of the Cisco
7 carbonate or the Penn carbonate to define exactly
8 how that trend is, but we feel that essentially
9 it is running in a north-south direction, and
10 that's why we favor an unorthodox location at
11 this time.

12 I'll direct your attention to Exhibit
13 No. 9, which is an isopach map of this Upper Penn
14 dolomite interval to show that the Penn dolomite
15 is the thickest at the proposed location, and
16 then it will coincide with the structure and that
17 we will have a high, thick dolomite section at
18 the proposed location.

19 All the wells in the surrounding area,
20 except the one we are completing, are dry holes
21 in this Penn, Upper Penn, dolomite interval. And
22 so that we are using extreme caution in stepping
23 out one location to the south. These units are
24 developed, as I mentioned, on 320-acre spacing.

25 Beneath the Penn at 7800 feet, we have

1 the Morrow interval, which is productive on wells
2 on either side. To the northeast on Section 23
3 is the Yates No. 1 Beauregard, which I have
4 illustrated on all the maps.

5 And then in the well in Section 27, the
6 Sinclair No. 1 Trigg, which was also productive
7 in the Morrow and produced 8- to 900 million
8 cubic feet of gas before it was plugged in 1982.

9 I have illustrated that well, as well
10 as the Beauregard well on Exhibit No. 11, which
11 shows the cross-section here going northeast to
12 southwest and the proposed well location in
13 between these two to show that we anticipate the
14 Upper Penn dolomite to be thick as well as
15 structurally high.

16 We will carry these wells another 2,000
17 feet down to test the Morrow interval. The
18 Morrow clastic sands, as you know, are lenticular
19 sands. And we are looking at sands at 9800
20 feet.

21 The well in Section 23 only made 400
22 million cubic feet of gas. As I mentioned, the
23 well in Section 27 made nearly 900 million cubic
24 feet of gas before it was plugged in 1982.

25 Directing your attention to Exhibits

1 No. 12 and 13, which were prepared by me to
2 illustrate the Morrow clastic interval. And this
3 is -- I want to emphasize that this prospect is a
4 dual objective with the Penn carbonate at 7800
5 feet as well as the Morrow clastic interval at
6 9800 feet.

7 The first map, Exhibit No. 12, is the
8 map on the top of the Lower Morrow marker, and
9 this is a regional marker that's fairly well
10 recognized in the area. It's just above the pay
11 zone. It shows a homoclinal dip to the southeast
12 with very slight nosing at the proposed
13 location.

14 It's important to note that nosing
15 because if we look at the isopach map, which is
16 Exhibit No. 13, which also shows the proposed
17 location, and I have highlighted the thicker
18 channel sand nature of the Lower Morrow interval,
19 and it is in a northeast-southwest direction, you
20 can see that the thicker sand is in the extreme
21 eastern portion of Section 27.

22 And for this reason we would like to
23 stay with the unorthodox location at 1330 feet
24 from the east line, and that's one of the reasons
25 that we are proposing that location to encounter

1 thicker and hopefully better productive sands
2 than the adjacent wells to the east and to the
3 west.

4 Q. Mr. Cromwell, one of the questions that
5 I neglected to ask with respect to the well that
6 was the reentry well in Section 22, you say
7 you're waiting on completion. Do you have an
8 indication whether or not that is going to be a
9 good well or an economical well?

10 A. Yes, sir. We have done some initial
11 testing, and we believe that the well will be a
12 commercial well.

13 Q. Now, you have basically explained why
14 we are seeking an unorthodox location with
15 respect to this particular well, and you've also
16 explained that it has a dual objective. Taking
17 into consideration all of these facts, would you
18 give the Examiner the benefit of your thoughts
19 with respect to what the risks are that your
20 group is encountering out here with respect to
21 this particular well, because it is also one of
22 Yates' requests to have the Division assess a
23 risk factor.

24 A. Yes, sir. I feel that this is a fairly
25 high risk proposal in the fact that there is a

1 lot of water that is productive with the Cisco or
2 the Cisco Canyon interval or this Upper Penn
3 interval and that you want to stay as high on the
4 structure as possible. And otherwise you will
5 encounter large volumes of water which will
6 increase your operating costs.

7 And so for that reason I feel that it
8 is high risk on the Upper Penn carbonate
9 interval, and it is also a high risk on the
10 Morrow interval because of the fact, A, that you
11 have two wells that were -- one is
12 sub-commercial, and one was barely a commercial
13 well to the northeast and southwest, plus the
14 fact that the well that's directly to the
15 north -- excuse me, the Oryx No. 1 B Scoggins
16 well was a dry hole after several tests in the
17 Morrow so that the Morrow is a high risk
18 objective as well.

19 Q. Mr. Cromwell, you are aware that Yates
20 is seeking a 200 percent penalty assessment; is
21 that correct?

22 A. Yes, sir.

23 Q. Mr. Cromwell, based on your experience
24 as a geologist and you're experienced in this
25 part of the southeastern part of New Mexico, do

1 you feel that that request of 200 percent penalty
2 assessment; is that reasonable or unreasonable
3 and also is it consistent with what is being
4 sought with respect to projects in this area?

5 A. It's been my experience that that
6 request is reasonable and is correlative with the
7 adjacent or the nearby operators and their
8 requests for penalty assessment.

9 Q. With respect to this application of
10 Yates Petroleum, is it your opinion that the
11 granting of these requests by Yates Petroleum
12 will be in furtherance of the objectives of the
13 Oil Conservation Division, those being the
14 prevention of waste and the protection of
15 correlative rights?

16 A. Yes, sir, I do. I feel that as a
17 working interest owner in the well in Section 22,
18 it is to my benefit to have Yates to be the
19 continual operator of this proposed reservoir in
20 the Cisco Canyon interval and to have Yates to
21 continue the operations would be in the best and
22 most prudent and efficient as a working interest
23 owner to protect the correlative rights as well
24 as to efficiently manage the reservoir.

25 Q. Mr. Cromwell, Exhibits numbered 8

1 through 13, were these exhibits prepared by
2 yourself or under your direction?

3 A. Yes, sir.

4 MR. CARROLL: Mr. Examiner, I would
5 move the admission of applicant's Exhibits 8
6 through 13.

7 EXAMINER CATANACH: Exhibits 8 through
8 13 will be admitted as evidence.

9 MR. CARROLL: I would pass the witness
10 at this time.

11 EXAMINER CATANACH: Mr. Turner.

12 EXAMINATION

13 BY MR. TURNER:

14 Q. Mr. Cromwell, it's become apparent that
15 there have been competing applications for the
16 location of this well and, I guess, some
17 uncertainty as to where the well was going to be
18 drilled.

19 Can you tell me a little bit more about
20 the thought process that you have gone through
21 and why you have decided that the unorthodox
22 location is preferable to a standard location
23 now?

24 A. Okay. I'll be glad to. If you'll look
25 at the structure map on the top of the Penn

1 carbonate, you'll see that we have a narrow
2 anticlinal ridge. In other words, it is a
3 structural ridge that is low on the west, and it
4 is low on the east. And the well that was
5 drilled in the southeast quarter of Section 22
6 encountered that zone some 300, 400 feet higher
7 than either well.

8 So you have a narrow, high-relief
9 feature encountered within a mile of the two
10 existing wells when Oryx drilled their well in
11 1989. And we feel that that trend is mostly in a
12 north-south direction. And in moving in a
13 north-south direction, you go down into the east
14 half of Section 27, if that trend were to
15 continue.

16 And it is my contention that the well
17 that's drilled -- the Sinclair well was drilled
18 way off structure. And so I would like to see
19 that well drilled as far to the east as
20 possible. Admittedly there's no control, but you
21 would also have no positive evidence to say
22 exactly where that trend continues.

23 So if you look at the top of the Penn
24 carbonate structure, you'll see that I want the
25 unorthodox location because it hopefully will be

1 a higher location on the structure.

2 Now, if you look at the Morrow, the
3 Morrow isopach map, once again, which is Exhibit
4 No. 13, I have isopached the clean Morrow sand in
5 the lower Morrow interval, which is the pay in
6 the Trigg well that's located in the northwest
7 quarter of Section 27.

8 And that thick sand, I believe, is
9 predominantly thicker in the east half of Section
10 27. And so I would like to stay where the sand
11 is thickest as well as high structurally as
12 possible. So weighing those two factors I felt
13 that in an orthodox location would be the benefit
14 for all working interest owners and to drill at
15 that position.

16 Q. But certainly based upon the limited
17 amount of control that's out there, as you admit,
18 there is a great deal of subjectivity in your
19 conclusion to drill here as opposed to a standard
20 location?

21 A. These maps are based on my
22 interpretation. Yes, sir, that's correct.

23 MR. TURNER: No further questions.

24 EXAMINATION

25 BY EXAMINER CATANACH:

1 Q. Mr. Cromwell, you've only used well
2 control to drop your maps?

3 A. Yes, sir.

4 Q. No other geophysical data or anything
5 like that?

6 A. Well, when we initially put together
7 this prospect on the Chalk well, we tried to use
8 some geophysical control that Arco had shot in
9 the area. After looking at their data -- I am
10 not a geophysicist, but what the geophysicist
11 told me that looked at this with me was that
12 their data was of poor control. They had surface
13 problems in here. The data was not reliable to
14 use as an accurate data point.

15 Plus the fact that we had two existing
16 wells, actually three wells when we reentered
17 this well. The Oryx well in the northwest corner
18 of Section 22 was there, as well as the Yates
19 Beauregard well in the southwest corner of
20 Section 23.

21 So when Oryx drilled their well in
22 between these two wells, they encountered the
23 Penn dolomite much higher than they anticipated.
24 In fact, it was so high that they did not even
25 have their mud logger on location when they went

1 through it. They lost circulation when they went
2 through the zone and paid no attention to the
3 hydrocarbon shows that were there and went on down
4 and tested the Morrow.

5 So they did not recognize the potential
6 promise of the Penn carbonate. And they were
7 concentrated on the Morrow, and they only tried
8 to make a Morrow completion.

9 Q. Do you also have water in the Morrow
10 formation in this area?

11 A. No, sir.

12 Q. It's dry.

13 A. Excuse me. The zone can be wet, yes,
14 sir. But when you have production in the Morrow,
15 it is essentially dry gas.

16 Q. Okay. Do you have any idea where the
17 gas-water contact in the Cisco Canyon is?

18 A. No, sir. I don't have an accurate
19 estimate because the well that we are testing on
20 our reentry, we're testing right at the upper
21 portion here, and we are producing high volumes
22 of water. And our engineer will testify to those
23 volumes shortly.

24 But we're only getting a 10 percent oil
25 cut. So the well is making, you know, a certain

1 amount of oil, but it is also making ten times
2 the amount of water. And we're just within the
3 top 30 feet of that zone right now.

4 So, you know, I had originally thought
5 that the oil-water contact would be several
6 hundred feet lower. And after our perforations
7 in here and the subsequent high volumes of water
8 production that we're producing in here, I feel
9 that we need to stay as high, if not higher, as
10 we can on the structure. That's why I think that
11 the unorthodox location would be preferable,
12 according to my mapping.

13 EXAMINER CATANACH: I believe that's
14 all I have of the witness.

15 MR. CARROLL: I have no other
16 questions.

17 Mr. Collins.

18 BRIAN COLLINS

19 Having been duly sworn upon his oath, was
20 examined and testified as follows:

21 EXAMINATION

22 BY MR. CARROLL:

23 Q. Would you, please, state your name and
24 occupation?

25 A. My name is Brian Collins. I'm an

1 engineer with Yates Petroleum Corporation out of
2 Artesia.

3 Q. How long have you been with Yates, Mr.
4 Collins?

5 A. Approximately two years.

6 Q. Mr. Collins, during that time have you
7 had an occasion to testify before the New Mexico
8 Oil Conservation Division relative to
9 engineering, petroleum engineering matters?

10 A. Yes, I have.

11 Q. And your experience as a petroleum
12 engineer goes beyond your employment with Yates;
13 is that correct?

14 A. That's correct. I spent ten years with
15 Exxon Company USA as a petroleum engineer.

16 Q. All right. And you have had your
17 credentials accepted as a petroleum engineer, an
18 expert in that field; is that correct?

19 A. That's correct.

20 MR. CARROLL: Mr. Examiner, I would
21 tender Mr. Collins as an expert with respect to
22 the field of petroleum engineering.

23 EXAMINER CATANACH: Mr. Collins is so
24 qualified.

25 Q. (BY MR. CARROLL) Mr. Collins, you are

1 familiar with the application that is pending
2 today before the Division, are you not?

3 A. Yes, sir.

4 Q. And you're familiar with this
5 particular area and have done some work in here,
6 have you not?

7 A. That's correct.

8 Q. Mr. Collins, as we get into your
9 testimony, why don't you begin, briefly, stating
10 for the Examiner reasons why Yates should be the
11 operator or should be chosen as an operator here
12 with respect to its application to force pool.
13 Why is Yates preferable?

14 A. Okay. Primarily because of our
15 experience in the area, both from offset Morrow
16 well drilling and from this reentry in the Chalk
17 "AKH" Federal No. 1. Do you want me to go
18 ahead?

19 Q. Go ahead.

20 A. I'm going to refer here in a moment to
21 Exhibits No. 14 and 15, Exhibit 14 being an AFE
22 produced by Nearburg Producing Company and
23 Exhibit 15 being a drilling AFE produced by Yates
24 Petroleum. We've drilled nine wells within a
25 three-mile radius of the captioned well down to

1 the Morrow formation.

2 Nearburg, to my knowledge, has not
3 drilled any wells within this immediate area to
4 this well. And I think the AFEs show that Yates,
5 due to our experience in the area and in
6 southeastern New Mexico in general, that we can
7 drill this well less expensively than Nearburg.

8 I might mention that the total
9 completed well cost on the Nearburg AFE is
10 \$725,313. The completed well costs on the Yates'
11 AFE is \$607,800. The difference is \$117,513 that
12 Nearburg is higher than Yates on their AFE.

13 Now, what I've done is looked at -- I
14 had found out on cost data on two of the wells
15 within this three-mile radius, one of them is the
16 Pierre "AGF" State Com. No. 1, which is
17 approximately one mile to the east of the Chalk
18 Fed No. 2.

19 Q. Let me interrupt here just a minute,
20 Mr. Collins.

21 A. Okay.

22 Q. That Pierre "AGF" well is located
23 within the proration unit that is colored orange
24 on our Exhibit No. 1; is that correct?

25 A. That's correct.

1 Q. All right.

2 A. And I also looked at a well that's
3 approximately three miles to the west called the
4 Compromise "AEJ" Fed. Com. No. 1. It's just to
5 the west of the crosshatch area that denotes the
6 Rio Pecos working interest unit.

7 Q. That's in Section 30, is it not?

8 A. That's correct. And what I did was
9 pulled actual drilling cost data, the drilled and
10 completed cost data on those wells. The Pierre
11 was drilled in April of 1989. The Compromise was
12 drilled in December of 1986. So this data is
13 current and is not going to be significantly
14 different than what we could get now price-wise.

15 And the Pierre, the actual cost was
16 \$590,388. On the Compromise, the actual cost was
17 \$579,758. And if we extrapolated the net cost
18 per foot for the Compromise well to our proposed
19 well to a depth of 10,025 feet, that would say
20 that it would cost \$593,000.79.

21 What I'm getting at is actual cost data
22 on nearby wells supports the Yates' AFE cost.

23 Q. Okay. Now, Yates' AFE is Exhibit No.
24 15, is it not?

25 A. That's correct.

1 Q. And that AFE was prepared, and what is
2 the date of that AFE?

3 A. It's March 24, 1992.

4 Q. All right. And the Nearburg AFE that
5 we've been referring to is Exhibit No. 14; is
6 that correct?

7 A. That's correct.

8 Q. And the date of that is February 4 of
9 92; is that correct?

10 A. That's correct.

11 Q. And this was the AFE that was submitted
12 to Yates Petroleum along with their well proposal
13 in February of this year?

14 A. That's correct.

15 Q. Okay. If you'd continue, I'm sorry, I
16 just wanted to make sure our record was clear.

17 A. Okay. There is one point I wanted to
18 bring up or a couple of points on the Nearburg
19 AFE. I don't want to delve into great detail
20 into this. But there's two, the two biggest
21 differences in our cost estimates is, one,
22 Nearburg put in a 10 percent contingency into
23 their intangible cost, which to me is another
24 reflection of their lack of experience in the
25 area.

1 And they also submitted what I consider
2 inflated tubular goods cost. The reason I bring
3 this up, our AFE forms, basically when a person
4 signs these, they're approving the operator to
5 charge whatever they show on their AFE for
6 tubulars or less, essentially at their option, is
7 my interpretation of this.

8 And I checked the current prices, what
9 we can buy this pipe for. And just as an
10 example, on the second page of the Nearburg AFE,
11 Exhibit No. 14, their surface casing they've
12 listed 8-5/8 inch casing at \$12 a foot. Well,
13 the current price for this same casing is \$9.45 a
14 foot, which is a difference of \$2.55 a foot less
15 than what they show on the AFE.

16 On the 4-1/2 inch casing, they show it
17 at \$8.70 per foot. And the current market price
18 for this 4-1/2 inch casing is \$3.73 a foot, so a
19 difference of \$4.97 a foot off what they're
20 showing on their AFE.

21 On their 2-3/8 inch tubing, they show
22 unit price of \$3.30 a foot. The current market
23 price is \$2.19 a foot for a difference of an
24 overage of \$1.11 per foot.

25 When you take all these numbers into

1 account by the footage of pipe that will be run,
2 essentially you could argue that their AFE is
3 \$63,000 overpriced relative to what the current
4 market price of the tubulars are.

5 Also I wanted to make a point on the
6 selection of the tubulars. They have proposed to
7 run 4-1/2 inch casing on this well. And I feel
8 like there's some severe mechanical limitations
9 using 4-1/2 inch.

10 Upper Penn completions typically
11 involve at some point in their life some type of
12 a high volume artificial lift. What we typically
13 use at Dagger Draw is submersible pumps on a high
14 volume well to get the well pumped down where we
15 can bring in the oil and gas.

16 Well, in 4-1/2 inch casing, we're
17 limited to a maximum production capability of
18 approximately 1500 barrels of fluid per day. Our
19 experience is that that number is actually less
20 than that. And as opposed to Yates' proposal of
21 running 5-1/2 inch casing where we can get a
22 maximum production rate of approximately 4,000
23 barrels a day if necessary. We have much more
24 flexibility in 5-1/2 inch is what I'm saying.

25 Likewise, downhole tool selection,

1 packers and other type types of downhole
2 equipment are not -- they're available, but
3 they're not as available as what you can get for
4 5-1/2 inch casing.

5 And I'd like to note that fishing
6 operations are considerably more difficult if you
7 have a fishing job in 4-1/2 inch casing than in
8 5-1/2 inch casing due to the smaller tools and
9 smaller clearances between tools and the casing.

10 I'd also like to mention the proposal
11 to use 2-3/8 inch tubing. If this well is indeed
12 productive or has enough show in the Morrow to
13 justify a stimulation treatment, hydraulic-frac
14 job, in other words, the 2-3/8 is typically not
15 suitable for hydraulic fracturing operations due
16 to the higher friction pressure due to the
17 smaller inner diameter of the tubing. Whereas
18 2-7/8 inch, which is what we propose to run in
19 the well, is acceptable.

20 And we routinely hydraulically fracture
21 the Morrow Formations down to 7/8 inch tubing,
22 but we don't down 2-3/8 because of the high
23 surface pressures caused by the additional
24 friction in the tubulars.

25 Q. Mr. Collins, you've discussed some of

1 these mechanical problems, but let us suppose
2 just for a moment that there is production
3 obtained, gas production, and you mentioned the
4 problems with water disposal.

5 Does Yates in your opinion offer some
6 distinct advantages to the operators of this
7 proposed Chalk well in those areas of gas
8 marketing and water disposal because of its
9 experience in this particular area? And if you
10 do believe so, would you specify that for the
11 Examiner?

12 A. Yes. I believe that Yates does offer
13 advantages from both a gas marketing and a water
14 handling viewpoint. We have already made an
15 agreement based on our, at least initial testing,
16 on the Chalk "AKH" Federal No. 1 with Anadarko
17 Petroleum to send our produced water to them at a
18 considerably lower cost than what we would incur
19 if we were trucking the water.

20 And depending on the field development
21 in the future, you know, if the field becomes a
22 large field, we will at that time find an
23 abandoned well or a depleted well and convert it
24 to saltwater disposal service and further reduce
25 costs.

1 We've already obtained right-of-way to
2 lay this waterline. We are currently securing
3 right-of-way and have already worked an agreement
4 with Northern Natural Gas to lay a sour gas
5 pipeline to Northern Natural. And the proposed
6 well is within a half-mile of Transwestern's
7 sweet gas line, if we do indeed make a sweet gas
8 Morrow completion.

9 Our other wells in the area are tied in
10 to Transwestern. And Yates Petroleum is
11 considered a top priority customer with
12 Transwestern, so we should get favorable pricing
13 and be able to sell gas readily through
14 Transwestern.

15 We're also in the process of applying
16 for an air permit for a compressor ultimately, at
17 least in the case of this Chalk No. 1, we believe
18 that a compression will be required to put the
19 gas into the sales line. So that is in the works
20 right now.

21 And we are also making what I'd call a
22 preliminary scoping study to investigate the
23 feasibility of sweetening the sour gas to reduce
24 the sweetening fees going into a sour pipeline.

25 Q. I take it then, Mr. Collins, what

1 you're testifying to here is that there are
2 certain benefits from economies of scale, the
3 fact that Yates is already having to build these
4 facilities. By you being operator they will be
5 there, and you'll have access to them and will
6 actually result in some cost savings to the
7 working interest owners of this proposed well?

8 A. I believe that's correct.

9 Q. And based on your experience or the
10 Yates' experience here, that they would be best
11 able to design appropriate systems and take
12 advantage of any cost-saving opportunities
13 available out there?

14 A. I do.

15 Q. And I think also your testimony
16 indicated that from your assessments of the AFEs
17 presented by Nearburg that the proposals that
18 they made, in your expert opinion, do indicate
19 that they don't have knowledge of what they're
20 going to encounter out here. And, in fact, what
21 they have proposed could in fact work to the
22 detriment and increase the expense and possibly
23 jeopardize the success of this project; is that
24 correct?

25 A. That's possible.

1 Q. Now, let's turn a moment -- apparently
2 this area and wells that are completed out here
3 do have certain risks associated with them; is
4 that correct?

5 A. That's correct.

6 Q. Mr. Collins, would you for the Examiner
7 develop what your thoughts are with respect to
8 what risks are posed by these particular kinds of
9 wells? And if you would also, after you've
10 described those risks, address the request of
11 Yates Petroleum that a penalty assessment of 200
12 percent be made or assessed by the Commission in
13 this pooling order.

14 A. In reviewing both the Oryx Scoggins "B"
15 1 well, which we reentered and renamed the Chalk
16 Federal No. 1, which is Exhibit No. 16 as their
17 daily drilling report for that particular well,
18 and also briefly examining the drilling histories
19 of the wells we drilled in the area, I've got
20 some of the following mechanical risks I think I
21 should bring up.

22 One problem common to the area is lost
23 circulation, which occurred a number of times in
24 the Oryx well. There's also the possibility of
25 differential sticking, which is enhanced or

1 aggravated by the lost circulation problems.

2 On this Oryx well, I notice at one
3 point after they'd been drill-stem testing the
4 Morrow, they had some difficulties with gas
5 influx and had, you know, to circulate gas out of
6 the well to run back in the hole.

7 And in addition, on these DSTs they
8 encountered some tight hole and significant drag
9 and could quite easily have become stuck on a
10 well. And in this area, there is interval, I'd
11 call it roughly 4,500 feet to 8,000 feet where
12 you can encounter some fairly significant
13 deviation problems, at least deviation greater
14 than the norm for straight-hole drilling.

15 As far as the penalty goes,
16 nonparticipation penalty basically on all the
17 wells in the area, the Rio Pecos working interest
18 unit, the Beauregard State No. 1, the Pierre
19 "AGF" State Com. No. 1, and the Compromise "AEJ"
20 Fed. Com. No. 1, those wells had a 200 percent
21 penalty to them, cost plus 200 percent. And
22 Chalk "AKH" Fed. Com. No. 1, reentry was cost
23 plus 400 percent on that particular well.

24 So it's the area norm, and it's fairly
25 standard industry norm to go with cost plus 200

1 percent for the penalty.

2 Q. In your experience, Mr. Collins, do you
3 think that the risks that you have spoken about
4 and in conjunction with the risks that Mr.
5 Cromwell spoke about from a geological
6 standpoint, that the 200 percent penalty is
7 justified by the circumstances posed by this
8 area?

9 A. Yes, I do.

10 Q. With respect to the cost supervision,
11 daily or monthly supervision rates and also the
12 drilling rates, could you give us the benefit of
13 your experience as to what the normal rate is in
14 this area for those two matters?

15 A. Well, I think the normal rate in this
16 area for overhead would be approximately \$5,000 a
17 month during the drilling operation and
18 approximately \$500 a month for subsequent
19 operations of the well.

20 This data was derived from a survey
21 done by an accounting firm called Ernst & Young
22 for the West Texas, Southeastern, or Eastern New
23 Mexico area for wells of this depth. And this is
24 1991 data, which is their most recent data.

25 Q. All right. So you're basing this

1 recommendation, and it is Yates' request that
2 they be granted a \$5,000 drilling rate overhead
3 charge and a \$500 monthly; is that correct?

4 A. That's correct.

5 Q. And you're basing this, one, on the
6 data compiled by this Ernst & Young study, which
7 is done every year with respect to these kind of
8 matters; is that correct?

9 A. That's correct.

10 Q. And also is it a fair amount in your
11 experience to be charged and one that is the
12 customary charge to be encountered in this
13 particular area of Southeastern New Mexico?

14 A. Yes.

15 Q. Mr. Collins, are there any other
16 matters that you wish to at this time bring to
17 the attention of the Examiner with respect to
18 Yates' application?

19 A. I guess the only thing I'd like to
20 mention is that Yates Petroleum, and this is more
21 specific to the Upper Penn part of this well, but
22 it applies to the Morrow to a large extent, but
23 Yates Petroleum is essentially the most
24 experienced operator in drilling and producing
25 and just all-around handling of these Upper Penn

1 wells based on our Dagger Draw experience.

2 We're currently transporting and
3 marketing approximately 70 million cubic feet a
4 day of sour gas from Dagger Draw. We're
5 disposing of approximately 50,000 barrels of sour
6 water a day. And today we've drilled and
7 completed approximately 100 wells in the Dagger
8 Draw area, which is an Upper Penn dolomite
9 reservoir similar to what it is in this Chalk No.
10 1 reentry well. That's all I have.

11 Q. All right. Then, Mr. Collins, just as
12 a summary then, do you believe it would be in the
13 interests of the directive that the Division must
14 live by of preventing waste and protecting
15 correlative rights if the Division were to grant
16 the application for compulsory pooling, the
17 unorthodox location, and the charge rates that
18 you've talked about with respect to penalty
19 assessment and overhead charges?

20 A. Yes.

21 MR. CARROLL: Mr. Examiner, I would
22 move admission of Exhibits 14, 15, and 16 at this
23 time.

24 EXAMINER CATANACH: Exhibits 14 through
25 16 will be admitted as evidence.

1 MR. CARROLL: I would pass the witness.

2 EXAMINER CATANACH: Mr. Turner.

3 MR. TURNER: I have no questions of the
4 witness.

5 EXAMINER CATANACH: No questions? I
6 don't have any questions of the witness. He may
7 be excused.

8 MR. CARROLL: At this time then, Mr.
9 Examiner, this would conclude our evidence that
10 we would present with respect to our particular
11 application. But we would reserve the right, if
12 necessary, to recall any of these witnesses,
13 depending upon the testimony that Mr. Turner
14 presents in his application.

15 EXAMINER CATANACH: Okay. Let's go
16 ahead and take a 15-minute break at this point.
17 I guess we'll go straight through.

18 [A recess was taken.]

19 EXAMINER CATANACH: We'll call the
20 hearing back to order. And I'll turn it over to
21 Mr. Turner.

22 MR. TURNER: I am J. Randy Turner,
23 attorney with the Kemp, Smith, Duncan & Hammond
24 law firm out of Midland, Texas, here representing
25 Nearburg Exploration Company, in Case No. 10473,

1 which has been consolidated with Case No. 10467.

2 I call as my first witness Bob Shelton.

3 ROBERT G. SHELTON

4 Having been duly sworn upon his oath, was
5 examined and testified as follows:

6 EXAMINATION

7 BY MR. TURNER:

8 Q. Mr. Shelton, would you, please, state
9 your name and place of residence?

10 A. Robert G. Shelton, Midland, Texas.

11 Q. By whom are you employed, and in what
12 capacity are you employed?

13 A. Nearburg Producing Company. I'm the
14 land manager.

15 Q. Have you previously testified before
16 the Division or one of its examiners?

17 A. Yes, I have.

18 Q. Would you, please, summarize your
19 educational background and work experience?

20 A. I have a business degree from Texas
21 Tech University, and I started my work as a
22 landman in 1973 -- 1977, excuse me. And I have
23 worked consistently in that field since 77 with
24 Diamond Shamrock, Maxus Exploration, and Nearburg
25 Producing Company.

1 Q. Have your credentials previously been
2 accepted by the Commission as an expert in land
3 matters?

4 A. Yes, they have.

5 Q. Are you familiar with the application
6 filed in this particular case?

7 A. Yes, sir.

8 Q. And are you familiar with the subject
9 area involved in this particular case?

10 A. I am familiar with it.

11 MR. TURNER: Are the witness'
12 qualifications acceptable?

13 EXAMINER CATANACH: They are.

14 Q. (BY MR. TURNER) Mr. Shelton, would you
15 briefly state what Nearburg Exploration Company
16 seeks with this application?

17 A. We seek the compulsory pooling of the
18 north half of Section 27, Township 18 South, 27
19 East for the drilling of a 10,025 foot Morrow
20 test well at a location of 1,980 from the east
21 line and 660 from the north line.

22 Q. Isn't it true that Nearburg in filing
23 its application has really asked for essentially
24 two different forms of remedy from the
25 Commission, one being the compulsory pooling of

1 the north half of Section 27 from the surface
2 down to 10,025 feet below the surface, that being
3 one form of remedy?

4 A. That is one form of remedy.

5 Q. And the second one that you originally
6 asked permission for was for an unorthodox well
7 location?

8 A. That's correct.

9 Q. At the location of 660 feet from the
10 north line and 1,330 feet from the east line?

11 A. That is correct.

12 Q. Since the filing of this application,
13 is it not true that Nearburg has elected to drill
14 a well at either the location, a standard
15 location or at the location applied for in your
16 application for an unorthodox well location?

17 A. That is correct. We feel like, as
18 earlier testimony has exhibited, that there's not
19 enough well control actually to factually
20 determine the existence of a reservoir in one
21 location versus the other.

22 We feel that it's prudent to drill a
23 well there as evidenced by the geology previously
24 presented. But we don't feel like there's enough
25 information to depict that the unorthodox

1 location is required. We'd be glad to drill as
2 an operator at either location. We would be
3 willing to do the orthodox or the unorthodox
4 location.

5 Q. Mr. Shelton, I'd like to go into the
6 question of how Nearburg came to acquire its
7 interest in the north half of Section 27. Could
8 you tell me how you acquired your interest?

9 A. I checked the records on this
10 particular tract myself here and found out that
11 Arco, Atlantic Richfield Company, Arco, owned
12 one-half interest in the north half of Section 27
13 and the Trigg Family Trust owned one half, the
14 remaining one-half interest.

15 We went to Arco, purchased their
16 interest outright. We have an assignment of
17 record in the county. We also have an approved
18 assignment by the BLM of our undivided 50 percent
19 interest.

20 Arco received their interest by virtue
21 of a farmout from the Trigg Family Trust. The
22 farmout was granted in support of a Morrow test
23 well, which was drilled by then Arco, Sinclair at
24 that time, in the north half of Section 27. It's
25 the Sinclair Federal well in the northwest

1 quarter.

2 They drilled that well. As a result of
3 drilling that well under the terms of the farmout
4 agreement, they earned an assignment of 50
5 percent of Trigg's interest insofar as the
6 coverage from the surface to 10,025 feet. And we
7 obtained our interest directly as the result of
8 that assignment from Trigg to Arco.

9 Q. Is that farmout agreement that you
10 referred to the farmout agreement that you have
11 in front of you and which we have marked as
12 Exhibit 1?

13 A. It is this farmout, that's correct. We
14 obtained this farmout agreement only late Tuesday
15 of this week. We got the farmout from the files
16 of the Trigg Family Trust in Roswell, New
17 Mexico. They provided it for us.

18 Q. Okay. Now, are you familiar -- have
19 you read and are you familiar with the terms of
20 this farmout agreement?

21 A. I am familiar with it.

22 Q. And the operating agreement that is
23 attached as Exhibit A to that farmout agreement,
24 have you read that, and are you familiar with its
25 terms?

1 A. Yes, sir. I have read it, and I am
2 familiar with its terms.

3 Q. Just to clarify here, the Exhibit 1,
4 what I have marked as Exhibit 1, is the clipped
5 series of documents commencing with the farmout
6 agreement with the operating agreement attached
7 as Exhibit A thereto, followed by the accounting
8 procedure that's attached to the form of
9 operating agreement.

10 And there's various other
11 correspondence in that Exhibit 1 whereby the BLM
12 approves the assignment of the 50 percent
13 interest from John Trigg to Atlantic Richfield
14 Company, followed by an assignment, typewritten
15 assignment of operating rights from Mr. Trigg to
16 Sinclair Oil Corporation, and then following at
17 the end, or towards the end there, by the copy of
18 the actual operating agreement that was entered
19 into by Atlantic Richfield Company and Mr. and
20 Mrs. Trigg pursuant to the terms of the farmout
21 agreement.

22 Now, Mr. Shelton, could you tell us a
23 little bit about the farmout agreement and how
24 Sinclair came to earn the assignment that it
25 received from the Triggs?

1 A. The farmout agreement provided for a
2 test well to be drilled on the farmout lands
3 which covered, among other lands, the north half
4 of 27. They were successful in drilling the
5 well. They made a productive well out of it.
6 The well began production in 1980. The well
7 produced for approximately ten years.

8 Pursuant to that completion and under
9 the terms of the farmout agreement, Trigg's 50
10 percent interest was assigned to Sinclair, who
11 earned the 50 percent interest in the proration
12 unit of the well, that being the north half of
13 Section 27.

14 Q. Okay. That is the acreage that the
15 assignment actually covered?

16 A. That is correct. And the assignment
17 specifically references the existence of an
18 operating agreement and makes the assignment
19 subject to the operating agreement.

20 Q. Now, with that said, Mr. Shelton,
21 you're an experienced landman and your
22 credentials have been accepted as an expert in
23 your field.

24 If you were a landman who was acquiring
25 or interested in acquiring an interest in the

1 north half of Section 27, you would go to the
2 county records and check the title and look at
3 all the instruments in the chain of title of the
4 interest that you're trying to acquire; is that
5 correct?

6 A. I would do so and make sure that I knew
7 appropriately what all burdens came with the
8 interest that I was acquiring, whether they be
9 royalty burdens, overrides, or contracts, which
10 the acreage in which the interest I was acquiring
11 was subject to.

12 Q. And if you did that, as a typical
13 landman would do, you would come across the
14 assignment of the 50 percent interest from the
15 Triggs to Atlantic Richfield Company of the 50
16 percent interest in the north half of Section 27;
17 is that correct?

18 A. You certainly would.

19 Q. And if you became aware of that
20 assignment and you read that assignment, you
21 would see that the interest is expressly made
22 subject to the terms of this operating agreement,
23 would you not?

24 A. Yes, you would, and it would put you on
25 notice, of course, that an operating agreement

1 did exist.

2 Q. Now, if you would, Mr. Shelton, let's
3 turn to the actual executed operating agreement.

4 A. I don't have a copy of the executed one
5 right here.

6 Q. There should be one. That's it.

7 A. This is the one that's attached to the
8 farmout. Oh, maybe it's in here.

9 Q. Yes. It's further down in the stack
10 there?

11 A. Okay.

12 Q. And if you would, turn to page 4 of the
13 operating agreement.

14 A. All right.

15 Q. Article 10 entitled, "Term of the
16 Agreement," and would you, please, read to us the
17 first part of that paragraph?

18 A. "This agreement shall remain in full
19 force and effect for as long as any oil and gas
20 leases subject to this agreement remain or are
21 continued in force as to any part of the unit
22 area" --

23 Q. Continue reading, please.

24 A. -- "whether by production, extension,
25 renewal, or otherwise provided, however, if the

1 first well drilled hereunder results in a dry
2 hole and no other well is producing oil or gas in
3 paying quantities from the unit area, then at the
4 end of 90 days after abandonment of the first
5 test well, this agreement shall terminate unless
6 one or more of the parties are engaged in
7 drilling a well or wells pursuant to Section 12
8 hereof."

9 Q. I think that's far enough for the time
10 being. The second part of that sentence
11 basically is a proviso. The first part of the
12 sentence says the agreement, in essence, will
13 remain in force and effect as long as any of the
14 leases subject to the agreement are in force and
15 effect.

16 And based upon your familiarity with
17 this area, is the oil and gas lease under which
18 you have acquired your interest and under which
19 Yates is claiming an interest still in force and
20 effect?

21 A. Yes, it is.

22 Q. And based upon what you know about the
23 drilling of -- drilling activity under this
24 lease, was the first well drilled on the contract
25 area a dry hole?

1 A. No, it was not. It was a completed
2 productive Morrow, Atoka Morrow well.

3 Q. If that's the case according to this
4 provision, then, the proviso portion of that
5 paragraph would not be applicable and you would
6 conclude then, would you not, that since the
7 lease is still in force and effect, it's still
8 subject to the terms of this operating agreement?

9 A. Absolutely.

10 Q. If you would, Mr. Shelton, turn to page
11 8 of the operating agreement, and the paragraph
12 No. 19 entitled, "Selection of New Operator,"
13 would you, please, read that provision for us?

14 A. "Should a sale be made by operator of
15 its rights and interest, the other parties shall
16 have the right within 60 days after the date of
17 such sale by a majority vote in interest to
18 select a new operator. If a new operator is not
19 so selected, the transferee of the present
20 operator shall assume the duties of and act as
21 operator.

22 "In either case the retiring operator
23 shall continue to serve as operator and discharge
24 its duties in that capacity under this agreement
25 and until its successor operator is selected and

1 begins to function. But the present operator
2 shall not be obligated to continue the
3 performance of its duties for than more than 120
4 days after the sale of its rights and interests
5 have been completed."

6 Q. This provision, in essence, just
7 paraphrasing then, states -- well, let me ask you
8 this question first. Who was the operator
9 designated under this operating agreement?

10 A. Our predecessor in title, Sinclair-Arco
11 was the operator.

12 Q. And that is who you acquired your
13 interest from, did you not?

14 A. That is correct.

15 Q. And you acquired your interest when,
16 Mr. Shelton?

17 A. We acquired our interest in
18 approximately September of 1991. I think our
19 assignment, county assignment is dated then. Our
20 Federal assignment is dated at a later time. I
21 think it's in November of 91.

22 Q. But in either event, more than 60 days
23 have elapsed since the date you acquired your
24 assignment from Arco?

25 A. Absolutely.

1 Q. In your interpretation then of that
2 provision would mean what, Mr. Shelton, regarding
3 the operator?

4 A. Pursuant to the terms of that section
5 of the operating agreement, we have succeeded to
6 an operating agreement which is in full force and
7 effect.

8 Q. Now, Mr. Shelton, you have in front of
9 you other additional exhibits that I asked you to
10 go through. And would you identify which of
11 those exhibits were either prepared by you or
12 under your direction or control?

13 A. The exhibits are a land plat
14 designating the location; the orthodox location
15 of the proposed well and the appropriate 320-acre
16 spacing unit, being the north half of Section 27;
17 an ownership report prepared under my direction
18 covering, among other lands, the north half of
19 Section 27; a letter dated February 11, 1992, to
20 the Trigg Family Trust advising them that we had
21 acquired a 50 percent interest and proposing the
22 drilling of a 10,025 foot Morrow test.

23 Q. Bob, if you would, just to move along a
24 little bit, because I'll come back and ask more
25 specific questions about the contents of the

1 exhibits, if you'll just identify them by number
2 for the ones that you're responsible for.

3 A. Okay. The letter dated December 3 to
4 John Bettis.

5 Q. Which is designated as which exhibit?

6 A. I don't have the numbers on mine.

7 Q. Oh. That would be Exhibit 5?

8 A. Okay. Exhibit 6 is a letter to the
9 Trigg Family Trust.

10 Q. Okay. Let me go through here.

11 A. An application for permit to drill
12 which has been approved by the BLM.

13 Q. Which is marked Exhibit --

14 A. Marked Exhibit 5.

15 Q. Right.

16 A. A sundry notice with attached
17 information regarding amendment, which is Exhibit
18 6; a portion of the Bureau of Land Management
19 regulations marked Exhibit 7; and an AFE for the
20 drilling of a Morrow test well marked Exhibit 8.

21 Q. Okay. Let's start with your Exhibit
22 No. 2, and again explain to us what Exhibit No. 2
23 is?

24 A. Exhibit No. 2 shows with a red dot a
25 location 660 from the north line, 1980 from the

1 east line of a well proposal. And it shows the
2 north half of Section 27 being designated the
3 proration unit for that well spacing unit.

4 Q. Okay. And Exhibit 3 is what?

5 A. Exhibit 3 is an ownership report
6 compiled from the federal and county records
7 setting forth the actual ownership of the north
8 half of 27 among other the lines.

9 Q. Right.

10 A. And it shows the north half of 27 to be
11 by one half of the Trigg family trust and one
12 half by Nearburg Exploration Company.

13 Q. So is what you're telling us then is
14 that the ownership list that you have prepared
15 reflects the ownership as reflected in the county
16 records; is that correct?

17 A. Yes, county and Federal.

18 Q. And federal records?

19 A. That is correct.

20 Q. So when you go to either the county
21 records or the BLM records, you're saying that
22 the interest is owned by Nearburg Exploration
23 one-half, and the Trigg Family Trust owns the
24 other half?

25 A. That's correct.

1 Q. And there's no evidence of any
2 ownership interest then by Yates Petroleum
3 Corporation or any of the other parties who may
4 have testified today are subject to their
5 control?

6 A. That is correct. There is no evidence
7 of ownership at all in any records.

8 Q. But Nearburg Exploration Company owns
9 an undivided one-half interest as reflected by
10 both sets of records?

11 A. That is absolutely correct.

12 Q. And is that interest owned in fee
13 simple? Are there any strings attached to that
14 interest, or do you own the interest outright?

15 A. Outright. The assignments were not
16 term assignments. They're permanent
17 assignments. There is no attachments other than
18 the agreements and royalty reservations that they
19 come tied with.

20 Q. So the rights that you have acquired
21 then are rights to conduct drilling operations
22 under your interest?

23 A. That is correct.

24 Q. Mr. Shelton, would you, please, tell us
25 how long you have worked for Nearburg?

1 A. About two-and-a-half years.

2 Q. During that time period have you become
3 very familiar and close to the operations of your
4 employer?

5 A. Yes, sir, very close.

6 Q. And would you say that you are included
7 in all of the important decisions that the
8 company makes regarding the drilling of wells?

9 A. Yes, absolutely.

10 Q. Have you been extensively involved in
11 your company's discussions regarding the drilling
12 of a well in the north half of this Section 27?

13 A. Yes, I have been at every meeting
14 that's been held.

15 Q. Then would you tell us briefly what the
16 philosophy of Nearburg is regarding the drilling
17 of a well in the north half of Section 27 and
18 what Nearburg would like to accomplish in the
19 operations that are conducted on that tract of
20 land?

21 A. We believe, as exhibited by previous
22 geologic testimony, that it does merit a well
23 being drilled, both for the objectives of the
24 Cisco Canyon and for the Morrow. We think it's a
25 reasonable risk location that could be

1 economically productive. And we believe that
2 with a 50 percent ownership in that tract we have
3 enough interest to justify our operatorship in
4 the tract and drilling of the well.

5 Q. And what has been the decision of
6 Nearburg regarding the location of the well to be
7 drilled in the north half of Section 27?

8 A. We, of course, have been able to obtain
9 and utilize all the same data that Yates has.
10 And we see virtually the same picture, but we
11 know that the location cannot be so specifically
12 picked to know that a reservoir will or will not
13 be present at an orthodox or an unorthodox
14 location.

15 We, too, have attempted to use seismic
16 in the area. We are still evaluating the
17 location geophysically. But we at this time
18 think either the orthodox or the unorthodox
19 location will be certainly capable of commercial
20 production.

21 Q. So then it's your testimony that
22 Nearburg would be willing to drill the well in
23 the north half of 27 at a standard location or at
24 an unorthodox location, and you really have no
25 preference for which location to drill at?

1 A. That's correct.

2 Q. Okay. In the pursuit of getting a well
3 drilled in the north half of Section 27, have you
4 filed with the BLM an application for permit to
5 drill a well?

6 A. Yes, we did. We filed an application
7 for permit to drill, Form 3160-3 with the Bureau
8 of Land Management, and as amended a permit was
9 issued and approved to Nearburg Producing Company
10 by the area manager on April 8, 1992, at a
11 location 660 from the north line and 1330 from
12 the east line, Unit B.

13 Q. Okay. So you have already secured
14 approval or your permit to drill a well from the
15 BLM?

16 A. Yes.

17 Q. Now --

18 A. We did amend it.

19 Q. Right. But you do have a permit to
20 drill?

21 A. Yes, we do have a permit to drill
22 issued by the Bureau of Land Management.

23 Q. What is your understanding of the
24 proration unit required for the drilling of the
25 proposed well in the north half of Section 27?

1 A. Gas well will be 320-acre spacing.

2 Q. Is that your understanding that would
3 be true whether or not the gas well would be a
4 Morrow well or a Cisco Canyon well?

5 A. That's correct. That's my
6 understanding.

7 Q. It's been your testimony also that
8 either formation is a possible producing
9 formation under this tract?

10 A. That's correct.

11 Q. Given the fact that Nearburg has
12 already secured a permit to drill from the BLM
13 for a well to be drilled in the north half of
14 Section 27, what is your understanding regarding
15 the ability of the BLM to issue another permit
16 for a well to be drilled on that proration unit?

17 A. My understanding is that the BLM will
18 not -- you know, once a permit has been issued on
19 a proration unit, we've discussed it with them,
20 and they do not understand why they would permit
21 another operator on the same proration unit or
22 give out additional drilling permits.

23 Their regulations in part, it is my
24 interpretation, state that they would only issue
25 a drilling permit if it complies with the spacing

1 patterns and under the directions of the
2 appropriate governmental authority.

3 And having two operators in one area
4 for the same spacing unit, I don't believe they'd
5 get a permit on it.

6 Q. In fact, Mr. Shelton, you testified
7 just a few minutes ago that what has been marked
8 as our Exhibit No. 7 is an exhibit that was
9 prepared by you. Would you tell us what Exhibit
10 No. 7 is?

11 A. It's Bureau of Land Management
12 Regulation 3162.3-1 that states the criteria for
13 the BLM issuing a permit. Says, "Each well shall
14 be drilled in conformity with an acceptable well
15 spacing program at a surveyed location approved
16 and prescribed by an authorized officer after
17 appropriate environmental and technical review.

18 "An acceptable well spacing program may
19 be either one which conforms to the spacing order
20 or field rule issued by the state commission or
21 board and accepted by an authorized officer."

22 Q. Okay. So based upon this regulation
23 and your understanding of the BLM's policy is
24 that they would not be inclined to issue another
25 permit to drill a well on this tract of land; is

1 that correct?

2 A. That's my belief. That's correct.

3 Q. Now, Mr. Shelton, would you tell us a
4 little bit more about Nearburg's experience in
5 drilling oil and gas wells in southeastern New
6 Mexico and in particular the type of well that
7 you are proposing to drill in your application?

8 A. Nearburg primarily is in New Mexico and
9 operates a great number of wells. We, like I
10 say, primarily are a New Mexico operator. We
11 primarily deal in two formations in New Mexico.
12 We drill Morrow Atoka wells, and we drill Cisco
13 Canyon wells.

14 We also, like Yates, are very heavily
15 involved in the Dagger Draw area. We have four
16 saltwater disposal wells in that area. We have
17 many, many wells in the area. And we produce a
18 great amount of fluid, both water, oil, and gas.

19 We have an individual in our company
20 that's dedicated totally to gas marketing. We
21 have an office in Hobbs, New Mexico. We have
22 immediate access to our facilities with our
23 personnel.

24 We have, let's see, twelve people
25 designated -- directed toward our operations. We

1 operate 123 wells. Last year we drilled 20 wells
2 as an independent. We distribute somewhere in
3 the neighborhood of \$30 million a year in
4 revenue.

5 And we're a very capable operator,
6 especially in the Cisco Canyon and Morrow
7 operator. We have a great deal of experience,
8 and we're a very good and very professional
9 operator. We operate for a lot of other industry
10 partners, including we're Yates' nonoperator in
11 some cases in Dagger Draw.

12 Q. Okay. Yates has earlier put on
13 testimony regarding some specific concerns that
14 they have regarding this particular area and this
15 proposed well. Would you share with us the
16 discussion and concern that Nearburg has
17 regarding the concerns that have been raised by
18 Yates' people?

19 A. We have now and we submit here an AFE
20 for the drilling of this well at the orthodox
21 location which shows -- one of their concerns was
22 the drilling costs. At my direction Tim
23 McDonnell went back and looked at our AFE. Our
24 drilling cost is expected to be, total well cost,
25 \$576,258.

1 Q. Okay. Now, let me stop you there,
2 Bob. The AFE that you're referring to is what we
3 have marked as Exhibit No. 8?

4 A. That's correct.

5 Q. And that AFE is basically an AFE that
6 was come up with by Nearburg after reviewing
7 operations out there and being able to revise its
8 AFE. So this AFE is a revised AFE?

9 A. This is the revised AFE after we have
10 talked to the people that would actually do the
11 work on our behalf. We've gotten bids. We've
12 secured all the information necessary to make an
13 appropriate AFE. And, accordingly, we've
14 generated this revised AFE.

15 Q. Now, one of the concerns that was
16 raised by Yates regarding your proposed
17 operations, as set forth in your original AFE,
18 was regarding the casing that you proposed to
19 use. Would you, please, address those concerns
20 for us?

21 A. The production casing of 4-1/2, which
22 was in the old AFE, has now been changed to
23 5-1/2. We recognized through our operations in
24 the Dagger Draw area, like they do, that great
25 volumes of fluid are produced and that the 5-1/2

1 inch casing is preferable.

2 Q. And would you tell us briefly just some
3 of the other changes that you were able to make
4 to your AFE that might alleviate some of the
5 concerns that Yates had with your original AFE?

6 A. Primarily it's on pricing. After
7 getting appropriate bids from individuals, the
8 prices of casing, tubular goods, and the work to
9 be done throughout the AFE, you know, it's just
10 been revised according to all of our operations.

11 Q. Okay. And based upon your extensive
12 operations in southeastern New Mexico, would it
13 be fair to say that you would have somewhat equal
14 access to some of the economies of scale that
15 Yates described that they would have access to?

16 A. Certainly. They've discussed
17 arrangements with other operators of disposal of
18 saltwater. I'm sure -- that's a commercial
19 facility. I'm sure we would have the same access
20 to it.

21 Pipelines in the area. Of course, we
22 have a full-time person marketing gas for us. We
23 can provide the same services for gas
24 connections, sales and marketing of gas.

25 Those economies of scale are -- you

1 know, anybody that's an operator in New Mexico
2 doesn't have to be an operator within that
3 section or within the nine surrounding sections.
4 We certainly have the ability and the forethought
5 to be a prudent operator and take advantage of
6 all those same types of opportunities.

7 Q. Based upon what you're telling us, Mr.
8 Shelton, would it be a fair statement on your
9 part -- I guess the point I'm hearing you make
10 would be that you believe that Nearburg can drill
11 this well as efficiently and as well as Yates can
12 drill it?

13 A. Absolutely we can. We don't -- we are
14 a company of a very few dedicated people. We
15 have about 30 employees. We operate in New
16 Mexico, and we can drill a well very ably, very
17 cost effectively.

18 Q. And is Nearburg committed to drilling
19 this well?

20 A. Yes, sir, they are. We feel like we
21 have the largest economic risk in the well. We
22 own a 50 percent interest. Although Yates can
23 testify to the fact that they control a bigger
24 interest, their economic interest is only 21
25 percent or less.

1 And we feel like because of that it
2 gives us duty and responsibility to protect the
3 interest of our 50 percent hold-down costs. And
4 we believe with the largest interest, we should
5 be, rightfully should be designated operator.

6 We will of course -- you know, we
7 believe that the overhead rates professed by
8 Yates are overhead rates that are common for the
9 area, and we'd certainly be willing to live with
10 the overhead rates expressed by Yates for the
11 fixed overhead and drilling rates.

12 Q. Mr. Shelton, based upon what you have
13 told us here today, do you feel that your
14 application and the well that you propose to
15 drill would be in the best interests of oil
16 conservation and the protection of correlative
17 rights?

18 A. Yes, I do. I believe -- you know, we
19 AFE'd Yates first. We initiated this operation.
20 We initiated this well proposal. We've carried
21 forth with the permitting. We've done everything
22 necessary to drill the well. And we feel like we
23 have, of course, have the ability. And we've
24 done our homework on this deal. And we think we
25 should certainly be the operator.

1 We've not yet even substantiated that
2 Yates has an interest in this property. You
3 know, if they've got an interest, it's by virtue
4 of some agreement outside the record. And that's
5 something that we -- that they have not even, I
6 don't think, adequately shown.

7 MR. TURNER: At this time I move for
8 the admission of Exhibits 1 through 8.

9 EXAMINER CATANACH: Exhibits 1 through
10 8 will be admitted as evidence.

11 MR. TURNER: I would also move the
12 admission of Exhibits 9, 10, 11, 12, and 13,
13 which are copies of the letters that were sent
14 out to each of the working interest owners, as we
15 found them to be, together with the return
16 receipts from the US Postal Service.

17 EXAMINER CATANACH: Exhibits 9 through
18 13 will be admitted as evidence.

19 MR. TURNER: I have no further
20 questions at this time.

21 EXAMINER CATANACH: Mr. Carroll?

22 MR. CARROLL: Yes, I do have some
23 questions.

24 EXAMINATION

25 BY MR. CARROLL:

1 Q. Mr. Shelton, you have testified that
2 you personally checked these records; is that
3 correct?

4 A. In Santa Fe I personally checked the
5 records of the BLM in Santa Fe, New Mexico.

6 Q. And when was that check performed?

7 A. Last summer. It was performed by me.
8 When I ran the original ownership, it was updated
9 by Doug Shutes two days ago.

10 Q. Mr. Shelton, precisely when did you
11 perform that check in Santa Fe?

12 A. Sometime in July, I believe.

13 Q. In July. Mr. Shelton, you were aware
14 that Mr. Cromwell had presented this prospect
15 covering Section 27 and 22 to your management,
16 were you not?

17 A. He and Mr. Bettis came by our office
18 and presented it to myself and Les Honeyman.

19 Q. In August?

20 A. I was there at that time.

21 Q. Did you advise them --

22 A. I don't believe it was in August when
23 they presented it to us. Let me check some
24 information here. If I'm not mistaken, I believe
25 the prospect was presented to us in November.

1 Q. Mr. Shelton, you heard Mr. Cromwell
2 testify that he personally showed it to your
3 management prior to the visit that you're talking
4 about and prior to his selling the prospect to
5 Mr. Bettis and Mr. Honeyman?

6 A. To -- well, I am not aware that he
7 showed it to anybody except for the one time he
8 showed it to me and Les Honeyman in our office in
9 November.

10 Q. You have no reason to doubt that Mr.
11 Cromwell testified truthfully a moment ago when
12 he was on the stand, do you?

13 A. No. I have no reason to doubt that
14 whatsoever.

15 Q. Now, Mr. Shelton, you don't have any
16 reason to doubt the fact that Yates Petroleum,
17 Bettis, and the individuals listed on our Exhibit
18 2 own an interest in that well, do you?

19 A. Own an interest in what well?

20 Q. Own an interest, excuse me, in the
21 north half of Section 27.

22 A. I have nothing to verify that. I do
23 know there's an existence of a farmout agreement
24 between Trigg and Craig Clark.

25 Q. Mr. Shelton, my question was: You have

1 no reason to doubt that Yates is interested, they
2 have testified to, at this hearing today is
3 incorrect, do you?

4 A. That they have a 21 percent interest or
5 a 10 percent interest?

6 Q. That the interest as shown on Exhibit 2
7 is correct?

8 A. They do not have that of record, no.

9 Q. You don't have any reason, though, to
10 dispute that as being correct?

11 A. If I went and checked the records, I
12 would dispute that, yes.

13 Q. Mr. Shelton, that's not my question.
14 You know personally that those interests are
15 correct, do you not?

16 A. I have not seen a chain of title which
17 brings anything out of this farmout agreement.

18 Q. Then, Mr. Shelton, why did you in
19 February of this year try to get them to sign a
20 JOA and an AFE for this well?

21 A. I felt like it was prudent. I also
22 sent it to Trigg, and I sent it to everybody that
23 did have a record. I sent it to everybody that
24 claimed an interest in it. That doesn't mean
25 that I recognize it.

1 Q. You do recognize that they have an
2 interest. You also sent the same information in
3 some of your exhibits here showing that you wrote
4 Mr. Bettis?

5 A. Craig Clark, Bettis, all of those
6 people were sent the information because they
7 claimed an interest.

8 MR. TURNER: I believe that one of your
9 witnesses testified earlier that that was a
10 matter of precaution to undergo noticing in that
11 regard. I think that's what Mr. Shelton is
12 telling you here.

13 MR. CARROLL: Then I want Mr. Shelton
14 to answer the question.

15 Q. (BY MR. CARROLL) Does he have any
16 information which would cause him to doubt the
17 veracity of Exhibit 2 which we presented?

18 A. The lack of information.

19 Q. The lack of information?

20 A. Right, the lack of not seeing
21 anything -- not seeing a chain of title from the
22 farmout agreement in to any of the people that
23 are claiming an interest, except for the Trigg
24 Family Trust under that exhibit.

25 Q. Well, Mr. Shelton --

1 A. I mean, if you've got it, show it to
2 me. Let's see the chain of title and I can
3 testify to it.

4 Q. Mr. Shelton, did you ask in your
5 February letter to be presented with that
6 evidence?

7 A. No.

8 Q. You did not, did you?

9 A. I did not.

10 Q. You didn't doubt it in February, did
11 you it?

12 A. I sent it to everybody that claimed an
13 interest.

14 Q. Mr. Shelton, let's go -- you testified
15 that you personally checked the records; is that
16 correct?

17 A. The BLM records in Santa Fe.

18 Q. And you also testified that anyone who
19 checked the records would be put on notice that
20 there was a joint operating agreement because the
21 Trigg assignment referenced it; is that correct?

22 A. The Trigg assignment is in the county
23 records that references that. And anybody checks
24 the county records would be put on notice.

25 Q. Were you put on notice then? Were you

1 aware of it back last year?

2 A. I did not check the county records.

3 Q. You didn't check the county records?

4 A. I found out the existence of the
5 operating agreement, as we've testified, last
6 Tuesday and got a copy of it.

7 Q. When did you find out about it?
8 Tuesday, a week ago?

9 A. No. This is Thursday -- Tuesday, two
10 days ago.

11 Q. And so at that point in time, you had
12 no notice of the joint operating agreement that
13 you have presented as an exhibit?

14 A. Yeah, I believe we did have actual
15 notice. It was of record. Just because I didn't
16 find it until Tuesday doesn't mean I didn't have
17 notice.

18 Q. Then why did you propose a joint
19 operating agreement to Yates back in February and
20 also proposed back in December of last year to
21 Mr. Bettis to join into a joint operating
22 agreement?

23 A. Because I did not at that time know of
24 the existence of the operating agreement. Had I
25 known of it, I certainly would have, as we will

1 today, make the proposal under the effective
2 currently in force operating agreement.

3 Q. Mr. Shelton, that decision to make that
4 offer is based on the fact that we beat you to
5 the Division with the filing of our forced
6 pooling application. That's the only reason
7 you're willing to accept the penalty provisions
8 under the old JOA, and that's to gain
9 operatorship; isn't that correct?

10 A. We feel like we are the best person to
11 operate.

12 Q. You feel that you're the best operator?

13 A. That's correct.

14 Q. Let's go and talk about these AFEs that
15 you presented. You don't deny the fact that the
16 AFE that was presented in February was more than
17 \$100,000 more; is that correct?

18 A. Absolutely not. I do not dispute that.

19 Q. And you have just presented a new AFE
20 to the Examiner; is that correct?

21 A. That is correct.

22 Q. And that new AFE is substantially lower
23 than the older one; is that correct?

24 A. That is correct.

25 Q. Now, Mr. Shelton, you have not

1 presented that AFE to Yates Petroleum, have you?

2 A. No.

3 Q. We've never seen that before just a
4 moment ago when it was given to us?

5 A. That's correct.

6 Q. You did have the benefit of the lower
7 AFE that Yates Petroleum presented to you, did
8 you not, when this one was being prepared?

9 A. Yes.

10 Q. And you also told us that one of the
11 things that you did in preparing this new AFE is
12 that you went out and got appropriate bids and
13 those kind of things so you made a proper AFE; is
14 that correct?

15 A. That is correct.

16 Q. And, in fact, you're admitting that the
17 AFE you submitted in February was not appropriate
18 because you didn't go out and get the appropriate
19 bids and that you presented an AFE to these
20 people that was way in excess of what it would
21 take to drill a well out there?

22 A. We did submit an AFE, which is now in
23 hindsight, we did estimate costs higher than what
24 we believe them to be today.

25 Q. And the reason you believe them to be

1 higher is because you've had the benefit of
2 Yates' AFE and their benefit of actual drilling
3 costs out there, do you not?

4 A. Not so solely, no.

5 Q. Not solely. But percentage-wise, Mr.
6 Shelton, how much are you going to attribute the
7 benefit of having Yates' AFEs?

8 A. We do our work based on what we think
9 we can do the bids from contractors. I would say
10 we compared them obviously, as you have compared
11 them, and this testimony represented that you
12 did.

13 Q. Well, Mr. Shelton, you're admitting
14 that the AFE that you presented back in February
15 was incorrect?

16 A. It was higher than what we can now
17 operate and produce and drill the well for.

18 Q. What has changed between February and
19 today that makes you now able to operate the well
20 cheaper?

21 A. Our control of the costs by getting
22 actual bids, by doing a little bit more research
23 and study on the well proposal itself, and
24 defining those actual costs.

25 Q. So you're telling me that this Nearburg

1 Exploration Company, who supposedly is just as
2 experienced as Yates, has done all this drilling
3 in all these years, just three months earlier
4 went out and made a novice mistake by preparing
5 an AFE that was not based on the actual costs of
6 services could be rendered for based on actual
7 drilling costs; is that correct?

8 A. I'm not saying that we didn't.

9 Q. You're not saying you didn't. The
10 particular well that we're talking about in
11 Section 27, I believe you testified that -- well,
12 when was that well actually drilled, Mr.
13 Shelton? I was a little confused by your
14 testimony.

15 A. Well, I've got the state records that
16 show the well was drilled in 1967, and I'll be
17 glad to pull those for you.

18 Q. No. When you were testifying --

19 A. It showed they were drilled in 1967,
20 but it shows first production in 1979 or 80 --
21 no, I'm sorry, 1969 or 70, and then the well
22 produced up into 1980.

23 Q. That's the problem I had. You
24 testified it was in 1980. But it was actually
25 back in 1970?

1 A. 69 or 70. I'm sorry. That is correct.

2 Q. And this particular well was plugged in
3 1982, ten years ago; is that correct?

4 A. That's correct.

5 Q. And there's been no operations on the
6 north half of Section 27 for ten years; is that
7 correct?

8 A. Since that period of time.

9 Q. And you testified that the actual
10 obtaining of these assignments was sometime,
11 September of last year; is that correct?

12 A. Let me look at them and see. I
13 negotiated and consummated that trade. The state
14 assignment is dated November 21. The Federal
15 assignment is October 21.

16 Q. Of 1991; is that correct?

17 A. That's correct.

18 Q. Several months after the date that Mr.
19 Cromwell testified that of August that he went in
20 and showed this deal to Nearburg?

21 A. He testified that he showed the deal to
22 Nearburg in August; is that correct?

23 Q. That's correct?

24 MR. CROMWELL: Could I say something,
25 sir?

1 EXAMINER CATANACH: Through your
2 attorney.

3 Q. (BY MR. CARROLL) Those dates would be
4 several months after the dates that Mr. Cromwell
5 testified to?

6 A. I am not aware that Mr. Cromwell showed
7 this prospect to us before the November date.

8 Q. Mr. Shelton, that's not the question.
9 The dates that we're talking about, the November
10 and October dates, do fall several months after
11 an August date of 1991; is that correct?

12 A. That's correct.

13 Q. Now, with respect to this old operating
14 agreement, did you give notice to the persons
15 that were signatory to it that you intended to be
16 the successor operator?

17 A. Well, yes, we did, which is -- which
18 would be Trigg. I have a letter dated February
19 11 to the Trigg Family Trust which so states that
20 we have acquired 50 percent interest and proposes
21 the drilling of a well. I have a letter back
22 from them acknowledging our ownership and
23 acknowledging our letter.

24 And in that letter they -- I don't have
25 a copy of the Trigg letter back to us. Do you

1 have a copy of it? Yes, that's it. It is dated
2 February 28, so it's a reply. It says, "We are
3 in receipt of your letter dated February 11."
4 They received our AFE and proposal.

5 And at that time they offered, they
6 said they would consider a farmout to Nearburg
7 where the trust would retain a 15 percent net
8 override; thereby, yielding a 70 percent net
9 royalty interest farmout.

10 So although they had given a farmout to
11 Craig Clark, they offered us a farmout at that
12 time in response to my letter.

13 Q. Mr. Shelton --

14 MR. TURNER: Excuse me. That is
15 attached as Exhibit 4, that correspondence you're
16 referring to, Bob?

17 THE WITNESS: Uh-huh.

18 Q. (BY MR. CARROLL) Again, Mr. Shelton,
19 you're not answering my question. I asked with
20 reference to the old operating agreement, which
21 you have brought before the Division, did you
22 give notice to anyone that you were going to
23 under that agreement become or wanted to become,
24 put up for election, whatever you call it, to be
25 the successor operator?

1 Did you invoke any provision under that
2 old operating agreement?

3 A. Well, the operating agreement says that
4 within 60 days unless somebody objects, we become
5 the operator and we did.

6 Q. Well, it also says that it would be by
7 election and you have to have more than 50
8 percent, does it not?

9 A. No, that's not what it says.

10 Q. Well, Mr. Shelton, we're in direct
11 difference there. But, again, Mr. Shelton, you
12 haven't answered my question. Did you
13 specifically invoke that operating agreement at
14 any time?

15 A. To the extent that we were required to
16 do so, yes, sir, we did.

17 Q. How?

18 A. Let's see.

19 Q. I make reference to your letter of
20 February 11 where it says, "Also enclosed please
21 find NPC's," Nearburg Producing Company,
22 "operating agreement dated February 4, 1992."
23 You did not try to invoke that operating
24 agreement, did you?

25 MR. TURNER: I object. You have not

1 established that there was an obligation to
2 invoke the terms of the operating agreement. So
3 you're asking a question that is irrelevant until
4 you establish that it is required.

5 MR. CARROLL: Mr. Turner, I sat back
6 and let you put in all that evidence about that
7 operating agreement, which is totally irrelevant
8 to anything in this hearing. I let you put it
9 in. I expect the same from you. I think that
10 anything with respect to that thing is irrelevant
11 and should not be considered by the Commission.

12 Q. Now, Mr. Shelton, again you did not do
13 anything or invoke anything with respect to that
14 old operating agreement, did you?

15 A. I do not think it was necessary to do
16 so.

17 Q. You did not do anything, though, did
18 you?

19 A. No.

20 Q. Whether you considered it necessary or
21 not?

22 A. No.

23 Q. Mr. Shelton, you've also testified that
24 the orthodox location is just as good as the
25 unorthodox location; is that correct?

1 A. I've testified that Nearburg Producing
2 Company would be willing to drill either one of
3 them.

4 Q. Mr. Shelton --

5 A. We believe geologically they have the
6 same merit.

7 Q. All right. Do you have any geological
8 training or background, Mr. Shelton?

9 A. No.

10 Q. So, in other words, you have no way of
11 substantiating that position; is that correct?

12 MR. TURNER: He has testified that --
13 what his testimony was that that was the
14 conclusion of his company.

15 MR. CARROLL: I didn't -- Mr. Turner,
16 if you'd listen to my question, I asked him if he
17 personally had any. I'm trying to determine his
18 knowledge and his experience and his ability to
19 testify.

20 Q. And my question again is, Mr. Shelton,
21 do you have any knowledge based upon any kind of
22 experience, training, or what have you, which
23 would allow you to make that determination as to
24 whether or not the orthodox is just as good as
25 the unorthodox?

1 MR. TURNER: He did not testify that he
2 made that determination, Ernest.

3 MR. CARROLL: I know he didn't. I
4 didn't say he did. I'm asking, does he have
5 any --

6 MR. TURNER: It's an irrelevant
7 question if he did not make the statement that he
8 made the determination.

9 EXAMINER CATANACH: Mr. Carroll, the
10 witness has testified that that's his company
11 position.

12 MR. CARROLL: All I'm wanting to know
13 is if he has any independent experience or
14 knowledge that would help us in this situation.
15 He can answer the question yes or no, and that
16 would be the easiest way.

17 THE WITNESS: No.

18 Q. (BY MR. CARROLL) Do you intend to put
19 on any testimony by virtue of a witness that they
20 are relatively the same?

21 A. No, we do not intend to put on any
22 geologic testimony.

23 Q. So, in other words, you are presenting
24 that proposition to this Division, but you are
25 not allowing us to cross-examine or determine the

1 correctness of that; is that correct?

2 A. You're proposing the same thing. I
3 wouldn't think you'd want to object to it.

4 Q. We're proposing the unorthodox, not the
5 orthodox?

6 A. We're telling you as a company we'll
7 drill either one of them.

8 Q. You've also made the position -- made
9 known to the Division that Nearburg says that
10 they are -- one is as good as the other; is that
11 correct?

12 A. We believe at the present time from our
13 evaluation that either location could be
14 commercially productive.

15 Q. And Nearburg does not propose to put on
16 any evidence by which we can test that position;
17 is that correct?

18 A. No. That's correct.

19 Q. Therefore, it's unsubstantiated other
20 than by your assertion?

21 A. Substantiated by our company's position
22 that we have an AFE; we're an operator capable of
23 performing it; we have an approved permit to
24 drill by the BLM; and we're ready, if you'll give
25 us your election, to go to work.

1 Q. Now, when you were talking about the
2 AFE a minute ago, questioning by Mr. Turner, you
3 stated that this revised AFE, which now comes in
4 at \$576,000, it was based on your reviewing
5 operations; is that correct?

6 A. As I testified, I said it was done
7 under my supervision and request of Tim
8 McDonnell, our operations manager.

9 Q. So you don't know what he did in coming
10 up with the new numbers, do you?

11 A. He discussed it with me, yes.

12 Q. And what operations then did Mr.
13 McDonnell inform you that he reviewed and
14 analyzed in coming up with this new AFE number?

15 A. Drilling conditions in the area, bids
16 from companies, as I've discussed, information
17 necessary to put together a final AFE of this
18 type.

19 Q. What drilling conditions in this area
20 necessitated or allowed you to drop the AFE cost?

21 A. I do not know that.

22 Q. You don't know. What bids from other
23 contractors allowed you to drop the cost?

24 A. Bids for all types of services, mud
25 services, drilling services, any type of

1 operational service that we would use in the
2 well.

3 Q. Specifically which ones were cheaper
4 than the old ones that were used in your original
5 AFE?

6 A. I would have to go back and compare
7 them. I can't tell you without comparisons.

8 Q. You don't know?

9 A. I can sure go back and compare them.

10 Q. I may have you do that, Mr. Shelton.
11 Let's go on for a minute, though. Are you saying
12 that Mr. McDonnell did not get bids prior to his
13 preparation of the AFE in February?

14 A. I don't know that he didn't, but if he
15 did, he's got new bids now.

16 Q. Now, with respect to Yates' facilities
17 for disposing of saltwater and what have you, you
18 in your testimony assumed that you would have
19 access to those; is that correct?

20 A. Yeah, I believe, if Anadarko is a
21 company out there taking water and disposing of
22 it, we would have access to their facility.

23 Q. Would you have access to the Yates'
24 facilities?

25 A. Does Yates have a disposal facility in

1 the area.

2 Q. Yates has a number of facilities out
3 there, Mr. Shelton. You're the one that's
4 testifying about what you can take advantage of.
5 We've already had our testimony. Why don't you
6 answer my question?

7 A. Your testimony was that you all had
8 already made arrangements to dispose of the water
9 with Anadarko. If you had a disposal system that
10 you wanted to use of your own, I'm assuming that
11 you would not have made that agreement.

12 Q. Do you have contracts in place in that
13 area for the disposal of sour gas?

14 A. No, we do not.

15 Q. Do you have a permit supplied for the
16 compression of sour gas or necessary EPA permits
17 or anything such as that?

18 A. No, we do not. We don't know that's
19 necessary until you drill the well.

20 Q. In other words, you don't have the
21 experience yet in that particular area to know
22 what you're going to encounter; is that correct,
23 Mr. Shelton?

24 A. That is absolutely not correct. We do
25 have experience. We have experience in all areas

1 of Eddy, Lea Counties, southeast New Mexico with
2 gas compressions, sour gas delivery drilling.

3 Q. Do you have a well in this particular
4 area?

5 A. We do not have a well in this immediate
6 area, no. We have a lot of wells.

7 Q. How many is a lot?

8 A. Well, we operate 100 -- we operate 66
9 wells in New Mexico, including 4 saltwater
10 disposal wells.

11 Q. How many wells do you operate in the
12 Dagger Draw?

13 A. Let's see, 3, 4, 5, 6, approximately 9
14 or 10.

15 Q. All right. You heard the testimony
16 from the Yates engineer they had approximately,
17 what, 100 in that area?

18 A. Whatever they've got.

19 Q. They have considerably more experience,
20 don't they?

21 A. They've got more wells. I don't know
22 that they have more technical ability, no.

23 Q. What about more experience, Mr.
24 Shelton?

25 A. They've drilled more holes.

1 Q. That equates with more experience?

2 A. They produce more wells.

3 Q. That equates with experience, doesn't
4 it, Mr. Shelton?

5 A. I don't know.

6 Q. You don't know.

7 A. I think the technical merit of the
8 employees and the work that they've done is our
9 experience and our benefit.

10 Q. Mr. Shelton, with respect to the
11 overhead rates, the rates that were testified to,
12 the 5,000 during drilling, the 500 producing,
13 those rates are in line with what is customarily
14 charged in that area, are they not?

15 A. They could be a little low. I mean in
16 the areas of Dagger Draw, Yates is charging more
17 than that; we're charging more than that.

18 Q. With respect to the penalty provision
19 that has been asked for by Yates, the 200 percent
20 penalty provision is also reasonable, is it not,
21 for drilling wells?

22 A. If we were on your side, we would ask
23 for that same penalty.

24 Q. The penalty provision in the old JOA,
25 the 1960 model that you have just given to us, do

1 you recall what that penalty provision is?

2 A. It's 100 and 200.

3 Q. In other words, it's cost plus 100; is
4 that right?

5 A. Uh-huh.

6 Q. That's interpretive. So it would be
7 less than what Yates has asked for today?

8 A. That's correct.

9 Q. Mr. Shelton, do you have the two AFEs
10 that Nearburg has prepared, the one that was in
11 February and the one that was done as of a day or
12 two ago?

13 A. Let's see, I can get them. Okay.

14 Q. The major differences between these two
15 AFEs is that one of them is that you've taken out
16 about \$48,000 worth of just contingency costs
17 built in; is that correct?

18 A. That is correct.

19 Q. And the other major cost reduction that
20 you made was in the tubulars, much along the
21 lines that Mr. Collins testified to; is that
22 correct?

23 A. That is correct.

24 Q. And those two items right there alone
25 account for the majority of the difference; isn't

1 that correct?

2 A. And appropriately so. I mean, those
3 are the issues that you all raised that were too
4 high, and that seems to be the issues that we
5 found were too high, you know, and that we now
6 know are correct.

7 Q. The contingency issues deal with lack
8 of experience and knowledge of an area, don't
9 they?

10 A. No. Contingency issues, you all didn't
11 put it on your AFE, so I guess you're assuming
12 that you will, as an operator, you have such
13 expertise that you know nothing will go wrong and
14 you know you can do it for whatever you said.
15 That may be fine.

16 We have a philosophy of believing that,
17 you know, any operator can have problems. There
18 should and usually is by every other operator I
19 know a contingency built in. I guess, if you all
20 don't need one, that's fine.

21 Q. And apparently you've decided, Nearburg
22 has elected to change their philosophy and do
23 away with that contingency all just so they can
24 have their AFE meet Yates?

25 A. I think it's important that we be

1 competitive and we be judged on an even scale.
2 And that's the scale, no contingency, that you've
3 chosen to make.

4 Q. In other words, that philosophy is not
5 etched in stone or a company policy, is it?

6 A. I can't tell you that. I can tell you
7 that obviously we want to be open and honest and
8 judged on the same scale in this hearing as you
9 all are.

10 Q. And then therefore the testimony that
11 you gave a little while ago about your
12 conversations with your drilling engineer about
13 getting bids from other suppliers and what have
14 you really wasn't accurate?

15 A. It absolutely is. Like I say, we got
16 bids from the drilling contractor, you know,
17 that's obvious. You get bids for casing, pipe,
18 you get bids for everything. I'm not saying that
19 every bid we got resulted in a reduction of the
20 AFE costs. What I'm saying is we did get bids
21 that did result in some reductions.

22 Q. And you also got Yates' AFE?

23 A. Yeah, we sure did.

24 Q. Sure did.

25 A. You had ours. You sent yours to us.

1 Q. Mr. Shelton, let's talk about one other
2 thing I almost forgot. You testified, and I
3 think it was your Exhibit No. 5, where you made
4 an application to the United States to drill this
5 well; is that correct?

6 A. That is correct.

7 Q. And in fact, let's see, that
8 application was dated April 7 of 1992; is that
9 correct?

10 A. Let me find it and I'll tell you.

11 Q. Exhibit No. 5.

12 A. April 7, 92, Tim McDonnell signed it,
13 and I assume that was the day it was submitted.

14 Q. What was the location that you
15 submitted that permit?

16 A. 660 from the north, 1330 from the east.

17 Q. That's an unorthodox location, isn't
18 it?

19 A. Yes, sir, it is.

20 Q. And in fact you sought permission,
21 permit for that well, before you had even
22 submitted an application to the OCD for that
23 unorthodox location, didn't you?

24 A. You know, we filed this permit before
25 we filed our pooling and unorthodox location

1 notice, that's correct.

2 Q. And in fact the notification, the
3 reason why you did that was just trying to beat
4 Yates; isn't that true?

5 A. No, it sure wasn't. I mean, we were
6 intending to drill a well out there, and we filed
7 an application to drill a well. You know, if you
8 all thought we were in competition for that, I'm
9 sure you would have filed yours, you know, before
10 us or immediately after us.

11 Q. Well, isn't it putting the cart ahead
12 of the horse before filing for an application to
13 drill a location you don't even have permission
14 to drill?

15 A. No, because it takes sometimes 30 days
16 or more to get an application through the BLM
17 that's not correct at all. It takes a long time.

18 Q. You didn't know that you would get that
19 location permitted, though, did you?

20 A. No. I mean, you never know when you
21 send one in to the BLM or anybody that you're
22 going to get it permitted.

23 Q. You also know that application was
24 submitted on April 9, as you've just testified --

25 A. April 7.

1 Q. April 7, excuse me. And that the
2 application of Yates for their forced pooling was
3 done at the end of March prior to your filing
4 that application?

5 A. Well, I didn't recognize that, no, but
6 I mean the dates match with what you're saying.

7 Q. So, in other words, Yates Petroleum
8 could very well have filed its application for an
9 unorthodox location before you filed your
10 application to drill?

11 A. Could have and you also could have
12 filed a permit to drill had you desired.

13 Q. But there was no reason to do it until
14 you had an approved location, would there be, Mr.
15 Shelton?

16 A. Yes, I do believe there is because I
17 think it takes 30 days to get one through, and I
18 do believe that it's necessary to file and assume
19 it's possible to get the progress moving and get
20 going.

21 Q. What kind of deadlines did you have
22 that necessitated you worrying about this 30 days
23 that it takes?

24 A. We've got a lot of operations, a lot of
25 things we want to do. This is one of the wells

1 on our schedule and we wanted to get it done as
2 quickly as possible.

3 Q. The deadline you're trying to beat is
4 that you hoped you would beat Yates' application?

5 MR. TURNER: I object to that
6 question. It has no relevancy at all.

7 MR. CARROLL: It does. You brought it
8 up as having a relevant issue. That's why you
9 introduced it, I'm sure. I think the Examiner
10 ought to take notice, at least I don't have the
11 date that our application was filed, but my
12 submittal letter was dated March 24, some 13 days
13 prior to the filing of this application.

14 I have no other questions.

15 EXAMINER CATANACH: Any redirect, Mr.
16 Turner?

17 MR. TURNER: Yes.

18 FURTHER EXAMINATION

19 BY MR. TURNER:

20 Q. Let's go back to the AFE, Mr. Shelton,
21 that we've introduced as Exhibit 8.

22 A. Okay.

23 Q. And just to clarify your testimony,
24 what that is regarding the AFE, I understood your
25 testimony to be previously that the AFE was

1 reviewed under your direction and supervision and
2 at your request?

3 A. At my request, that's true.

4 Q. And the AFE was modified and ultimately
5 reduced once that review was undertaken?

6 A. Once it was completed, that is correct.

7 Q. And that essentially the result of that
8 process is simply that you found that you are
9 able to drill this well for less money than you
10 originally anticipated?

11 A. That is correct.

12 Q. And would this result be fairly common
13 anytime that you went back and reviewed an AFE
14 with additional information?

15 A. I believe it would be, yes.

16 Q. And do you think that it is a prudent
17 practice to include a contingency just in case
18 something goes wrong?

19 A. I think it shows a level of
20 appreciation to anybody that participatees in the
21 well with you. An AFE is an estimate. It's not
22 an exact number. Nobody pays based on AFE; they
23 pay on actual invoice. It's going to cost -- we
24 operate wells in Dagger Draw every bit as
25 reasonably as Yates does. And a contingency, we

1 feel like, is something that is appropriate.

2 Q. But the bottom line here is that, you
3 know, this is a competitive business, is it not?

4 A. Yeah.

5 Q. And you felt like if the practice of
6 Yates was to eliminate a contingency, you could
7 do that also?

8 A. Absolutely. We want to be judged on
9 even merit.

10 Q. That's consistent with all your
11 testimony today; that you believe, that Nearburg
12 believes that they can drill this well every bit
13 as good as Yates for the same cost that Yates can
14 drill?

15 A. Absolutely we can. We've drilled wells
16 with Yates as Yates as a nonoperator, and I have
17 heard no objection about our costs and fees from
18 them.

19 MR. TURNER: I have no further
20 questions.

21 EXAMINER CATANACH: Just one, Mr.
22 Shelton.

23 EXAMINATION

24 BY EXAMINER CATANACH:

25 Q. You have an approved drilling permit

1 from the BLM for a standard location?

2 A. That's correct. We had an approved AFE
3 for the unorthodox location. We went back and
4 amended it, made it an approved location for the
5 orthodox location. I think that exhibits that
6 we'll be willing to drill either well.

7 Q. Okay. It's your opinion you do not
8 have approval to drill at an unorthodox location
9 from the BLM?

10 A. That is correct. We have approval for
11 an orthodox location. We are willing and ready
12 to do the orthodox location.

13 MR. TURNER: One second, Dave.

14 A. We have discussed with the BLM that if
15 we want to amend it back to the unorthodox, we
16 can do that.

17 Q. (BY EXAMINER CATANACH) The February 11
18 letter to the Trigg Family Trust, was that just
19 sent to the Trigg Family Trust, or was that sent
20 to anybody else? That was Exhibit No. 4.

21 A. That was sent to -- the Trigg Family
22 Trust is the owner, and if I'm not mistaken, it
23 was also sent to other people who claimed -- yes,
24 it was -- other people who claimed an interest in
25 the property: Bettis Brothers, Inc., Craig

1 Clark, Trigg Family Trust, and Yates Petroleum
2 Corporation.

3 Q. Is it your understanding that if
4 Nearburg is successful in this application that
5 they would just be pooling Yates Petroleum, or
6 would the individual be pooling the various other
7 interest owners?

8 A. We would be pooling all people who
9 claim an interest under that property other than
10 those who -- anybody that's made a voluntary
11 agreement with us outside the operating
12 agreement, which we currently have. That point
13 aside, we would be pooling all the individuals
14 they list on their Exhibit 2.

15 Q. But you don't have any documentation
16 that shows that those people in fact have
17 interests?

18 A. That's correct. We sent and gave out
19 notices and sent proposals to more people than
20 were required because we sent it to everybody of
21 record, as is required. And then we sent it to
22 people that were claiming an interest.

23 There wasn't any way for us to know
24 that there was some more people out there that
25 they now show in their exhibit that claim an

1 interest. I have no, you know, like I've
2 testified before, I have no direct chain of title
3 showing they even have an interest.

4 Q. Do you know if any of this
5 documentation has been filed at the courthouse?

6 A. I know it has not.

7 Q. As of when?

8 A. As of yesterday, we had no -- Tuesday
9 we had Doug Shutes check the federal records, and
10 there is no documentation. This is not even a
11 notice of a farmout of record.

12 EXAMINER CATANACH: Okay. I have
13 nothing further. The witness may be excused.

14 THE WITNESS: Thank you.

15 EXAMINER CATANACH: Anybody need a
16 short break? Let's take five.

17 [A recess was taken.]

18 EXAMINER CATANACH: Mr. Turner, it's my
19 understanding you do not have any more
20 witnesses. I don't know if I missed it or not,
21 but did you propose a risk penalty in this case?

22 MR. TURNER: We did not propose a
23 separate risk penalty. Basically I guess our
24 view of this case, at least philosophically, is
25 that we're essentially asking for the same thing

1 that Yates is asking in each of these
2 applications.

3 I think their testimony, we agree with
4 the testimony they've put on regarding the risk
5 factor. And we would certainly live with the
6 risk penalty that they've asked for.

7 EXAMINER CATANACH: Regardless of
8 location.

9 MR. TURNER: Right.

10 EXAMINER CATANACH: Okay. We can go
11 ahead and give closing statements at this time.
12 Mr. Turner, you can go ahead and go first, if you
13 wish.

14 MR. TURNER: As I just stated, Mr.
15 Hearing Examiner, philosophically I think what
16 these cases boil down to is a fight for
17 operatorship of the proposed well. We view these
18 cases as really being two separate cases, one for
19 compulsory pooling of the north half of Section
20 27 as to the Morrow and Cisco Canyon Formations.
21 We view that as a separate issue from the
22 unorthodox well location.

23 We have stated that we believe that
24 either well is a good drillable prospect and that
25 for one party to get up and say that a well in

1 this area is definitely superior to another well
2 location is his guess against someone else's
3 guess. We have concluded that either well could
4 be drilled, and we will be happy to drill either
5 well.

6 We think that in the compulsory pooling
7 aspect of this case that there is one threshold
8 issue that has to be resolved by the Commission
9 now since it has undertaken this case before it
10 can decide whether or not either party is
11 successful in their application for compulsory
12 pooling, as the statute requires that you have to
13 find there is an absence of an agreement to pool
14 before you can undertake to pool these parties'
15 interests.

16 We believe that we have demonstrated
17 the existence of an operating agreement that does
18 pool the working interest in this half section of
19 land. We have the operating agreement. We have
20 presented it. We have presented evidence that
21 the underlying lease that the operating agreement
22 covers is still in existence; therefore, the term
23 of the operating agreement is still alive.

24 We have demonstrated that we are the
25 successor in interest to the operator named in

1 the operating agreement. And by the acquisition
2 of our interest and the notification of the other
3 party to the operating agreement that we had
4 acquired Arco's interest, put the Trigg Family,
5 as well as their successors in interest, on
6 notice that we had acquired that interest. And
7 more than 60 days now has elapsed since they had
8 notice of our acquisition of that interest.

9 And during that 60-day period they did
10 nothing to elect a successor operator, as they
11 had the opportunity to do according to the terms
12 of that provision. They did nothing. The
13 provision clearly states that if they fail to
14 elect a successor operator in the manner
15 prescribed in that provision, that the successor
16 in interest to the operator will automatically
17 become the operator under the operating
18 agreement.

19 Therefore, we think that the Commission
20 has to find that there already is an agreement in
21 place regarding the pooling of the interest in
22 the north half of Section 27 and that both
23 parties are subject to the terms of that
24 agreement and any well that is to be drilled on
25 this land is to be drilled under the terms of

1 that agreement.

2 Secondly, if the Commission finds that
3 the operating agreement for some reason is not in
4 force, and there's been absolutely no evidence
5 presented to the Commission that that operating
6 agreement is not in force. We have presented
7 it. We brought it in. We've demonstrated it.
8 There's been no evidence to indicate that it
9 doesn't exist. No controverting evidence
10 whatsoever.

11 But if the Commission finds that the
12 operating agreement is for some reason not in
13 force, we believe that we have demonstrated that
14 Nearburg is a capable operator with sufficient
15 experience to drill a well at either location, a
16 standard location or an unorthodox location.

17 We believe that both well locations
18 have equal geological merit. We're willing to
19 drill either well. We believe that a standard
20 location would be in the best interests of the
21 state of New Mexico. We believe it would be in
22 the best interests of the offsetting operators as
23 well.

24 We also believe that might doesn't
25 necessarily make right. We all know and

1 understand that Yates Petroleum is a large
2 organization with unlimited resources, and they
3 have drilled numerous wells in all parts of New
4 Mexico. But that doesn't mean that they can do
5 it better necessarily than one of the small
6 companies who goes out there and operates wells
7 and drills prospects and has to make a living in
8 the oil business also. The attitude that might
9 makes right just cannot prevail in a case such as
10 this.

11 We believe that we were the first ones
12 to propose a well to be drilled in this half
13 section. That's evidenced by the fact that we
14 were the first company to send out an AFE
15 proposing a well. Yates got -- they made a lot
16 about, "Well, we've just tried to beat Yates.
17 We've just tried to beat Yates." The truth of
18 the matter is both companies want to operate the
19 well. They done what they felt like they had to
20 do to get the well drilled with them as
21 operator. That's all I have.

22 EXAMINER CATANACH: Thank you.

23 Mr. Carroll.

24 MR. CARROLL: I think Mr. Turner
25 adequately or correctly represents there are two

1 issues before the OCD today: One with respect to
2 the orthodox location, there is no issue. The
3 only evidence before this Commission or the
4 Division is that the unorthodox location is
5 correct; that it's a proper location based upon
6 the known data, the geological data, and the
7 expert testimony of Mr. Cromwell, who is a
8 practicing geological consultant and who in fact
9 developed this prospect.

10 It bothers me for Nearburg to come in
11 and say that the orthodox location is just as
12 good. They tell us that it's the policy of
13 Nearburg that it's just as good, and yet they
14 don't tell us what that policy is based on, how
15 it was arrived at, any such thing. We can't test
16 that. We know nothing about that. And quite
17 frankly, I think that the Examiner is justified,
18 because there is no evidence, to just completely
19 dismiss that proposition or position from today's
20 hearing because there is nothing to substantiate
21 that.

22 The real issue here is the fight for
23 operatorship. Again, I have extreme trouble with
24 the position of Nearburg because they keep taking
25 contradictory positions. In one hand they tell

1 you that you have no jurisdiction to decide
2 whether or not this operating agreement, which
3 they so fortuitously found a day ago or two days
4 ago, when everything -- and quite frankly in my
5 estimation, it looked like they were up against a
6 brick wall with respect to these applications.

7 All of a sudden they pull this thing
8 out, and they wave it, and they say, "Wait a
9 minute, OCD. You have to give credence to this
10 thing. You must recognize it. You must decide
11 whether or not there is an operator agreement out
12 here. That's your threshold question." And yet
13 when they tell you that, they say that you can't
14 decide if it's a good one or not. That's totally
15 inconsistent.

16 The testimony today is by Yates
17 Petroleum. There is no operating agreement out
18 there. They want to propose or they have
19 proposed that this area be force pooled and that
20 they be named as operator to drill this well. If
21 in fact Mr. Turner has a position, he has another
22 forum who in fact does have jurisdiction.

23 This Division should completely throw
24 out those arguments. I'd also like -- the
25 inconsistency of this kind of argument, without

1 giving credence or accepting the fact that this
2 old JOA is effective, I must find fault with what
3 Mr. Turner argues about it. He states that we're
4 stuck with this company. Nearburg is operator
5 now because 60 days passed.

6 That's not what the operating agreement
7 says. It just says that if 60 days pass and
8 there's no election, the successor will act as
9 operator. He's not the operator. He will act.
10 That's just the safeguard provision so in case
11 the operator goes away, disappears, goes
12 bankrupt, quits operating, or transfers his
13 interest, at least somebody is responsible. That
14 does not make them an operator, and that's what
15 this agreement says. In other words, there are
16 some grave problems with Mr. Turner's position
17 that he's going to have to advocate in a court of
18 law, not here before the Division.

19 And furthermore he wants to take -- he
20 says my position: We're home-free because 60
21 days have gone by since this transfer of
22 ownership. Well, how can he make claim to that
23 60-day provision when we didn't know about it
24 until today? He didn't know about it until the
25 day before yesterday. I'm not sure what Mr.

1 Turner's arguing. He wants to take inconsistent
2 positions.

3 What it really does, it points out the
4 real problem in today's case. And it goes to the
5 issue of who's more qualified to operate this
6 well. This was an idea conceived by David
7 Cromwell. He took it to Nearburg in August of
8 last year. Nearburg said, "Oh, we're not
9 interested in that area," according to Mr.
10 Cromwell.

11 Then in October and November, several
12 months after that, they go out and get this
13 assignment from the Arco acreage. Then a few
14 months later they propose a well. Well, what was
15 going on? Was Nearburg getting any more
16 experience on their account? No.

17 Mr. Cromwell and his partners put
18 together a deal. They went and tested this
19 idea. This is an untested idea. There's no
20 other wells out there. They risked money and
21 went in and made a recompletion in the well in
22 Section 22. Well, Nearburg sat back, not gaining
23 any expertise, but at least getting their acreage
24 proved up.

25 Now, we get into this one-up-man ship

1 game about who proposes what first. Nearburg
2 knew that Yates was going to propose that well.
3 They were out there busy recompleting and proving
4 up the prospect, spending their money; Nearburg
5 wasn't doing anything.

6 Who knew about it? Nearburg knew that
7 Yates was going to do it. But Yates wasn't going
8 to propose the well until they had all the facts
9 to, one, make sure it was worthwhile proposing
10 and, two, make sure they propose the right kind
11 of well. They weren't going to go off
12 half-cocked.

13 All of this has occurred. So what,
14 Nearburg sends out a letter? They sent out an
15 AFE that's admittedly inflated. They admit it's
16 inflated. They didn't even tell us that they
17 redid one, but they had the benefit of our
18 correct data fees based on actual experience, and
19 they come in and present it in today's hearing.

20 This experience, what Mr. Turner's
21 position is, we can block any operator out there
22 if we just go in and send them a piece of paper
23 saying, "Hey, we propose a well." It doesn't
24 matter if we propose a correct well. It doesn't
25 matter if our AFE is even close to what it should

1 be.

2 And also, you know, we're catching
3 Nearburg's fingers in the pie. We've caught them
4 several times. Once with respect to this AFE.
5 Mr. Collins pointed out that the AFE has -- yes,
6 it's supposed to be an estimate of cost and that
7 you pay on the actual invoices except for one
8 area. Tubulars. That AFE says they can bill
9 according to those numbers or less, whatever they
10 choose. They can take it out of inventory. They
11 can document any cost. Well, we caught their
12 finger in the pie. That's a good scam. We
13 caught them.

14 The other scam, this business about
15 proposing the well and getting their application
16 in to drill with the BLM. They didn't even
17 have -- they proposed it for their unorthodox
18 location. They made that application. They did
19 get it in to the federal government first, but
20 they didn't even have an approval from this
21 Division that they could even drill that well.

22 Yates Petroleum had already submitted
23 an application to this Commission for that
24 unorthodox location. Why was it necessary to
25 file that APD with the federal government? It

1 wasn't necessary. The necessary thing was to
2 file the application to get approval to drill
3 that well first. That's what Yates was doing.

4 Now, we hear some lame excuse. "Hey,
5 it takes 30 days." What's 30 days got to do with
6 it? There's no lease explorations out here.
7 This is an old HBP lease. It's been owned
8 apparently since 1967, because that's when the
9 first well was drilled.

10 Yates Petroleum was following the
11 rules, was following prudent operatorship
12 guidelines. They were going out there and
13 determining what's there before they proposed a
14 well just out of clear blue. I mean, anybody can
15 do that. But I don't think that this Division
16 should allow someone going off half-cocked, just
17 filing applications and requests to do these
18 things anytime they want to, that that should be
19 allowed to block a prudent operator from going
20 out, determining what's out there, determining
21 what the risks are, determining how they should
22 best drill a well, making application according
23 to the rules for that well, and proceeding
24 according to the rules.

25 Nearburg has tried to jump in more than

1 once. They jumped in on Mr. Cromwell's
2 prospect. They've jumped in on our wells after
3 we were sitting out there proving it up through
4 the reentry on Section 22. That's what it really
5 is. That's what it boils down to. Yeah, and we
6 get this old argument about, "Hey, we're
7 justified because Yates is the big boy and we're
8 the young guy. We're smaller. But we can do
9 just as good a job."

10 Well, they can do just as good a job at
11 trying to horn in to somebody's prospect as
12 anybody. They've proven that. But what they
13 haven't proven is that they do have the
14 expertise. They have no wells out there in that
15 area. They have drilled 8 or 9 wells over in the
16 Dagger Draw; Yates has got 100. They tell us a
17 bunch of things that they can do.

18 Mr. Shelton, a landman, is real good at
19 telling how good they are engineering-wise and
20 geologic-wise and all of these good things. But
21 they're not about to risk putting one of those
22 persons on to allow us to cross-examine him like
23 we put our witnesses on. That is just another
24 example of the case Nearburg puts on. They don't
25 want to be tested.

1 Mr. Examiner, I think that the job of
2 the Division is very clear. The unorthodox
3 location should be approved. Yates Petroleum's
4 request for forced pooling should likewise be
5 approved; that the provision for the \$5,500
6 overhead cost should also be approved and a risk
7 penalty of 200 percent, cost plus 200 percent,
8 should also be approved.

9 And we would ask, therefore, then that
10 be approved and that the competing application of
11 Nearburg Production in the other case that was
12 consolidated with Yates' application be denied.

13 EXAMINER CATANACH: Thank you,
14 gentlemen. Is there anything else in these two
15 cases?

16 MR. TURNER: Short rebuttal.

17 EXAMINER CATANACH: Short.

18 MR. TURNER: It will be very short.

19 Mr. Carroll makes a lot to do about
20 inconsistencies in our cases and us trying to
21 play both sides of the fence. But Mr. Carroll
22 only this morning came in and dismissed a
23 competing application that he, himself, filed.
24 So it wasn't until he showed up at hearing that
25 we were aware exactly what his intentions were.

1 I think that both parties have studied
2 this prospect in detail and have had to come up
3 with alterations to their proposed operations, I
4 think, in order to come up with the best proposal
5 for not only themselves but the other working
6 interest owners.

7 Secondly, he maintains that our case is
8 inconsistent in the position that we say that the
9 Commission has to take regarding this operating
10 agreement. It troubles me a great deal that
11 let's say the next case that comes up, if someone
12 shows up and says there's an existing operating
13 agreement, they bring it in and demonstrate, here
14 it is, the other side shows no evidence
15 whatsoever that that evidence is not a valid
16 agreement, that the Commission disregards that
17 and grants forced pooling.

18 It seems to open the door for anyone to
19 come in here and say that they can force pool
20 regardless of the existence of an agreement, even
21 though that agreement is presented to the
22 Commission. I think that's a bad precedent to
23 establish. I think that we have to look at the
24 issue very closely as to whether or not we have
25 demonstrated there is an operating agreement. I

1 think we've done that. I think because of that
2 the Commission has to say an agreement is in
3 place and the parties have to live with it.

4 EXAMINER CATANACH: Is there anything
5 further?

6 MR. CARROLL: I don't think it's
7 necessary to beat the dog anymore.

8 EXAMINER CATANACH: Let's close these
9 cases out. Cases 10467 and 10473 will be taken
10 under advisement.

11 [And the proceedings were concluded.]

12

13

14

15

16

17

18

19

20

21

22

23

24

25

10467 10473
April 30 1992
David P. Catanach, Examiner
Oil Conservation Division

1 CERTIFICATE OF REPORTER

2

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

6

7 I, Debbie Vestal, Certified Shorthand
8 Reporter and Notary Public, HEREBY CERTIFY that
9 the foregoing transcript of proceedings before
10 the Oil Conservation Division was reported by me;
11 that I caused my notes to be transcribed under my
12 personal supervision; and that the foregoing is a
13 true and accurate record of the 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 May 9, 1992.

20

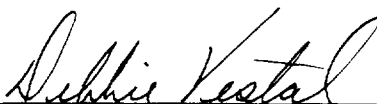
21

22

23

24

25


DEBBIE VESTAL, RPR
NEW MEXICO CSR NO. 3

NEW MEXICO OIL CONSERVATION COMMISSION

STATE LAND OFFICE BUILDING

STATE OF NEW MEXICO

CASE NOS. 10467 and 10473

IN THE MATTER OF:

[10467] The Application of Yates Petroleum
Corporation for Compulsory Pooling,
Eddy County, New Mexico.

[10473] The Application of Nearburg Exploration
Company for Compulsory Pooling and an
Unorthodox Gas Well Location, Eddy
County, New Mexico.

BEFORE:

CHAIRMAN WILLIAM LEMAY

COMMISSIONER GARY CARLSON

COMMISSIONER BILL WEISS

FLORENE DAVIDSON, Senior Staff Specialist

State Land Office Building

August 6, 1992

REPORTED BY:

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

ORIGINAL

A P P E A R A N C E S

FOR THE NEW MEXICO OIL CONSERVATION DIVISION:

ROBERT G. STOVALL, ESQ.

General Counsel
State Land Office Building
Santa Fe, New Mexico 87504

FOR YATES PETROLEUM CORPORATION:

LOSEE, CARSON, HAAS & CARROLL
Post Office Box 239
Artesia, New Mexico 88210
BY: **ERNEST L. CARROLL, ESQ.**

FOR NEARBURG EXPLORATION COMPANY:

KEMP, SMITH, DUNCAN & HAMMOND, P.C.
400 West Illinois, Suite 1400
Post Office Box 2796
Midland, Texas 79702-2796
BY: **J. RANDY TURNER, ESQ.**

I N D E X

	Page Number
Appearances	2
WITNESSES FOR THE APPLICANT:	
1. <u>MICHAEL R. BURCH</u>	
Exam by Mr. Carroll	32, 82
Exam by Mr. Turner	42
Exam by Chairman LeMay	82, 85
Certificate of Reporter	98

E X H I B I T S

	Page
Exhibit No. 1	33
Exhibit No. 2	35
Exhibit No. 3(A)	36
Exhibit No. 3(B)	36
Exhibit No. 4	37
Exhibit No. 5	38
Exhibit No. 6	39
Exhibit No. 7	40

1 CHAIRMAN LEMAY: We shall resume by the
2 calling of Cases 10467 and 10473.

3 MR. STOVALL: Case No. 10467 is the
4 application of Yates Petroleum Corporation for
5 compulsory pooling, Eddy County, New Mexico.
6 10473 is the application of Nearburg Exploration
7 Company for compulsory pooling and an unorthodox
8 gas well location, Eddy County, New Mexico.

9 CHAIRMAN LEMAY: These cases will be
10 consolidated on the docket unless objections are
11 raised.

12 MR. TURNER: No objection.

13 CHAIRMAN LEMAY: They were at the
14 Examiner hearing.

15 CHAIRMAN LEMAY: Appearances in Cases
16 10467 and 10473.

17 MR. CARROLL: Mr. Chairman, I am Ernest
18 Carroll of the Artesia law firm of Losee, Carson,
19 Haas and Carroll, and I am here today
20 representing Yates Petroleum, the applicant in
21 Case 10467.

22 MR. TURNER: My name is Randy Turner,
23 Mr. Chairman. I am an attorney with the Kemp,
24 Smith, Duncan & Hammond law firm out of Midland,
25 Texas. I am here today representing Nearburg

1 Exploration Company in Case 10473.

2 CHAIRMAN LEMAY: Additional appearances
3 in the case? Thank you.

4 Those witnesses who will be giving
5 testimony, please stand to be sworn in.

6 [And the witnesses were duly sworn.]

7 CHAIRMAN LEMAY: We shall proceed.

8 MR. TURNER: Mr. Chairman, I would
9 first like to address the Commission about
10 Nearburg's position in this consolidated case. I
11 would first like to tender to the Commission
12 certified copies of proceedings that are pending
13 in the District Court of Midland County, Texas,
14 regarding a declaratory judgment action that has
15 been filed regarding the existence of an
16 operating agreement covering the lands that are
17 sought to be pooled in this matter.

18 It is Nearburg's position in this case
19 that this case is not a case that is proper for
20 compulsory pooling to be considered by the
21 Commission. In the original proceedings, we
22 introduced to the Hearing Examiner an operating
23 agreement that we discovered to exist concerning
24 these lands, that continues to be in force, and
25 by virtue of that operating agreement it's

1 Nearburg's position that a pooling of the lands
2 before the Commission today has already taken
3 place and that therefore compulsory pooling
4 proceedings before the Commission is not proper,
5 and the Commission does not have jurisdiction to
6 enter a compulsory pooling order.

7 CHAIRMAN LEMAY: Is there a response?
8 Are you asking for a declaratory judgment--

9 MR. TURNER: No, we're asking that the
10 proceedings be dismissed at this time for lack of
11 jurisdiction.

12 CHAIRMAN LEMAY: Mr. Carroll, do you
13 have any response to that?

14 MR. CARROLL: Yes, Mr. Chairman. I
15 have with me copies, I do not have copies enough
16 to furnish, but I can, though, the responses that
17 have been made on behalf of the defendants in the
18 Midland County lawsuit.

19 I will advise this Commission that that
20 lawsuit, in our opinion, has been nothing more
21 than a front, an effort to delay the
22 proceedings. Nearburg has not even obtained
23 service on Yates Petroleum, Yates Drilling, the
24 Trigg Family and also, I believe it is, Abo, four
25 of the defendants which they have alleged in

1 this.

2 Our answer in the Midland County Court
3 alleges that there is no jurisdiction in Texas
4 because the land does not lie in Texas and no
5 part of the agreement was made there.
6 Furthermore, without these parties, and Yates
7 Petroleum being the major--the operator in this
8 proposed action, there's no service nor can there
9 be under their long-arm statute, because Yates is
10 not licensed to do business, nor any of the other
11 companies, that this is merely just a subterfuge
12 and something that Nearburg filed merely to delay
13 matters.

14 But, in a more substantive response, I
15 would state this: I think that, and I would
16 refer the Commission to the original order issued
17 by the Division, the operating agreement that Mr.
18 Turner made reference to, we do not agree that it
19 is a valid operating agreement, nor does it bind
20 any of the interest of the parties thereto.

21 It is Yates' position and the position
22 of the 50-percent ownership under this lease,
23 that it is not valid and it does not control.
24 And in the order that the Division made, they
25 went back to what is basically the charge of this

1 Commission or that the Division has, and that is
2 that the Commission can only act when there is a
3 need and they do not have all the parties
4 available to consent or agree to a well.

5 What this Commission is faced with,
6 until there is some valid court decision, and I
7 would state to this Commission that any decision
8 by the Texas court will never be valid because it
9 doesn't have subject matter jurisdiction nor
10 personal jurisdiction, that there is no
11 declaration that they could ever make. So, as it
12 stands today, before this Commission, and as it
13 was before the Division Hearing Officer, there is
14 no recognized, binding order, binding these
15 people together, pooling them or anything else.
16 Therefore, the Commission must act and must rule
17 and carry out its mandate under the statutes and
18 under the pooling statute that we have, and until
19 this Commission has jurisdiction, until a court
20 of competent jurisdiction makes some answer and,
21 quite frankly, I don't know if that will ever
22 happen. Nearburg certainly hasn't gone to a
23 court which could even be alleged has competent
24 jurisdiction for the issue.

25 So, as the matter stands, this

1 Commission has only one decision that it can make
2 and that is that it has jurisdiction and should
3 proceed with the application.

4 CHAIRMAN LEMAY: Would you like to
5 respond?

6 MR. TURNER: I would like to respond.
7 In the packet of exhibits that I've furnished the
8 Commission, included are copies of the responses
9 in the Midland proceedings that were filed by all
10 of the defendants named in that suit, and
11 included in the defendants who filed answers in
12 that suit are Yates Petroleum, Yates Drilling and
13 the other companies that Mr. Carroll says were
14 not even served with process. Not only were
15 these defendants served with process, they did
16 file answers in those cases.

17 And I would refer the Commission to
18 those answers for an acknowledgment by those
19 defendants of the existence of the very operating
20 agreement that they now contend does not exist.

21 MR. STOVALL: Mr. Turner, with respect
22 to that issue, it doesn't really matter because
23 the Texas court has absolutely no jurisdiction
24 over this Commission and it has absolutely no
25 jurisdiction over interest in real property in

1 the State of New Mexico. And there's no question
2 this is real property in the state of New
3 Mexico. So this Texas court decision is a
4 personal contractual litigation between Yates
5 Petroleum and Nearburg and it has absolutely no
6 bearing on what this Commission does today.

7 MR. TURNER: Mr. Stovall, I tend to
8 disagree with that conclusion simply because the
9 action that we filed in the Texas court does not
10 seek to, in any way, enjoin the Commission or
11 have jurisdiction over the Commission. It also
12 does not seek to determine any question of title
13 to lands in the state of Texas.

14 What we seek from the Texas court is
15 merely a declaration of the interpretation of
16 this operating agreement. It is a contract that
17 was entered into between parties, one of which
18 was a corporation who had a large office
19 maintained in Midland, Texas. It is our position
20 that that court does have jurisdiction and that a
21 declaration of that court would be entitled to
22 full faith and credit.

23 If that court determines that this
24 operating agreement is a valid operating
25 agreement, we think that the Commission must give

1 that court decree full faith and credit under the
2 United States Constitution.

3 If you look closely at the
4 jurisdictional limits of the various courts,
5 you're right about your assertion that to the
6 extent that it involved a question of title to
7 land, a Texas court would not have jurisdiction.
8 If you'll read our pleadings, you'll see that
9 that's not what we're attempting to do in that
10 case. What we are doing is simply following
11 through with what we represented to the Hearing
12 Examiner we would do at the initial hearing.

13 At that hearing, when we introduced the
14 operating agreement, it was our position that the
15 fight between Nearburg and Yates really belonged
16 in the courts. It's a contractual matter. The
17 question of whether that operating agreement
18 exists or not really is a question of fact and is
19 one that until that issue is resolved, the
20 Commission does not have jurisdiction to act.

21 MR. STOVALL: Why didn't you take this
22 to a New Mexico court?

23 MR. TURNER: A couple of reasons, and
24 let me cite you to the transcript of the initial
25 proceedings. We got into some discussion about

1 the difference of opinion of the length of time
2 that it would take to process these proceedings
3 in the New Mexico courts. Mr. Carroll was
4 adamant that the proceeding would have to be
5 maintained in Eddy County. He represented to the
6 Hearing Examiner that one of the judges in Eddy
7 County had recused himself from hearing any case
8 that would ever be brought against Yates, leaving
9 only one judge left to hear the case, and his
10 representation was that it might take two years
11 to get that matter resolved.

12 We researched the matter thoroughly and
13 concluded that jurisdiction was proper in Texas.
14 We filed in Texas because we knew that we could
15 get a speedy resolution of the issue which we
16 could then bring to the Commission, with a
17 declaration of the rights of the parties
18 regarding this land, and we thought that it was
19 in the best interest of all parties concerned to
20 have a speedy resolution that we could then bring
21 to the Commission.

22 If that court rules that the operating
23 agreement is in existence, then the Commission
24 cannot issue compulsory pooling. The statute--

25 MR. STOVALL: I'm going to stop you

1 right now and disagree with you on that, and I'm
2 going to tell you why. Number one, you recognize
3 that court has no jurisdiction over this
4 Commission. Number two, this Commission is being
5 asked to pool mineral interests. It is not being
6 asked to interpret or enforce a contract. Those
7 mineral interests are interests in real
8 property.

9 If, in fact, the Texas court determines
10 that this contract is valid, then Nearburg's
11 action is going to be an action in contract
12 against Yates Petroleum for a breach of that
13 contract. It does not take away from the
14 jurisdiction of this Commission to pool mineral
15 interests in the State of New Mexico pursuant to
16 the Oil and Gas Act. We're not pooling
17 Nearburg. We're pooling mineral interests which
18 happen to be owned by Nearburg.

19 MR. TURNER: My reading of the
20 pertinent statute regarding the authority of the
21 Commission to grant force pooling, it says that
22 "In the absence of an agreement, the Commission
23 shall pool." If the parties have an agreement, I
24 don't think the Commission has any authority to
25 pool. I think the statute is very clear on that.

1 I think until you resolve the issue of whether or
2 not there is an agreement, you can't pool.

3 CHAIRMAN LEMAY: Let me break this up
4 here. We're not a legal court here. You have a
5 motion before us to dismiss this case based on
6 the action you're taking in Texas. What I want
7 to do is huddle for a minute with my fellow
8 commissioners and rule on that, whether to
9 proceed or not.

10 Mr. Carroll?

11 MR. CARROLL: Mr. LeMay, I would want
12 to make one statement to correct a statement made
13 by Mr. Turner. Mr. Turner has misled this
14 Commission by his statements about the answers
15 that were filed in the Texas court, and I think
16 Mr. Stovall can agree with me.

17 When you look at the answers that were
18 filed by Yates Petroleum, Yates Drilling Company,
19 Abo and Trigg, those were not answers that
20 acknowledge jurisdiction, they are special
21 appearances contesting--and please do not be
22 misled by Mr. Turner's statements that we have
23 agreed there's jurisdiction in Texas. We hotly
24 contested, and that's all that's been filed.

25 CHAIRMAN LEMAY: That certainly sounds

1 like a legal battle that I'm not sure engineers
2 and geologists are going to get involved in. But
3 you have a motion before us on dismissal, and we
4 shall--

5 MR. TURNER: May I add just one thing?

6 CHAIRMAN LEMAY: Yes.

7 MR. TURNER: I didn't get to finish
8 when Mr. Stovall interrupted, what I was going to
9 point out to you regarding those answers. The
10 answers themselves clearly acknowledge, on behalf
11 of Yates Petroleum, Yates Drilling and the other
12 defendants in that case, they acknowledge the
13 existence of the operating agreement and even
14 assert that they have been duly elected as a
15 successor operator under that operating
16 agreement.

17 So, in those proceedings they're
18 acknowledging the existence of the operating
19 agreement and coming before the Commission today
20 and telling you that it does not exist.

21 CHAIRMAN LEMAY: Well, I understand Mr.
22 Carroll is shaking his head so obviously we have
23 disagreements all the way along. If we're going
24 to argue, legally, disagreements, what is agreed
25 to and what is not, we're not going to get very

1 far in this case. So if you'll excuse us just
2 for a minute in huddling, we'll come up with an
3 answer to your motion.

4 I'm sorry. Go ahead.

5 COMMISSIONER CARLSON: Mr. Carroll, you
6 shook your head. Are you contending that an
7 operating agreement does not exist? Is there an
8 agreement between the parties?

9 MR. CARROLL: No. What I'm saying,
10 there is no valid operating agreement that binds
11 this group, the people that are the applicants,
12 and Nearburg. There is a piece of paper that was
13 signed in 1967, but we do not think and contend
14 that it is not a valid operating agreement that
15 is binding upon the parties today.

16 COMMISSIONER CARLSON: And, Mr. Turner,
17 are you moving to dismiss your own application
18 for compulsory pooling, too?

19 MR. TURNER: Yes.

20 MR. STOVALL: If it would help, and
21 I'll do this on the record directed at the
22 Commission, having reviewed this in the context
23 of the Examiner hearing, I think it's clear on
24 the face of the documents that the operating
25 agreement is not an agreement which was

1 originally entered into by either Nearburg or
2 Yates. It was entered into by predecessors in
3 interest. Any claim, I believe, that it would be
4 applicable in this case, would have to be based
5 upon it being an encumbrance or covenant
6 affecting real title.

7 And, therefore, I will stand and advise
8 the Commission that I do not believe that that
9 Texas court decision, even if they determine that
10 this operating agreement binds the parties
11 through some sort of assignment process, binds
12 the parties with respect to real property
13 interests in the State of New Mexico.

14 My advice to the Commission, and I will
15 say so on the record before you go to the huddle,
16 is that it is appropriate to deny the motion to
17 dismiss this application and proceed to hear the
18 case. I think you have clear jurisdiction.

19 CHAIRMAN LEMAY: I have no problem with
20 claiming pure jurisdiction in the case. I think
21 we do, too. My problem is the existence of an
22 operating agreement, how it affects the case, and
23 whether it does affect the case and whether it
24 would affect a ruling by this Commission in the
25 case.

1 The validity of the operating agreement
2 is something that we, of course, cannot pass on,
3 and I guess my question is, how would it affect
4 the case? Mr. Carroll, I want to address that to
5 you. Make some assumptions on the validity of
6 the operating agreement.

7 MR. CARROLL: I will. Let us assume
8 that the worst case scenario, from my standpoint,
9 is that we go ahead and drill the well under an
10 order and at some point in time, two or three
11 years down the road, we get a court decision that
12 says Yates Petroleum was bound under the
13 operating agreement, that is a contractual
14 obligation. And if there should be any redress,
15 it would be in the form of monetary damages which
16 can be assessed by any court, or change in
17 operator position.

18 Basically, what that tells us is that
19 there is certainly adequate avenue for redress if
20 there is, in fact, something wrong.

21 The opposite side of the coin is that
22 we contend there is no operating agreement and
23 the only real interest to this Commission is to
24 see the prevention of waste and protection of
25 correlative rights and to be sure that a well is

1 drilled out here and all parties are properly
2 charged with the cost of the risk and what have
3 you. And that's what the Commission should be
4 concerned with, and they can adequately take care
5 of that mandate by going ahead and hearing the
6 case and issuing the order, just like the
7 Division did.

8 MR. TURNER: I would like to answer
9 that, also. Our response is very simple. As a
10 matter of fact, we have made attempts to settle
11 this dispute by just having both parties agree
12 that the operating agreement that we contend
13 exists does, in fact exist. That way both
14 parties do have an agreement that all the
15 interest is pooled, and all we ask is that we
16 honor the existing agreement.

17 The only effect it would have on the
18 parties, if the Commission so found that the
19 operating agreement exists, is that rather than
20 enter a compulsory pooling order, the parties
21 operate under the existing operating agreement.

22 CHAIRMAN LEMAY: I think the question,
23 as I hear it, is not whether one exists, I see
24 that here, but whether that agreement is
25 binding. Whether it exists as to the current

1 parties in dispute, not that it was somehow
2 generated in 1967 by Sinclair. That's obvious.
3 So I don't follow your reasoning there.
4 Obviously there's an operating agreement.
5 Obviously there's dispute as to whether it
6 applies to the parties in this case.

7 MR. STOVALL: Mr. Chairman, if I might
8 help, just from a procedural standpoint, before
9 you and I think what you wanted to break to
10 discuss was the motion to dismiss--

11 CHAIRMAN LEMAY: Yes.

12 MR. STOVALL: And then you've raised
13 the additional concern, does the operating
14 agreement have any impact upon the decision on
15 the merits in the force pooling application.

16 CHAIRMAN LEMAY: Yes.

17 MR. STOVALL: I think a lot of the
18 questions you're talking about now go to that
19 second question, which would only be acted upon
20 after you've made the decision on the motion to
21 dismiss and can be brought forward in the
22 presentation of the case on the merits if you
23 elect to deny the motion to dismiss. I think
24 that can come forward and then be addressed in
25 that context, if you elect to proceed with the

1 case at this time.

2 CHAIRMAN LEMAY: We'll decide whether
3 to act on your motion.

4 [A recess was taken.]

5 CHAIRMAN LEMAY: Mr. Turner, in regard
6 to your motion to dismiss, the position of this
7 Commission is that there is no agreement because
8 it's alleged by one of the parties that there is
9 no agreement. We shall conduct this hearing with
10 that assumption.

11 Now if, in fact, in the future you
12 prove that there is one and you have recourse in
13 the courts, that all takes its progression
14 through the courts. But we have jurisdiction in
15 the case and therefore we have to presume that
16 there is no valid agreement in place, and that's
17 where we'll continue on it.

18 MR. TURNER: Can I ask the Commission,
19 then, is it the Commission's policy, not only in
20 this case but cases in the future, that any time
21 there's a disagreement as to whether or not there
22 is an agreement regarding pooling, that the
23 parties' redress will be to the courts? They
24 will not be able to come before the Commission
25 and have that issue resolved, but instead will

1 have to not only fight the battle of compulsory
2 pooling before the Commission and then go off to
3 district court and fight it there? In the
4 meantime, if they're ultimately proven to be
5 right in district court, their interest should
6 have been force pooled--and it may be two years
7 later or so--

8 CHAIRMAN LEMAY: It could be, but you
9 certainly have recourse in many ways there. You
10 have recourse both for damages, you have
11 recourse, if this is a valid operating agreement,
12 under what is normally called "change of
13 operator" provisions in your agreement,
14 provisions under "lessen all parties," normal
15 operating agreements have that and accounting
16 procedures, and you can also reopen this case.

17 We always, in our orders, we always say
18 that these cases are subject--we have
19 jurisdiction. We claim that, so there's no
20 reason why we can't reopen the case. Our
21 problem, as you can see, we could wait on lots of
22 courts to act over lots of issues, especially
23 when they're raised, whether they have merit or
24 not, we are not equipped nor will we consider
25 pieces of paper that are claimed to have validity

1 and that validity is questioned.

2 We cannot operate under those
3 circumstances, nor can our expertise extend to
4 the validity of that paper. So when there's
5 disagreements, you can assume we have to make
6 certain assumptions over those disagreements.

7 MR. STOVALL: Mr. Chairman, if I might
8 add and put it in your favorite legalistic
9 terminology, and I say this to support what
10 you're saying and be able to defend it, is that
11 this Commission is charged with the prevention of
12 waste and protection of correlative rights.

13 In this case, that means that pooling
14 of mineral interests to allow the nonwasteful
15 recovery of that, that is, in a sense, an
16 equitable remedy as lawyers understand that
17 term. If this Commission acts, and it is
18 determined that the legal, contractual interests
19 are otherwise than the Commission assumed when it
20 acted, there is available to the parties a legal,
21 that is monetary remedy, which they can pursue in
22 the courts.

23 The short answer to your question, Mr.
24 Turner, is that in this case I believe the
25 Commission can go forward on a different set of

1 facts. They might choose to do so differently,
2 but there is no prima facie clear agreement which
3 binds the mineral interests in this case under an
4 operating agreement. That is a disputed matter.
5 And therefore this Commission can proceed under
6 the Oil and Gas Act to deal with the mineral
7 interests and allow the parties to proceed in
8 court to deal with the legal interests.

9 MR. TURNER: May I respond by saying I
10 haven't even had an opportunity to present a
11 prima facie case as to the existence of the
12 operating agreement?

13 CHAIRMAN LEMAY: Did you want this
14 Commission to consider the validity of the
15 operating agreement, considering we have two
16 engineers and a geologist?

17 Let's get down to some very practical
18 matters, not legalistic. You would like us to
19 hear legal arguments concerning whether this
20 operating agreement is valid or not?

21 MR. TURNER: In this particular case,
22 the question of whether or not the operating
23 agreement exists and is valid is really a very
24 simple matter. There are two provisions in the
25 operating agreement that have to be looked to,

1 and the answers to the issues are things that I
2 was prepared to present to the Commission today
3 to establish, I think clearly, that there can be
4 no question but that the operating agreement
5 exists.

6 My concern is this. Any party who
7 comes into the Commission wanting to force pool,
8 in the face of an existing agreement, if the
9 Commission does not look into the question of
10 whether an agreement is in place, then it is
11 potentially depriving a party of not just a right
12 that can be answered in monetary damages--because
13 you're talking about a well being drilled, and
14 only one such well will ever be drilled--

15 CHAIRMAN LEMAY: Mr. Turner, let me
16 interrupt you there. Maybe I wasn't very clear.
17 What I was saying and the corollary of what
18 you're saying is that the pure alleging that a
19 certain agreement exists, you can allege a piece
20 of paper that's not acknowledged to be accurate
21 exists, and therefore will affect the
22 deliberations of this Commission. You make an
23 allegation that is not provable, that is in court
24 because it's not provable or accepting, and
25 expect us to, one, hear arguments on the legal

1 merits of that so-called operating agreement that
2 governs operations, and rule on it.

3 Taking that to the extreme, anyone can
4 manufacture paper and claim it affects the
5 deliberations of this Commission and therefore we
6 have to rule on the validity of all kinds of
7 paper that can be manufactured, and that's what
8 this is. Not to say that there is an operating
9 agreement, whether it's valid or not, is not
10 under the scope of this Commission.

11 MR. TURNER: It seems to me if the
12 Commission is presented with an operating
13 agreement, and I as an officer of the court am
14 representing to the Commission that the operating
15 agreement is valid, and if there's no evidence
16 introduced to the contrary to show that the
17 operating agreement does not exist, that that is
18 sufficient evidence for the Commission to rule on
19 its existence.

20 CHAIRMAN LEMAY: I think all kinds of
21 paper can be manufactured and alleged to do all
22 kinds of things. And if this Commission's
23 deliberation is supposed to be concerning
24 manufactured documents that may or may not affect
25 our deliberations, we are at a standstill.

1 We cannot rule on the validity of all
2 documents that are claimed to influence our
3 decisions. If they're disputed by the other
4 party, there's some doubt as to the validity of
5 them, otherwise they would be stipulated. You're
6 asking us to take on the jurisdiction of a court
7 and forget our obligations to protect correlative
8 rights and prevent waste in the meantime, until a
9 court decides on something.

10 We don't have that luxury, Mr. Turner.
11 We have to make decisions based on fact and based
12 on correlative rights and prevention of waste.
13 That is our jurisdiction.

14 MR. TURNER: Well, it just seems to me
15 the statute requires that force pooling is proper
16 only if there is not an agreement.

17 MR. STOVALL: We're talking a bunch of
18 gobbledegook here that's not really helping
19 anybody make a decision. There is an operating
20 agreement which was entered into affecting these
21 lands by two parties, none of whom are here
22 today, correct?

23 MR. TURNER: That is true.

24 MR. STOVALL: That operating agreement
25 was never recorded in Eddy County, New Mexico, is

1 that correct?

2 MR. TURNER: That is correct, but an
3 assignment that refers to--

4 MR. STOVALL: That operating agreement
5 or a memorandum thereof was not recorded in Eddy
6 County--answer the questions, please, and then
7 I'll let you go forward--is that correct?

8 MR. TURNER: Yes, that is correct.

9 MR. STOVALL: And the only potential
10 notice of that operating agreement is the
11 assignment which you refer to and which can be
12 made evidence in this record, and I assume you
13 intend to do so?

14 MR. TURNER: Yes.

15 MR. STOVALL: Which would purport to
16 show the existence of an operating agreement?

17 MR. TURNER: That is correct.

18 MR. STOVALL: The binding effect of the
19 operating agreement on the successors in interest
20 would either have to be through a legal
21 assignment of the contractual rights, or through
22 it being an encumbrance on the real property
23 interest which was assumed at the time the real
24 property interest was acquired, is that correct?

25 MR. TURNER: That is correct.

1 MR. STOVALL: And there is, at this
2 point, disagreement as to whether that last
3 condition exists, either there was acceptance by
4 assignment of the contractual obligation,
5 legally, or a valid encumbrance under New Mexico
6 law on the real property interest, and it is the
7 absence of clear decision on that which gives the
8 Commission jurisdiction because, in this case,
9 there is a disagreement as to the binding
10 effect.

11 And, in fact, yes, the Commission may
12 enter a pooling decision which is subsequently
13 determined to be invalid because that in fact did
14 encumber the real property interests and they
15 were subject to it. There are some other issues
16 I could raise such as: Does an operating
17 agreement actually pool the interests, or is it
18 merely an agreement as to some operational
19 conditions?

20 Based upon all those considerations, my
21 advice to the Commission is that there is
22 sufficient lack of agreement in this case so as
23 to give the Commission jurisdiction under the Oil
24 and Gas Act and the force pooling provisions of
25 the Oil and Gas Act to hear the matter and enter

1 a decision.

2 Now, it has the option when you present
3 the evidence, if you want to present evidence of
4 the operating agreement, as to whether or--that
5 could go to operatorship. Each of the parties
6 has sought to pool the interests. Each of the
7 parties seeks to be an operator, and the facts
8 surrounding that operating agreement may be
9 evidentiary to help the Commission make a
10 determination as to who should be the operator of
11 the well. Whose application to pool should be
12 granted.

13 But I think there is sufficient lack of
14 agreement to give jurisdiction under the Oil and
15 Gas Act, and I recommend, Mr. Chairman, that we
16 proceed with this case on the merits because we
17 could spend the rest of the day doing this.

18 CHAIRMAN LEMAY: I know, and I think
19 that's the way we ruled.

20 COMMISSIONER CARLSON: Bob, is it your
21 recommendation, then, that we hear evidence as to
22 the existence of the agreement?

23 MR. STOVALL: With respect to the issue
24 of operatorship; not with respect, particularly,
25 to the issue of your authority to pool the

1 interest. My recommendation to you is that there
2 is sufficient disagreement under the Act to allow
3 you to pool the interests.

4 COMMISSIONER CARLSON: I see.

5 MR. STOVALL: But you may consider it
6 as evidence with respect as to the operatorship
7 of the well. If something comes out later, we
8 need to review that and then discuss it; but at
9 this time, based upon my knowledge of the legal
10 issues of the operating agreement, that's my
11 advice to the Commission.

12 CHAIRMAN LEMAY: Okay. Rather than
13 proceed now, we'll take a break and be back at
14 1:00 to proceed with the case and hear it.

15 [The noon recess was taken.]

16 [Commissioner Carlson is not present.]

17 CHAIRMAN LEMAY: We have a quorum. I
18 don't know where Commissioner Carlson is, but he
19 can join us when he gets here.

20 Do you want to begin, Mr. Carroll?

21 MR. CARROLL: Yes, sir. We call as our
22 first witness, Mike Burch.

23 **MIKE BURCH**

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

EXAMINATION

BY MR. CARROLL:

Q. Would you please state your name, employer and occupation?

A. My name is Mike Burch. I work with Yates Petroleum Corporation in Artesia, New Mexico, as a landman.

Q. How long have you worked for Yates Petroleum Company as a landman?

A. Three years, three months.

Q. Mr. Burch, have you previously had occasion to testify before the Oil Conservation Division?

A. Yes, I have.

Q. As a petroleum landman?

A. Yes, I have.

Q. Have you had your credentials accepted as a professional petroleum landman?

A. Yes, I have.

MR. CARROLL: Mr. LeMay, I would tender Mr. Burch as an expert in the field of petroleum landman.

CHAIRMAN LEMAY: His qualifications are acceptable.

Q. Mr. Burch, the application of Yates

1 Petroleum that is before the Commission today in
2 Case No. 10467, are you familiar with that?

3 A. Yes, I am.

4 Q. Basically, what is Yates Petroleum
5 Corporation seeking by that application?

6 A. Yates seeks an order for pooling all
7 the minerals from 5000 feet below the surface to
8 the base of the Morrow formation, underlying the
9 north half of Section 27, Township 18 South,
10 Range 27 East, in Eddy County, New Mexico, to
11 form a standard 320-acre gas spacing proration
12 unit at an unorthodox location of 660 feet from
13 the north line and 1330 feet from the east line.

14 Q. Now, Mr. Burch, you have prepared
15 certain exhibits for presentation today, have you
16 not?

17 A. Yes, I have.

18 Q. I would ask you to please turn to
19 Exhibit No. 1. Would you please explain for the
20 record or describe for the record what this
21 exhibit is and then, if you would, explain the
22 exhibit to the Commission?

23 A. Okay. Exhibit No. 1 is a map of the
24 area that we propose to drill our Chalk AKH
25 Federal No. 2 well, which is highlighted with the

1 red dot in Section 27, the north half of Section
2 27, colored in yellow and outlined by the red
3 marking.

4 Also on this map, in pink, we have
5 highlighted the east half of Section 22, which is
6 where our present Chalk AKH Federal Com. No. 1
7 well is located.

8 In the slashed green area, the four
9 sections to the west of this is the Rio Pecos
10 working interest units, which Yates Petroleum
11 Corporation is the operator of that unit.

12 Highlighted in the blue is the south
13 half of Section 23, which Yates Petroleum
14 Corporation operates the Beauregard State Com.
15 No. 1 well; and highlighted in orange, the north
16 half of 26, is the Pierre AGF State Com. No. 1
17 well, which Yates Petroleum Corporation is the
18 operator of.

19 Q. Mr. Burch, the purpose of this exhibit
20 then was to, one, acquaint the Commission with
21 the exact location of the north half of 27 which
22 is the subject of Yates' application, and further
23 to acquaint the Commission with the fact that
24 within under a three-mile radius Yates Petroleum
25 does operate numerous wells, is that correct?

1 A. That's correct.

2 Q. And within that less-than-three-mile
3 area, how many wells does Yates operate?

4 A. We have nine wells in that immediate
5 area.

6 Q. Those wells are located within these
7 colored blocks, the pink, blue, orange and green?

8 A. That's correct.

9 Q. Mr. Burch, would you turn now to your
10 Exhibit No. 2, and would you describe for the
11 record what that exhibit is and then explain its
12 relationship to this application for the
13 Commission?

14 A. Exhibit No. 2 represents the working
15 interest owners of our proposed Chalk AKH Federal
16 No. 2 well in the north half of Section 27,
17 stating their percentages of working interest
18 ownership in that proposed well.

19 Q. This list of ownership does represent
20 100 percent when totaled, is that correct?

21 A. That's correct.

22 Q. Nearburg Exploration Company owns 50
23 percent, is that correct?

24 A. That's correct.

25 Q. And the remaining 50 percent is owned

1 and represented by Yates Petroleum, this group of
2 people, is that correct?

3 A. That's correct.

4 Q. Mr. Burch, would you turn to your
5 Exhibit No. 3. Would you describe for the record
6 what--well, it's Exhibit 3(A). Excuse me. And
7 in fact you may go ahead and describe Exhibits
8 3(A) and 3(B), what they are and the purpose in
9 presenting them.

10 A. Okay. Exhibit 3(A) is a letter from
11 Yates Petroleum Corporation to Nearburg
12 Exploration Company dated March 24, 1992,
13 proposing our Chalk AKH Federal No. 2 well in the
14 north half of Section 27, 18 South, 27 East.

15 At that time we proposed a location at
16 660 feet from the north line, 1320 feet from the
17 east line. We enclosed copies of the AFE and
18 also enclosed a copy of our operating agreement
19 covering the lands in that space unit, and we
20 solicited Nearburg's participation in the
21 drilling of our well.

22 Exhibit 3(B) is also a letter from
23 Yates Petroleum Corporation to Nearburg dated
24 April 2, 1992. We made a proposal, this was the
25 Chalk AKH Federal No. 3, we made a proposal to

1 drill a well at a location 660 from the north
2 line, 1980 from the east line of Section 27, and
3 we also made note that we were changing--we had
4 revised the location of our proposed No. 2 well
5 to 660 from the north line, 1330 from the east
6 line, simply because we had a problem with the
7 pipeline and we had to look at moving the
8 location.

9 Q. Moving to the 1330 was also necessary
10 to get it off a quarter-quarter section boundary
11 line--

12 A. That's correct.

13 Q. --and avoid going against one of the
14 rules of the Division?

15 With respect to these requests to join
16 in, has Nearburg Exploration Company accepted or
17 has any kind of a deal been made with Nearburg to
18 drill this well?

19 A. No, it has not.

20 [Commissioner Carlson is present.]

21 Q. Would you explain what Exhibit No. 4 is
22 or describe it for the record and then explain
23 it?

24 A. Exhibit No. 4 is various letters from
25 the non-operating parties requesting and

1 confirming their desire for Yates Petroleum to be
2 the operator of our Chalk AKH No. 2 well. I say
3 that's a list of the non-operators. That's in
4 exclusion of Nearburg Petroleum.

5 Q. But if we refer to the previous Exhibit
6 No. 2, which was a list of working interest
7 owners, all of the interests, other than Nearburg
8 Exploration, are covered by this exhibit?

9 A. All the working interest owners other
10 than Nearburg. That's what this exhibit
11 represents, that we do have their agreement,
12 approval, to operate this proposed well.

13 Q. All right. Would you turn to Exhibit
14 No. 5, and please describe for the record Exhibit
15 5 and its purpose?

16 A. Exhibit No. 5 is Yates Petroleum
17 Corporation's APD application to permit the Chalk
18 AKH Federal No. 2 at 660 feet from the north
19 line, 1330 feet from the east line. This was the
20 application that we had in to the BLM to approve
21 that location.

22 Q. Now, Mr. Burch, this is a copy of the
23 same application which was presented to the
24 Division at the prior hearing, is that correct?

25 A. That's correct.

1 Q. Since the time of the Division hearing,
2 this application has, in fact, been approved by
3 the BLM, is that correct?

4 A. That's correct.

5 Q. What was the date of the approval of
6 this application to drill?

7 A. That application was approved June 17,
8 1992.

9 Q. Mr. Burch, if you would please turn to
10 Exhibit 6, and again identify it for the record
11 and its purpose?

12 A. Exhibit No. 6 is waiver letters that we
13 obtained from the offsetting parties to our
14 application for an unorthodox location. These
15 are letters by all the offset owners that we
16 contacted, waiving any objection to us seeking
17 that unorthodox location.

18 Q. Again, these are all the same that are
19 shown--the list of operators that are shown on
20 Exhibit 2, with the exception of Nearburg
21 Exploration, is that correct?

22 A. That's correct. And we also, added to
23 that was a letter from Oryx Energy Company and
24 Baber Well Service Company that we also gave
25 notice to, because Oryx had an interest in a well

1 in the east or, excuse me, in the west half of
2 Section 22. It's up in the northwest quarter of
3 Section 22.

4 Just as a precautionary measure, we
5 gave them notification, also. The same goes for
6 Baber Well Service which has a shallower well in
7 the southwest quarter of Section 23, which is in
8 the west half of the southwest quarter of Section
9 23.

10 Q. These notices were given in an effort
11 to comply with the Commission rule that offset
12 operators nearest to the unorthodox side of a
13 well be given notice of an application, was this
14 not an effort to comply?

15 A. Yes.

16 Q. And they presented waivers, is that
17 correct?

18 A. Yes.

19 Q. Would you please turn to your Exhibit
20 No. 7, and again describe for the record and
21 explain this exhibit.

22 A. Exhibit No. 7 is the certificate of
23 mailing and compliance with Rule 1207 that your
24 law firm prepared and circulated to all the
25 interested parties in this case, showing those

1 parties in Exhibit A; and also a copy of a sample
2 letter that was sent to all those parties,
3 stating what we intended to do through this
4 hearing.

5 And then also the return cards on the
6 certified mailing are also copied on this.

7 Q. Those names that appear on this
8 "Exhibit A" to Exhibit No. 7, that is a list of
9 all persons who were required to receive notice
10 of this application under the rules of the Oil
11 Conservation Division, is that correct?

12 A. Yes, sir, that's correct.

13 Q. To the best of your information, Yates
14 Petroleum has complied with all notice provisions
15 as required by the rules?

16 A. We've complied with all requirements,
17 to our knowledge.

18 MR. CARROLL: Mr. Chairman, at this
19 time I would move the admission of Yates
20 Petroleum Exhibits 1 through 7.

21 CHAIRMAN LEMAY: Without objection,
22 Exhibits 1 through 7 will be admitted into the
23 record.

24 MR. CARROLL: Mr. Chairman, I would
25 pass the witness at this time.

1 CHAIRMAN LEMAY: Thank you. Mr.
2 Turner?

3 EXAMINATION

4 BY MR. TURNER:

5 Q. Mr. Burch, could you please tell me the
6 basis of the interest that Yates Petroleum
7 Corporation is claiming in the north half of
8 Section 27?

9 A. The basis that we make claim is through
10 a farmout agreement from the Trigg family that
11 was purchased by the Beddes Group, and then
12 ultimately Beddes Group showed the prospect to
13 Yates Petroleum Corporation and we acquired an
14 interest to drill that well.

15 Q. Okay. So that we can learn a little
16 bit more about the right that Yates Petroleum
17 Corporation has to drill this well since, if we
18 went to the records in Eddy County and checked to
19 see what interest you might have there, we would
20 not find any interest of record in Yates, is that
21 correct?

22 A. That's correct.

23 Q. Could you tell us a little bit about
24 the terms of your farmout agreement so we could
25 understand what rights you have to propose the

1 drilling of this well?

2 A. Under the farmout agreement they
3 received from the Trigg family, the Beddes Group
4 had the right to go drill a well. If they
5 obtained production and made a discovery on the
6 well, then they had the rights to go back in and
7 ask for an assignment of that interest.

8 Q. So, have you earned an interest, then,
9 under the farmout agreement?

10 A. Well, you know, Mr. Turner, usually
11 standard operating procedures in the oil
12 industry, as you know, you usually don't make the
13 assignment of those interests and file those of
14 record before you drill your well. Usually you
15 wait to see if it's--otherwise it would be an
16 exercise in futility to assign those rights and
17 file those in the county record and do all that
18 work, and then go out and drill a dry hole. You
19 usually don't do that.

20 Q. You understand that from a
21 third-party's position who has not been privy to
22 the terms of your farmout agreement, we really
23 don't know what rights you actually had to
24 propose the drilling of this well, so I'm trying
25 to learn a little bit more about the basis of

1 your proposal and what interest you have earned
2 and how it is that you have the right to propose
3 the drilling of this well.

4 A. Well, the interest that I show on my
5 Exhibit No. 2 are the interests that we're
6 participating and propose this well under, you
7 know, which shows all of the interest under
8 there. It includes the 50 percent under the
9 farmout agreement that we intend to participate
10 on the well with.

11 Q. But there's nothing that's introduced
12 or there's no evidence of your interest in the
13 north half of Section 27 that's been introduced
14 to the Commission, is that correct?

15 A. And there is no--on the record in the
16 county, no, there is none. We come to the
17 Commission, you know, they probably hear these
18 things every day, where we have obtained farmout
19 rights to farm out, to propose a well and go
20 drill a well, then to earn the assignment on
21 that.

22 I guess--are you saying that we're
23 going to propose an expensive well, to go out and
24 spend possibly close to \$600,000 to drill a well
25 when we don't feel confident that we know who has

1 those rights and who will end up with those
2 rights once we drill?

3 Q. I'm trying to satisfy myself that the
4 requirements of the statute have been complied
5 with. One of those requirements is that a party,
6 who has a right to drill, proposes the drilling
7 of the well and complies with compulsory pooling.
8 And I have not--

9 A. If the Commission has a question about
10 that, we can supply copies of the farmout
11 agreement. We can supply copies of the letter
12 agreement where we made a contractual deal with
13 the Beddes Group, if that's going to satisfy the
14 Commission.

15 Or, if we need to satisfy you, I would
16 feel your clients have already been satisfied
17 simply because they made requests of the
18 possibilities of obtaining the same farmout.

19 Q. We have not been furnished with a copy
20 of your farmout agreement, and I think we would
21 like to see that so that we can determine if you,
22 in fact, have any right to drill this well.

23 A. Well, if there's any problem as far as
24 we have rights to be able to go out and drill
25 this well, we have no problem in creating the

1 paper trail to show that we have those rights,
2 Mr. Turner, to go propose the well.

3 We don't just periodically go out and
4 propose wells when we know or we aren't secure in
5 the fact that we have those rights to go do those
6 things.

7 Q. I understand that, and that may be your
8 practice and I think that's certainly a prudent
9 practice, but our purposes are that we need to be
10 satisfied that you, in fact, do have have that
11 right and that you have a contractual commitment
12 from the Triggs, as the record owner of this
13 interest, that you can drill this well. It seems
14 to me that the Commission would want to be
15 satisfied of that, also.

16 A. We have no problem whatsoever providing
17 them with that.

18 CHAIRMAN LEMAY: We'll leave the record
19 open after this case for you to supply
20 information to the Commission and to Counsel.
21 Thank you.

22 THE WITNESS: Okay.

23 Q. In obtaining this farmout agreement
24 from the Triggs, were you directly involved in
25 ascertaining the ownership interest of the Triggs

1 in this tract of land?

2 A. No, I was not directly.

3 Q. How did you make the determination that
4 Trigg was the proper party to obtain a farmout
5 agreement from?

6 A. The party that approached us on this,
7 which Mr. Clark can testify to as far as what he
8 did to assure himself and us, that, you know, he
9 had a good, valid farmout agreement with him.

10 Subsequent to that, Mr. Turner, we've
11 had title opinions, if that's--. We know who
12 owns it and who had the rights to--

13 Q. So you have had title opinions written
14 on this tract?

15 A. Yes, there have been opinions.

16 Q. In those title opinions, do they make
17 reference to the interest that is owned by
18 Nearburg Exploration in this tract of land?

19 A. Yes, they do.

20 Q. Do those title opinions make reference
21 to the chain of title, the instruments that
22 comprise the chain of title, of the interest of
23 Nearburg Exploration?

24 A. Well, I'm sure--let me state that I
25 have not thoroughly examined, from front to back,

1 that title opinion. I'm sure that a competent
2 attorney would, yes, chain out the title before
3 he rendered his opinion.

4 Q. Do you have a copy of the title opinion
5 with you today?

6 A. I don't believe I do. I don't believe
7 I brought it with me.

8 Q. In the course of examining title, you
9 say that you're familiar with title opinions and
10 what a good title opinion would reflect. If a
11 title examiner came across the assignment
12 pertaining to a 50-percent interest in this tract
13 of land and that assignment was made subject to
14 an existing operating agreement, you, as an
15 experienced landman, would that raise some
16 question in your mind as to the validity and the
17 continued existence of that operating agreement?

18 MR. CARROLL: I would object to the
19 question because I'm not sure exactly how it was
20 posed to Mr. Burch. He started out talking about
21 an experienced land title attorney, I thought,
22 and what a title attorney would make, and I don't
23 think Mr. Burch is qualified at all to make any
24 statement as to what a title attorney would be.
25 And then the question at the end became--

1 MR. TURNER: He's already done that.
2 He said an experienced title attorney would do
3 these things. He's already testified to that.

4 CHAIRMAN LEMAY: I'm confused as to the
5 question. You're asking him what an experienced
6 title attorney would do?

7 MR. TURNER: In his experience. He's
8 told me that an experienced title attorney would
9 set forth this type of information in the title
10 opinions, based upon his experience. So, based
11 upon his experience, I'm asking him what that
12 title opinion would normally reflect.

13 CHAIRMAN LEMAY: Are you talking about
14 a hypothetical title opinion?

15 MR. TURNER: A title opinion
16 that's--yes, a hypothetical. Yes, he does not
17 have the actual title opinion with him today, so,
18 based upon his experience, what a typical title
19 opinion would reflect.

20 CHAIRMAN LEMAY: Go ahead. What would
21 a typical title opinion reflect?

22 A. Well, we would hope that it would give
23 us a true reading of what was in the records.

24 Q. Well, let me ask you this, then: I am
25 going to ask you to take a look at an assignment

1 that is reflected to be recorded in the records
2 of Eddy County.

3 Let's just assume, for a minute, that
4 the title attorney would have just come across
5 this assignment in his title examination, or even
6 that you, as an experienced landman, came across
7 this instrument in your examination of the
8 records pertaining to this tract of land.

9 This assignment is, in essence, an
10 assignment from the Triggs to Sinclair Oil
11 Corporation of an undivided 50-percent interest
12 in the lease pertaining to the north half of
13 Section 27.

14 Would you look that over and see if you
15 agree with that?

16 MR. CARROLL: I'm sorry. I lost the
17 question. What are you asking him to do?

18 MR. TURNER: I haven't asked him a
19 question yet. Right now I'm asking him to look
20 at the assignment and to tell me whether or not
21 it purports to convey a 50-percent interest in
22 this lease.

23 Q. Does it appear that that's what this
24 assignment does, Mr. Burch?

25 A. Yes, that's correct, it does.

1 Q. Okay. And if you could read a little
2 further down the page on this assignment to the
3 full paragraph prior to the last paragraph, the
4 paragraph that begins, "With the above-described
5 oil and gas lease," would you read that out loud
6 to us, please?

7 A. It says, "The above-described oil and
8 gas lease is subject to the operating agreement
9 covering the above-described land by and between
10 John Trigg and wife, Pauline V. Trigg, and
11 Sinclair Oil Corporation."

12 Q. Now, assuming that either this was set
13 forth in your title opinion or whoever it was
14 that checked records for you to make the decision
15 to acquire the farmout agreement, that person
16 would have come across this assignment and this
17 particular language, then, that makes the
18 assigned interest subject to an operating
19 agreement, is that correct?

20 A. Yes.

21 Q. Well, let me ask you, then, what--your
22 testimony is that Yates is acquiring this
23 interest from John Trigg whose interest here is
24 recited to be subject to this operating
25 agreement.

1 MR. CARROLL: I am going to object to
2 that statement because that is an incorrect
3 statement. All this interest says is that the
4 interest of Sinclair Oil Corporation is subject
5 to it.

6 MR. TURNER: No, it says the oil and
7 gas lease is subject to the operating agreement.
8 It's very clear.

9 MR. CARROLL: I think there is a--Mr.
10 Commissioner, I'm going to object to the line of
11 questioning.

12 CHAIRMAN LEMAY: Okay.

13 MR. CARROLL: And let me state it once
14 and maybe I won't have to do it anymore. Mr.
15 Turner has failed to recognize our argument that
16 Nearburg Exploration cannot lay claim to the
17 rights given by any operating agreement.

18 Now, there's a lengthy reason and
19 argument, because Nearburg has never gained the
20 permission of the Trigg family to succeed to the
21 rights of the farmout agreement and the rights of
22 any operating agreement. In other words,
23 Nearburg doesn't have standing to enforce the
24 operating agreement.

25 CHAIRMAN LEMAY: I thought we covered

1 that before lunch?

2 MR. CARROLL: I did, too.

3 CHAIRMAN LEMAY: We said that the
4 existence of the operating agreement, we can see
5 that. The validity of the operating agreement is
6 a matter that's before the Texas courts, as you
7 mentioned. We made an assumption and the
8 validity of that operating argument is not going
9 to be argued legally here among scientists.

10 We've made that assumption. Now, you
11 can put--these are awfully good things to present
12 on direct. Are you asking this witness to be
13 your witness? or--

14 MR. TURNER: No, I'm not. What I'm
15 simply doing, it was my understanding that the
16 question of the existence of the operating
17 agreement would be pertinent, as I understood Mr.
18 Stovall said, for purposes of deciding who would
19 be the operator. It seems to me that I've got to
20 establish that the operating agreement does, in
21 fact, exist.

22 CHAIRMAN LEMAY: Oh, I think that's
23 valid. I have no problem with that question. I
24 didn't know if you were getting into this witness
25 to be a legal judge of the validity of the

1 operating agreement.

2 MR. TURNER: I'm trying to establish
3 for our purposes of having some contention for
4 maybe being the operator here, and I understood
5 that subject would be open for that purpose.

6 CHAIRMAN LEMAY: Yes, but there's a
7 fine line there. You don't want to get into
8 legal arguments as to the validity of that
9 operating agreement, where it takes legal
10 arguments to cinch it or not cinch it. I
11 understand you're arguing that before a court
12 right now.

13 So there is a line there, and we
14 established that, I thought, prior to lunch. The
15 existence of the operating agreement, I think we
16 can see that.

17 MR. STOVALL: Perhaps, Mr. Chairman, to
18 simplify this, we can stipulate to specific facts
19 rather than beat around the bush with the witness
20 that, A, there is an operating agreement between
21 the Trigg family and I believe it's Sinclair, is
22 that correct? That's who signed the original
23 operating agreement?

24 MR. CARROLL: That's correct.

25 MR. STOVALL: Do you agree to that?

1 MR. TURNER: Yes.

2 CHAIRMAN LEMAY: Okay. I think we're
3 on the right track. Can we stipulate certain
4 things that both of you agree to, and then those
5 that are disputed we'll handle those separately?
6 For the purpose of time and understanding, there
7 is an operating agreement, is that correct?

8 MR. STOVALL: My proposal, Mr.
9 Chairman, is that I take them through the facts
10 and stipulate to them, because you could spend
11 half an hour discussing that with this witness.

12 CHAIRMAN LEMAY: Let's do that, so we
13 can have a basis of understanding, what you all
14 agree to stipulate to and what you don't.

15 MR. TURNER: I guess the other thing
16 that seems to me to be somewhat important here is
17 that if the parties are aware that there was the
18 existence of an operating agreement at some
19 point, the contention is that the operating
20 agreement does not exist, I would like to get to
21 the basis of that contention.

22 I think it's important that someone
23 come in before--Mr. Commissioner, you talk about
24 this being just a piece of paper. It's more than
25 just a piece of paper, it's an evidentiary

1 matter. The Yates group is coming in and saying
2 that piece of paper is no good. I'm trying to
3 establish, at least, some basis for that
4 contention. And the reason I'm doing that is
5 because they have asserted it exists in one court
6 and they say it doesn't exist here. It seems to
7 me that the--

8 MR. STOVALL: That's not what they've
9 asserted, Mr. Turner. What they've asserted, and
10 we've been through this before, is that that
11 operating agreement exists but it is not binding
12 or applicable to their interest in this well or
13 in this proration unit. There is a difference.
14 There's a critical difference.

15 Now, if I may, Mr. Chairman--

16 CHAIRMAN LEMAY: By my saying "just a
17 piece of paper," was not meant to apply that
18 agreements carry no importance. That statement
19 was meant to imply that if there is anything,
20 contracts, what have you, that are not accepted
21 as applying to a force pooling case, that that is
22 a matter of contention. One party says it
23 applies, the other says it doesn't, that can be
24 argued in many forums. This is not the forum to
25 argue that particular legality in. That was the

1 point I was trying to raise prior to lunch, and
2 by continuing to go back to that, trying to put
3 us as legal judges of your argument, is not what
4 we want this case to be about.

5 MR. TURNER: I understand that. It's
6 just important, I think, to understand the basis
7 for the contention that it doesn't exist. To
8 just get up and say that it doesn't exist or
9 doesn't apply to them is one thing, but I think
10 it's important to come in here and at least have
11 a basis to make that kind of contention and
12 representation to the Commission.

13 CHAIRMAN LEMAY: Let's follow Mr.
14 Stovall's recommendation and see what you
15 stipulate. I'm not sure what we're trying to get
16 at. So, if we could stipulate some things; the
17 existence of an operating agreement may be one
18 thing you can stipulate to. I can see it. Let's
19 start with that.

20 MR. STOVALL: I think I've already
21 heard you both agree that the operating agreement
22 does exist.

23 MR. TURNER: Is that correct, Ernest?

24 MR. CARROLL: That is correct. There
25 is an operating agreement, I think it's dated 67

1 or 69. I'm not sure. There was an operating
2 agreement that was signed by the Trigg family and
3 Sinclair Oil, and we recognize that such a
4 document exists.

5 MR. STOVALL: Fine. And then a portion
6 or one-half of the Trigg interest, Trigg is the
7 original leaseholder?

8 MR. TURNER: That's correct.

9 MR. CARROLL: That's correct.

10 MR. STOVALL: One-half of the Trigg
11 interest was assigned by the interest acquired by
12 Sinclair, through the farmout, was assigned to
13 Arco, is that correct? and there is an assignment
14 that exists?

15 MR. TURNER: Trigg owned 100 percent,
16 made the assignment of 50 percent to Sinclair,
17 who Sinclair was just merged into Arco, so
18 they're really one in the same entity. And
19 Nearburg claims its 50 percent through Arco,
20 through that chain of title. Trigg still owns
21 the other 50 percent interest of record subject
22 to the farmout agreement that Yates has
23 acquired.

24 MR. STOVALL: And that assignment
25 you've referred to, the document speaks for

1 itself, it makes reference to an operating
2 agreement?

3 MR. TURNER: Yes, the interest assigned
4 from Trigg to Sinclair, subject to that operating
5 agreement.

6 MR. CARROLL: There was a farmout
7 agreement dated November 4, 1966, between John H.
8 Trigg and Pauline V. Trigg, and Sinclair Oil &
9 Gas Company.

10 MR. STOVALL: Correct. And that's
11 another document that you both agree exists?

12 MR. TURNER: Yes.

13 MR. CARROLL: Yes, and that covered the
14 50-percent interest that Trigg farmed out to
15 Sinclair, that when Sinclair changed its name to
16 Arco, then Arco subsequently assigned to the
17 Nearburgs.

18 MR. STOVALL: So the fact of the
19 existence of those agreements is clearly
20 stipulated to. The operating agreement which
21 we're referring to, and there is only one and I
22 don't have a date, but we'll agree it's all the
23 same one we're talking about, has not been
24 recorded and there's no memorandum of that
25 agreement being recorded in Eddy County, New

1 Mexico, is that correct?

2 MR. CARROLL: That's correct.

3 MR. TURNER: The assignment I was just
4 going through contains--makes this assignment
5 subject to it. And those words "subject to" have
6 extreme legal significance.

7 CHAIRMAN LEMAY: We're not getting to
8 the legal significance. And I hope you will not
9 keep bringing up what's legally significant and
10 what's legally arguable before us.

11 MR. CARROLL: I will stipulate that
12 there is this assignment.

13 MR. STOVALL: Let me rephrase my
14 question for purposes of stipulation. The
15 assignment, that we have already stipulated to
16 the existence of, makes reference to the
17 operating agreement and that is the only
18 reference in the records of Eddy County to any
19 operating agreement affecting these lands?

20 MR. TURNER: I cannot stipulate that
21 that is the only reference.

22 MR. STOVALL: You or Nearburg has not
23 had a title examination that would indicate
24 this--

25 MR. TURNER: I have not personally

1 examined the title myself. I will stipulate that
2 the assignment is subject to that operating
3 agreement, and that's all I can stipulate to.

4 MR. STOVALL: The critical issue here,
5 and I think the one we can go forward with, and
6 from my understanding of where the Commission is,
7 this is the matter you have to argue in court,
8 but the understanding I have is that Yates
9 Petroleum does not agree that the interest which
10 it proposes to acquire through the farmout with
11 the Trigg family is subject to that operating
12 agreement? Is that a correct statement?

13 MR. CARROLL: I think that's a correct
14 statement.

15 MR. STOVALL: Mr. Turner, the questions
16 that you're proposing to the witness are
17 questions of whether or not Yates Petroleum
18 should consider itself bound by that or if it has
19 a solid, legal basis for not considering it,
20 subject to the provisions of that operating
21 agreement, is that correct?

22 MR. TURNER: That's correct.

23 MR. STOVALL: I think the Commission
24 has said, and I hear the Commission saying to
25 you, that they are not going to make the

1 determination of whether or not Yates Petroleum
2 should be bound, should consider itself bound or
3 is bound by that operating agreement. That is
4 for a court of competent jurisdiction to
5 interpret the contract. And that is the basis
6 for jurisdiction, is that there is not an
7 agreement there. And there is, to the extent the
8 operating agreement is not recorded and there are
9 some issues to be resolved, there is a basis for
10 this Commission to go forward jurisdictionally.
11 And I think they're telling you, if I'm not
12 mistaken, Mr. Chairman, you don't want to hear
13 whether or not Yates should consider itself bound
14 or is bound by the operator agreement.

15 CHAIRMAN LEMAY: I have to accept
16 Yates' statement at face value, that they do not
17 consider themselves bound by this operating
18 agreement, for certain legal arguments that will
19 be decided by a court.

20 Beyond that, I'm not sure where you are
21 going, Counselor. Are you still trying to get
22 them bound by this agreement even though they
23 agree--

24 MR. TURNER: I'll tell you what bothers
25 me about this is that you say you can accept his

1 statement at face value that the agreement
2 doesn't exist, and yet--

3 CHAIRMAN LEMAY: I didn't say that. I
4 didn't say I could accept that. I said, for
5 purposes of this Commission and what we have to
6 consider, we are not making a determination on
7 the operating agreement, the validity of it. We
8 accept their position as being their position.
9 We don't accept their position as being factual.
10 We're not siding with their position. They may
11 well be bound by the operating agreement. What
12 we accept is what they are telling us what their
13 position is. That's what we accept.

14 MR. TURNER: I misunderstood you.

15 CHAIRMAN LEMAY: No, we're not
16 accepting their argument.

17 MR. TURNER: Okay. I guess we have
18 that resolved now.

19 CHAIRMAN LEMAY: Well, we have certain
20 stipulations, so we'll go on into the body of the
21 case. Please continue.

22 EXAMINATION RESUMED

23 BY MR. TURNER:

24 Q. Mr. Burch, under this farmout agreement
25 that you have, can you tell us what date the well

1 that you're proposing Yates drill here be
2 commenced?

3 A. We have--let's see. I don't have a
4 copy right here in front of me, but I believe Mr.
5 Clark can confirm, if I make a misstatement, I
6 believe we have 180 days after the completion of
7 our first well to start our second well.

8 Q. Okay. And, so what date, then, would
9 that mean that Yates would propose to commence
10 this well?

11 A. Well, our engineer can testify as to
12 when the actual completion of this well finished,
13 if you want to take that in his testimony. And
14 then it would just be 180 days from that date to
15 try and get this started. That's why we've
16 wanted to pursue this and get this done, simply
17 because we are under time constraints to get this
18 well drilled, and we would like to see that done.

19 Q. Okay. Yeah, we would want to hear from
20 your engineer regarding the completion date of
21 that well. The question I'm really asking you
22 is, what date do you propose to drill this well,
23 or are you saying that the date you would propose
24 this well be drilled coincide with the date that
25 you need to drill your next well under your

1 farmout agreement?

2 A. Well, we would hope, and we intend to
3 do that today in this hearing, is to ask for an
4 extension, first of all, in this matter before
5 the Commission, ask for an extension of 90 days
6 simply because we're running to the end of what
7 they originally gave us under the first order.
8 So we would like to have more time, you know,
9 here with the Commission to pursue the drilling
10 of that well.

11 No, we don't want to run past the
12 extension of our farmout agreement under the
13 terms where we're going to have to get it
14 renewed. The thing that concerns us here is that
15 Yates Petroleum Corporation has been caught in
16 this trap before, as far as getting a rig on
17 location and actually beginning to drill the well
18 and then being shut down, you know, by a third
19 party or by somebody that would shut us down,
20 saying that we could not drill that well.

21 We don't want to go to the expense of
22 doing that in this case. That's why we are
23 hesitant to say the exact date that we want to
24 spud this well, depending on the outcome of
25 what's going on here today. You're asking me a

1 question, Mr. Turner, that I really can't pick a
2 date and say that we are going to spud by this
3 date.

4 Q. If that's your best answer, that's
5 fine.

6 MR. TURNER: Okay. No further
7 questions.

8 CHAIRMAN LEMAY: Additional questions
9 of the witness?

10 MR. STOVALL: Mr. Chairman, I would
11 like to, if I might before you start, go back to
12 the thing to clarify where we are, and my
13 recommendation to the Commission on the operating
14 agreement issue.

15 As I specified in the discussion on the
16 motion--and I want to make sure this is clear so
17 that my advice to the Commission, if it accepts
18 its reasoning, and the discussing with respect to
19 the operating agreement is clear, is that there
20 exists an agreement out there to which neither of
21 the parties before the Commission today are
22 signatory parties, correct?

23 MR. CARROLL: Correct.

24 MR. TURNER: Correct.

25 MR. STOVALL: The only recorded

1 document is a memorandum of this operating
2 agreement in an assignment between two parties,
3 one of which is a predecessor in interest to both
4 parties appearing today, but the agreement is not
5 an assignment of any interest which Yates
6 proposes to acquire today? Is that correct? Did
7 I make sense?

8 MR. CARROLL: I wouldn't classify it as
9 a memorandum, but there is a reference in a
10 document.

11 MR. STOVALL: Okay. That's fair.
12 Yates does not accept an assignment of that
13 operating agreement or agree to become a party to
14 that operating agreement in a contractual basis,
15 is that correct? Would you agree to that?

16 MR. CARROLL: Our position, I think
17 better stated, is that Yates feels that it is not
18 bound to Nearburg Exploration by a joint
19 operating agreement. There is no agreement
20 between those two parties. There's some legal
21 reasoning why I stated it that way.

22 MR. STOVALL: My interpretation and my
23 understanding of law, Mr. Chairman, and how I'm
24 recommending that you get where you are, is that
25 Yates would become bound to Nearburg through that

1 agreement by one of two ways; either by an
2 assignment of the contract obligations and
3 rights, or by that being an encumbrance and a
4 burden upon the real property interest acquired.

5 CHAIRMAN LEMAY: We're not getting into
6 the legal arguments because I'm not a lawyer. I
7 can't even accept yours, Counselor.

8 MR. STOVALL: I'm telling you that they
9 can only be a party to that operating
10 agreement--it can only affect Yates one of two
11 ways. Yates agrees to have it affect them, by
12 accepting an assignment of the contract rights
13 under the operating agreement. That is one way
14 by which Yates can be subject to that operating
15 agreement and enter into that contractual
16 relationship with Nearburg. They have stated
17 categorically, without equivocation, that they do
18 not accept that method of becoming bound.

19 CHAIRMAN LEMAY: Do you agree with
20 this, Mr. Turner?

21 MR. TURNER: No.

22 CHAIRMAN LEMAY: Oh, okay. We're going
23 to get back into the legal--

24 MR. STOVALL: I'm advising you as to
25 my--

1 CHAIRMAN LEMAY: I see. Okay.

2 MR. STOVALL: I'm not asking them for a
3 stipulation at this time.

4 CHAIRMAN LEMAY: I see.

5 MR. STOVALL: The other way by which
6 Yates' interest could become bound is if that is
7 a valid encumbrance or burden upon the real
8 property interest, just as a mortgage or other
9 type of--real estate covenants could be a run
10 with the land, as we lawyers call it, and be a
11 burden upon the property interest acquired, and
12 subsequent takers of that property interest
13 accept it subject to the burdens of that
14 encumbrance.

15 CHAIRMAN LEMAY: You're getting a
16 little bit far.

17 MR. STOVALL: I understand.

18 MR. CARROLL: Mr. Chairman, just so
19 maybe Mr. Turner will have a better idea, I think
20 what Mr. Stovall has stated thus far, he's stated
21 two positions. I think they're legally correct
22 assessments of the law.

23 But there is also a third position, one
24 that Yates maintains wholeheartedly, is that
25 before one can enforce contractual rights, they

1 have to own those contractual rights. We
2 basically are saying that Nearburg has no
3 standing under the contractual documents--and
4 this is one of our alternative arguments, because
5 in the law you can have alternatives--we're also
6 stating that besides the other two arguments
7 which you posed, that Nearburg has no standing to
8 assert any rights under those contracts.

9 CHAIRMAN LEMAY: We understand that.
10 That's our way of saying to you, you don't agree
11 with what Nearburg is saying.

12 MR. CARROLL: That's right.

13 COMMISSIONER CARLSON: You're saying
14 under the alleged operating agreement they have
15 no standing?

16 MR. CARROLL: That's right. Under the
17 alleged operating agreement and farmout agreement
18 together, those two contracts which we agree do
19 exist. We're saying they have no standing under
20 those.

21 COMMISSIONER CARLSON: You're not
22 contesting that Nearburg has a 50-percent working
23 interest in this property?

24 MR. CARROLL: They own operating rights
25 of 50 percent, yes, sir. We do not contest

1 that. But the contractual rights, and the
2 instruments speak to those very issues, and
3 that's why we raise this third issue, is that
4 they do not have standing.

5 CHAIRMAN LEMAY: You'll raise it, I
6 guess in Texas, because I don't think we're going
7 to hear it in New Mexico.

8 MR. STOVALL: My final statement is
9 that I'm comfortable advising the Commission that
10 with respect to the burden of the operating
11 agreement, I don't believe that that assignment
12 constitutes sufficient notice to tell Yates that
13 the interest they're acquiring is subject to an
14 encumbrance which would bind their interest.

15 CHAIRMAN LEMAY: Thank you, Counselor.

16 MR. STOVALL: A court may contradict
17 me, but based upon the information you've got--or
18 to make it clear, particularly to Mr. Turner,
19 that we're not just simply saying that if
20 somebody says an agreement's not binding, it's
21 not binding. I think there is a basis for the
22 Commission--

23 MR. TURNER: And that's exactly the
24 line of questioning I was trying to pursue.
25 Rather than to allow Yates to come in and say it

1 doesn't exist, I wanted to get to the foundation
2 of that objection, and I really hadn't been able
3 to hear that until Mr. Carroll just enunciated
4 it.

5 It's troublesome that someone can come
6 in and say, well, it doesn't exist.

7 CHAIRMAN LEMAY: No, I think we all
8 agree it existed. We're just arguing over the
9 validity of it.

10 MR. CARROLL: It's the legal
11 significance of the thing, is what we're talking
12 about.

13 COMMISSIONER CARLSON: Mr. Turner, may
14 I ask you, are you contesting whether Yates
15 Petroleum has--let me back up. The statute says
16 that anybody with a right to drill can come in
17 here and seek an order for compulsory pooling.
18 Are you contesting that they do not have a right
19 to drill?

20 MR. TURNER: Yes. They have not
21 demonstrated to me that they have that right to
22 drill. I have seen no evidence of that.

23 MR. CARROLL: Are you contesting they
24 do not have their 10.5 percent working interest?

25 MR. TURNER: I've seen no evidence to

1 establish that interest or how they arrived at
2 those interests set forth on their exhibit.

3 COMMISSIONER CARLSON: So that is an
4 issue in this case?

5 MR. TURNER: Yes, it is.

6 MR. STOVALL: Mr. Commissioner, I think
7 you have other witnesses in addition to Mr. Burch
8 who can provide additional evidence to establish
9 Yates' right to drill.

10 MR. CARROLL: This is something I don't
11 know the Commission has ever gone into, but, yes,
12 I can put on an additional witness that actually
13 purchased the farmouts, and I have him present
14 here.

15 CHAIRMAN LEMAY: Leaving the record
16 open as we tend to do, wouldn't that be
17 sufficient to establish--to the assumption that
18 they do have the right, and if that information
19 is not forthcoming within that period of time,
20 then, of course, the Commission takes that into
21 consideration in judging the validity of that? Or
22 what do you want for verification if they have
23 the right to drill?

24 MR. TURNER: We need to see the chain
25 of title from the Trigg family into the parties

1 that they are listed as the owners of that
2 interest now.

3 MR. CARROLL: I don't think you're
4 entitled to that. I don't think that's the role
5 of this Commission. Mr. Turner can go to the
6 courts of New Mexico and get an injunction to
7 stop us from drilling. He can get a temporary
8 retaining order, as this Commission well knows,
9 to stop orders of the Division and Commission if
10 he has ascertainable, legal right, as he says.
11 He has never attempted to do that, and that's
12 part of my argument.

13 MR. STOVALL: Well, let me take this
14 one step further. I believe that the testimony
15 of Yates Petroleum Corporation, their testimony
16 under oath that they have the right to drill,
17 pursuant to oral or written agreements with the
18 record interest owner of the interest,
19 establishes a prima facie case of the right to
20 drill and shifts the burden of going forward.

21 MR. TURNER: Bob, how does that
22 establish a prima facie case more than the
23 presentation of an operating agreement that
24 existed, which you're saying doesn't establish a
25 prima facie case?

1 CHAIRMAN LEMAY: I think we're getting
2 back to legal arguments. Let's not turn this
3 into legal arguments. We're going to stop this
4 right now and get back to Commissioner Carlson's
5 initial question. And then, if you want to
6 present your own witnesses, you're entitled to do
7 that.

8 The assumptions we're making have been
9 well stated. We've got a force pooling case
10 here, correlative rights and waste are issues.
11 Some of these other things we're getting into are
12 not really issues this Commission will deal
13 with.

14 MR. TURNER: And Commissioner, in all
15 due respect, I disagree. There are elements you
16 have to be able to establish to be entitled to
17 compulsory pooling, and one of them is the right
18 to drill and one of them is that there's not an
19 existing agreement.

20 CHAIRMAN LEMAY: Mr. Turner, we're
21 making some assumptions. We've heard lots of
22 cases here. Give us the credit for accepting
23 from an expert witness that they have the right
24 to drill. You've requested additional evidence
25 for that right. I have left the case open for

1 Yates to provide that additional evidence to us
2 and to you. How far do you want to take this
3 issue on the right to drill?

4 Maybe Commissioner Carlson has
5 questions as to the right to drill, but a
6 certified statement by an expert that they have
7 the right to drill is evidence that the
8 Commission considers, so is a title opinion, so
9 are these other matters. Are we nitpicking this
10 thing too much? How far are we going?

11 MR. TURNER: I don't think so at all.
12 I just think they have to establish the elements
13 of their case and they haven't done that yet.
14 They're being given the opportunity to present
15 these things at a later date, whereas for us to
16 establish the existence of our operating
17 agreement, we're kicked back into court to go
18 decide that issue there. I don't think we're
19 receiving the same treatment.

20 CHAIRMAN LEMAY: I'm not going to allow
21 that kind of argument here because we have not,
22 as a Commission, we have not looked at or have we
23 interpreted operating agreements or the validity
24 of operating agreements. That is a matter for
25 the courts.

1 We have, as a matter of our
2 jurisdiction, determined and accepted the right
3 to drill. We make that assumption. It can be
4 proved. We do make that determination and we do
5 have authority to force pool. That is our
6 authority, and we're pursuing that path. They
7 are different areas of jurisdiction. I stated
8 that previously and I'll state it again. One is
9 a legal right, a legal right to property, and
10 that you've taken to a court of jurisdiction.

11 We don't interpret operating
12 agreements. We never have. If you're looking
13 for future commitments, we never will. How clear
14 can I be?

15 MR. TURNER: I understand your position
16 real well.

17 CHAIRMAN LEMAY: Thank you.
18 Commissioner Carlson, do you want to continue?

19 COMMISSIONER CARLSON: I don't know if
20 I have any more questions. I'm just trying to
21 clarify the issues here.

22 As I understand, Mr. Turner, if you
23 have allegations that they do not have a right to
24 drill, it's based on that those rights have been
25 given up because they are a successor in interest

1 to the operating agreement, is that correct?

2 MR. TURNER: No.

3 COMMISSIONER CARLSON: Are you
4 contesting that they have the 10 and a half
5 percent working interest?

6 MR. TURNER: Yes, sir.

7 COMMISSIONER CARLSON: Do you have any
8 indication or evidence that they do not have such
9 an interest?

10 MR. TURNER: I just don't have any
11 evidence that they do. I know John Trigg owns
12 the interest of record, and I have a piece of
13 paper here that says they own these interests and
14 these percentages, and that's all we've got.

15 COMMISSIONER CARLSON: But you have no
16 indication or nothing to indicate that the sworn
17 testimony here is not true, is that correct?

18 MR. TURNER: No, nothing to indicate
19 that other than what I find in the county
20 records.

21 MR. STOVALL: Let me suggest, to
22 perhaps give you some guidance and let you know
23 it's not quite as--or that there is a basis for
24 this, I would believe that with respect to the
25 right to drill, they have established the prima

1 facie case and perhaps your burden is to say,
2 present somebody who represents the Trigg
3 interests to say that no, they can't acquire that
4 right to drill. We're not giving them permission
5 to drill our interest. We own the interest and
6 they have no way to acquire it because we don't
7 give them permission to.

8 I think their testimony, to be sure the
9 operating agreement exists, has to be accepted as
10 truthful. We could go into a line of questioning
11 about oil field practice with respect to that,
12 but I think that is a successful prima facie case
13 and, at this point, it is rebuttable, clearly
14 rebuttable, with evidence that that is not an
15 accurate statement due to misunderstanding or, in
16 the worst case, that it were not true.

17 We recognize, as a Commission, that
18 these agreements do exist and that testimony as
19 to that effect is acceptable. It's not being
20 controvertible, but it is acceptable.

21 CHAIRMAN LEMAY: Excuse me, Counselor.
22 Mr. Carroll, you have how many witnesses?

23 MR. CARROLL: I have four witnesses.

24 CHAIRMAN LEMAY: You've got a landman?

25 MR. CARROLL: I have two landmen, and

1 the other landman was the one I was not proposing
2 to call until Mr. Turner raised all these
3 questions about the ownership. I have the
4 landman that originally researched the title and
5 purchased the farmout agreement from Trigg,
6 present.

7 CHAIRMAN LEMAY: Is that someone you
8 would like to question on title and right to
9 drill?

10 MR. CARROLL: I guess.

11 CHAIRMAN LEMAY: Who else do you have?

12 MR. CARROLL: I have an engineer and a
13 geologist.

14 CHAIRMAN LEMAY: Shall we continue?
15 Commissioner Weiss, do you have any questions?

16 COMMISSIONER WEISS: I don't have any
17 questions.

18 CHAIRMAN LEMAY: In terms of how the
19 interest was acquired and the trade, is that your
20 other landman, or--

21 MR. CARROLL: That would be all that
22 our other landman would cover.

23 CHAIRMAN LEMAY: Maybe I need to ask
24 some questions of Mr. Burch, then.

25 THE WITNESS: May I make a statement?

1 CHAIRMAN LEMAY: Yes.

2 THE WITNESS: Yates wants to provide
3 anything to satisfy to the Commission that we do
4 have the right to drill. We didn't feel like we
5 were going to come up here and have to defend
6 ourselves against owning that right to drill. We
7 felt like we were acting as a prudent operator by
8 obtaining the farmout, by obtaining an interest
9 in that farmout, and proposing our well.

10 We didn't want to drag this in front of
11 the Commission to try and defend the right that
12 we have to drill. We'll be glad to provide the
13 Commission and we'll be glad to provide Nearburg
14 with anything they need to do to satisfy that,
15 but we didn't want to feel like we're--because,
16 you know, if we succumb to that type situation,
17 it's like, you know, to where we get assignments
18 and get everything that we need, you know, to
19 file of record, which a lot of those contracts
20 never are, we don't want to feel like--

21 CHAIRMAN LEMAY: Mr. Burch, we
22 understand your position. We'll make the
23 determination whether or not you have the right
24 to drill.

25 THE WITNESS: Okay.

1 CHAIRMAN LEMAY: I have some
2 questions.

3 EXAMINATION

4 BY CHAIRMAN LEMAY:

5 Q. Your Exhibit No. 2 lists a lot of
6 people in there that equal 50 percent. Also,
7 your Exhibit No. 4 is a letter from Mr. Cromwell
8 indicating, different than the other people, that
9 he's claiming to be the originator of the
10 prospect in here, is that correct?

11 A. Yes, sir, that's correct.

12 Q. Line 4 seems like is a working interest
13 owner and originator of this prospect?

14 A. Yes, sir.

15 Q. Did you have negotiations with Mr.
16 Cromwell as the originator of the prospect?

17 A. No, sir. Mr. Cromwell actually took
18 this and sold this idea to the Beddes brothers.

19 MR. CARROLL: To help, Mr. Cromwell is
20 the geologist who I will put on the stand.

21 CHAIRMAN LEMAY: Fine. I needed to
22 clarify that, and I will direct my questions to
23 Mr. Cromwell. Thank you. I have no further
24 questions. Call your next witness.

25 MR. CARROLL: May I ask just a couple

1 of questions to clarify things?

2 CHAIRMAN LEMAY: Certainly.

3 FURTHER EXAMINATION

4 BY MR. CARROLL:

5 Q. Mr. Burch, Exhibit No. 2, the ownership
6 interests that are reflected for Yates Petroleum,
7 Yates Drilling, Abo, and all of this group down
8 to Nearburg, are these the percentages that are
9 shown in the records of Yates Petroleum as they
10 are kept in the normal course of business?

11 A. That's correct. That's how we propose
12 to obtain that interest to drill that well.

13 Q. Is it your opinion that Yates Petroleum
14 has a right to drill this well as an interest
15 owner of the oil and gas rights in that
16 particular half section?

17 A. That's correct.

18 Q. Now, one other thing that you were
19 talking about under cross-examination with Mr.
20 Turner, the original order that was handed down
21 at the end of the case that was held before the
22 Division, gave Yates Petroleum until September 1,
23 1992, to spud this well under the pooling order
24 that it issued, is that correct?

25 A. That's correct.

1 Q. And when you were talking about
2 additional time, you were making reference to the
3 fact that since we do not know when the
4 Commission's order is actually going to come
5 down, since a de novo application was made,
6 you're asking that Yates be allowed 90 days from
7 the date of the Commission order in which to spud
8 the well?

9 A. That's correct.

10 Q. At least if this order comes down
11 within a reasonable time period, that will be
12 still within the 180-day time period in which you
13 must spud the well under the terms of the Trigg
14 farmout?

15 A. We feel that that will give us
16 sufficient time, yes.

17 Q. Is it Yates Petroleum's intention at
18 this time to drill this well?

19 A. Right now?

20 Q. Yes, sir.

21 A. No, not right now.

22 Q. It is their plan?

23 A. It is, yes. I mean, not today, until
24 we settle.

25 Q. It's the uncertainty of the fact that

1 this Commission hearing is outstanding?

2 A. Correct.

3 Q. If we get an order, then, it is the
4 intention of Yates Petroleum to drill the well?
5 Yates has every intention to do that?

6 A. It's our intention to proceed and drill
7 this well, yes.

8 Q. And the only reason the 90 days is
9 requested is to allow you to schedule the well
10 timely, because there are other wells that Yates
11 Petroleum is drilling?

12 A. That's correct.

13 Q. And its personnel is spread fairly thin
14 when you're drilling a number of wells?

15 A. That's correct.

16 MR. CARROLL: That's all I have.

17 [Discussion off the record.]

18 FURTHER EXAMINATION

19 BY CHAIRMAN LEMAY:

20 Q. Why are you here?

21 A. Mr. Commissioner, we're here seeking
22 the--

23 Q. I know what your application says. Why
24 are you here?

25 A. That's what we keep asking ourselves,

1 why we're here. We went through this exercise
2 once before, before the Commission, and received
3 an order, and we felt like it was--

4 Q. Why did you come here last time?

5 A. Because we couldn't get Nearburg to
6 volunteer to--voluntarily agree to get this well
7 drilled.

8 Q. We've got 50/50 here, and would
9 Nearburg be a qualified operator to operate the
10 prospect?

11 A. We don't feel with the expertise that
12 we have in that area and with after drilling the
13 No. 1 well, which is just to the north of this,
14 we feel like that we know what's going on in that
15 area.

16 Q. That wasn't my question. I wasn't
17 asking what you felt you would do. Is Nearburg a
18 qualified operator?

19 A. They operate in New Mexico.

20 Q. There you go.

21 A. I imagine they're a qualified operator,
22 yes.

23 Q. Good. That's the answer I wanted to
24 here. They're qualified. You're here because
25 you have 50/50 and you can't agree, and you've

1 got stipulations and you've got all kinds of
2 problems.

3 CHAIRMAN LEMAY: Isn't there a better
4 way to solve this thing than taking all our time
5 with lawyers? I mean, you have two people who
6 can't agree. Is it a family feud, or what's
7 going on here? Does this go back to bad blood
8 between brothers? I don't really understand what
9 this is all about.

10 I understand we have legal processes,
11 but to me, I need to know what's going on. Why
12 can't we get together on something like this
13 without dragging every issue under the sun?

14 MR. TURNER: I think maybe I can
15 address that and bring this thing to a
16 resolution.

17 CHAIRMAN LEMAY: I would love to hear
18 it, Counselor. Be my guest.

19 MR. TURNER: I was just consulting my
20 client about that very thing. It appears, at
21 least to Nearburg, that really the only thing
22 that we're fighting about at this point is the
23 question of the amount of penalty that would be
24 assessed against the nonoperator, if that party
25 elected to go nonconsent.

1 Nearburg would be willing to
2 capitulate, at this point, to allow the
3 compulsory pooling to take place in lieu of the
4 operating agreement, if the penalty were set, as
5 they're established in that operating agreement.

6 CHAIRMAN LEMAY: What was the penalty
7 established in the operating agreement?

8 MR. CARROLL: It's 100-percent penalty,
9 in terms that the Commission has used.

10 MR. STOVALL: Cost plus a hundred.

11 MR. CARROLL: Cost plus a hundred would
12 be what that says. Plus, there would be--

13 CHAIRMAN LEMAY: Well, let me finish
14 here. I don't want to have legal argument. Let
15 me just get to the heart of the thing.

16 MR. CARROLL: Well, this is it.

17 CHAIRMAN LEMAY: Counselor, don't
18 interrupt me. I'm asking a question. You'll
19 have your chance after I ask the question and get
20 an answer.

21 Mr. Turner, you have 100-percent
22 nonconsent, cost plus a hundred?

23 MR. TURNER: Yes, sir.

24 CHAIRMAN LEMAY: You're stating from
25 Nearburg's position that you would be happy if

1 Yates operated with that nonconsent provision?

2 MR. TURNER: We've already offered
3 that.

4 CHAIRMAN LEMAY: Would you also accept
5 that, if Nearburg operated, would you give that
6 to Yates?

7 MR. TURNER: Yes.

8 MR. SHELTON: We offered that today.

9 CHAIRMAN LEMAY: So, it's a give-take
10 proposition as far as you're concerned, with
11 100-percent nonconsent?

12 MR. TURNER: Yes.

13 CHAIRMAN LEMAY: Thank you. Mr.
14 Carroll, is that something you want to consult
15 with your clients and you would accept on a
16 give-take basis?

17 MR. CARROLL: I would have to consult.
18 Mr. Patterson is here.

19 CHAIRMAN LEMAY: I think Mr. Patterson
20 is well qualified to speak for Yates. Why don't
21 we take a five-minute intermission--

22 MR. CARROLL: Mr. LeMay, there is one
23 other issue, and this is what I was trying to
24 address a minute ago, there are two things that
25 have to be considered when you do the force

1 pooling. One is the penalty but there's also the
2 drilling rates.

3 The old agreement that Mr. Turner has
4 been trying to talk about speaks of a \$750
5 drilling rate and \$140 per month. What we put
6 testimony on and what we were granted under the
7 original order was \$5,000 and \$500. There is
8 substantial contention there.

9 CHAIRMAN LEMAY: I agree. Would you be
10 willing to agree, on a give-take basis, to use
11 the \$5,000, \$500 rates?

12 MR. SHELTON: Yes, sir.

13 CHAIRMAN LEMAY: That issue seems to be
14 taken care of. Is there anything else that
15 concerned you?

16 MR. CARROLL: I need to visit with Mr.
17 Patterson.

18 CHAIRMAN LEMAY: All right. Let's take
19 a 10-minute intermission and see if we can have a
20 give-take proposition.

21 MR. TURNER: The only other thing that
22 we would want in there, because of the
23 questionable timing of the drilling of this well,
24 that if we agreed to an order for compulsory
25 pooling, that the timing of when the nonoperator

1 had to put up their share to drill would be tied
2 to the proposed commencement date of that well.

3 In other words, if the well was
4 proposed to be drilled December 1st, that the
5 nonoperator would have to put up his money 30
6 days prior to the spud date, not immediately upon
7 entering the order.

8 MR. STOVALL: Mr. Chairman, as far as
9 the timing of the order, the Commission order
10 will be a new order and the dates will go from
11 the Commission order, and we have the 30-day
12 language in there.

13 CHAIRMAN LEMAY: I think there's ample
14 protection there.

15 MR. TURNER: Because that's a problem.
16 We would just want to tie it to the drilling of
17 the well, not to the entering of the order.

18 MR. STOVALL: Let me read the language
19 of the existing order. I thought that's what our
20 order said.

21 CHAIRMAN LEMAY: That should not be a
22 stumbling block. I think both parties can agree
23 on that.

24 MR. TURNER: We don't want to have our
25 money tied up for 180 days and the well may not

1 get drilled.

2 MR. STOVALL: I'll review the order. I
3 thought that's how the orders work.

4 CHAIRMAN LEMAY: How much time do you
5 need?

6 MR. CARROLL: Five minutes, I would
7 think.

8 CHAIRMAN LEMAY: All right. Let's take
9 a five-minute break.

10 [A recess was taken.]

11 CHAIRMAN LEMAY: Okay. We shall
12 resume.

13 Mr. Carroll?

14 MR. CARROLL: Yes, sir, I would like to
15 make a statement to the Commission.

16 CHAIRMAN LEMAY: Yes, sir.

17 MR. CARROLL: Mr. Chairman, I have
18 visited with Randy Patterson, land manager for
19 Yates Petroleum.

20 Yates Petroleum would agree to the
21 following as proposed by yourself, the cost plus
22 100-percent penalty, the \$500 and \$5,000, plus we
23 would ask that part of the agreement be that,
24 one, Nearburg would dismiss all of its lawsuits
25 around the country, that it agree not to appeal

1 this decision further.

2 And furthermore, Mr. Commissioner, we
3 are very troubled by having to enter into this
4 because what we're doing is setting a very
5 dangerous precedent. One, Yates Petroleum has
6 taken officially the position that the risk for
7 this kind of well under the circumstances
8 justifies a 200 percent. We have put testimony
9 on to that fact and, in fact, the Division found
10 that justified. We do not want our agreeing to
11 this to be considered anything more than a legal
12 compromise of disputed rights, and not as an
13 agreement that this kind of well, under these
14 circumstances, justifies a cost plus 100
15 percent.

16 Because we can see that the very next
17 time we come before this Commission we get on the
18 stand and we say this justifies the 200 percent
19 penalty and the cross-examiner says, wait a
20 minute. You just agreed to a 100 percent.
21 What's the difference?

22 CHAIRMAN LEMAY: Mr. Carroll, let me
23 interrupt you. Rest assured that this Commission
24 will not accept your agreement of compromise as
25 any kind of a standard for future force pooling

1 assessments. We always state in our force
2 pooling orders that if the parties can agree,
3 that takes precedent over the order, so there's
4 no precedent established by your agreeing to a
5 lesser penalty.

6 I might ask at this time, would it be
7 acceptable with Nearburg to dismiss their
8 proceedings in other courts of jurisdiction?

9 MR. TURNER: Absolutely.

10 MR. STOVALL: They become moot at this
11 point, don't they, if you reach an agreement?

12 MR. TURNER: Yes. I guess
13 simultaneously with getting all the documentation
14 signed, that would be part of the deal, that we
15 would dismiss the lawsuit simultaneously. And
16 what I would propose, if you have some
17 reservations about it, that we could sign
18 documents at the same time, which would be a
19 dismissal of the lawsuit, et cetera.

20 CHAIRMAN LEMAY: Can we assume this is
21 a done deal, then, gentlemen?

22 MR. CARROLL: Yes.

23 MR. TURNER: Yes.

24 MR. STOVALL: Let me ask a question to
25 make sure, you would still like the Commission to

1 go ahead and enter the order and have that be
2 controlling, rather than trying to negotiate an
3 operating agreement or that kind of thing, is
4 that correct?

5 MR. CARROLL: Yes. I think you have to
6 understand that there are some hard feelings in
7 this by the proprietors of our companies, and I
8 think that the only way we can live with this at
9 home is that it be presented as, this was a
10 Commission decision based upon their assessment
11 of the equity, so to speak, and it was more or
12 less a compromise engineered by the Commission.

13 CHAIRMAN LEMAY: I would be happy to be
14 in there any way we can, gentlemen.

15 MR. CARROLL: Thank you.

16 MR. TURNER: Mr. Stovall, just
17 regarding the issue we talked about regarding the
18 payment of money, the way this particular order,
19 and I believe the way most of them are written,
20 is that it requires the payment of our estimated
21 well costs within 30 days from the date we
22 receive an AFE. We would just simply ask that
23 the money not be required until 30 days prior to
24 the estimated spud date.

25 MR. STOVALL: Any problem with that,

1 Mr. Carroll?

2 CHAIRMAN LEMAY: You can just shake
3 your head either way, Mr. Patterson.

4 MR. PATTERSON: I'm sorry. I really
5 wasn't listening.

6 MR. STOVALL: The question, Randy, is
7 would you agree to allow them to not put up their
8 money until 30 days before actual proposed spud
9 date, so that you don't AFE them ahead of time?
10 They don't want you to float their money, is what
11 they don't want.

12 MR. PATTERSON: Okay.

13 CHAIRMAN LEMAY: Is there any
14 additional testimony in this case?

15 MR. CARROLL: I take it there is
16 nothing additional that we need to submit to
17 you?

18 CHAIRMAN LEMAY: We have the order all
19 ready. Which side of that deal did you want?
20 Did you want operator or did you want--

21 MR. CARROLL: We operate.

22 CHAIRMAN LEMAY: Okay.

23 MR. TURNER: We'll let them do that.

24 CHAIRMAN LEMAY: Okay. Anything
25 additional in this case? Statements? We shall

1 take the case under advisement. Thank you,
2 gentlemen.

3 MR. CARROLL: Thank you.

4 MR. TURNER: Thank you.

5 (And the proceedings concluded.)
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 CERTIFICATE OF REPORTER

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

6 I, Carla Diane Rodriguez, Certified
7 Shorthand Reporter and Notary Public, HEREBY
8 CERTIFY that the foregoing transcript of
9 proceedings before the Oil Conservation
10 Commission was reported by me; that I caused my
11 notes to be transcribed under my personal
12 supervision; and that the foregoing is a true and
13 accurate record of the 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 August 31,
20 1992.

21
22
23 
24 CARLA DIANE RODRIGUEZ, RPR
25 CSR No. 4