STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION
STATE LAND OFFICE BLDG.
SANTA FE, NEW MEXICO

7 January 1986

COMMISSION HEARING

IN THE MATTER OF:

Application of Wilton Scott to vacate and void Division Order No. R-7983, Lea County, New Mexico;	CASE 8678
and	
Application of Union Texas Petroleum Corporation for a nonstandard spacing and proration unit, Lea County, New Mexico;	CASE 8793
and	
Application of Wilton Scott for a non-standard oil proration unit and unorthodox oil well location, Lea County, New Mexico;	CASE 8794
and	
Application of Wilton Scott for an unorthodox oil well location, Lea County, New Mexico.	CASE 8795

BEFORE: Richard L. Stamets, Chairman
Ed Kelley, Commissioner

TRANSCRIPT OF HEARING

A P P E A R A N C E S

For the Division: Jeff Taylor
Attorney at Law
Legal Counsel to the Division
Energy and Minerals Dept.
Santa Fe, New Mexico 87501

A P P E A R A N C E S

For Wilton Scott:	Owen M. Lopez Attorney at Law HINKLE LAW FIRM P. O. Box 2068 Santa Fe, New Mexico 87501
For Union Texas Petro:	William F. Carr Attorney at Law CAMPBELL & BLACK P. A. P. O. Box 2208 Santa Fe, New Mexico 87501
For APC Operating:	W. Thomas Kellahin Karen Aubrey KELLAHIN & KELLAHIN P. O. Box 2265 Santa Fe, New Mexico 87501
For Robert and James Edsel:	R. Charles Gentry Attorney at Law SHANK, IRWIN & CONANT 4100 Thanksgiving Tower Dallas, Texas 75201

I N D E X

I N D E X

E X H I B I T S

MR. STAMETS: We will call next, I believe, Case 8678, 8793, 8794, 8795, which, if I'm not mistaken, should all be consolidated for purposes of testimony.

Hearing no objection, let's call those.

MR. TAYLOR: Case 8678, the application of Wilton Scott to vacate and void Division Order No. R-7983, Lea County, New Mexico.

Case 8793, the application of Union Texas Petroleum Corporation for a nonstandard spacing and proration unit, Lea County, New Mexico.

Case 8794, the application of Wilton Scott for a nonstandard oil proration unit and unorthodox oil well location, Lea County, New Mexico.

Case 8795, the application of Wilton Scott for an unorthodox oil well location, Lea County, New Mexico.

MR. CARR: May it please the Commission, my name is William F. Carr with the law firm Campbell and Black, P. A., of Santa Fe, appearing on behalf of Union Texas Petroleum Corporation.

We have three witnesses.

MR. STAMETS: Other appear-

ances?

MR. LOPEZ: If it please the Commission, my name is Owen Lopez with the Hinkle Law Firm, Santa Fe, New Mexico, appearing on behalf of Wilton Scott and we have two witnesses.

Mr. Chairman, if the Commission please at this time, I would like to move to dismiss Case Number 8795, which is the application of Wilton Scott for an unorthodox oil well location, Lea County, New Mexico.

In this case Wilton Scott seeks approval of an unorthodox oil well location 330 from the north and west lines of Section 12, Township 15 South, Range 36 East, North Caudill-Wolfcamp Pool.

MR. STAMETS: If there is no objection, Case 8795 will be dismissed.

Other appearances?

MR. KELLAHIN: If the Commission please, I am Tom Kellahin appearing with Karen Aubrey, Kellahin and Kellahin of Santa Fe, New Mexico.

We're appearing on behalf of APC Operating Partnership.

MR. STAMETS: Do you have any witnesses, Mr. Kellahin?

MR. KELLAHIN: Mr. Chairman, I potentially have two witnesses.

MR. STAMETS: Are there other appearances?

MR. GENTRY: Mr. Chairman, I'm Charles Gentry from the law firm of Shank, Irwin & Conant of Dallas, Texas, representing for purpose of appearance here Robert and James Edsel of Dallas, Texas.

I'm associated for this purpose with the law firm of Maddox, Renfrow and Saunders, of Hobbs, New Mexico.

I have no witnesses and I only have an oral statement to make.

MR. STAMETS: Any other appearances?

I presume that counsel has all sat down and negotiated and determined how they wish to proceed in this case?

They have not. All right. In that event, I think we probably should proceed with the de novo case, 8678.

MR. LOPEZ: Mr. Chairman, it's the position of Mr. Scott that in order -- the orderly procedure in this case would be for Union Texas to go forward with its 80 acre case. The reason -- for reasons of fundamental fair play, Union Texas should be required to be the first to go forward with the burden of establishing a case

for the 80-acre spacing as opposed to the presumptively correct statewide 40-acre spacing for Wolfcamp wells.

You will recall that APC brought the original case, No. 8598, but failed to notify Scott, whose substantial mineral interests would be adversely affected.

The second case, No. 8678, was brought by Scott to undo what was done without his knowledge. Both APC and Union Texas supported 80-acre spacing in the second case but relied only on the record in the previous hearings, Case No. 8595, and the Division took administrative notice of that record.

The result is that an order changing the spacing requirements for Scott was solely on the basis of the record where Scott was not present to cross examine the witnesses.

Fundamental due process requires that the burden of making an 80-acre spacing case falls on Union Texas.

This is a de novo hearing, which means we are starting all over at the beginning. The first and second cases are inextricably connected or the resulting orders cannot be explained. The parties wanting 80-acre spacing at the outset have the burden of persuading the OCD that the presumptively correct statewide spacing rules of 40 acres should be changed.

To require Scott to uphold 40-acre spacing at this de novo hearing would be to improperly shift the burden of persuasion from Union Texas to Scott and would violate fundamental due process.

In addition, Mr. Chairman, I believe it's the practice of the Commission, and I think Mr. Carr in a recent case so much as stated that it is the movant that goes first in a de novo case. In the case before you it was Union Texas that first brought the de novo after applications to have a de novo hearing on Case Number 8678. It was in response to their applicatio that Wilton Scott filed his de novo application and applications for nonstandard units.

Therefore, I would like to move and I believe it would be proper for Union Texas to go forward.

MR. CARR: Mr. Stamets, had Mr. Lopez contacted us, we would have been happy to say, yes, Union Texas would be happy to go forward.

Mr. Lopez has stated that in a recent case I made the statement that the movant goes foward and has the burden of proof. I think that's a correct statement. It was correct when I made it, it's correct today, but just so we don't confuse things at the outset, this case is not a case that is sought to create pools.

It's a case to vacate the existing pool rules and the applicant in that case is Mr. Scott. If he doesn't want to carry the burden to go forward, we'll be happy to go forward first.

What we have before you, Mr. Stamets, is a situation where on July 12, 1985, the Division entered an order creating the Northeast Caudill-Wolfcamp Pool. That order was entered after a hearing and that was heard May 8th, 1985. Notice was given of that hearing in accordance with the rules of the Oil Conservation Division and some people apparently contend now they didn't get notice, but it was done in accordance with the rules and an order was entered.

And the order was entered and provided for 80-acre oil well spacing, well locations within 150 feet of the center of any quarter section, and it provided that the rules be effective June 1, 1985. Nothing in the record shows why the June 1, 1985, date was set. It was, however, the first day of the first month following the hearing in which those rules were sought and at the time the order had been entered it would have been the effective date of the pool rules for the Northeast Caudill-Wolfcamp Pool.

Mr. Scott filed an application. That's Case 8678. In that case he sought an order rescinding these rules. Union Texas Petroleum Corporation is an

interest owner in the pool. They're the operator of the Scott No. 1 Well; they own 50 percent of the interest in the Gilliam Well; and they appeared at that case in support of APC's position, which was the defense of their original order for 80-acre spacing.

As a result of that hearing Division Order R-7982-B was entered. That order maintained 80-acre spacing, maintained the well location requirements but changed the effective date to July 12th, the date of the original order. That's the only change.

In response to this order Union Texas Petroleum Corporation filed for hearing de novo. We're here today to present a case to show you that 80-acre spacing is in fact the appropriate spacing for this pool and that the effective date should be June 1, 1985.

We're going to show you that if this effective date is not reinstated that there's going to be an adjustment of interest, that the people who paid for the drilling of the well, the Scott No. 1, and the people who have shared in production from that well, are now going to have their interest reduced substantially and Mr. Scott will be the beneficiary of that production because under a farmout there will be assignments of interest back to him.

We're going to show you that correlative rights are going to be impaired if the effective

date of the order remains on the 12th of July.

Then we're going to request a nonstandard spacing or proration unit consisting of the 40-acres on which the Scott well is located, only, only in the alternative, only if you insist on staying with the July 12 effective date.

The purpose of this 40-acre unit would be to hold the interest owners' position constant in that well and we would ask that we be permitted to produce from a smaller unit one-half of an 80-acre allowable.

One of the cases that was filed by Mr. Scott was just dismissed, but he is still seeking an unorthodox well location in the 40 acres, south 40, that currently are dedicated to the Scott well, and he's seeking a nonstandard unit. What that would do would be effectively break that 80-acre unit into two nonstandard 40-acre units, with the Union Texas operated Scott No. 1 in the northernmost of those units, and a location available to Mr. Scott in the southern 40, and yet he wants that well in the extreme northwest quarter, which encroaches upon the acreage that is operated by Union Texas, and because of the advantage he would gain by that location, we would request that you impose a penalty on the production from that well. We're prepared to go forward.

MR. STAMETS: I think we'll

take about a fifteen minute recess and then when we come back we'll -- we'll let you begin, Mr. Carr.

Before we take the recess, I'd like to have all of those people who will be or may be witnesses in this case to stand and be sworn at this time.

(Witnesses sworn.)

MR. STAMETS: We'll take a fifteen minute recess.

(Thereupon a recess was taken.)

MR. STAMETS: Mr. Carr, are you ready to proceed?

MR. CARR: At this time, Mr. Stamets, we will call Bill Priebe.

Mr. Stamets, since Union Texas is going first, I'm going to first call Mr. Priebe. Mr. Priebe is a petroleum engineer, but I'm not going to use him to present engineering testimony and will not qualify him as an expert, but will use him simply to give some background information and following his testimony with a petroleum engineering witness and a petroleum geologist.

MR. STAMETS: Okay.

BILLY M. PRIEBE,

being called as a witness and being duly sworn upon his oath, testified as follows, to-wit:

DIRECT EXAMINATION

BY MR. CARR:

Q Will you state your full name for the record?

A Billy Martin Priebe.

Q Mr. Priebe, where do you reside?

A Midland, Texas.

Q By whom are you employed and in what capacity?

A Union Texas Petroleum as an Area Production Superintendent.

Q Mr. Priebe, have you previously testified before this Commission and had your credentials accepted and made a matter of record?

A No, I have not.

Q Would you briefly review for the Commission your educational background and your work experience?

A I got a Bachelor's in mechanical engineering from Texas A & M University in May of '76 and started to work for Exxon in June of '76; worked for Exxon for about

four and a half years in various production, reservoir, and drilling engineering assignments in Midland and Andrews, Texas.

I went to work for Coquina Oil Corporation in January of '81 as a drilling engineer; worked for them a little over two years as a drilling engineer in West Texas and southeast New Mexico and the Rocky Mountains, and have worked for -- went to work for Enstar Petroleum Company in March of '83 and have worked for them and for Union Texas in drilling and production operations since that date to the present time.

Q Now, Mr. Priebe, during the course of your employment you've been employed either with Enstar or with Union Texas during the period in which the Northeast Caudill-Wolfcamp Pool was developed, is that correct?

A That's correct.

Q Are you familiar with that particular area? Has that been part of your -- your duties as an employee of Enstar and Union Texas?

A Yes, it has.

Q And are you familiar with the applications filed in these consolidated cases?

A Yes, I am.

Q Would you identify what we have put up on the wall and marked as Union Texas Petroleum Corporation Ex-

hibit Number One, please?

A This is a structure map of the area of interest around the Northeast Caudill-Wolfcamp Field.

Q Now, are you going to be testifying as to structure?

A No.

Q Would you use this map and by way of background provide the Commission with some -- with general information as to development of the Wolfcamp formation in this area?

A The first well in the area that encountered -- produced oil from the Wolfcamp in this immediate area was the Tipperary No. 1 Allen, located here. It was completed in approximately July of -- no, that's not right -- in October of '70, and produced a total of 948 barrels of oil. It is now plugged and abandoned.

The next well that was completed as a producer in the area, there were a couple of dry holes drilled in between, was the Enstar Scott No. 1, right here. It was completed in July of '83 and is currently a producing well.

The next well drilled in recent times was the Scott No. 2, also drilled by Enstar, located at this location. It -- the original wellbore was drilled and was dry in the Wolfcamp, was plugged back, and two sidetrack at-

tempts were made to establish commercial production in the Wolfcamp and the bottom hole locations of those two wells are also marked on the map.

It is now, all three, the original hole and the two sidetracks are all plugged at this time.

MR. STAMETS: Mr. Priebe, just to be sure that I understand which well we're looking at, I see Enstar 2 Scott, TD 10-9-60, is that the well?

A That's correct.

MR. STAMETS: And then do the dashed lines that lead off of that show --

A Bottom hole locations of the Scott No. 2 Redrill No. 1 and the Scott No. 2 Redrill No. 2.

MR. STAMETS: Okay, what was the date of that -- of those two wells?

A They were mid-'84. I'm not sure that -- of course they took place over a considerable period of time in the middle -- mid-'84.

MR. STAMETS: Thank you.

A The next well drilled was by Florida Exploration. It is now operated by APC Operating Partnership. It is the No. 1 Gilliam in Section 2. It also was completed as a producer in August of '84 and is still an active producer in the field.

The two other recent wells are the Brit

tany No. 1 Alexander, at this location pointed here. It was completed as a producer, produced for a short period of time, and the cumulative production was 503 barrels of oil.

It is now a shut-in well being held for possible use as a salt water disposal well.

Also drilled --

MR. STAMETS: It does have a dry hole symbol on it on this map, is that correct?

A That is correct.

MR. STAMETS: But in fact it's --

A It's produced, according to the New Mexico Engineering Committee records, produced 503 barrels of oil, and those barrels are reported in December of '84.

Also drilled in the latter part of '84, the Edsel Scott 3-Y, located at this location. It was a dry hole and was plugged in mid-February of '85.

Q Mr. Priebe, what is the interest of Union Texas Petroleum Corporation in this general area?

A Union Texas Petroleum operates the No. 1 Scott and has a 50 percent working interest in the Gilliam No. 1.

Q Would you refer to what has been marked as Oil Conservation -- or I'm sorry, as Union Texas Petroleum Corporation Exhibit Number Two and identify this,

please?

A This is Commission Order R-7983.

Q And in that case who was the applicant?

A APC Operating Partnership.

Q Is this the original case seeking the creation of the Northeast Caudill-Wolfcamp Pool?

A Yes.

Q When did that case come on for hearing?

A The hearing date was May 8th of '85.

Q What is the date of this order?

A The date was July 12th, '85.

Q And what was the effective date of the rules promulgated by that order?

A June 1st of '85.

Q Would you now refer to Exhibit Number Three, Union Texas Exhibit Number Three, and identify that?

A That is rule -- Commission Order R-7983-B.

Q And in that case who was the applicant?

A Wilton Scott.

Q What changes were made in that order as compared to the previous order that established the pool and promulgated the pool rules?

A The effective date of the pool rules was changed to July 12th, the date of the order.

Q The date of the original order?

A Original order, right.

Q Mr. Priebe, what does Union Texas Petroleum Corporation seek in this proceeding here today?

A We seek that the 80-acre spacing set out by the original order be upheld for the Northeast Caudill-Wolfcamp Field.

We support APC's application for 80-acres and believe that 80-acres is the proper spacing for the field. Later witnesses will present expert testimony to this effect.

We also seek that the original effective date of June 1st, '85, be reinstated.

Q Mr. Priebe, why is that important?

A That is important because under a farmout agreement covering the Scott No. 1 all acreage that was not dedicated to a producing well on June 15th, '85, has to be reassigned.

Q And what would the effect of this reassignment be?

A If the July 12th date is maintained, it would potentially result in up to 50 percent decrease in the interest of the current working interest owners in the Scott No. 1, and we do not think that it's fair that the people who bore the risk of drilling a well should now be forced to take a decreased interest in the well.

Q Does Wilton Scott have an interesst in that well?

A Yes, he does --

Q Would that interest be reduced by virtue of the reassignment?

A The interest in the 40-acre tract on which the wellsite sets would be reduced but the fact that he owns the other 40 that would be combined with that to form an 80-acre unit would result in an increased working interest in the well.

Q Were Exhibits Two and Three the copies of Oil Conservation Division Orders taken from your files on the Northeast Caudill Pool?

A Yes.

MR. CARR: At this time, Mr. Stamets, we would offer Union Texas Exhibits Two and Three.

MR. STAMETS: Without -- without objection these Exhibits Two and Three will be admitted.

MR. CARR: That concludes my examination of Mr. Priebe.

MR. STAMETS: Are there any questions of Mr. Priebe on the information that he has presented?

Mr. Priebe may be excused.

MR. KELLAHIN: Excuse me, I'm

sorry, I was waiting for Mr. Lopez to have some questions. I have some questions.

MR. LOPEZ: No questions.

MR. KELLAHIN: Mr. Chairman, if I have your permission, I have some questions for Mr. Priebe.

CROSS EXAMINATION

BY MR. KELLAHIN:

Q Mr. Priebe, I was not clear with regards to your understanding of the changes in the interest depending upon what happens to the farmout versus the effective date of the spacing.

What is the acreage dedicated currently to the Scott No. 1 Well operated by UTP? Is that an 80-acre dedication?

A I believe that that's dedicated 80 acres to that, right.

Q All right. Assuming the spacing rules are effective prior to the termination of the farmout with Mr. Edsel, what would be the 80-acres that UTP would dedicate to the Scott well?

A If the effective date was -- was after the June 15th farmout date --

Q No, sir, before.

A Before? We would dedicate the -- the northwest of the southwest and the southwest of the southwest.

Q It would be a stand-up 80, then --

A Right.

Q -- in the west half of the southwest. Am I correct in understanding that there is a difference in ownership between the northwest and the southwest of that quarter section?

A There is not a difference in ownership of the effective date is prior to the June 15th date.

Q So if the effective date is prior to the farmout determination --

A Right.

Q -- then was it your testimony that working interest owners who paid for the Scott well, as well as the royalty and overriding royalty owners that are participating in the production and revenue on that Scott well would be the same?

A That's right.

Q All right. Let's see if I understand what happens if the effective date of the spacing orders is after the June 15th date. I'm correct in understanding that the June 15th date is the date that triggers the Edsel/UTP farmout? That's --

A Right.

Q -- the date we're looking at?

A Right.

Q All right. If the Commission's spacing order is effective after June 15th, what then was your testimony about what happens?

A The -- the original owners, original working interest owners in the Scott No. 1 would be forced to release all but the 40 acres held by the Scott No. 1 on June 15th of '85 and if the spacing, an 80-acre spacing order is effective after that date, well then we would be faced with a situation of needing 80 acres to dedicate to make a standard proration unit but yet would not -- would have released the right to 40 of those 80 acres and would hold only the original 40 acres the Scott No. 1 sets on.

Q If that occurs, what is your understanding of the options that you would have on behalf of your company in order to form an 80-acre standard unit, notwithstanding the fact that you have now lost 40 of the acres under the farmout?

What are your choices?

A Two choices would be to either reach some sort of an agreement with the present owner, the new owners of that south 40 acres or to form an 80-acre pool, which would result in the dilution of the -- the original inter-

ests, working interest owners in the well, or to get approval for a nonstandard 40-acre tract for the Scott No. 1.

Q Have you considered the possibility of force pooling in the absence of a voluntary agreement to then have an 80-acre tract around the Scott well?

A I personally have not, no.

Q All right. The choice, then, your company has made, if I understand you correctly, is to seek a 40-acre nonstandard proration unit for the Scott Well if the Commission makes the effective date of the spacing case after the June 15th date.

A That's correct.

Q All right. Let me understand the difference, then, in the interest, working interest ownership, between the 80 acres and what would happen if the 40 acres that's released under the farmout, if you're required or compelled to put that 40 acres back into your unit. Do you have, have you calculated or prepared an exhibit that shows the actual percentage interest to change between the two fact situations?

A No, we haven't prepared that yet.

Q Can you approximate for me, you said Mr. Scott, and I'm not sure exactly what happens to his interest, could you state again, sir, what happens in the event that the spacing case is spaced on eighties but is effectiva

after the June 15th date?

A The interest of all of the working interest owners in the 40-acre tract, the northwest of the southwest, their working interest would be cut in half or diluted as -- when we bring the other 40 acres into that proration unit.

The owners of the southwest 40 acres, which is Wilton Scott and Frank Late, their new working interest would be one-half times their interest currently in the well plus one-half times their interest in that southwest 40-acre tract.

Q Am I correct in understanding then that under that fact situation they would have an additional 50 percent interest?

A Between the two of them, that's correct.

Q For no other reason than the effective date of the spacing case.

A That's correct.

Q Thank you.

MR. LOPEZ: Mr. Chairman, based on Mr. --

THE REPORTER: Mr. Lopez, I'm not able to hear you clearly down here.

MR. STAMETS: And, Mr. Lopez, I'm going to give you a chance in just a minute. Mr. Kella-

hin's questioning stimulated some for me and maybe I'm going to ask the same ones you are, so let's see.

CROSS EXAMINATION

BY MR. STAMETS:

Q Mr. Priebe, you were qualified as a petroleum engineer and if you don't feel qualified to answer these questions, just tell me.

A All right.

Q I'm not going to talk about a date. Let's just forget about dates.

Right now I presume the No. 1 Scott Well, the producing well, has 80 acres dedicated to it.

A That's right.

Q All right, and at the time that the original application for 80-acre spacing was filed, the ownership in this 80 acres, being the west half of the southwest quarter, would be identical throughout as to working interest and royalty interest, is that --

A That's right.

Q -- correct? All right. So that if now by any action this Commission takes, if the spacing in this pool goes back to 40 acres, the interest, then, in the southwest quarter southwest quarter would be different from the interest in the northwest quarter southwest quarter.

A That's right.

Q And is it your testimony that the correlative rights of the owners in the southwest quarter southwest quarter at the time of the original application, their correlative rights would be violated by changing the spacing now back to 40 acres because they would lose their working interest in the southwest of the southwest?

A Could you repeat that, please?

Q I don't know. I'm trying to figure out how correlative rights would be violated if the Commission now changed the spacing back from 80 acres to 40 acres or if we did not allow for 80-acre spacing in there.

The impact would be that there would be a change in working interest in the southwest quarter southwest quarter, is that correct?

A That's correct.

Q And that's the whole basis for your saying the correlative rights will be violated.

Your working interest would be reduced.

A The working interest owners of the -- the current working interest owners in the Scott No. 1 would have their interest reduced by that action, correct.

Q Okay. Now, if in fact the well were able to drain 80 acres, then we would be violating your correlative rights because we'd be allowing someone else to be able

to produce oil and gas which the well could produce.

A If we went back to forties?

Q Yes.

A That's correct.

Q Okay. But, Mr. Priebe, if the well in fact is only able to drain 40 acres, would there then be any impact on the correlative rights of the owners of the southwest quarter southwest quarter, the owners that existed at the time the original application was filed?

A I'm not sure I understood the question.

Q Okay. If in fact the Scott No. 1 Well

REPORTER'S NOTE: The remainder of this page is blank due to a reporter error in programming. The text continuity is correct and complete.

can only drain 40 acres --

A Uh-huh.

Q -- it would seem as though the owners in that 40 acres would be the ones that would derive all of the production therefrom.

A All the production under the northwest of the southwest.

Q That's correct, and if it can only drain 40 acres, it would not seem as though that those same owners would be entitled to any production from the southwest quarter of the southwest quarter from the Scott No. 1 Well.

A But -- that's correct, but if it was only draining 40 acres then it wouldn't derive any production from that southwest southwest from the Scott No. 1 because it would be unable to drain that if we assume that it just drained 40 acres.

Q Okay, so under those conditions they wouldn't be losing any of their production rights from the Scott well but what they would in fact lose would be their farmout on the southwest southwest.

A I believe that's correct.

MR. STAMETS: I'm not sure that clarified anything for anybody besides me.

Mr. Lopez, do you have some additional questions?

MR. LOPEZ: Yes, Mr. Examiner, I appreciate your questions but I just have a few.

CROSS EXAMINATION

BY MR. LOPEZ:

Q Mr. Priebe, isn't it the position of Union Texas in the hearing today that the Scott No. 1 Well can in fact carry 80 acres because you are putting on a case for 80-acre spacing?

A That's correct.

Q Isn't it also true, Mr. Priebe, that any time the Commission enters an order adopting or changing pool rules to increase spacing and proration units, that often there is a readjustment of mineral interest in the producing well?

A I don't know.

Q You've had no experience in that regard with any production of Union Texas Petroleum with wells that are producing in existing proration units that are expanded to a larger size?

A Personally, no.

Q Have you attempted to reach agreement with Mr. Scott with respect to the entitlement to production that is in the Scott No. 1 Well as a result of the 80-acre spacing order that was entered July 12th?

A I do not know what negotiation has taken place personally.

MR. STAMETS: Any further questions of the witness?

Mr. Taylor.

CROSS EXAMINATION

BY MR. TAYLOR:

Q Mr. Priebe, you said that if 80 -- or 40-acre spacing is adopted that some of the working interest owners in the Scott No. 1 would have their interest diluted. Could you name for us the working interest owners whose interest would be diluted?

A You say at 40-acre spacing?

Q Or they would lose -- they would have to give up acreage, right?

A No, I didn't. If 40-acre is kept as the spacing there wouldn't be no dilution of interest.

Q If 80-acre spacing is, then?

A If -- depending upon the effective date, yes.

Q Well, who, regardless of what happens, who would lose -- who would have an interest diluted? I assume Union Texas would be one of them.

A No. Enstar Petroleum Company, Robert M.

Edsel, James Edsel, William Bahlburg, Olympic Exploration, and Inderex, Incorporated, I-N-D-E-R-E-X.

And I believe that's all of them.

Q Okay. As to the Scott No. 1 Well, when did you say that it was drilled?

A It was completed in July of '83.

Q And has that well paid out yet?

A Yes.

Q And how long did that take?

A As best I can recollect, it was in the range of four to five months.

Q So actually the interest owners in that well have already been paid back their original investment.

A That's correct.

Q That's all the questions I have. Thank you.

MR. STAMETS: I think it would be very useful if somebody would volunteer to supply the Commission with a plat which would show how the ownership in the 80-acres would change depending upon the spacing and depending upon the effective date.

MR. CARR: Mr. Stamets, we'll supply that kind of data.

MR. STAMETS: Thank you, Mr. Carr.

Any other questions of Mr. Priebe?

He may be excused.

MR. CARR: At this time, Mr. Stamets, we would call Phil Peron.

Mr. Stamets, if we could have just a minute, we have a large cross section to put up.

PHILIPPE R. PERON,

being called as a witness and being duly sworn upon his oath, testified as follows, to-wit:

DIRECT EXAMINATION

BY MR. CARR:

Q Would you state your full name and place of residence?

A I'm Philippe Raymond Peron, Midland, Texas.

Q By whom are you employed and in what capacity?

A Union Texas Petroleum Company. I'm an exploration geologist.

Q Mr. Peron, have you previously testified before this Division and had your credentials accepted and made a matter of record?

A No, I have not.

Q Would you summarize for the Commission your educational background and your work experience?

A I've a Bachelor's degree from Hartwick College in Oneonta, New York, in geology. Graduated in 1974.

I have a Master's degree from the University of Texas A & M, College Station, graduated in '78.

I was employed by Houston Oil and Minerals Corporation from October, 1976, to April of 1981, working in the Houston Area and the Rocky Mountains.

In April of 1981 to April of 1984 I worked for High Plains Exploration Company. I worked both the Rocky Mountains and Midland.

And since April of 1984 I've worked for Union Texas Petroleum Company, working the Permian Basin.

Q Are you familiar with the area which is the subject of today's consolidated cases in this matter?

A Yes, I am. I've been working the area for Union Texas Petroleum.

Q Are you the exploration geologist assigned to the project by Union Texas?

A Yes, I am.

Q And are you familiar generally with what is being sought here today?

A Yes.

MR. CARR: We tender Mr. Peron as an expert in petroleum geology.

MR. STAMETS: And your experience, has that been primarily as an exploration geologist?

A Yes, it has.

MR. STAMETS Any questions of the witness' qualifications?

He is considered qualified.

Q Mr. Peron, I'd now direct your attention to what's been marked as Union Texas Exhibit Number One. Was this exhibit prepared by you?

A Yes, it was.

Q And how was this exhibit constructed? What did you do?

A This exhibit was mainly constructed using well control within the area.

Q Now, there are a number of wells on this exhibit. All of those wells, in fact, penetrated the Wolfcamp formation.

A Yes, they did.

Q In your work as a geologist, how would

you characterize the control that is available to you in this area in constructing this map?

A The control in this particular area is good.

Q Would you go to the map and identify the two producing wells in the pool?

A The two producing wells would be the Enstar Scott No. 1, which is in the northwest of the southwest of Section 1, and the Apache Gilliam No. 1 Well, which is in the northeast of the southeast of Section 2.

Q Now, Mr. Peron, what does this exhibit actually show?

A This exhibit shows the structure mapped within the producing horizon itself. Also marked or indicated on the map, the porosity pinchout and the oil/water contact has also been clearly labeled.

Also, I might add, that the area between the porosity pinchout and the oil/water contact would be the area of hydrocarbon accumulation.

Q And does this show the location of the commercial hydrocarbons?

A Yes, it does.

Q So would you conclude that there are commercial hydrocarbons within that entire area?

A No, not within the entire area.

Q Does this then show just the area in which the hydrocarbons would be located without any reference to whether or not they're commercial?

A Yes, that's correct.

Q You stated you had good control in the area. How much control did you have in actually locating the oil/water contact on the structure map?

A We had a well, the Enstar Scott No. 1, which had a porosity zone that calculated wet, and it was separated by a 10-foot shale break, and above that there was a producing -- a zone that was actually perforated and produced oil from that Scott Well.

So, therefore, we were able to pinpoint the oil/water contact within a ten foot interval and we chose to use the average of the interval.

Q And it would be within that ten foot interval if you -- on the data forms that you have.

A That's correct.

Q Now you've also placed a porosity pinchout on this map. How did you do that?

A By -- by correlating the wells and actually looking at the porosity within the wells, we came up with a porosity pinchout.

The wells to the left of this porosity pinchout line indicate wells that have no porosity. The

wells to the -- to the west of this line do have some porosity.

Q Now, do you have an opinion as a geologist as to whether or not the reservoir limits of the Northwest Caudill-Wolfcamp Pool are at this time reasonably well defined?

A In my opinion they are reasonably well defined, yes.

Q And are they the limits that are depicted on Exhibit One?

A Yes, they are.

Q In your opinion is this a separate, distinct source of supply from other Wolfcamp fields in the area?

A Yes, it is.

Q Now I'd like you to go to the cross section A-A', which is Union Texas Exhibit Number Two, and ask you to first refer to the index map and indicate what the general line of cross section is.

A The general line of cross section on the -- on the index map shows that we (not clearly understood) southwest, went towards the north, the northeast and the east, and picked up wells in the (not clearly understood).

Q Was this exhibit prepared by you?

A Yes, it was.

Q Would you now for the Commission identify the wells that are depicted on this cross section?

A The first well, starting in the southwest, is the PanAm Sinclair State No. 1. (Not clearly understood because of paper noise.)

The Apache Exploration Gilliam No. 1 Well --

MR. STAMETS: I've having quite a time getting this open.

Q Do you want to start over, please?

A Let me start over and correct myself on these.

The first well on the cross section to the southwest is the PanAm Sinclair State No. 1 in Section 11.

Then we picked up the Apache Exploration Gilliam No. 1 which is in Section 2.

We came across and picked up the Enstar Petroleum Scott No. 1 in Section 1.

Farther to the east we picked up the Enstar Petroleum Scott No. 2, also in Section 1, and we came down through the Late Oil Allen State No. 1, which is the farthest (not clearly understood.)

Q Now is this a stratigraphic or a structural cross section?

A The cross section was hung on a structural datum but it does also depict stratigraphy.

Q Mr. Peron, you've indicated certain markers on that. Would you point them out and indicate what they are?

A All right. The marker that's marked in the middle of the cross section map as a map horizon is what I used for the structural map on the wall.

Several of the others are just simply markers within the Wolfcamp where I could reasonable pick the -- the markers across and correlate them. I have a marker above and then there's a marker below, which I was not able to correlate to these two wells.

Q So the marker that's immediately above the area that you shaded on this cross section is the marker that you used for mapping the formation on Exhibit One.

A Yes, this marker right here.

Q Okay, would you now to go this exhibit and explain to the Commission what it shows?

A Okay. The exhibit shows the general structural trend of the -- of the structure; also, the porosity is depicted on the cross section. The porosity pinchout is indicated between the Enstar Scott No. 1 and the Scott No. 2.

The oil/water contact is also placed on

the cross section. The area that's shaded green indicates the oil accumulation. The area that's shaded blue indicates porosity that's not hydrocarbon bearing.

Also on the map is depicted the perforations that are in both the Scott No. 1 Well and the Apache Gilliam No. 1 Well.

I might point out at this time that there are three sets of perforations which are not colored. The top perforation is a -- is a porosity zone that has -- is very limited; does not appear to have very much production associated with it. I do not feel that it's part of the main producing horizon within these two wells.

The two other perforations that are within, both within the shaded area and just above it, I did not feel were -- were -- actually depict porosity from the zones.

The first (not clearly understood) looks like it may have been perforated in the oil zone. The little (not clearly understood) exhibit a shale there but did not believe that was porosity, but at the lower perforation that was not colored in. Also it looks like it may be in the washout zone. The density made it look like it may have been washed out is the reason I show zero porosity; therefore in my opinion, this does not reflect porosity.

Q Mr. Peron, how would you characterize the

pay continuity in the area?

A The pay continuity from the Enstar Scott No. 1 down to the southwest is very good.

Q And this exhibit also shows porosity, does it not?

A Yes, it does, indicated by both the green and the blue markers.

Q Now, the green and the blue on this exhibit are -- is that a picture or a characterization of the reservoir as it stands today?

A No, both the exhibits were produced to show original conditions.

Q In your opinion are the wells that are producing from the Northeast Caudill Pool producing from a common source of supply in the Wolfcamp formation?

A Yes, they are.

Q What conclusions can you draw from your structure map and your cross section generally about the continuity in this area?

A From the cross section, just using the three, the three wells that show the good porosity, it definitely shows that we do have some good continuity between the producing horizons to the southwest.

Also, on the map we're showing a similar situation, that we have continuity within the reservoir to

the west and to the south.

Q Do you see anything from a geological point of view that would preclude the development of this acreage on 80-acre spacing, and what I'm talking about is things such as discontinuity, faulting, or other geologic features?

A I see no reason why -- why there should be some -- no, I don't.

Q Were Exhibits One and Four prepared by you?

A Yes.

MR. CARR: At this time, Mr. Stamets, we would offer into evidence Union Texas Exhibits One and Four.

MR. STAMETS: Any objections to the admission of these exhibits?

They will be admitted.

MR. CARR: That concludes my direct examination of Mr. Peron.

MR. STAMETS: Are there questions of this witness?

Mr. Lopez?

MR. LOPEZ: Yes, Mr. Examiner.

CROSS EXAMINATION

BY MR. LOPEZ:

Q Mr. Peron, have you estimated in your opinion the number of productive acres that underlie the Northeast Caudill-Wolfcamp Pool?

A The number of productive acres should be roughly 262.

Q Is this a water drive reservoir?

A As a geologist I may not be able to to answer that in engineering terms, but in my opinion, yes, it is.

Q I assume that you carefully examined the electric log for the BP Petroleum No. 1 Allen located in the southeast of the southwest quarter of Section 1. Is it your testimony today that you did not discover any porosity in that -- in your examination of that well?

A Did not discover any porosity within our cutoff limits.

Q Are you familiar with Mr. Scott's testimony in the original hearing of this case where he testified that there was -- that it was -- he was advised that there was good porosity in the top part of the Wolfcamp reef in that well and that he recommended that they re-open the well and try to complete it in that reef?

A I'm not familiar with that testimony.

Q If there were porosity in the well, that would change your structure map to some extent, wouldn't it, and indicate more productive acreage in the southwest of the southwest?

A Yes, if there was porosity within that well.

Q Did you ever discuss with Apache before Apache brought the initial application in Case Number 8595 the fact that Union Texas intended to file an application for 80-acre spacing over this same 160-acre area?

A I never talked to them specifically about filing an application.

Q What did you talk about?

A I had a phone call from a geologist, Mr. Dick Brunner, asking me several questions about the reservoir.

Q Did you support his application for 80-acre spacing at that time?

A Yes, I did.

MR. STAMETS: Are there other questions of this witness?

MR. KELLAHIN: Yes, Mr. Chairman.

CROSS EXAMINATION

BY MR. KELLAHIN:

Q Mr. Peron, I wonder if we can impose upon you to take a moment, remove Exhibit Number One from the wall, and block it out for me using a ruler so that we know the 40-acres.

Let me show you what I've done in my exhibit and then I'll ask you to do it on the Commission copy.

MR. KELLAHIN: I'm asking the witness, Mr. Chairman, to simply scale off in Section number 1, first of all, a line that marks the east half from the west half and then divides the southwest quarter into 40-acre tracts.

Let's return the exhibit to the wall, if you please.

Q Mr. Peron, in doing your geologic reviews for this case and for the wells involved, did you do your work independently of any other geologic work done by either Apache or APC Partnership?

A Yes, I did.

Q Did you review any of the geologic testimony or exhibits from any of the prior hearings in the spacing case, either the one in May of '85 or the two hearings in August of '85?

A No, I did not.

Q There are some questions about the structure map that I'd like to ask you, sir.

First of all, I'd like to focus in on the porosity pinchout line that you've constructed on Exhibit Number One and ask you, sir, what it means to be on either side of that line in terms of Wolfcamp production in this pool?

A In my opinion being on the east half of this line means that you will not have any commercial production from this area -- that portion -- that area.

Being on the west half, there's a possibility of being commercially productive.

Q The location of the porosity pinchout, then, for a geologist would have significance in determining where to locate additional wells for the pool?

A In this case it is very important, yes.

Q All right, sir, and what have you used, then, to control the construction of the line that represents your opinion of the porosity pinchout?

A I've used the data that we looked at that is contained within the well logs in this hearing.

Q Do you have a recommendation as a geologist as to whether an additional well ought to be placed in the southwest quarter of the southwest quarter east of the

pinchout line?

A I would not drill a well east of the pinchout line in that quarter section, no.

Q And why not?

A It is my opinion that there would be no porosity found and therefore the well would not be able to produce any hydrocarbons.

Q Prior to the time the Gilliam well was drilled when we had the -- what I will call the primary producing well, which is the Scott No. 1, there was a period of how long that the Scott No. 1 Well was producing before the Gilliam Well started producing?

Do you recall, sir?

A I'm not sure of that, that figure.

Q Do you see any geologic evidence that would preclude the Scott No. 1 Well from draining acreage in Section 2 in the absence of the Gilliam Well?

A No, I do not.

Q Looking at the oil/water contact line that you've got on Exhibit Number One, is that your opinion of the location at that line originally or is that its location today?

A This is the original oil/water contact before production within this field.

Q Before any pool production.

A Before any pool production.

Q How did you determine and control the location of that line?

A That line was controlled by the Enstar Scott No. 1 Well. I'll move to the cross section.

We had a zone that was not perforated in the Scott No. 1 from 10,894 to 10,900. We calculate water saturation. Leading up into the pay itself we had a zone from 10,874 --

Q I'm sorry, sir, could you turn to the other side of the exhibit so you're speaking towards the reporter?

A The zone from 10,874 to what I believe is 10,882, calculated oil saturated, was actually perforated but it didn't produce hydrocarbons.

There is a shale or a zone of no porosity that is approximately 10 to 12 feet thick. We placed the oil/water contact based on the log calculations and in part on the perforations in other wells, within the zone approximately half way.

Q Did you utilize the log from the Gilliam No. 1 to help you locate the oil/water contact?

A Yes, We do have a similar situation but the main well that we had used was the Enstar Scott.

Q Can you approximate for us or have you

done additional work to determine where the oil/water contact is now with production having taken place in the pool?

A I have not done any such calculation.

Q Let me ask you, sir, about the continuity of the reservoir. Mr. Carr asked you your opinions concerning the pool being a common source of supply for this Wolfcamp, and I assume I'm recalling correctly that you concluded that this was a common source of supply.

A Yes, I did.

Q You also told Mr. Carr that you had estimated productive acreage at about 262 acress?

A That -- we had -- the original oil in place lies within a 262-acre area. We did not say that it was commercial.

Q I understand. What -- where is the 262 acres and how did you locate that acreage?

A The acreage that we're talking about is bounded by the pinchout line to the east and the oil/water contact on the west side of that line.

Q Did you attempt to construct a net pay Isopach of the Wolfcamp sand to determine what the acreage would be using an Isopach?

A We had looked at that. We did not do it for this hearing.

We do have another exhibit that does --

that it does reflect that.

Q If we were looking at the net productive acreage would it not be reasonable to also include an Isopach so we could determine the relative thickness and thinness within the 262-acre area you've identified?

A It would be helpful and I think a later exhibit will show -- will incorporate that data into that other map.

Q Are you -- let's look, return to the cross section and the Allen State No. 1 Well, which is the Late Oil Company well to the east of the pinchout. Would you go beyond the exhibit and turn back towards us, sir?

Have you carefully examined that log to determine whether or not you believe the reservoir to extend to that wellbore?

A Yes, I have.

Q All right, and what is your conclusion?

A My conclusion is that it does not extend to that wellbore.

Q Do you see any indications of what's the porosity cut off that you would use in this area?

A We've used 4 percent.

Q You've indicated on the Gilliam No. 1 Well to us that there was a small interval in the top of the Wolfcamp Reef and you have generally concluded that that

contributed very little, if any, production from the Wolfcamp Pool for that well.

Was that your conclusion?

A Yes.

Q Okay. Do you see that that top interval has extended into the Scott Well on the cross section?

A It does not appear that it does show up in the Enstar Scott No. 1 Well.

Q All right. Was that interval perforated in the Scott No. 1 Well?

A No, it was not.

Q Are there any indications on the log that would cause you to recommend to the engineering people that they perforate that upper zone?

A Not, not for me.

Q Do you see if that zone extends over into the Allen State Well?

A It did not appear that it did.

Q All right, sir.

Based upon your studies, Mr. Peron, are you aware of any geologic reason why this pool ought not to be spaced for a temporary period on 80-acre spacing?

A I do not see any geologic reason, no.

MR. KELLAHIN: May I have a moment, sir?

MR. STAMETS: While Mr. Kellahin is taking a moment, Mr. Peron, let me ask, you discussed a cutoff limit on the porosity. I don't recall if you presented that in your direct testimony. What cutoff did you use?

A We used 4 percent.

MR. STAMETS: Whenever you're ready, Mr. Kellahin.

MR. KELLAHIN: All right.

Q I have a couple of further questions, Mr. Peron.

Can you tell me, using the 4 percent porsity cutoff, which I think was on the Scott No. 1 Well, how many net feet of pay did you get in the Scott Well?

Have you done that?

A I had done it awhile back but when we constructed one of the other exhibits we did not do our calculations that way. We did count up the feet on the zone by zone but I did not add the feet per se.

Q All right. Can you tell me what the net pay footage is on the Gilliam No. 1 Well using some porosity cutoff? Do you have that number?

A I do -- I do not have that number.

Q All right, sir. Thank you.

MR. STAMETS: Any other ques

tions of this witness?

Mr. Lopez.

MR. LOPEZ: Yes, Mr. Chairman, just briefly.

RECROSS EXAMINATION

BY MR. LOPEZ:

Q Mr. Peron, I notice when you drew your porosity pinchout, recognizing that we have already discussed a difference of opinion with respect to the B-F Allen No. 1, I notice that you draw the pinchout relatively close, or just a little to the west of the Enstar Scott No. 2. What prevents you from drawing that same pinchout line just a little to the west of the B-F Allen No. 1? I mean my question then is couldn't this pinchout line go in a more vertical angle from the Enstar Scott No. 2 rather than in a diagonal direction that you've drawn it?

A To answer your -- to answer the first part of the question correctly, I tried to draw the porosity between these two wells which had good porosity in the second well drilled and no porosity in the first one.

MR. CARR: Mr. Peron, would you identify the wells, please?

A Yes, the wells that Mr. Lopez is referring to is the -- is the Enstar Scott No. 2, the original

hole, and the Enstar Scott No. 2 redrill.

I simply drew the porosity pinchout approximately half way between those wells. We have good porosity in the Scott No. 2 Redrill No. 1 and no porosity in the Enstar Scott Redrill No. 2.

Moving down to the Enstar Scott No. 1 and the B-P Petroleum Allen No. 1, I simply approximated halfway between those two wells, which is a reasonable assumption.

The same consideration was taken between the B-P Petroleum No. 2 and the Apache Gilliam No. 1.

Q Otherwise you had no other control guide from which to draw that pinchout line, is that correct?

A No, I did not.

Q If a well is not drilled in the southwest southwest of 1, and I notice on your map that you've concluded there exists at least in part productive hydrocarbons underlying the tract, how will those hydrocarbons be produced?

A Those hydrocarbons will be produced by the Enstar Scott No. 1 Well.

Q Then the oil will migrate up-dip to that well through the water drive, is that your opinion?

A Yes.

Q I also notice that in your testimony that you've identified 262 productive areas in the pool and you

have included the area between the oil/water contact and the porosity pinchout.

I notice that in that area there are approximately at least four dry holes. How can you account for including acreage underlying these dry holes as part of the productive field?

A The limits that I have outlined, as I said, was an area of hydrocarbon entrapment and not necessarily productive or commercial.

The north part of this reef is not commercial, in our opinion, and therefore, and which we will demonstrate later, we did not use this portion of the pool to calculate our --

Q All right, and so that acreage should be subtracted from your 262 acres if we're talking about productive acreage.

A That's correct.

Q Do you know how many acres that might add up to?

A We -- we have calculated that we have 207 productive or commercial acres; therefore the subtraction of 207 from 262 will be nonproductive.

Q Thank you.

MR. STAMETS: Any other questions of this witness?

MR. KELLAHIN: Nothing further, Mr. Stamets.

MR. STAMETS: Mr. Peron may be excused.

Mr. Carr, you may continue.

MR. CARR: Mr. Stamets, based on the length of the testimony, I'm becoming extremely suspicious that my last witness is going to be fairly lengthy; he's going to take some time.

I would suggest if you are going to break for lunch that you do it early so we could get back and --

MR. STAMETS: Let's go ahead and qualify the next witness before we take a break.

MR. CARR: All right.

VAN RICHARD TEMPLE,

being called as a witness and being duly sworn upon his oath, testified as follows, to-wit:

DIRECT EXAMINATION

BY MR. CARR:

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

A Yes. My name is Van Richard Temple.

Q Mr. Temple, where do you reside?

A I live in Midland, Texas.

Q Mr. Temple, by whom are you employed and in what capacity?

A I'm employed by Union Texas Petroleum and I'm the Permian Basin District Operations Manager.

Q Have you previously testified before the Oil Conservation Divison or this Commission and had your credentials accepted and made a matter of record?

A No, I have not.

Q Would you summarize for Mr. Stamets your educational background and your work experience?

A Okay. I graduated from the University of Oklahoma in December of '73 with a Bachelor of Science in mechanical engineering.

I went to work for Exxon in Andrews, Texas, in January of '74. I worked for Exxon in Andrews and in Midland in various capacities as a production engineer, as a reservoir engineer, and as a drilling engineer.

During my tenure there I attended numerous industry and Exxon schools to provide me with the technical data required to perform petroleum engineering jobs.

In December of '77 I went to work for Union Texas Petroleum in Midland, Texas. For the following

two and a half years I worked as a Petroleum and Senior Petroleum Engineer in Midland and under that time I was responsible for reservoir engineering and drilling engineering on various properties in the Permian Basin.

Following that, for the following two and a half years I was assigned as a District Engineer, which was a supervisor over the engineers or over the petroleum engineers in Midland, Texas. I served in that capacity for approximately two and a half years.

I was then assigned as an Area Operations Manager, which was a supervisor of our field operations for the western half of our district in Midland. I served as an Area Operations Manager for approximately one year.

I was then moved to Houston and served in the Houston Office as Manager of Petroleum Engineering. In that position I was somewhat more specialized than previously and worked in the -- at a reservoir engineering capacity as opposed to drilling or production services.

In that group I was responsible for working various areas that the company had operations in. This included, in addition to the West Texas operation, Rocky Mountain, southern Louisiana, Gulf Coast, Alaska, some international operations and it kind of gave me a broad base of experience while I was there.

I was then moved back to Midland as a

Manager of Engineering and served in that position for six months at which time we had a reorganization and moved me into my current job.

My total work experience is approximately twelve years.

Q Mr. Temple, in this work experience have you been employed at all times as a petroleum engineer?

A Either been as a petroleum engineer or an engineering manager or an operations manager.

Q Does your area of responsibility with Union Texas Petroleum Corporation include that portion of southeastern New Mexico which includes the acreage which is the subject of today's hearing?

A Yes, sir.

Q Are you familiar with the area which is the subject of today's hearing?

A Yes, sir.

Q And are you familiar with the applications that have been filed in each fo the cases which are consolidated in this matter?

A Yes, sir.

MR. CARR: Mr. Stamets, at this time we would tender Mr. Temple as an expert witness in petroleum engineering.

MR. STAMETS: Are there any

questions as to his qualifications?

The witness is considered qualified.

At this point we will recess the hearing until 1:00 o'clock.

(Thereupon the noon recess was taken.)

MR. STAMETS: The hearing will please come to order.

Mr. Carr, you may begin your examination of this witness.

DIRECT EXAMINATION CONT'D

BY MR. CARR:

Q Mr. Temple, would you please identify what has been marked as Union Texas Petroleum Corporation Exhibit Number Five?

A Exhibit Number Five is a net Phi H map over the Northeast Caudill Reservoir. This map was constructed by calculating the Phi H interval for each one of the wells shown on the map and these calculations are shown at the particular well location.

Phi H is simply the porosity in the well times the height of the particular interval and in these

wells were we have multiple intervals we calculated a Phi H for each of the intervals and summed them up.

The fact that this is a net Phi H map means that we honored the oil/water contact as we're coming down dip and where we see the Phi becoming less and less and in fact going to zero down here in the southwest does not mean our pay is pinching out. It simply means that our pay is being submerged below the oil/water contact.

We've also drawn in here what we've called a permeability barrier and this honors the dry holes that did have some Phi H development in the northern part of the reservoir and we've drawn this through the .75 Phi H line and carried our contour around next to the permeability pinchout.

We have contoured this as best we can to honor both our data points and the structure map.

Q Now, Mr. Temple, if I understand this exhibit, the portion of the reservoir that can produced oil is between the oil/water contact and the -- the line, what did you call that line?

A We called that the permeability barrier line.

Q And the permeability barrier line. How many acres do you have in that area between the permeability barrier line and the oil water contact?

A There are 207 productive acres.

Q Now was this exhibit prepared --

MR. KELLAHIN: Sorry, sir, 207?

A Yes, sir.

Q Now was this exhibit prepared under your direction and supervision?

A Yes, it was.

Q Have you checked the data that was used in preparing the exhibit?

A The -- the actual calculations, log calculations and the drawing of the contour map was performed by Mr. Peron and one of the engineers, reservoir engineers back in our Midland Office, but I have reviewed the method in which they've made those calculations and agree with it completely.

Q Now as part of your study on the area, did you prepare calculations to determine original oil in place in this reservoir?

A Yes, sir, I have.

Q And are those calculations set forth on what has been marked Union Texas Exhibit Number Six?

A Yes, sir.

Q And what conclusion did you reach? What figure did you reach in determining the volume of original oil in place in the Northeast Caudill-Wolfcamp Pool?

OIL IN PLACE

A We calculated there were 793,900 stock tank barrels of oil in place originally in this 207 acres.

Q Now, I'd like you to go to Exhibit Number Six and I'd like you to review the factors you used in making the calculation and know what the value is that you set for each of the factors, and how you got that value.

A Okay. On the first page of the exhibit we show the equation that we used to make the calculation and this is a standard volumetric equation where we have the 7758, which is the unit's conversion factor, the "A" represents the area of the particular interval. The Phi H represents the pore volume of the particular interval, and then the one minus SW is the hydrocarbon percent in that particular interval and where the SW represents the water saturation, initial water saturation, and the VO is the formation volume factor, which gets us from reservoir barrels back to stock tank barrels.

We've drawn a summation sign there because we've calculated oil in place in eight of the -- in eight individual areas, depending on what our Phi H was in each one of those areas.

For water saturation we used 33 percent. This was based on a resistivity log analysis on the Scott and the Gilliam.

Our formation volume factor we used is

1.451 and we got this from standings correlations which can be found in various in places in oilfield industry literature. The particular numbers we used here were obtained from (not understood) correlation and impirical charts that we had in one of my Exxon manuals, but these -- these correlations appear throughout various literatures in the industry.

Q And are these standings correlations correlations that are generally relied on by petroleum engineers in making calculations of this nature?

A Yes, sir. Where you do not have actually PVP data from oil from that reservoir, these calculations are used and are found to be fairly reliable, particularly when we have a black oil reservoir like this.

Q Is it possible for you to go out and test the reservoir and get figures that would be better figures now than standings correlations that you've used?

A They would be probably more questionable than the standings correlations because we believe that we're producing below the bubble point of the reservoir, so an oil sample that we would get would not be at original conditions.

Q Now, Mr. Temple, you stated that you calculated original oil in place of 794,000 barrels. Did you calculate what the ultimate recovery from this pool would

be?

A Yes. Before that, I'd like to address the second page of this exhibit.

Q All right.

A And then I'll go on to that.

On the second page of the exhibit we show the specific intervals along with the Phi H and the area and the oil in place we attributed to each interval.

By example, Interval 1 would be this interval in here, and since we were between zero and .5 Phi H -- that should be .5 or .05 -- we used an average Phi H in this interval of .25.

Q Now when you say "this interval" you're going to the Exhibit Number Five.

A Right.

Q And you are talking about the interval between the contour that has the zero on it on the lefthand side of the contoured area, and the next contour, which has the number on the exhibit .05 but it should be --

A .5.

Q -- .5.

A Right.

Q All right.

A And then we calculated what the area was in this interval and then used the .25 for Phi H because

it's an average between zero and .5, and we used that manner of calculating various areas in this reservoir.

Q Now are you ready to go to your determination of the recovery?

A Yes sir.

Q Did you calculate that figure?

A Yes, sir, we did.

Q And would you explain what figure you got and how you obtained that figure?

A Okay. We've calculated an estimated ultimate recovery for this reservoir to be 233,000 barrels of oil, and this corresponds to 29 percent recovery of the original oil in place.

Now the manner in which we got to this number is we used production data from the Scott and from the Gilliam plotted on semilog graph paper and we use an exponential decline to continue the forecasted production from the current date into the future.

We decline the wells in this exponential manner at an economic limit and then we took those remaining reserves from, I believe we used December 1st as our date, and we took the remaining reserves from December 1st to the economic limit and added that to the cumulative production to those-- of those wells.

Q Now you got a recovery factor of 29 per-

cent. How does this recovery factor compare for wells in similar reservoirs?

A We believe this is a very reasonable recovery for a reservoir with a moderate water drive, which we feel this reservoir has.

Q Now where in all these calculations do the economics actually come into play?

A For the ultimate recovery it only came in in determining the economic limit and that is, we, honoring the operating expenses and the producing rate, we carried the well down to a point at which it made no money and then we said from that point on we discontinued production.

Q Now, Mr. Temple, you've stated that you've estimated there are 233,000 barrels of recoverable reserves. What is the total production to date from the reservoir?

A Current production, the cumulative production as of 12-1-85 was 202,000 barrels of oil.

Q Now, Mr. Temple, are you prepared to make a recommendation to this Commission as to what the spacing pattern should be for the oil wells producing in the Northeast Caudill Pool?

A Yes, sir, I believe the most proper spacing for the reservoir is 80-acre spacing.

Q And upon what do you base that recommendation?

ation?

A There are several factors. One is we have a reservoir that by Permian Basins or West Texas considerations we believe a very permeable reservoir in that we have two wells producing a significant amount of fluid and producing with relatively high pumping fluid levels.

The Scott No. 1 is producing in excess of 400 barrels a day fluid with the pump set at 8000 foot and with the fluid level well above that.

And we have the Gilliam No. 1 producing on the order of 175 to 200 barrels of fluid a day and again I believe their pump is set fairly high or above the perforations and they are carrying a high fluid level.

That gives rise to the indication that we do have a relatively or a very permeable reservoir here.

The second thing we have is we have some pressure data that indicates that the Gilliam is in pressure communication with the Scott.

When the Scott was originally drilled, pressure information was obtained that showed that the original pressure in the Scott, and this measurement was made in August of '83, and the pressure was found to be 3358 or 3360 pounds.

That well was produced for approximately a year and about 100,000 barrels of oil was taken out of the

reservoir by this well.

Then the Gilliam No. 1 was drilled and completed and when that happened another bottom hole pressure was run 9-84, or September of '84, and this pressure showed an original pressure in the Gilliam of 2956 pounds, and we show here a 400 pound drop in the pressure from what was found in the Scott to what was found in the Gilliam, and I attribute this pressure drop to the drainage or the production from the Scott well over to the Gilliam well.

Q How far apart are these wells?

A Approximately 1100 feet apart, and in my mind that 11 -- 400 pound drawdown over one year period, for two wells that are 1100 foot apart is fairly significant.

The second thing is that if you strike an arc between the Scott to the Gilliam, using the 1100 foot as a radius, that corresponds to an 80-acre drainage radius, so that shows that in these two wells that we have seen drainage over a typical 80-acre pattern, and I believe actually we've probably drained well beyond that.

If you carry the drainage from 400 down to 300 you carry that on out into the reservoir, we well have -- may well have drained in excess of 80 acres, are capable of draining it in this well.

Q Is this a water drive reservoir?

A Yes, sir, I believe it is. We have seen

water encroachment in both the Scott and the Gilliam. The Scott is producing on the order of 90 percent water cut, initially produced no water.

The Gilliam is producing on the order of 70 percent water cut, and it initially produced water free.

So we've had water influx into both of these wells.

Additionally, using our geologic description and the oil in place that we calculated, we made material balance calculations to determine that with the 793,000 barrels oil in place and the pressure drawdown that we saw prior to production from the Gilliam, that the oil in place was capable of only supporting 10,000 barrels of production. These were on material balance calculations and basically it says that if there was external drive for this 400 pound pressure drop, we would have only seen 10,000 barrels of production, but we saw 100,000 barrels of production, which indicates that we had an external source supplying pressure support for this reservoir, and that's we've calculated between 80 to 90 percent of the pressure support was being provided by what we feel is the aquifer down to the southwest.

Q Now, Mr. Temple, have you calculated what the two existing producing wells in this pool, what they have actually drained to date?

A Yes, I have.

Q And is this information contained on what is marked Union Texas Exhibit Number Seven?

A Yes, it is.

Q Would you refer to that exhibit, please, and review the information contained thereon with the Commission?

A Yes, sir. What we've done is we wanted to calculate the drainage area based on the production to 12-1-85, and what we're doing is we're saying that at 12-1-85 production ceases, so now let's calculate what area that we've drained.

To do that we've used a typical volumetric equation where a similar -- exactly like the one we've used before with oil in place and V sub O, the Eunice conversion factor, Phi H, and the 1 minus SW that we've talked about earlier, except we've rearranged the equation to reflect the area to be drained as the calculated number.

Also here the original oil in place, we are saying is represented by the production to date, and so we've taken actual production for the well as of 12-1, divided it by the recovery factor to turn it back into an oil in place number, and then we've taken that oil in place and fitted it into the Phi H directly around the well.

Now, for the Scott No. 1 we have an oil

production of 131,000 and the Phi H we used was 2.3. Even though the Scott has a Phi H of 3.02, this is the highest Phi H of any well in the reservoir and we felt since we were calculating a drainage area around this well that we'd be more typical what the Phi H would be in that area around the Scott well, we averaged the Phi H with the Gilliam Well, which is 1.57, and you come up with an average of the two would be 2.3.

Using these numbers we calculate that as of 12-1-85 the Scott No. 1 has already drained 54 acres and at that time the well is currently or it was producing and is still producing 40 barrels of oil a day.

The Gilliam No. 1 we did in the same manner except the oil production was 70,000 and the Phi H we used on it is the 1.57 value because that well is draining reserves in areas of better Phi H and draining reserves in areas of lower Phi H, so we felt in that well that tne 1.57 would be representative of the area directly around the well.

Using this we calculate that as of 12-1 this well has already drained 43 acres and is still producing 60 barrels of oil a day.

Q Now, Mr. Temple, if I understand your prior testimony, you've indicated that there are probably only something in the neighborhood of 30,000 barrels of oil

left to be produced in this pool based on your calculations of recoverable reserves.

A Uh-huh.

Q And yet when I look at this exhibit you indicate that only 97 acres have been drained. How do you reconcile these figures?

A Okay. The production and area that we're talking about on the Scott 1 and the Gilliam 1 is in the sweet spot of this reservoir and has the high Phi H values. It's right around this area here, and we have to remember when we're talking about acreage drained, that with this particular reservoir we have a three dimensional reservoir, and 40 acres drained out here where you have a low Phi H, would result in a much lower oil production number than a 40 acres where you have a high Phi H, because you simply have a thicker column in the center part of the unit than you do here.

To illustrate what I'm talking about, if you'll go back to Exhibit Number Six and look at the data sheet, you can see Interval 1 has only -- has 39.5 acres and has 35,000 barrels of oil in place.

Where you go down to Exhibit Six -- or I mean Interval 6, and we have 10.8 acres, which is approximately a quarter of the acreage in Interval 1, yet we have over twice the oil in place, and that again reflects the

three-dimensionality (sic) of the reservoir.

In fact, when we talk acres drained, we have to be cognizant of where that acreage is located, and we believe the remaining production to be recovered in these wells is oil that has been pushed or moved through this outer perimeter in this low Phi H and even though it's only 30 - 33,000 barrels of oil, it still represents a large acreage drainage because of the low Phi H of where it came from .

Q And do you believe that the wells that are currently producing in this reservoir will produce that 33,000 barrels?

A Yes, sir.

Q Do you have an opinion as to whether or not development of this area on 40-acre spacing would result in the drilling of unnecessary wells?

A I believe it would.

Q In your opinion would going to 40-acre spacing result in waste?

A I believe it would result in waste.

Q Would granting this application with 80-acre spacing impair correlative rights?

A No.

Q Now, what well locations do you recommend be included in any rules which result from this hearing?

A Wells located within 150 foot of the cen-

ter of a quarter quarter section.

Q And upon what do you base that?

A The Scott well is so located.

Q And what effective date do you request be set in these rules?

A June 1st.

Q Why is that?

A This is the first day of the month following when the -- the hearing was held.

Q That's the original APC hearing?

A That's right, and it will prevent reassignment of acreage, thereby altering any ownership of the Scott No. 1 Well.

Q If July 12th, 1985, remains the date in these rules, what does Union Texas Petroleum Corporation seek?

A We'll seek a nonstandard spacing or proration unit to be comprised of the northwest of the southwest of Section 1. This will prevent a readjustment of the equities in this area.

Q And on what date would you like -- what date would you propose as the effective date for the creation of that nonstandard unit?

A The effective date of the 80-acre spacing.

Q Does Union Texas Petroleum Corporation object to the well location proposed by Wilton Scott in the one remaining case?

A Yes, we do, due to the fact that they are gaining an advantage due to the location to the offset property, particularly the Scott No. 1.

Q Now, Mr. Temple, are you prepared to make a recommendation to the Commission as to how a penalty should be calculated for a well drilled at the proposed unorthodox location?

A Yes, sir.

Q And are those calculations set forth in what has been marked Union Texas Exhibit Number Eight?

A Yes, sir.

Q Would you briefly review those for the Commission and state your recommendation?

A Okay. What we did is we took the center part of the quarter quarter section and we moved -- we located a well 150 foot from that center point directly towards the proposed location of the Scott Well, and when we do this it puts this well 554 feet off the north and south lines, excuse me, off the north and the west lines.

The proposed Scott location is 330 feet off of these lines, which gives us a 224-foot difference between the two wells, and this is -- this 224-foot difference

represents 40 percent of the distance a legal location would be.

We also then calculated the net area encroachment a well would provide being drilled 330 versus 554 and this area encroachment calculates to be 16.6 acres and is represented by the cross hatched exhibit on the attached map.

The recommended penalty that we offer is to take the average of these three deviations from a standard unit and use this to calculate the 66 percent production limitation factor to be applied against a well's prorated allowable, or against the well's allowable.

Q If this kind of a penalty is place on the well's allowable, do you believe that will protect the offsetting operators against the advantage gained by Mr. Scott from the unorthodox location?

A Yes, sir.

Q Now you have stated you -- this should be applied against the well's prorated allowable. If we have a 40-acre nonstandard proration unit, being the southwest of the southwest of Section 1, if that's approved by the Division, now what would you recommend the allowable be for that well?

A I recommend that with half the acreage that the allowable be half of the standard allowable, which

I believe is, I'm not sure exactly, 400 to 480 barrels, in that range, but be half of that and then that number reduced by this production limitation factor.

Q Would you likewise recommend that the Union Texas Well on a nonstandard be authorized to produce half of an allowable?

A Yes, sir.

Q Mr. Temple, were Exhibits Five through Eight prepared by you or compiled under your direction and supervision?

A Yes, sir.

Q Can you testify as to their accuracy?

A Yes, sir.

MR. CARR: At this time I would offer into evidence Union Texas Exhibits Five through Eight.

MR. STAMETS: Without objection these exhibits will be admitted.

MR. CARR: That concludes my direct examination of Mr. Temple.

MR. STAMETS: Are there questions of this witness?

MR. LOPEZ: Yes, sir, Mr. Stamets.

MR. STAMETS: Mr. Lopez.

CROSS EXAMINATION

BY MR. LOPEZ:

Q Mr. Temple, I believe you were here when Mr. Peron testified and I would ask you exactly the same question I asked him as to -- well, let me ask the question this way: Did you adopt his porosity pinchout line for purposes of your Exhibit Number Five?

A Yes, sir.

Q And isn't it conceivable based on the discussion I had with Mr. Peron that the porosity pinchout line could have been indicated in the direction or vertical from the Enstar Scott No. 2 Well than in the diagonal direction drawn on that map?

A That certainly is possible but on the other hand the line could be moved in the other direction also.

Q I believe that if I understood your testimony that you have indicated that this is a water drive reservoir and the water drive is essentially from the southwest to the northeast, is that correct?

A Yes, sir, it's from the southwest moving from this interval out here.

Q Based on the -- based on your information and as laid out on this Exhibit Number Five, is the remaining productive acreage underlying the southwest quarter of

the southwest quarter of Section 1 located in the zones of higher permeability on the map?

A Well, these -- these zones down here we do not expect to have as good a permeability development as these in the middle of the reservoir because of their proximity to the pinchout.

Q I believe your testimony showed that both the Scott No. 1 Well and the Gilliam Well are draining areas greater than 40 acres. Can you identify what areas, in your opinion, you believe the Scott No. 1 Well is draining outside this 40 acres or what 54 acres you believe it to be draining?

A No, sir, I cannot, but what I can say is that based on our calculations that we've recovered or we have recovered 203,000 barrels of oil of the total 233,000 estimated ultimate recovery, which is approximately 87 percent of the oil to be recovered out of this reservoir, which in our estimation would be between 80 and 90 percent of the total area of the reservoir, productive area of the reservoir, has already been drained.

So we see a very small amount of productive acreage out there that has yet to be drained.

Q Would it be fair to say that the reserves that underlie, or did underlie, the southwest quarter of the southwest quarter have been effectively drained or will be

drained by either the Scott No. 1 Well or the Gilliam Well, or both?

A Yes sir.

Q Okay. I notice that the Gilliam Well has a 330/330 location. I would like to ask you how you could justify a location other than 330/330 since that is crowding the southwest quarter of the southwest quarter for Mr. Scott?

A We do not have strong objections to a well location 330 off the west line and we would prefer to see something on a standard location but we understand the situation trying to protect that leaseline from the Gilliam Well, as it's also 330; however, we do feel very strongly about the 330 distance from our southern border, from our southern part of the proration unit because we are 660 off that line.

Now, if the Commission deems that they should adjust that formula or disregard the penalty off of -- off of the west line, we wouldn't have strong objections to that, but we would like to see the factors put in there, or the penalty we put in there because of the proximity to our Scott No. 1 Well, which is 660 off that line, we would like to see that remain.

Q Then if I understand your answer, you have no objection to it being 330 from the west line but you

have objection to it being 330 from the north line.

A Yes, sir. We do not have strong objection to it being 330 off the west line.

Q So if that's the case, then your calculation with respect to penalty would have to be amended, is that correct?

A Correct.

Q Based on the testimony, don't you -- isn't it your opinion that a 66 percent penalty on top of a 50 percent penalty is an awfully strong penalty for a well to be drilled at a 330/330 location?

A Well, it would also be drilled in a nonstandard proration unit. You have two things working on you and I think each one of these things needs to be addressed. A nonstandard proration unit if it were dedicated half of the acreage to the well than what standardly is dedicated in a reservoir, so we feel that should be considered. And then the fact that we're 330 off a line we are 660 off of, where the regulations speak to the 660 being more standard, I think that that penalty is justified also.

Now, this would still give you allowable, I believe, of over 150 barrels a day and that still is -- will make you a very economic well.

So a penalty like this, assuming an allowable well would be drilled, would not prevent you from

drilling that well land recovering a fair gain on that -- on that project.

Q Isn't it correct to say that the net result of your recommendation with respect to Mr. Scott is that he will either be prevented or severely penalized from drilling the well at 330/330 location off the north and west lines of the southwest southwest of Section 1; meanwhile, the Gilliam Well will be grandfathered in at a nonstandard location with no penalty under your proposed plan?

A I believe that the penalties that we've offered are similar to what's been offered in the past for -- for wells that are located closer to -- closer to the leaseline than what the field rules specify, and I believe that we're within our rights to recommend that sort of penalty be continued forward in this case.

Q What is your justification, then, for allowing the Gilliam Well to stand at what would be an unorthodox location and not suffer any penalties?

A I have not addressed that and I have not recommended that and I'm really not prepared to address a penalty imposition on that well or lack of penalty on that well.

As operator of the Scott Well, that's where we have really directed our testimony.

Q You don't think the equities call for

some sort of adjustment?

A That's really not for me to say.

MR. LOPEZ: No further questions.

MR. STAMETS: Other questions of this witness?

Mr. Kellahin.

MR. KELLAHIN: Thank you, Mr. Chairman.

CROSS EXAMINATION

BY MR. KELLAHIN:

Q Let me ask you some questions, Mr. Temple, with regard to the calculation of the original oil in place that you have made that shows 794,000 barrels of oil in place.

I assume that material balance calculation is a standard, acceptable calculation from which to make an evaluation of the original oil in place, is it not, sir?

A In certain applications it certainly is.

Q All right. In this pool in this application do you have an opinion as to whether that's an appropriate method to calculate the original oil in place?

A I think it would be very difficult to

calculate your original oil in place through material balance in this reservoir because it would be very difficult ot describe the size and the properties of the aquifer supporting -- supporting the oil production in that essentially we only have one well and that's this PanAm Sinclair No. 1 that is down dip penetrating where we believe the aquifer is.

So getting a good aquifer description in a material balance calculation is very important if you're going to determine oil in place with that.

Q Can you describe for us whether or not using a material balance calculation there are different programs or calculations that are adjusted to take into consideration water drive or a partial water drive effect on a reservoir?

A Those programs are available.

Q Do you know what would be estimated to e the original oil in place using a material balance calculation for this reservoir without the consideration of water drive?

A We made a calculation as such and if you assumed no water influx, you would have to have an oil -- original oil in place on the order of 6-1/2 million barrels, which would require a minimum of 800 productive acres, and that would be using an average Phi H of -- well, a Phi H of 2.3, I believe it was that I calculated which is the average

between the Scott and the Gilliam, so that 800 acres would be very conservative assuming the entire reservoir averaged that Phi H.

Q Let's assume we have such a calculation using material balance without it being adjusted for the water drive. What can you tell by looking at that calculation that tells you you've got an erroneous result from that calculation?

A I can't find 800 acres above an oil/water contact that I could put that oil in. We have control to the north, water from down dip control to the south. We have control to the east. I don't see how you could come anywhere -- come anywhere near of increasing your productive acreage from 207 to 800, a fourfold increase. I just can't see that happening. I mean I don't believe that's the situation.

Q Even if we could take the porosity pinchout and move it farther to the east and I don't care how far out you move it, move it several thousand feet, I assume.

A No, I don't believe you -- okay, we made a calculation of the acreage in a wedge in this southwest of the southwest, right here. All right, and that calculation showed us that that area had on the order of 11 acres.

So if you move this thing back, you're going to have to move it back an awful long ways if that

already is 11 acres, you're going to have to move it a long ways to get that up to 600.

Q You'd have to move it farther beyond the B-F Petroleum Allen No. 1?

A I believe that would be correct.

Q So you're satisfied that if a material balance calculation is done in the way we've described, it doesn't fit the facts.

A Yes, sir, that's right.

Q Why don't we do the same material balance calculation but this time we adjust that calculation to take into consideration the water drive in the reservoir? Can that be done?

A Yes, sir.

Q All right. For the sake of curiosity, have you run such a calculation?

A No, sir, we have not.

Q All right. Can you describe generally, based upon your knowledge of that calculation, what you would expect it to do in terms of the total calculated barrels of oil in place versus a calculation that doesn't take water drive into consideration?

A Okay. What the material balance calculation would do is if you assume that there is no influx you'll calculate an oil in place larger than what's actually

there, and the water influx will look like additional oil in place because the water influx is providing pressure support just as expansion of additional oil out there would provide.

So if you have an active water drive present, it will greatly reduce your oil in place number over what would be calculated assuming no influx into the reservoir.

Q Based upon your expertise, Mr. Temple, as a reservoir engineer and your study of this area, do you have any reservations about the presence of water drive as one of the drive components in this reservoir?

A I'm very confident that we have a water drive in this reservoir.

Q What is the gas/oil ratio on the reservoir, do you know, approximately?

A I don't know what the average gas/oil ratio is in considering total production from the reservoir. On our Scott No. 1, the Enstar Scott No. 1, we have a gas/oil ratio of about 1100 with an original gas/oil ratio around 850.

Q Can you give us any opinion with regards to what would happen to the gas/oil ratio in this reservoir in the absence of a water drive?

A Okay, you would see a strong increase in the gas/oil ratio as the pressure depleted in this reser-

voir.

Q Give us a little lesson, Mr. Temple, tell us what it is in the absence of water drive that will happen to the gas/oil ratio as the oil is produced out of the Wolfcamp.

A Let me -- let me clarify myself.

Let's talk about right now our 207-acre reservoir. All right. If we did not have a water influx and we produced the kind of production that we've seen out of this reservoir, the pressure would have fallen considerably further than what it's fallen so far and that pressure drop gives rise to an increase in gas/oil ratio as gas is being evolved down in the reservoir and is produced through the well.

Q In looking at the material balance calculations, does the engineer take the reservoir parameters that he finds in the log of a particular well, assign some values to that and run through the calculation?

A The material balance?

Q Yes, sir.

A No, sir. Material balance calculations are made utilizing pressure, volume, and temperature characteristics of the oil, compressibility characteristics of the rock and water.

Q What if the engineer is running a volu-

metric calculation to determine and estimate of the original oil in place producable?

A In the volumetric calculations you do utilize log contrived values and also a P sub O, which is a formation volume factor.

Q You have selected to make the calculation of the original oil in place using the Phi H map.

A Yes, sir.

Q Can you describe as an engineer what the degree of accuracy and reliability is for this reservoir of the volumetric method versus the material balance method, versus the method you've selected, so we have a feel for what it is that you've done?

A Well, the method that we have selected is a volumetric method. We took our geologic description. We used our log data to calculate Phi H values honoring the pinchouts and our oil/water contacts, and we calculated volumetrically what we felt, what we believe was present in the reservoir under original conditions.

We feel this data is fairly accurate. I can't give you a guarantee as to, you know, a degree of accuracy, but with my experience, I would say that this data is plus or minus 15 percent.

Now a material balance calculation on this reservoir, we haven't made. The primary reason we

haven't made it is because of our lack of reservoir data on the aquifer. Exactly how much fluid that aquifer can put into the reservoir is a function of the aquifer size, is a function of the aquifer permeability, and a function of the areal extent of the aquifer.

We didn't -- we felt like that with that lack of data, that we could make a much more accurate estimate of the oil in place using the volumetric method; however, if somebody pursued the material balance method, that certainly would be an approach to take, and I'd be interested in seeing what the results would be, although I feel like that the volumetric data, because of the lack of aquifer reservoir information, volumetric data would be a better way to go.

Q Can you express an opinion with regards to what happens if no further drilling takes place in the reservoir as you've defined it in terms of the two existing wells, being the Gilliam and the Scott Well, being able to reasonably and efficiently produce the reserves in that reservoir?

A I think the two wells will reasonably and efficiently produce all remaining reserves in that reservoir.

Q What happens if the Scott Well is drilled out of the southwest of the southwest of Section No. 1 and

we now have a third well in the same pool competing for the same reserves?

A I feel the reserves recovered out of the Scott No. 1, if any, would be acceleration reserves, and would not increase the total recovery from this reservoir.

Q You said Scott No. 1.

A Excuse me, excuse me, the well in the southwest of the southwest.

Q Simply accelerate the recovery of reserves and not contribute additional reserve development?

A That's my opinion.

Q What happens in terms of effectively producing the reservoir if on the east side of Section 1 line separating from Section 2, the line that separates the pool vertically, all right, sir -- yes, sir, the line that separates the Gilliam acreage from the Scott acreage, what happens in terms of production in the reservoir if now we have two Scott wells in Section 1 versus the one Gilliam Well in Section 2 competing for the reservoir?

A Would you restate the question, please?

Q Yes, sir. My question is, I'm looking to determine whether or not you have an opinion as to whether the Gilliam Well can fairly compete against the two Scott wells if the second Scott well is drilled?

A I think if a second Scott well was dril-

led that this well would have difficulty in competing with these two wells, as this well, I think, has already had difficulty in competing with the Scott No. 1 because of the differences in its Phi H.

And if you look at adding another well down there, you're going to increase the straws in the reservoirs and so it would, obviously, I think you would get more production out of these two wells than you would that one well.

Q To go back to part of your answer, you are saying that already under current situations the Scott Well has an advantage over the Gilliam Well, notwithstanding the fact that the Gilliam Well is 330 from the section line?

A From a productivity standpoint it definitely has an advantage over the Gilliam Well based on Phi H.

Q Does the Gilliam Well have any advantage because of its proximity to the section line versus the Scott Well's distance from that same line?

A Yes, sir, it does have an advantage in that it is -- I think I'll go over and refer to this contour map. We see that the well, by being 330 off a lease line, brings it up dip in this particular structure, and where you have some water encroachment from a water drive, the up dip well has advantage and will recover more reserves.

Q Which of the two wells is up dip?

A The Gilliam, excuse me, the Scott Well is the highest well in the field.

Q Which of the two wells in your opinion is the first well to be watered out?

A The first well to be watered out in a particular producing zone should be the Gilliam No. 1.

Q Can you reach an opinion for us with regards to the direction of flow of production?

A I believe the direction of the water influx and consequently the flow of the production would be from the southwest to the northeast.

Q In the event the second Scott well is drilled in the southwest quarter of Section 1, do you have an opinion as to whether it would be prudent for the owners in Section 2 to drill a second well in order to offset the drainage advantage gained by the second Scott well, drilling a second Gilliam well in Section 2?

A Assuming that the Scott well made a well, and made a commercial well, that would justify the expenditure of drilling another well, I could see where obligations or demands could be made by parties to drill a second well in Section 2.

Q If that occurs, then we have four wells in the little pool, don't we?

A Yes, sir.

Q All right, how many of those are unnecessary?

A I believe two of them.

Q All right, sir. Let me talk about the what if with you, Mr. Temple, what if the Commission stays with 80-acre spacing and yet approves the formation of the two nonstandard 40-acre units, one for the Scott 1 and one for the Scott well out of the southwest quarter.

It was your testimony, I believe, that in order to balance the equities you would suggest that the 80-acre allowable be divided in half and then you would assign a penalty to the Scott because of location. We just went through that.

Let me show you Commission Rule 505, Mr. Temple, with regards to the depth bracket allowable, and have you find for me, sir, what would be top allowable for a well at this depth on 80-acre spacing?

A 400 barrels a day.

Q Do you recall, sir, what the original daily rate of production was on the Scott well when it was completed?

A I believe it was top allowable or very close to it.

Q And do you recall what the original producing rate was on the Gilliam well when it was --

A I also believe --

Q -- completed?

A -- it was top allowable.

Q What is the current producing rate on each of the wells, approximately?

A The production from the Scott No. 1 is approximately 40 barrels of oil a day and Gilliam No. 1 is approximately 60 barrels of oil a day.

Q If we use the calculation you've suggested of taking the 400 barrels on 80 acres, dividing it in two, we have 200 barrels, and then you've assigned a penalty on location of 66 percent, giving you, I believe, 132 barrels a day, that would be the initial producing rate for the Scott well in the southwest quarter?

A Yes, sir.

Q All right, it would be that rate that would compete against the current rates of 60 and 40 on the other two producing wells.

A Yes, sir.

Q Do you see any advantage or disadvantage gained by the second Scott well with the allowable restriction as you've recommended?

Did I lose you?

A No, that -- that's a tough question to answer, because considering current rates and current reser-

voir status, you know, I see no advantage, or see no disadvantage to being able to produce twice what the maximum production from the field is in a single well.

But -- and I guess that, that would have to be my answer.

Q Would you consider a penalty based upon some percentage of the current producing rates of those wells versus one that gives the penalized well still the opportunity to produce three times what the Gilliam Well is currently producing?

A I would not recommend that.

Q Let me see if I understand. We've got the Scott Well that's now been producing for two years, whatever. It's produced 100,000 barrels of oil, 130 -- I've forgotten now?

A About 130.

Q About 130,000 barrels of oil. It's now down to 60 barrels a day.

We've got the Gilliam Well down to 40 barrels a day and it --

A No, it's 60 on the Gilliam and --

Q Got them reversed, all right, Gilliam's got 60, Scott's got 40. The new Scott well then has a top allowable of 132. It now competes for the reserves in the pool. How is that not an imbalance in favor of the second

Scott well?

A Well, the two wells that were -- productive wells that were drilled in the field were allowed to produce at top allowable and their production was based on this top allowable number that we've just mentioned earlier, based on the allowable schedule, and they were allowed 400 barrels a day to recoup their -- to make a fair price for the risk that was involved in the well.

I believe that any penalties imposed should be imposed based on that 400-barrel a day rate since that is what the other two wells were allowed to produce originally, rather than the current producing rate, which is what the wells are producing now.

So any penalties on the second well out there, I feel like would be more fairly imposed on a 400-barrel a day top allowable rate rather than the current producing rate.

Q Does that answer take into consideration your testimony awhile ago that you thought the second Scott well is going to set up the situation where there is drainage across the common section line in the absence of the fourth well?

Have we restricted the second Scott under this penalty to such a level that you're comfortable that the fourth well is not now going to have to be drilled in

order to maintain a balance between the two ownerships in the two sections?

A Since we're "what ifing" here --

Q Yes, sir.

A First of all, I don't think that you can drill a well in that southwest southwest that's going to make 2-300-400 barrels a day.

Now, let's say that a well is drilled, "what ifing", let's say a well is drilled there capable of making 2-300 barrels a day, in my mind if that happens, it's going to show that there may be some errors in our structure map or in our interpretation.

If that's the situation, you have an introduction of new data into the reservoir. The reservoir description may change and it may be justified to drill another well down there.

Now, I don't believe that's the case. I beleive our interpretation is correct, but if we're going to "what if", you know, I think we'd have to think about that also.

Q With the development of new data derived from the second Scott well, if it's drilled --

A Okay.

Q -- is it possible, or is it reasonably probable under the discipline of your profession, to take

that information, come back in and determine the actual net productive acreage in the pool for each well and assign allowables or adjust allowables after that well's been drilled?

A You mean have something like a productive acreage hearing? Something on that order?

Q Sure, or like a prorationing hearing or productive acreage hearing like you'd see in Texas?

A Sure, that would be an option.

Q Do you have production data available to you, Mr. Temple, from which you could determine for us how long either one or both of the other wells were top allowable wells?

A Yes, sir, I can give you a pretty close estimate. That information is in my briefcase.

Q All right, I wonder if we might have that information for the record, Mr. Chairman?

Okay, the Gilliam Well was top allowable for approximately four months.

Q All right, sir, and how about the Scott Well?

A The Scott Well was top allowable for approximately nine months.

Q One final question, Mr. Temple. You've indicated to us that you believe the third well will simply

be competing for the same reserves that the other two wells could currently produce.

In relation to the third well, what happens to the oil/water contact? Can you draw any opinion with regards to the production of the third well as Mr. Scott proposes in terms of its effect on the oil/water contact?

A No, sir.

Q Not yet; we'd have to drill the well first.

A Yes, sir.

Q Thank you.

MR. LOPEZ: Mr. Chairman?

MR. STAMETS: Mr. Lopez.

MR. LOPEZ: Just a couple of questions based upon Mr. Kellahin's cross.

RECROSS EXAMINATION

BY MR. LOPEZ:

Q Mr. Temple, on this "what if" scenario, and assuming two 40 nonstandard acre units in the west half of the southwest quarter of Section 1, and assuming the Scott No. 2 Well, or the second well, or a well drilled in the southwest of the southwest, wouldn't it be logically consistent to allow Apache to have a nonstandard unit in the

southeast of the southeast of Section 2, and wouldn't the net result be four nonstandard 40-acre units in the area in question?

A What's your question again? The last part of your question?

Q I mean if a well, a commercial well, were drilled in the southwest southwest on a nonstandard 40-acre unit, assuming you've got a nonstandard 40-acre unit to the northwest of the southwest, wouldn't the logical, consistent course of action be to form a nonstandard 40-acre comprised of the southeast southeast of Section 2, and allow that well to be drilled?

A That could be done.

Q The net effect would be 4 nonstandard 40 acres in an area you've applied for two 80-acre spacing units, and that's not what you want, is it?

A That's what I want, is 80-acre spacing.

Q You want 80-acre spacing for both the east half of Section 2 for the southeast quarter and the west half of the southwest quarter (not clearly understood.)

A Yes, sir.

Q So the only issue, really, is the effective date of the 80-acre spacing for this, isn't that true?

A I believe the, you know, the issue here is -- is if the 80-acre spacing, and we believe that the

proper development of this reservoir is on 80-acre spacing, and that we would like an effective date of June 1st so that we can -- or so that the interest in the Scott Well, those interests who drilled the well, can share in their entire 80-acre proration unit.

Q Well, let me ask the question this way.

Assuming 80-acre spacing is the proper way to go, and the Commission order stated with respect to the fact that one well can drill 80 acres, then the only remaining issue, is it not, is whether the date of June 1st or July 12th?

A That's -- that's the remaining issue.

Q That is the remaining issue. And isn't the only remaining, or the only issue that remains in connection with Union Texas' request for a nonstandard 40 comprised of the northwest of the southwest of Section 1 the same issue, namely, the effective date of the 80-acre spacing rule, because if the 80-acre spacing order stood with the June 1st effective date, would not Union Texas withdraw its nonstandard application for a 40-acre spacing unit?

A If the June 1st 80-acre rule stood, we would withdraw our 40-acre nonstandard proration unit application.

Q So the only issue with respect to the nonstandard 40-acre spacing unit is the issue of the effec-

tive date of the 80-acre spacing order, isn't that correct?

A Repeat that, please?

Q The only issue that is involved with your application for a nonstandard 40-acre spacing unit is the issue of whether the effective date of the 80-acre spacing order is June 1st or July 12th.

A Yes, sir.

MR. LOPEZ: No further questions.

MR. CARR: Mr. Stamets.

MR. STAMETS: Let me take a turn, Mr. Carr, before we let you do some redirect.

CROSS EXAMINATION

BY MR. STAMETS:

Q Mr. Temple, I believe you indicated that you thought the Gilliam Well would water out first.

A Right.

Q And yet the testimony seems to be that the Scott Well has the highest water cut. Do you have an idea of why that is?

A I believe so, sir. In the Scott Well, because of its structural position, we were able to perforate a zone structurally lower in this well than was in the Gilliam Well. We could see it right here. The Gilliam

Well, when this well was drilled, that zone was wet so they didn't perforate it; however, the Scott Well, when we drilled it, was productive, so it was perforated, and we believe that we've seen water encroachment in this lower zone that hit the Scott Well without that zone being open in the Gilliam Well.

And that explains why the water production hit the Scott Well and it's producing at a higher water level.

Q In a reservoir such as we have here, would it be possible to calculate production penalty on a well in the southwest quarter of the southwest quarter of Section 1 based on the net, relative net acre feet under that tract as compared to the other tracts in the pool?

A Yes, sir, it certainly would be possible.

Q You don't happen to know offhand the -- those figures, the relative net acre feet under the southwest quarter southwest quarter and the rest of the pool?

A No, I sure don't. We -- I don't have an acre feet calculation for that.

Q I don't know that I'd want that, but it's possible I might ask for it later.

A We could certainly get it for you pretty quickly.

MR. STAMETS: Mr. Carr, do you have any questions?

MR. CARR: I have no questions.

MR. STAMETS: Are there any other questions of this witness?

You may be excused.

MR. CARR: Mr. Stamets, that concludes the direct case of Union Texas Petroleum.

MR. STAMETS: Now, does anyone else have a desire to put their testimony on at this time or a preference?

MR. LOPEZ: Mr. Chairman, I defer to Mr. Kellahin (not understood) position of Apache. I assume it continues to be in support of 80-acre spacing. If that's the case before the Commission I think it would be (not clearly understood).

MR. STAMETS: Fine. Once we've embarked on 80-acres I think we should stick with it.

MR. KELLAHIN: I hadn't expected to be next, Mr. Chairman. I wonder if we might take five minutes so that we can get our witness and his exhibits before the Commission?

MR. STAMETS: Fine. We'll take five.

(Thereupon a recess was taken.)

MR. STAMETS: Mr. Kellahin, you may proceed.

MR. KELLAHIN: Thank you, Mr. Chairman.

Mr. Chairman, at this time we would call as our witness Mr. Richard L. Brunner.

Mr. Brunner has already been placed under oath, Mr. Chairman.

MR. STAMETS: Thank you.

RICHARD L. BRUNNER,

being called as a witness and being duly sworn upon his oath, testified as follows, to-wit:

DIRECT EXAMINATION

BY MR. KELLAHIN:

Q Mr. Brunner, for the record would you state your name and occupation, sir?

A Yes. My name is Richard L. Brunner. I'm an exploration geologist for Apache Corporation.

Q Have you previously testified as an exploration geologist before the Division?

A Yes, I have.

Q Would you describe for the Commission when and where you obtained your degree in geology?

A I obtained a Bachelor's degree from the University of Colorado in 1975.

I've worked as an exploration geologist since then.

Q What is your current duties and responsibilities for your company?

A Currently I am responsible for generating new prospects, evaluating farm-ins, evaluating producing properties for possible offset locations; and in general, keeping track in a geologic sense of any properties that Apache owns in the West Texas and southeast New Mexico Permian Basin area.

Q When you say Apache, Mr. Brunner, would you define for us your understanding of the relationship between Apache Corporation and APC Operating Partnership?

A Yes. APC is a limited partnership of which Apache Corporation is the sole general managing partner of that partnership.

Q What interest does Apache have in the acreage involved in this Wolfcamp reservoir?

A The APC Limited Partnership is the owner, 50 percent interest owner in the No. 1 Gilliam Well and adjoining acreage. I don't recall exactly the number of acres.

Q For purposes of this hearing, then, if we

look at the east half of the southeast quarter of Section 2, is that the acreage that's under lease to APC?

A Yes, that plus some.

Q And that includes the Gilliam No. 1?

A That's true.

Q All right, would you describe for us your understanding of how your company came into ownership and operations of the Gilliam No. 1 Well?

A Yes. Apache Corporation, through the APC Limited Partnership, purchased certain properties from Florida Exploration Company, the No. 1 Gilliam Well and adjoining acreage being part of that acquisition.

Q Have you reviewed the data, the documents, in your companies files and those that you've acquired from Florida Exploration concerning this well and other geologic data for this particular pool?

A Yes, I have.

Q Let me show you what is marked as Exhibit Number One and ask you to identify that exhibit.

A This exhibit is a structure map of the Upper Wolfcamp marker and overlaid on that, a Wolfcamp porosity Isopach.

Q Would you describe the data that was used or reviewed in the preparation of this exhibit?

A Yes. I reviewed from the Florida Explor-

ation prospect file certain structure maps generated from seismic data, well data from the -- all the wells within this area, and pretty much all the well information, tests, completion information, that I could find.

Q Are you satisfied as a geologist that the information depicted on this exhibit is true and accurate?

A Yes.

Q And have you reviewed this data and reached certain conclusions with regards to this information?

A Yes, I have.

MR. KELLAHIN: Mr. Chairman, we'd move the introduction of APC or Apache's Exhibit Number One.

MR. STAMETS: I'm sorry, Mr. Kellahin.

MR. KELLAHIN: We move the introduction of Apache's Exhibit Number One.

MR. STAMETS: Without objection this exhibit will be admitted.

Mr. Kellahin, did you intend to qualify this witness as an expert geologist?

MR. KELLAHIN: I believe I did and I have not and we would submit Mr. Brunner as an expert exploration geologist. Thank you.

MR. STAMETS: Without objection Mr. Brunner will be considered qualified.

Q Mr. Brunner, would you give us the general information, trying not to repeat what Mr. Peron has told us in terms of his work, but if you'll give us the information on this exhibit that is similar to what Mr. Peron has done on his structure maps so the Commission has an understanding of wherein the two geologists are in agreement and then I'll ask you where you disagree.

All right, sir.

A Mr. Peron's map and mine agree in that there is a structural closure involved in the trapping of hydrocarbons in this field and that it's also bounded by a porosity and/or permeability barrier; also that there is an oil/water contact that limits the reservoir particularly to the south and southwest directions.

Q Let's look first of all, sir, on the porosity pinchout, Mr. Peron has identified one on the east side of the Gilliam and Scott wells.

Where have you shown that porosity pinchout on your structure map? How is that identified?

A It's identified in the dashed lines; to the east side a porosity pinchout very similar to Mr. Peron's map between the Scott No. 2 Well and the Scott No. 1 Well, following in a northeast/southwest direction.

And again I have put a porosity pinchout to the west side. It's in disagreement to Mr. Peron's map.

Q All right, let's look at the east side pinchout first. What are the data, or the factors which you've used to locate that line, particularly as it crosses the southwest quarter of Section 1?

A I examined the porosity logs for all the wells within Section 1 and interpreted a porosity pinchout based on zero porosity of the Scott No. 2 Enstar Well, the V-P Pet Allen No. 1 Well, and the presence of porosity in the Scott No. 1 Enstar Well, and again the presence of porosity, although of less permeability, to the north in the Alexander and the Allen Wells.

Q As we look at the porosity pinchout and its relationship to the V-P Petroleum Allen Well and the Late Allen Well in Section 1, do you have an opinion as to whether it's reasonable to move that pinchout farther to the east than you've located it?

A I believe it could be moved farther to the east and still honor the data, but it's my interpretation that the line should be drawn as it is on my map.

Q And what do you base that on?

A I base that on a trend direction set up by honoring all the data within Section 1.

Q All right, let's look at the pinchout on

the east -- on the west side now. You say you and Mr. Peron are in a disagreement about that line.

Would you show us where the difference is between the two of you?

A Yes. I've shown that the -- I interpret that the Sohio No. 1 Huber Well is of much less porosity than what we find in the field and from there I interpret there would be a zero edge farther to the west, And I also draw that conclusion from similar Wolfcamp fields, that porosity is somewhat limited in a fairway of close to a mile or plus or minus that range of width.

Q Would you describe for us where and how you have determined the extent of the red shaded area, which is identified as the reservoir limit?

A I determined a reservoir limit bound on the east and on the west side by the porosity Isopach just described, and to the north side by the permeability barrier justified by the poor performance of the No. 1 Huber Well, No. 1 Alexander, and the No. 1 Allen Well.

I then also bounded the reservoir to the south by an oil/water contact, knowing that the No. 1 Sinclair Well in Section 1 does have porosity and is within a permeable, porous fairway for the Wolfcamp but is nonproductive because of water-filled porosities (not understood.)

Q Do you have an opinion, Mr. Brunner, with

regards to whether or not the reservoir, as you've defined it, constitutes a common source of supply within this Wolfcamp porosity?

A Yes. I believe the reservoir is a common source of supply.

Q Let me turn you now, sir, to Exhibit Number Two, which is your cross section.

Mr. Brunner, would you identify for us Exhibit Number Two?

A Exhibit Number Two is a well log cross section as drawn from west to east, from left to right, from the Sohio No. 1 Huber Well to the No. 1 Gilliam Well, this was drilled by Florida, to the Scott No. 1 Well, drilled by Enstar, and to the Scott No. 2 Enstar.

Q What's the purpose of this Exhibit, Mr. Brunner?

A This exhibit is in support of the Ispach map, also helping to explain the limits of the reservoir.

Q Have you examined the log information on each of the wells depicted on the cross section and satisfied yourself that they are true and accurate to the best of your knowledge?

A Yes, I have.

Q Have you drawn certain opinions and conclusions based upon your interpretation of this data?

A Yes, I have.

Q All right.

MR. KELLAHIN: We move the introduction of Exhibit Number Two.

MR. STAMETS: Without objection this exhibit will be admitted.

Q What conclusions do you draw with regards to the cross section, Mr. Brunner?

A I conclude that the porosity zones that are productive in both the Enstar No. 1 Scott Well and the Florida No. 1 Gilliam Well are correlatable and that they are occupying the stratigraphic level. My geologic interpretation would put them in communication. And that the field is bounded to the east and west by the dry holes on either end of the cross section.

Q Do you see any geologic evidence in your study, Mr. Brunner, that would cause you to believe that the pool ought to be developed on less than 80-acre spacing?

A No, I do not.

Q In what ways do you differ in interpretation or agree in interpretation of the cross section between you and Mr. Peron?

First of all, in what ways have you agreed?

A I agree with Mr. Peron's cross section in

that we have certain porosity zones in both producing wells that can be correlated and appear to be in communication.

Q Do you and Mr. Peron agree on the location of the oil/water contact, for example?

A I've not drawn an oil/water contact nor have I calculated on my cross section an oil/water contact, but I certainly agree with what Mr. Peron's presented today on his cross section.

Q Have you had an opportunity over the lunch hour to look at his cross section?

A Yes, I have.

Q When we look at the Gilliam No. 1 Well on his cross section versus the one on your cross section, is there a difference between you in terms of calculating the net feet of porosity in the two wells?

A Yes. On Mr. Peron's cross section he's colored in green where there are productive perforations and I believe that is more a gross feet of pay.

On my cross section I've used a 6 percent porosity cutoff, colored that in yellow, and have looked at more carefully a net feet of pay, and it's that net feet of pay on my cross section that I transformed those numbers onto the Isopach map overlaid on the structure.

Q Have you done a similar thing with the Scott No. 1 Well that's depicted on the cross sections?

A Yes, I have. I've used the same porosity cutoff and used that number in Isopaching the net feet of pay where again Mr. Peron's cross section has simply colored green the productive perforations and looked at more of a gross feet of pay.

Q Looking at the cross section, the correlation between the two producing wells, what do they tell you about whether or not these wells are producing from the same common source of supply?

A I believe that they are in communication and producing from the same common source of supply, yes.

Q Is there any structural relationship of significance between the two wells?

A Yes, I agree with Mr. Peron's structural cross section that the No. 1 Gilliam Well is lower structurally than the No. 1 Scott Well.

Q What is your position on behalf of your company, Mr. Brunner, with regards to the continuation of 80-acre spacing for this pool?

A It's Apache's position that we support 80-acre spacing for this pool, yes.

Q Do you have a position or an opinion with regards to the approval by the Commission of two nonstandard proration units, one for the Scott No. 1 Well and the other for the 40 acres out of the southwest quarter of Section 1?

A Yes. Apache is opposed for proration units of 40 acres in Section 1.

Q What's the reason for your opposition to that -- those two applications before the Commission, Mr. Brunner?

A I believe that those proration units would cause unnecessary wells to be drilled within a reservoir that can adequately be drained by the two existing wells and may also precipitate demand in Section 2 for a well to be drilled by Apache.

Q In comparing your study of the geology to Mr. Peron's, are there any other factors that you would draw the Commission's attention to in terms of significant differences or comparisons between the two?

A The structure map that I have drawn is obviously different shaped than Mr. Peron's and although I have not asked Mr. Peron, I believe his structure map was drawn solely on well data, that being those subsea depths calculated off of logs.

My structure map is somewhat different because I incorporated seismic data and have a, I believe, a more detailed structure.

The oil/water contact, therefore, that follows a structural contour, on his map is brought further to the south whereas I believe I would put my oil/water con-

tact not so far into Section 11, not so far to the southwest, having a more tightly closed structure on my map than -- than what Mr. Peron has.

Q Can you express any opinion as a geologist, Mr. Brunner, with regards to whether or not this is a partial water drive reservoir?

A Yes, I believe it is a partial water drive reservoir.

Q And what demonstrates that to you, sir?

A I believe that the No. 1 Sinclair Well is water wet and has porosity and permeability connected to the producing reservoir and also supported by engineering data that the pressure has been maintained although not to its original reservoir pressure, but to a certain extent.

MR. KELLAHIN: That concludes my examination of Mr. Brunner, Mr. Chairman.

MR. STAMETS: Are there questions of the witness?

Mr. Lopez.

MR. LOPEZ: If the Commission please.

CROSS EXAMINATION

BY MR. LOPEZ:

Q Mr. Brunner, isn't it true that Apache

Corporation was contacted some time in March, 1985, by an employee of Union Texas Petroleum who advised Apache that Union Texas was going to file an 80-acre spacing case and had retained an attorney for that purpose?

A Yes, that's true.

Q And when your company again talked to Union Texas Petroleum did they not suggest to you that Apache file the original application in Case 8595 because Union Texas had problems with other interest owners in the northwest quarter of the southwest qwarter of Section 1?

A Yes, I believe that is true.

MR. LOPEZ: That's all.

MR. STAMETS: Are there other questions of this witness?

He may be excused.

Do you have any other witnesses?

MR. KELLAHIN: No, sir, we'll rest our direct case at this time.

MR. STAMETS: Then it's your turn, Mr. Lopez.

MR. LOPEZ: Mr. Chairman, at this time on behalf of Mr. Scott, we hereby dismiss our appeal de novo in Case 8678 but continue our appearance and are prepared to present testimony in that case in opposition

to the establishment of a retroactive date.

In addition, we continue our appearance in opposition in Case Number 8793, which is the application of Union Texas for a nonstandard 40-acre spacing and proration unit.

We also -- well, I'll stop.

MR. STAMETS: Okay, let me understand what you've done, Mr. Lopez.

If I understand you correctly, your -- Mr. Scott now accepts 80-acre spacing as the proper spacing for this pool.

MR. LOPEZ: We do not object to it, that is correct.

MR. STAMETS: Okay. You do, though, wish to keep the de novo Case 8678 open from the standpoint of determining what the effective date of that 80-acre spacing will be, whether it should be June 1, as in the original order, or July the 12th as in the last order.

MR. LOPEZ: Correct. We are in opposition to the de novo taken taken by Union Texas to re-establish an upright spacing.

MR. STAMETS: All right, now was there another case?

MR. LOPEZ: The other case consolidated with this was Union Texas' Case 8793 and we con-

tinue our opposition to that case for the establishment of a nonstandard unit, and in that connection, we move to dismiss our Case No. 8794, which is our application for a nonstandard unit to apply to the southwest of the southwest of Section 1.

MR. STAMETS: Mr. Carr, as I think I understand this situation, I would think that Union Texas would wish to keep their -- their options open in Case 8793 for the 40-acre nonstandard unit -- based upon wlhat the final date is.

MR. CARR: That's correct.

MR. STAMETS: If the Commission should decide that the effective date for the 80-acre pool rules should be June 1 in the written order, then you would wish this case dismissed?

MR. CARR: yes, if it's June 1. If it's July 12th, we'll ask for a nonstandard unit effective as of that date.

We still have a de novo application in the prior case and we believe that entire case is still before you.

MR. STAMETS: And if the effective date should be July the 12th, Mr. Scott would still seek his nonstandard proration unit and unorthodox oil well location?

MR. LOPEZ: No, Mr. Chairman, at this time we are requesting that that case be dismissed.

MR. STAMETS: Okay, so the only issue that's before us now is what the effective date is going to be insofar as Case 8678.

MR. LOPEZ: Not really as far as Case 8793 is concerned because the Union Texas witness by his own admission says the only issue is the effective date in either case.

MR. STAMETS: I have a little bit of a problem on that, Mr. Lopez, just from the standpoint of, let's say, for example, the Commission did approve the July 12th date and did approve the 40-acre nonstandard proration for Union Texas, then that would leave Mr. Scott's acreage in the southwest quarter southwest quarter undrilled and with no well authorized.

MR. LOPEZ: That's correct.

MR. STAMETS: And that's what you would --

MR. LOPEZ: And we're prepared to face that.

MR. STAMETS: Okay, so at this point we can dismiss Case 8794.

MR. LOPEZ: Yes.

MR. STAMETS: Thank you.

MR. CARR: Mr. Stamets, just so we understand, we are still seeking a 40-acre unit, a non-standard unit, if the date is changed.

If the effective date stays July 12th, we're still seeking a 40-acre nonstandard unit, which would leave their 40 to do with it as they please.

MR. STAMETS: Right. I believe I understand all that. Thank you.

MR. KELLAHIN: Mr. Chairman, the case is going to go forward on the question of the effective date of the spacing for the pool, my client takes no position in that matter. We won't proceed beyond our participation at this point.

MR. STAMETS: Thank you, Mr. Kellahin.

MR. LOPEZ: We're prepared to call our first witness, Mr. Scott.

WILTON E. SCOTT,

being called as a witness and being duly sworn upon his oath, testified as follows, to-wit:

DIRECT EXAMINATION

BY MR. LOPEZ:

Q Would you please state your name and

where your reside?

A My name is Wilton E. Scott, and my residence is Houston, Texas.

Q Are you employed?

A No.

Q Would you for the Commission, for the benefit of the Commission briefly describe your educational background and work experience?

A Yes, and this has to be somewhat lengthy.

I was graduated from the University of Texas with a degree in geology in the year 1936.

I immediately went to work for what is now Exxon in some overseas assignments as a geologist.

I moved to Hobbs, New Mexico, in December, 1938, where I was employed as a geologist for Cities Service Oil Company.

I remained in that position or in that employment through the war with a stint out to go to the Army and after the war I took a job with Buffalo Oil Company as Vice President in charge of their exploration program.

I resided in Artesia.

In 1950 I moved to Midland in that same capacity.

In 1955 I moved to Houston in the capacity of Exploration Vice President for the then Tennessee

Gas Transmission Company, which is now Tenneco, Incorporated.

I remained with that company until my retirement in -- seven and a half years ago, which would be 1978, I guess.

I remained on the Board five years after that until 1983 at which time I resigned from the Board and from that time forward I am unemployed.

Q Did you hold any other positions with Tenneco other than Vice President of Exploration?

A Well, I don't think I can tell you all the titles I held in that company the thirty years I was associated with them, but I joined them as Vice President of Exploration. I became President of the oil company, Executive Vice President of the company, Vice Chairman of the Board, Chairman of the Board, President of the company, and was Chairman of the Board at the time I retired.

Q Are you --

A There may have been some other titles in there, I'm not sure.

Q Are you familiar with the applications that are in dispute before the Commission today?

A Yes, I am.

Q And what interest do you represent with respect to this dispute?

A I represent my own interest and that of my partner, Frank M. Late, who has a one-third interest in the all of the leases that I own, and also my wife and her two sisters, who own the minerals in Section 1 with the exception of one 80-acre tract.

MR. LOPEZ: I tender Mr. Scott as an expert manager in the oil and gas industry.

MR. STAMETS: The Commission is certainly distressed to hear that things are not going well for Mr. Scott but we do consider him qualified.

Q How did you get your interest in Section 1?

A My interest in Section 1 really goes far back because of my wife and her two sisters ownership of the minerals but more recently my interest as to this case particularly dates back to 1980 when I took commercial oil and gas leases from my wife and her family covering all of the minerals in Section 1 and covering 560 acres in that section and I also acquired at that time leases covering the northwest quarter and the north half of the southwest quarter of Section 2 -- 12, and the northeast quarter of Section 12, which adjoins those minerals to the south.

Q I believe you've already stated that Mr. Late is your partner in these leases. What did you two do with the leases after you acquired them?

A Soon after I acquired those leases I sold Mr. Late a one-third interest in them and the we jointly drilled the -- a Wolfcamp dry hole that was located in the northwest of the southwest of the southeast of Section 1.

Q What happened next?

A In December of 1982 we farmed out most of the acreage I've just described to Robert Edsel and his company in Dallas, Texas. That farmout requried the Edsels to drill a well at a location of their choice to a depth sufficient to test the Wolfcamp formation within ninety days of the date of that agreement.

It further required that they conduct a continuous drilling program on the leases with an anniversay of 120 days between the completion as a producer or the plugging as a dry hole and the starting of actual drilling operations on another well.

Late and I retained a one-sixteenth overriding royalty convertible to a one-eighth overriding royalty or a one-quarter working interest in each producer at the time of payout at our election.

Each well would provide its own payout time and anytime within the 120-day drilling commitment was not met all of the acreage not then included in a producing unit or proration unit would be reassigned to us.

Q I hand you what has been marked Scott's

Exhibit Number One and ask you if this is the farmout agreement you've just described?

A Yes, it is.

Q What did Edsel do with the farmout?

A Edsel sold interest in these leases to various companies and individuals including, among others, Enstar Petroleum Company of Midland, Texas, and in the -- in that amount of about 25 percent.

Enstar was elected operator for the group and in 1983 drilled a well near the center of the northwest of the southwest of Section 1.

The well was completed as a producer from the Wolfcamp formation at approximately 10,800 feet in July, 1983, and was placed on steady production September the 29th, 1983.

Reports were filed with the state requesting a 40-acre allowable and designating the northwest of the southwest as a proration unit.

Q Did the well pay out?

A It paid out in January, 1984, and Late and I both converted our overriding royalty interest to working interest.

Q Were any other wells drilled?

A Within the next few months an east offsets, a northeast offset, and north offset were drilled, all being plugged and abandoned as dry holes.

Q Did anything out of the ordinary occur with respect to the drilling of any of these wells?

A The No. 2 Scott was a dry hole and offsetting the discovery well to the east. Edsel and others took over the well and sidetracked it to the northwest where it was still a dry hole.

They then further sidetracked into the 40-acre unit north or into the southeast quarter of the northwest quarter of Section 1.

When they made this second sidetrack, they applied to the Commission for a nonstandard 80-acre proration unit and a compulsory pooling order. They notified me of these actions and I hired Ernest Padilla to represent me and prepared to appear at a hearing in Santa Fe to oppose both of those actions.

Q When was the last well under the farmout abandoned and what did you do as a result?

A The last well was --

Q Well, let me back up before we get to that.

Then you did object and your objection was known with respect to the application for a nonstandard unit and compulsory pooling of the 80 acres you just described.

What happened to the case?

A That's correct. I did make known my objection. The case was dismissed when the well was plugged as a dry hole.

Q Okay. Now would you tell me when the last well under the farmout was abandoned and what you did as a result?

A The last well under the farmout agreement was plugged in February, 1985, and I notified Jim Edsel, with whom I had negotiated the contract with originally, that unless another well was spudded by June 15th, 1985, we would be requesting reassignment of all leases not then included in a producing proration unit. All working interest owners were in agreement with this timetable. Accordingly, on June 19th -- and at that time Jim Edsel advised me that it was not their intent to do any further drilling under that agreement.

Accordingly, on June the 19th I requested of Jim Edsel that all of the farmout acreage with the exception of the northwest of the southwest of Section 1 be reassigned to Late and me.

He prepared the reassignment papers and sent them to all working interest owners requesting that they be signed and returned for delivery.

William Bahlberg, a working interest owner returned his signed reassignment directly to me in the

-- in July of 1985.

Q How did you find out that an order granting 80-acre spacing covering the west half of the southwest quarter of Section 1 had been issued?

A On approximately the 1st of August this Mr. William Bahlberg, who had returned his assignment to me, called my office in Houston and requested that I return his copy of the assignment. He explained that Jim Edsel had advised him that attorneys working for Edsel in discovery proceeding in the Union Texas offices in Midland had found a copy of an order of the OCD granting 80-acre spacing in the East Caudill Wolfcamp Field.

A few days later Jim Edsel confirmed their findings and advised all working interest owners to delay their reassignments until further information was available.

I contacted Ernest Padilla again, secured a copy of the order, and immediately requested to vacate the order, a hearing to vacate the order.

Q I hand you what has been marked Exhibit Number Two and ask you to identify that?

A That's the certified letter that I mailed to Jim Edsel or Robert Edsel in which I requested the reassignment of the acreage in question.

Q And although this letter is dated June

31st, I note the second page is dated June 19th, and this letter is actually the June 19th letter you sent --

A That is correct, yes.

Q Okay.

A Also, there's included a Mail-o-gram from William Bahlberg in which he requested that I return the re-assignment of interest that he had signed and mailed to me, which of course I did, and then there's also a letter from Jim Edsel to the working interest owners that states that by telegram dated July 17th we advised each of you that we were reviewing the issue of reassignment of the Scott-Late of certain acreage within the captioned prospect in light of our learning about the recent establishment of 80-acre pro-ration units and then he suggests that they hold up their reassignment until further information is available.

Q What --

A And the rest of it is just a list of those working interest owners.

Q What was your hurry in trying to vacate the order that was entered?

A Well, my urgency was prompted by several things.

Number one, I had anticipated getting a reassignment on the southwest of the southwest of Section 1 by July of 1985, and I made preliminary arrangements to

drill a well, with others, to be located in the northwest of the southwest of the southwest of Section 1.

Secondly, Late and I had a lease covering the northwest quarter and the north half of the southwest quarter of Section 12, 15 South, 36 East, that had expired March the 11th, 1984. In February, when the last well was plugged and Edsel advised me that they did not anticipate further drilling under their contract, we bought a one year extension to those leases in Section 12. We represented to the mineral owners, some sixteen of them, that we planned to drill a well in the unit north of them and if successful, we planned to drill a well on their acreage in the northwest of the northwest northwest of Section 12.

Number three, we knew that the No. 1 Scott and the No. 1 Gilliam Wells were already producing -- had already produced a lot of oil and we were naturally concerned about drainage.

Q Did you personally testify at the hearing on your application and if so, what was your testimony?

A A hearing was held in Santa Fe on August the 14th, at which time William McCoy and I both testified to the facts that I've just related.

I urged the Commission to rescind the order establishing 80-acre spacing because it was based on very poor and inaccurate information, that 40-acre spacing

had to that date given operators a good rate of return and that the field needed orderly development to the south where it did not have any limits on the productive acreage.

I stated that I was prepared to drill a well to the south on 40-acre spacing but to do so on 80's, which meant to jump over a half a mile, was far too risky and therefore I thought the south side of the field would never be explored under the outstanding order.

I also requested that the retroactive date of June 1 be deleted because no reason had been given for it and it had no bearing on contents of the order.

Q Did anyone else testify at the hearing?

A No one else testified. Union of Texas and Apache cross examined both McCoy and me but offered no evidence for the record in the July 14th hearing.

Q August 14.

A August 14, I beg your pardon. The OCD continued the hearing for two weeks to allow rebuttal. Again McCoy and I appeared and pleaded our case. Union of Texas and Apache both were represented but offered no evidence; however, they both made statements to support the 80-acre spacing on behalf of their clients.

Q What happened next?

A Order R-7983-B was issued on October 15th, 1985, rejecting my request for 40-acre spacing, af-

firming 80-acre spacing, and making the effective date of the order July 12th, 1985, which was the date of the -- the first order had been issued.

What happened next is why we're here today, I guess.

Q Why have you changed your position?

A I decided to support or at least comply with 80-acre spacing for the following reasons:

The two wells in this pool have continued to decline in oil production and increase in water production, with every increasing water production the likelihood of the southwest of the southwest of Section 1 being watered out by the time after appeals that I would be able to drill this 40-acre location; that that location would be badly damaged by the existing wells; and also, we cannot get more time on our lease covering the northwest quarter of Section 12, and it will expire before this case will be settled, and I could start drilling.

And also, we cannot get more time on our lease covering the northwest quarter of Section 12, and it will expire before this case will be settled and I could start drilling.

Q Do you have anything further to add in this case?

A I don't think so.

Q Were Exhibits One and Two copies of agreements and letters taken from your files?

A Yes, they were.

MR. LOPEZ: At this time I would offer Wilton Scott's Exhibits Numbers One and Two.

MR. STAMETS: Without objection these exhibits will be admitted.

I've one question. I'm not certain this whole --

MR. LOPEZ: That's Exhibit Three and we haven't gotten to that. We have a witness to testify to that.

MR. STAMETS: Okay. Are there questions of Mr. Scott?

MR. CARR: I've got just a couple of short questions.

CROSS EXAMINATION

BY MR. CARR:

Q Mr. Scott, if I understood your testimony, you said that you did not receive notice of the Commission Hearing when APC came forward and proposed the 80-acre spacing initially.

A That is correct.

Q Are you on the Division's mailing list for these dockets?

A No, I am not.

Q Are you aware that notice of these hearings is given in the newspaper?

A I'm really not familiar with that, no.

Q As to the farmout, Union Texas is not a party to that farmout agreement, is it?

A No. Edsel signed that contract and is the only other party with me.

Q So --

A They in turn sold interest in their farmout to various people, including --

Q Do you know who?

A Well, they're the non-operating -- the operating and the non-operating partners in the Scott No. 1 in various degrees and then when they drilled the second well I think Enstar dropped out and those partnerships changes somehow and I'm not really familiar with exactly who they are.

Q Do you know who the other interest owners are that took an interest to the Edsels in this --

A Yes, they're on one of these exhibits. Would you like for me to read them to you?

Q Would you, please?

A Robert M. Edsel, and I don't have the percentages that each of these owns; Robert M. Edsel; Indrex, Incorporated, of Tulsa, Oklahoma; Mr. Burr A. Silver,

Olympic Exploration and Production Company of Norman, Oklahoma; the Hughes Estate of Dallas, Texas; Union Texas Petroleum, or Entex; Mr. William C. Bahlberg of Dallas; Mr. Late, and myself.

Q Now, so I can understand what you're seeking here today, you're seeking 80-acre spacing with an effective date of July 12th, is that correct?

A That's correct.

Q And as a result of that, if that application is granted, your interest in the Scott No. 1 Well would be increased.

A That's correct, if the 80 acres dedicated would be the west half of the southwest quarter of Section 1.

Q And there would be a corresponding reduction in the interest of all those individuals whose names you've read.

A That is correct.

MR. CARR: I have nothing further.

CROSS EXAMINATION

BY MR. STAMETS:

Q Mr. Scott, I presume that you would be opposed to an order which affirmed the July 12 effective

date but which also granted Union Texas a 40-acre nonstandard proration unit.

A That is correct.

Q Such an order would have the same impact on your income from the Scott No. 1 Well as an order which would affirm a June 1 effective date for the 80-acre pool rules, is that correct?

A Yes, I think so.

MR. STAMETS: Are there other questions of this witness?

He may be excused.

MR. LOPEZ: We would now call Mr. Nutter.

DANIEL S. NUTTER,

being called as a witness and being duly sowrn upon his oath, testified as followa, to-wit:

DIRECT EXAMINATION

BY MR. LOPEZ:

Q Will you state your name and place of residence?

A My name is Dan Nutter and I live in Santa Fe, New Mexico.

Q What is your occupation?

A I'm a consulting petroleum engineer.

Q Have you been retained by Mr. Scott for the purpose of this hearing today?

A Yes, I have.

Q Are you familiar with the cases on the docket today as they relate to the Northeat Caudill-Wolfcamp Pool?

A I am.

Q Would you describe your educational background?

A I have a Bachelor of Science degree in petroleum engineering from New Mexico Institute of Technology in Socorro, which obtained in 1952.

Q And what is your professional experience?

A After graduation I was employed by the Phillips Petroleum Company as a Staff Petroleum Engineer and I came to the New Mexico Oil Conservation Commission on September the 1st of 1954.

Q So you've worked for the New Mexico Oil Conservation Commission and the Oil Conservation Division for a period of how many years, approximately?

A I worked for them for approximately twenty-eight years and retired on December the 31st of 1982.

Q And what -- during that period of time what position did you hold on the Commission staff?

A I was employed originally as a Staff Petroleum Engineer in 1954, as I said.

In 1957 I became the Chief Petroleum Engineer for the Commission and I was also an Examiner for the Commission. I held those until my retirement.

Q And in the course of your duties did you have occasion to write proposed orders for the Commission?

A I did.

Q And were you ever called on to interpret those orders and directives of the Commission for members of the industry?

A Yes, sir, I was.

Q How about the Oil and Gas Conservation statutes? Were you ever called upon to interpret these, also?

A Yes, I was.

Q Are you licensed by the State of New Mexico to practice as a professional engineer?

A I am.

Q Now, since you've retired from this employment of the State of New Mexico some three years ago, you have been practicing as a petroluem engineer and petroleum consultant, is that right?

A That is correct.

Q And you're still interpreting the rules

and orders and directives and maybe the -- for your clients, and advising them?

A Yes, I am.

Q Do you also interpret statutes?

A If there's no lawyers around, I do.

MR. LOPEZ: Mr. Chairman, I would like to tender Mr. Nutter as an expert in the field of oil and gas conservation and regulations and petroleum engineering.

MR. STAMETS: Certainly the witness is considered qualified in that area.

I might point out that perhaps Mr. Nutter's interpretation of the rules may not carry quite the weight it used to.

Q Were you present today and did you hear the testimony and see the exhibits presented by the Union Texas Petroleum witnesses?

A Yes, I was present and I did hear the testimony and see the exhibits.

Q What is your opinion of their case?

A I think they put on a pretty fair 80-acre spacing case, particularly for temporary rules.

Q You also heard Mr. Scott's testimony, did you not?

A Yes, I did.

Q In your opinion as a petroleum engineer and as an expert in oil and gas conservation regulations, have Mr. Scott's correlative rights in the Northeast Caudell-Wolfcamp Pool been impaired?

A I believe that his rights have been impaired.

Q Why do you believe that and how do you arrive at this conclusion?

A First, let's look at the Commission's definition of correlative rights. It's taken directly from the statute.

Correlative rights shall mean the opportunity afforded as far as it is practical to do so to the owner of each property in a pool to produce without waste his fair share of the oil or gas, or both, in the pool and to use his fair share of the reservoir energy.

Now, Mr. Scott owns a share of the northwest quarter of the southwest quarter of Section 1, where the Scott No. 1 Well is. He's getting his share there.

However, Mr. Scott owned the southwest quarter of the southwest quarter of Section 1 after June the 15th of 1985 if no well was on it or if it was not dedicated to a well. Neither of these requirements was met on June the 15th, however, so the farmout expired and the lease had

to revert to Mr. Scott under its own terms.

Mr. Scott had proposed to drill a well in the southwest quarter southwest quarter of Section 1, but this series of hearings and the accompanying delays have made that prospect less attractive at this point in time.

Meanwhile, as Union Texas has testified, wells are draining 80 acres and a large part of that oil is coming from the southwest quarter of the southwest quarter and since Union Texas, the operator of the well persists in denying that Mr. Scott is or has been since June the 15th the owner of the southwest quarter southwest quarter, they're denying him his right to the oil under the tract or coming from under the tract.

That, in my mind, has impaired Mr. Scott's correlative rights.

Q Is it not also true that often it is the case that when a spacing and proration unit is made larger there is often required a readjustment of mineral ownership in a producing well?

A Oh, sure, any time that you have spacing units that are expanded into larger than the incremental 40-acre tracts that normally are dedicated, there's an opportunity to go into leases that were not originally under dedication, and you will have a change in ownership or a change in the dedicated royalty or working interest, or over-

rides, even, when you change spacing in wells. That's a common thing.

Q Now, Mr. Nutter, you mentioned that the farmout expired on June 15th unless the southwest quarter of the southwest quarter had a well on it or unless it was dedicated to a well, but these requirements were not met; therefore the farmout expired and the land reverted to Mr. Scott.

Why do you think those requriements were not met?

A Okay. In the first place, it's obvious that no well was on the southwest quarter southwest quarter of Section 1 on June 15th.

That leaves only the question of whether the land is dedicated to a well. The only producing well in Section 1, the Scott No. 1 in the northwest quarter of the southwest quarter, when the Division entered its order on July the 12th, 1985, approving 80-acre spacing for the Northeast Caudill-Wolfcamp Pool, they made the order retroactive to June the 1st of 1985. Let's leave that point aside for a moment.

The order in declaratory paragraph No. 4 states that existing wells in a pool shall have dedicated thereto 80 acres in accordance with Paragraph (a) of Section 70-2-18 NMSA 1978; or in accordance with Paragraph (d) of

Section 170-2-18, may have nonstandard spacing or proration units established by the Division and dedicated thereto.

It goes on to say, and I'm quoting word for word directly from the second paragraph of declaratory paragraph No. 4, quote:

Failure to file new Forms C-102 with the Division dedicating 80 acres to a well, or to obtain a nonstandard unit approved by the Division within sixty days from the date of this order, shall subject the well to cancellation of allowable until said Form C-102 has been filed or until a nonstandard unit has been approved and subject to said sixty day limitation, each well presently drilling to or completed in the Northeast Caudill-Wolfcamp Pool or in the Wolfcamp formation within one mile thereof, shall receive no more than one-half of a standard allowable for the pool. Unquote.

When the Division or the Commission enter an order increasing the size of the proration unit in a pool that order in itself does not increase any acreage dedication. It only makes it possible for the operator to do that.

The Division is saying, all right, this pool has been 40-acre spacing but now you have two options. You can either file a new plat dedicating 80 acres and we'll accept it, or you can apply for a nonstandard proration unit

and get it approved. Then we'll give you an allowable in the same proportion to the allowable for an 80-acre unit that the acreage in your unit bears to the acreage in a standard sized unit of 80 acres.

But then they include the caveat that if you don't do one or the other ot these two things within sixty days, you get no allowable at all.

The presumption has got to be that your original 40 acres was dedicated and continues to be dedicated and no other lands are dedicated to the well until the plat is filed.

The privilege of dedicating 80 acres is there immediately when the order becomes effective but the Division has no means of even knowing what is going to be dedicated until the plat is filed.

Q When was an 80-acre plat filed for the Scott No. 1 Well?

A The new Forms C-102 were filed with the Hobbs Office of the Division on September 11th, 1985. That means that the northwest quarter of the southwest quarter of Section 1, and only the northwest quarter of the southwest quarter, was dedicated to the well from the effective date of the order on June the 1st until September the 11th.

Q But you contend that there was only 40 acres dedicated to the well on June 15th.

A I contend there was only 40 acres dedicated to the well on June 15th, because no plat had been filed.

I do -- I do not believe any rule of the Division could be clearer than the rule that says the well will continue to receive only a 40-acre allowable until a new plat is filed.

As I said before, it's up to the operator to file his new 80-acre plat. The Division can't do it for him, and no 80-acre plats were filed on June the 15th.

Q What about orders being made retroactively when you were with the Division? Did you ever recommend retroactive orders?

A Oh, sure. There are times when retroactive orders are justified and should be issued.

Q I'll hand you now what has been marked as Scott Exhibit Number Three and ask you to explain what it is.

A I wanted to see what the frequency of retroactive orders has been over the last several years, particularly on a poolwide basis.

So I took the R. W. Byrum book, Section 2, what he calls Field Rules, and looked for orders issued over the last twelve years from 19 -- through 19-- from 1974 through October of 1985.

Knowing that special allowables and special GOR's always seem to have a sense of urgency connected with them, I found 29 special allowable or special GOR orders in that time span. They are listed on Exhibit Three. Those orders which express the urgency of the situation and are backdated, I'm going to use the word "backdate" for retroactive, the order wasn't actually backdated, but the ones that express the urgency of the situation and were backdated are indicated by an asterisk next to the effective date column.

Now the last thing in the world that I'd want to swear to is that this list is complete, but I tried. I found, as I said, 29 orders of this type and 15, or 52 percent, effective retroactively.

Q What about spacing orders? Did you research these also?

A I did.

Q I hand you now what's been marked Exhibit Number Four and ask you to explain it.

A All right. Exhibit Number Four is a list of the orders I came across in the same source for the same time period for the orders relating to spacing and pool boundary effects on spacing.

There are 80 orders listed on Exhibit Number Four.

Q And how many of those are retroactive to a date prior to signing?

A Of the 80 orders which I found and listed only 8 -- only 7, or 8-3/4 percent were retroactive. Of these one was retroactive by one day. It was entered on March the 2nd and effective March the 1st.

The range of retroactivity was from one day to 5 months and 9 days. The actual retroactivity of those seven orders is one day, 13, 14, 16, 42, 45 days and 5 months and 9 days.

The order which was entered in the -- in Case Number 8595 for the Norheast Caudill-Wolfcamp spacing case, entered on July the 12th and made retroactive to June the 1st. This meant backing up 42 days.

I have not had a chance to research the records to find out if specific requests were made for these orders to be made retroactive or not, but I would imagin that some of them were probably requested at the hearing, and I am certain that there must have been a certain amount of justification in backdating some of these orders.

Q What would the main reasons be for the backdating of orders?

A I think there are probably three circumstances that would probably be the cause for 99 percent of retroactive orders.

One, the operator doesn't notice until the last minute that some situation is building up to his detriment on his leases, has to hurry in with a case as quickly as possible, wants an order expedited or even made retroactive.

Examples of this are gas/oil ratios suddenly shooting up and wells subject to shut-in because of excessive gas production; or lease expiring which can be saved if he can show a wider spacing pattern and dedicate some more acreage.

In these types of cases the request for a retroactive order should always be made at the hearing and be made part of the record.

Two, the operator needs to submit additional information to the Examiner after the hearing, and this throws the hearing, decision, and order schedule off track. So to try to smooth the case schedule out and put it back on schedule, so to speak, the order might be made effective approximately at the time it would have been made effective had there not been any delay.

Three, because allowables are calculated daily but records are kept on a monthly basis, it's always more convenient to have orders that are going to change allowables, have those orders effective on the first day of the month. The normal procedure, of course, is to make such

orders effective the first day of the month following the month in which the order is entered, but sometimes it streamlines things and avoids delays by backing up to the first day of the month in which the order is entered.

Q How about the situation where a lease is expiring and an order increasing the dedication to hold the lease would be considered? What kind of time frame should the operator look at in that case?

A Well, he would have to have his application for hearing in the Division's hands a minimum of 23 days and if the Division had just advertised the hearing and he had to wait for the next one, a minimum of approximately 37 days before the case could even come on for hearing.

Sometimes the transcripts take as long as three to four weeks, depending on the reporter's case load. Then, if there are any complications which must be mulled oer and discussed among the staff, another indeterminate period could result.

I would imagine that if someone were going to try to hold a valuable property by that means, he would be most prudent if he made the application timely enough so that he could allow at least six weeks or more after the hearing to get an order. That's a minimum for any kind of complicated case that requires the examiner to wait for the transcript and do a good job after he gets it, in my

opinion.

Sometimes it even takes longer than that.

Q Have you calculated the date according to your timetable that an order would have issued in Case Number 8595 when the hearing date was held on May 8th?

A Yeah, according to that timetable the earliest that an order could have come out would have been the third week in June.

Q Which would have been after the June 15th anniversary date.

A I believe it would.

Q Is it -- in your opinion will the approval of the case as it now stands in Case Number 8678 and the denial of Union Texas' application in Case Number 8793 for a nonstandard 40-acre spacing unit be in the interest of prevention of waste and protection of correlative rights?

A It certainly won't cause waste and I think it will protect correlative rights.

Q Were Exhibits Three and Four prepared by you?

A They were.

MR. LOPEZ: At this time I would like to offer Scott's Exhibits Three and Four.

MR. STAMETS: Without objection these exhibits will be admitted.

Are there questions of the witness?

MR. CARR: I have just one question; maybe two.

CROSS EXAMINATION

BY MR. CARR:

Q Mr. Nutter, you testified that you're an expert on the rules covering the Oil Conservation Division and interpret those for your clients from time to time.

A Yes, sir.

Q It's my understanding that you also interpreted those for us here today stating that often units are enlarged and that affects a change in ownership.

A Yes.

Q Have you been called upon to give an opinion as to whether or not any of those ownerships affect a retroactive adjustment for the proceeds for the prior production from that unit?

A I don't know how that works but sometimes -- you may get into forced pooling cases or you may have any kind of a negotiated thing if it's voluntary. I don't know how it would even handle on a compulsory pooling case.

Q If there's an order changing a spacing and proration unit and enlarging it, thereby bringing in ad-

ditional interests, are you aware of any provision in our statutes which prescribe whether or not there are retroactive adjustments?

A I don't think of any right offhand.

Q Are you familiar with Section 70-2-18 which is part of the Oil and Gas Act, which reads, I'm going to just read it to you.

A Okay.

Q Any Division order that increases the size of a standard spacing and proration unit for a pool or extends the boundaries of such a pool, shall require dedication of acreage to existing wells in the pool in accordance with the acreage dedication requirements for said pool, and all interests in the spacing and proration units that are dedicated to the affected wells shall share in production from the effective date of said order.

Are you aware of that rule?

A Not specifically in terms that you'v couched it in there.

MR. CARR: That's all.

CROSS EXAMINATION

BY MR. STAMETS:

Q Mr. Nutter, looking at the date that an applicant might consider having an order, I just looked here

at your Exhibit Number Four at 1983, 1984, well, for example, 1983, it looks like we had one, two, three, four, five, six orders for special pool rules and of the six, five were entered within a month or less of the date of the hearing.

A Okay. You're talking about 1983?

Q Yes.

A Okay. You'll notice that one of those is to rescind 80-acre spacing, so that would be relatively simple. If no one appeared, that would be an order where they would show cause why the pool rules should remain in effect, and if no one shows up it's an automatic thing, just issued the order and rescind the pool rules.

All right, then there are two reclassified as an associated pool and oftentimes those result from high GOR's building up and you suddenly become aware that there are gas wells in that pool, and those might more properly have been on Exhibit Number Three rather than on Exhibit Number Four, but cases like that often are fairly well cut and dried and the issuance of an order is easy in a case like that, where you wouldn't even have to wait for a transcript if that would be legal to do.

Q Looking at 1984 I see about 7 cases, 3 of which it appears as though an order has come out within 30 days.

A Yeah, some of those were pretty timely.

I think most of the time the Division is rather timely in getting its orders out.

Sometimes we've seen orders that have even backed up to -- I think if you'll look on the -- on the one for the gas/oil ratios you'll see orders that are backed up way prior to the date of the hearing on those.

So there's no, certainly no delay resulting from -- the order being made retroactive is certainly not any delay on the part of the Commission or Division in entering an order.

MR. STAMETS: Mr. Carr, how did you pronounce your first witness' name?

MR. CARR: Priebe, not Prevy. (sic)

MR. STAMETS: Priebe, all right.

Q Were you hear when Mr. Priebe testified?

A He was your explanatory witness at the very beginning? Yes.

Q Mr. Priebe said that he thought that the owners, the original owners, the people that filed the application, that their correlative rights would be violated if we did not make this -- the pool rules retroactive at least to before June the 15th, because they -- they paid for the drilling of the well. The well was draining acreage

that they owned or had authority over at the time of the filing of the application.

Now, just not for a moment considering whether or not they asked for a date before June the 15th of the original hearing, just dealing with that in a vacuum, is that a reasonable argument?

A I don't know. Spacing cases shouldn't be called to protect correlative rights, I don't think, and that about sounds like what they would be doing there, and then they called the spacing case and then they claim that if the order is entered in the manner that they would have gotten the order by the timely processing of the order, I think they filed their application too late is what really happened and they ran into the problem themselves. I think they're trying to bail themselves out of a bad situation --

Q Well, I understand your view.

A Uh-huh.

Q But dealing with Mr. Priebe's concept, just, you know, without any expiration dates, without this argument we've been through here today, is that a reasonable argument?

A What?

Q That --

A It has to -- that they have to have the order to protect their own correlative rights --

Q Yes.

A -- and to keep Mr. Scott from having his rights protected?

Q If you consider that at the time they filed the application all of the acreage in question on the 80 acres that they would propose to dedicate to the well, that they were in control of all that acreage and all of that acreage was being drained, is his argument that that 80-acre spacing is necessary to protect his correlative rights, is that a reasonable argument?

A It's -- it's not reasonable for him to say that the date of the order is preventing him from protecting his correlative rights because the protection of the correlative rights is -- is a matter for the Commission to give these people the opportunity.

Now they had the opportunity to bring their spacing case in. The well had produced 85 percent of the oil that it's going to ever produce --

Q I appreciate --

A -- before they ever brought the spacing case in.

Q I appreciate your elaboration, but you're still not answering the base question which I asked.

A Well, I think it's reasonable for them to want to protect their correlative rights, but I think it's

reasonable for Mr. Scott to want to protect his, too.

Q So the argument that they've made is a reasonable argument in -- in the abstract.

A It is from their point of view, certainly.

Q That may be the best answer I'm going to get for this question at this time.

But your argument then goes on to say that the course of events took over and this did not come about and because of the agreement, the farmout, that in fact the time in which this could have happened expired, and therefore the acreage did go back to Mr. Scott, and now to go back and change the date retroactive -- make a date retroactive into June, into the first fifteen days of June, would now violate Mr. Scott's correlative rights.

A Yes, because he's been -- he's been prevented by circumstances from developing the 40-acre tract to the south. He -- he wants to be precluded from sharing in the production from the well to the north and there's just no provision for protecting Mr. Scott's correlative rights anywhere that I can see.

Q Mr. Nutter, did you read the transcripts in the first cases?

A Oh, yes.

Q To your knowledge did anybody in there

testify as to need for an effective date for that order prior to June 15th?

A No, there was no mention whatsoever of any need for a retroactive order or anything.

The only thing that I can recall right off the top of the my head is that one fo the witnesses that was here today testifying for APC was asked if this would violate anybody's correlative rights and he said no, it wouldn't.

MR. STAMETS: Are there other questions of Mr. Nutter?

MR. CARR: Just one.

RECROSS EXAMINATION

BY MR. CARR:

Q Mr. Nutter, I understand from your testimony about effective dates of Commission orders that there were some types of cases that seem to get a faster track in terms of getting an order out and also the simpler cases seem to get --

A Oh, sure, yeah.

Q -- often faster treatment.

This was an unopposed case for 80-acre spacing that APC brought, was it not?

A Yes, sir, because Mr. Scott wasn't aware

of the case and wasn't here to oppose it.

Q But you don't say that notice wasn't given in accordance with Division rules, do you?

A I haven't checked the advertisement.

Q You don't know, then, do you?

A I don't know whether -- I presume that there was a legitimate notice given.

Q And Mr. Scott missed it, did he not?

A Well, he sure didn't --

Q Well, he missed it.

A I tell you, Mr. Carr, what had happened, he was watching for an application by Union Texas and APC filed the application, and they asked for creation of a new pool and he thought that it was going to be the adoption of special pool rules for an existing pool. And the application was for creation of a new pool.

It was actually a very well hidden application, and Mr. Scott might have seen it had he -- had it not been so well hidden.

Q Do you know if Mr. Scott had read a description of the property?

A I don't know if the notice even gave the description of the property.

Q Do you have any reason to believe it did not?

A I'd have to check it before I could say.

Q Thank you.

MR. STAMETS: Are there other questions of this witness?

He may be excused.

Is there any additional testimony in this case?

MR. LOPEZ: No, Mr. Chairman, but I would like to request the Commission take administrative notice of the record in Case Number 8595 and of the record in Case Number 8678 to the extent, and only to the extent that it will demonstrate that at neither hearing was there any -- ever any request or any evidence presented to justify a retroactive date of June 1st.

MR. CARR: Mr. Stamets, we don't object to your taking notice of prior hearings as long as when you take notice of them you take notice of the entire transcript of those hearings, not just specific argument.

We would request that you take notice of the entire proceeding in each of those cases.

MR. LOPEZ: We have no objection to that and would agree with Mr. Carr so long as the Commission is now well advised that Mr. Scott has withdrawn his objection to 80-acre spacing and therefore with respect

to the transcript of the second hearing withdraws his testimony with respect to --

MR. CARR: I think it's highly irregular, Mr. Stamets, to months later start withdrawing parts of testimony. I think the records stand right where they are. Mr. Lopez -- Mr. Lopez has (not understood) from his claim that the pool should be developed on 40, that's apparent from the record and that should be incorporated.

MR. LOPEZ: What was that last?

MR. CARR: That you have now withdrawn your 40-acre and that's clear from the record and the record should stand.

MR. LOPEZ: Well, I have no objection so long as the Commission takes notice.

MR. STAMETS: We will take note of the records in those two cases, I believe 8595 and 8658.

MR. LOPEZ: 8678.

MR. STAMETS: 8678, thank you.

Are there going to be any closing arguments in this case?

MR. LOPEZ: Yes, sir.

MR. CARR: Yes, sir.

MR. STAMETS: I certainly hope that they are very brief.

MR. LOPEZ: I wish I could be

so accommodating, but I won't.

I'll be as quick as I can.

MR. STAMETS: Mr. Carr, I believe I'm going to let you go first, since --

MR. CARR: Well, Mr. Stamets, I was earlier cited by Mr. Lopez as an authority on procedure here stating that the moving party bore the burden of proof and would go first.

I would like to again cite myself as an authority and remind the Division that I have assumed the role of moving party at Mr. Lopez' request and suggestion and as such I have the right to close last and I'll close last.

MR. STAMETS: Mr. Carr, you are absolutely right.

MR. LOPEZ: And I certainly have no objection. If Mr. Carr had asked me, I'd have been glad to go first.

MR. STAMETS: Please proceed with all due haste.

MR. LOPEZ: By farmout agreement dated December 6, 1982, Wilton Scott farmed out to Robert Edsel the southwest quarter of Section 1, Township 15 South, Range 36 East in Lea County.

Union Texas Petroleum Corpora-

tion is a successor in interest to Edsel of rights under the farmout.

The farmout mandated a continuous drilling program and required the farmoutee (sic) to reassign all acreage not contained within a producing proration or spacing unit if the continuous drilling obligation was not satisfied.

In July, 1983, the Scott No. 1 well was completed by Enstar Petroleum as a producer in the Wolfcamp formation in the northwest quarter of the southwest quarter of Section 1.

In 1984 APC Operating Partnership completed the Gilliam No. 1 Well as a producer in the Wolfcamp formation, located in the northeast quarter southeast quarter of Section 2.

In April, 1985, APC applied to the Oil Conservation Division in Case No. 8595 for pool creation and special pool rules, including 80-acre spacing, for the Wolfcamp formation underlying portions of Sections 1 and 2.

On July 12th, 1985, the OCD promulgated its Order R-7983, denying pool creation but granting temporary 80-acre spacing.

Although Order No. R-7983 was dated July 12, 1985, it was made effective retroactive to

June 1st, 1985. A retroactive effective date was neither requested in the application nor was evidence presented at the hearing in support of a retroactive effective date.

Scott did not receive notice of Case Number 8595 and did not learn of the matter until after Order Number R-7983 was entered.

Under the farmout agreement Scott was entitled to a reassignment of the southest quarter southwest quarter of Section 1 if no well was commenced on that 40 acres or that 40 acres was not assigned to a spacing unit on or before June 15th, 1985.

A well was never commenced on the southwest quarter of the southwest quarter of Section 1 on or before June 15th, and it was not assigned to an 80-acre unit until Form C-102 was filed by Union Texas on September 11th, 1985.

On June 19th, 1985, Scott requested a reassignment of said southwest quarter of the southwest quarter from Edsel. His request was denied for the reason that the southwest quarter of the southwest quarter was included in a spacing unit as of June 1 effective date in Order Number R-7983, and thus reassignment was not required.

Union Texas has also refused to reassign the southwest quarter of the southwest to Scott.

Scott then filed Case Number 8678 to vacate Order Number R-7983, claiming deficient notice of the hearing and that 80-acre spacing was improper. All interested parties were given written notice of this case.

After a hearing the OCD entered Order Numbr R-7983, which retained temporaty 80-acre spacing but which changed the order's effective date to July 12th, because no evidence was presented to support a retroactive date.

Union Texas appealed this order de novo, as did Scott. Union Texas requests that Order R-7983 be reinstated; Scott has dismissed his appeal and now supports 80-acre spacing but contends that the effective date should remain July 12th, 1985, because the June 1st retroactive effective date of Order Number R-7983 is improper as a matter of law and fact.

It is undisputed that the Commission has the authority to fix the spacing of wells. NM Statute Annotated, Section 70-2-12(B) (10) so provides; however, any order or rules fixing the spacing of wells, including a provision for retroactive effect, must be based upon the prevention of waste, the protection of correlative rights, and the preventing of the drilling of unnecessary wells. See NM Statute Annotated, Section 70-2-11; also Con-

tinental Oil Company versus Oil Conservation Commission, 70 NM 310, 1962; and Manufacturers National Bank versus Director of Department of Natural Resources, 362 NW 2d 572 (1984).

A retroactive provision in the subject spacing order serves none of these purposes.

Retroactivity will not present waste, because as the case now stands all the recoverable hydrocarbons under the west half of the southwest quarter of Section 1 have been and will be produced from the Scott No. 1 Well, the only well drilled on the 80-acre spacing unit, regardless of the effective date of the spacing rules.

In short, the ultimate recovery of hydrocarbons from the spacing unit is not affected by the effective date of the spacing order. Again see NM Statute Annotated, Section 70-2-3(A).

For the same reason retroactivity will not prevent the drilling of unnecessary wells. There is one well on the unit and no other wells will be drilled.

The only question remaining, then, is whether retroactivity will protect correlative rights. If the July 12th, 1985 effective date of the order is retained, Scott will be entitle dto an increased share of production from the Scott No. 1 Well. This is because on

June 15th, 1985, the entire working interest in the southwest quarter of the southwst quarter of Section 1 reverted to Scott. The rights of all othe working interest owners in that 40-acres was terminated under the terms of the farmout.

Union Texas claims that such result ot be improper because the dilution of the interest of other working interest owners in the Scott No. 1 Well would violate correlative rights, and not only is that their position in the case today, as well as in the applications of Union Texas for a hearing de novo and for a nonstandard unit.

Each time the Commission creates special pool rules, which increase the size of spacing and proration units, there is often an adjustment of participation by interest owners in the expanded unit. This dilution of interests is not related to correlative rights. See, for example, Ward versus Corporation Commission 501 P. 2d 503 (Oklahoma 1972), wherein the spacing increased from 160 to 640 acres and Tenneco's interest in the well production increased from zero to 55 percent; also see Desormeaux versus Inexco Oil Company, 298 So. 2d 897, where a writ was denied in the subject case.

Correlative rights are defined as the opportunity of an interest owner to produce without waste his proportionate share of hydrocarbons in a pool un-

derlying his property. Rule 1, Oil Conservation Division Rules and Regulations; see also Baumgartner versus Gulf Oil Corporation, 168 NW 2d 510 (1969).

The basis for Union Texas' argument does not truly concern the disproportionate taking of hydrocarbons from a common source of supply as it claims. Interest owners under the northwest quarter of the southwest quarter will still recover their equitable share of hydrocarbons.

Rather the basis is that Union Texas' share of production will be diluted and that it will lose its interest in the southwest quarter of the southwest quarter of Section 1 under the terms of the farmout agreement.

That is not a valid reason for the Commission to make the spacing order retroactive, because it has no direct relationship to correlative rights. It is a matter of solely private contractual rights.

The Commission cannot enter an order whose sole purpose is to alter private contractual rights.

It has been stated, quote:

Each mineral interest owner has the right:

A. To have the basic nature of its

> contractual rights with other persons remain undisturbed except insofar as abrogation is absolutely necessary to effect accomplishment of the conservation objective.

This is taken from Harris in 11 Oklahoma Law Review, 125, 130 (1958) in an article entitled "Modification of Corporation Commission Orders Pertaining to a Common Source of Supply".

Also, in Accord, Cabot Carbon Company versus Phillips Petroleum Company, 287 P 2d 675 (Oklahoma 1955), where it was held that the Corporation Commission can assure that each owner receives a share of the common reservoir produce to which he is entitled by his contract or conveyance.

In the present case the only effect of whether the spacing order has an effective date of June 1st or July 12th is whether Scott is entitled to an increased share of production under the farmout. The only issue then is the determination of mineral ownership pursuant to the farmout agreement, and does not relate in any way to the accomplishment of any valid conservation objectives.

Next, if the equities do not favor the parties seeking retroactivity an order should not be made retroactive.

Union Texas requests the effective date of spacing to be made retroactive to June 1st.

Union Texas argues that timely application for 80-acre spacing was made by APC in April, 1985; that a hearing was held May 8th, 1985; and if the OCD had not been dilatory, an order would have issued before June 15, adn the issue of retroactivity would be moot.

The argument continues that the only way for the Commission to remedy the harm caused by the OCD is by entering an order with a retroactive date.

Administraative rules cannot be made retroactive if the equities do not favor the party requesting the retroactive relief. See Application of Farmers Irrigation District, 187 Neb -- no, forget that -- 194 NW 2d 788 (1972); Tennessee Gas Pipeline Company versus FERC, 606 Fed 2d 1094 (1979). The original hearing in Case Number 8595 proceeded without constitutionally sufficient notice to Scott. Union Texas Petroleum versus Corporation Commission, 651 P 2d 652 (Oklahoma 1981).

In fact, APC admits that Union Texas requested APC to bring Case Number 8595 to avoid problems Union Texas had with interest owners in the west half of the southwest quarter of Seciton 1 by their own testimony here today.

Thus the order in that case is

void as against Scott. See Louthan v Amoco Production Company, 652 P 2d 308, and no order should have been effective against Scott until his right to be heard was respected.

In addition to the lack of notice of Case Number 8595, Scott was led to believe that none of the partners to the farmout were going to drill the southwest quarter of the southwest quarter of Section 1 by June 15th, 1985.

When June 15th passed Scott exercised his rights under the farmout and requested reassignment of his acreage.

Mr.Bahlberg, a working interest owner, did not -- did actually reassign his interest. It was this same Mr. Bahlberg who learned that Order R-7983 was entered July 12th and first made Scott aware of this fact, and requested that his reassignment be returned.

Immediately after receiving this information, Scott applied to vacate Order R-7983. He could not take an appeal de novo, not having been a party to the original suit.

MR. STAMETS: Mr. Lopez, how many more pages do you have to this?

MR. LOPEZ: Three. Four. Five.

MR. STAMETS: It seems to me that you're simply repeating most of the testimony that

we've heard here today and I can see no reason to go on with a closing statement that you could submit and that we can read at our leisure.

MR. LOPEZ: I'm glad to do that, Mr. Stamets, but I want to -- to have this closing statement incorporated into the record.

MR. STAMETS: I have no problem having it incorporated into the record and I can assure you that Mr. Kelley and I will both read it --

MR. LOPEZ: Well --

MR. STAMETS: -- but I just feel that fifteen minutes is sufficient for closing statement --

MR. LOPEZ: Okay.

MR. STAMETS: -- in this case and I don't see any need of going on with a recital of what we've been listening to the last five hours.

MR. LOPEZ: Well, I don't want to try the patience of the Commission and on the basis of this assurance that this -- this closing statement I have prepared, which I will submit as a brief, that it will be incorporated as part of the record in the case. I will close with the statement that I believe our position is clear and it is well justified and it is hard to (not understood).

MR. STAMETS: Thank you, and we

certainly appreciate your brevity.

REPORTER'S NOTE: At this time Mr. Lopez' oral presentation of his closing statement, or brief, was terminated adn the remainder is incorporated in the record of this hearing in written form.

MR. STAMETS: Mr. Carr?

MR. CARR: Mr. Stamets, I would request permission to file a post-hearing memorandum of authority and would request ten days to do that.

If Mr. Lopez is going to file his brief that he was reading, I would like an opportunity to file at the conclusion of the record also a post-hearing memorandum.

MR. STAMETS: Again we would appreciate that.

MR. CARR: And then I would also like to give a brief, and I will keep it brief, closing statement.

MR. STAMETS: Yes, that's fine, and in addition, I'm sure that we would like to see a recommended order from both sides in this case.

MR. CARR: I think it's important that I initially correct one thing that has been mis-

stated by Mr. Lopez.

Union Texas Petroleum Corporation is not an interest owner in the Scott No. 1 Well. They are the operator through a contract. They operate that well.

They're not in a position to reassign anything to anybody. They operate this property for other interest owners.

You have before you today a de novo hearing. It doesn't make any difference that Mr. Scott has backed off of his de novo application. The case is before you de novo, anew, and what you're looking at is whether or not 80-acre spacing is appropriate for this pool.

They backed off their intention, apparently, for whatever reasons they may state, to go forward with 40-acre spacing. They haven't presented a case. The evidence, I submit, before you as was recognized by Mr. Nutter, is -- strongly supports an order spacing this pool on 80-acre spacing and proration units .

I think if we look at the facts in this case we see that APC brought an application seeking 80-acre spacing or proration units. They brought this in April of this year and it came to hearing on May the 8th. It was a simple case.

No one anticipated at the time that it would be July 12th before an order was entered but that or-

der was entered and it contained an effective date of June 1. That effective date means, if it stands, the acreage in the west half of the southwest quarter is dedicated to that well, that those people who paid to drill that well, that those people who took that risk, whether they've been paid back or not, they're the ones who took the risk and put up the money, the ones who shared in production from the well, would be entitled to have the appropriate acreage dedicated to it so their interest wouldn't change and they could go forward sharing in the proceeds (not clearly understood due to outside noise) which they undertook it.

There's no problem with that. That's how it should be and yet what we have here is a situation where Mr. Scott comes in and he provides us with a nice history of what's happened and I have no quarrel with what he's recited, but what it really says is he missed the notice of the hearing. He's not -- he had properties here but he doesn't check. He doesn't get the docket. He doesn't read the newspaper to see what's going on and he missed the hearing.

And so what we have is a situation where we have an order that comes out in July dated back to June, and now they want to come before you and take the position that becase we hadn't dedicated 80-acres on the 15th of June, which, Mr. Stamets, is four weeks before the

order came out, this acreage should escape. I know Mr. Lopez has been talking about what's fair is fair, but what's fair is fair here, I submit, is that somebody should not reap substantial benefit because of the delay in an order that no one expected; consequences that no one, except, perhaps, Scott understood, and we think that what has happened not only is inconsistent with your duty is to protect correlative rights, it's inconsistent with the very purpose of those clauses in that farmout agreement. They were to reassign the acreage that wasn't dedicate to a well and it's presumed that it's the acreage that is the spacing unit which is the acreage that's going to be granted.

Then they turn around and they call Mr. Nutter, and Mr. Nutter, fortunately for me today is not deciding cases here any more, but Mr. Nutter wants to come in and make some interesting statements.

He wants to tell you that things like spacing cases shouldn't be brought to protect correlative rights. It raises questions in my mind as to how you can go forward with any spacing cases if you don't recognize that correlative rights is the underlying issue in that kind of a situation.

He talked about retoractive orders. They've been here before; we've had them before.

He talks about how relatively

simple cases, like an unopposed 80-acre case generally results in a fast order, as it did not here.

And so where we stand before you is the operator of a well for other interest owners. We are asking you to enter an order that will enable us to hold the interest constant for those people who drilled the Scott No. 1, who have shared in production while 90 percent of the reserves that can be produced in that have been produced.

We think that Mr. Lopez' argument that the Oil Commission can't alter private contract rights by order is absurd; every time you enter a spacing case, you do just that.

We submit now that if you're to carry out your statutory responsibility, the only choice you have here is to enter an order for 80-acre spacing for this pool, make the effective date June 1, 1985, and if you cannot do that, if you find you cannot reach that conclusion, we ask that you create a nonstandard spacing or proration unit to protect correlative rights, the rights of those who put the money up, who took the risk, protect their rights be creating a 40-acre unit which will permit them to go forward and share in the proceeds of their venture and then let Mr. Scott do what he wants with his other 40 acres.

He's evidenced throughout an intention to develop that property. I can tell you right

now that nothing that we've got before you today would prohibit him from going out and finding 80 acres, there are 80 acres undedicated in the undeveloped tract, we think he should be free to do that, and we ask you to enter an order granting 80-acre spacing, making it effective June 1, and if it cannot be made effective June 1, we ask for a nonstandard unit effective the date, the same date as the pool rules, so there is no gap in there that would create further problems and further complicate the litigation that we're in between Mr. Scott and Mr. Edsel in this case.

Thank you for your attention.

MR. STAMETS: Mr. Gentry, I believe you indicated that you would -- wanted to take a position in this case?

MR. GENTRY: Yes, sir, shall I come up there?

MR. STAMETS: I think you can be heard from right there.

MR. GENTRY: This will be very brief.

As I indicated previously when I entered an appearance, I'm Charles Gentry from the law firm of Shank, Irwin, and Conant, in Dallas, Texas, here representing the Edsels, Robert and Jim Edsel are the first names that have been used here in the case today and their

ownership as working interest owners has been well established.

Edsels basic position is in support of the application of Union Texas seeking that the original effective date of the order be reinstated as June 1, 1985; or in the alternative, a nonstandard 40-acre spacing unit be ordered comprised of the northwest quarter of the southwest quarter of Section 1.

Generally Edsel supports the written application filed by Union Texas except insofar as Paragraph 8 of that application may imply that in the absence of the requested relief, Wilton Scott will be entitled to share in proceeds from the well since the date of first production.

More specifically, Edsel's position is as follows:

First, The Division has authority to spepcify an effective date of such spacing order earlier than the date the order is issued. Indeed, the conditions at depth, which are characterized and set forth up here on various charts and maps has been there much longer than June 1st, the date it was applied for. It should not be any limitation on the Commission's ability to set the correlative rights straight simply because an order was issued on one date as opposed to another.

It seems entirely reasonable in the absence of fraud to give a spacing unit size order a date of effect as early as the date of initial application.

In the case of an order which increases the size of a spacing unit on which there is already a producing well, as here, correlative rights are more likely to be adversely affected, as has been observed several times, and an effective date earlier than the sate of issuance is well within the statutory authority and duty of the Commission to insure the protection of correlative rights.

The correlative rights of the Edsels and the others who participated in the expense and risk of drilling the Scott Well No. 1 will be adversely affected by a date earlier than June 14, 1985. Since the basic decision to increase the spacing unit size to 80 acres was to prevent waste and was in the interest of conservation, the Commission's corresponding duty and authority to protect correlative rights can effectively and easily be satisfied by restoring the original effective date of Order R-7983 to June 1, 1985.

Alternatively, if for some reason the request to restore teh June 1st effective date cannot or is not granted, the Edsels urge the Commission to grant the nonstandard 40-acre spacing unit sought by Union

Texas Petroleum Cororation. This is not the better solution but it would appear to achieve the primary objective of protection of correlative rights if it is made effective as of June -- July the 12th. Otherwise, as Mr. Carr has observed, maybe the gap in time would cause further problems between the working interest owners in the Scott Well No. 1 and Mr. Scott.

Finally, the Edsels want the record to reflect their strong opposition that if the effective date of the 80-acre spacing order is not before June 15, 1985, that Mr. Scott will become entitled to share in the proceeds of the well from date of first production.

New Mexico Statute 70-2 -- Section 70-2-18 makes it clear that when an order increasing the size of the spacing unit applicable to a producing well, quote, all the interests in the spacing or proration unit that are dedicated to the affected wells share in the production from the effective date of the order. End quote.

If the Commission does not grant either form of relieve sought and if it's final order allows Mr. Scott to participate in the proceeds of production from date of first production, the Edsels respectfully request that Mr. Scott be required to share in the expenses that other working interest owners bore with respect to Scott Well No. 1. That seems only fair.

And that's the end of my statement.

I'd be happy to respond to any questions or to file any post-hearing information that you would like.

MR. STAMETS: Thank you, Mr. Gentry.

Does anyone else have anything they wish to offer in these cases at this time?

These cases will be taken under advisement.

(Hearing concluded.)

C E R T I F I C A T E

I, SALLY W. BOYD, C.S.R., DO HEREBY CERTIFY that the foregoing Transcript of Hearing before the Oil Conservation Division (Commission) was reported by me; that the said transcript is a full, true, and correct record of the hearing, prepared by me to the best of my ability.

Sally W. Boyd CSR