

1 STATE OF NEW MEXICO
2 ENERGY AND MINERALS DEPARTMENT
3 OIL CONSERVATION DIVISION
4 STATE LAND OFFICE BLDG.
5 SANTA FE, NEW MEXICO

6 21 November 1985

7 DIVISION HEARING

8 IN THE MATTER OF:

9 Application of TXO Production Corp. CASE
10 for compulsory pooling, Lea County, 8755
11 New Mexico.

12
13 BEFORE: Michael E. Stogner, Examiner
14

15 TRANSCRIPT OF HEARING

16
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MR. STOGNER: The hearing will come to order.

We'll call next Case 8755, which is the application of TXO Production Corporation for compulsory pooling, Lea County, New Mexico.

Call now for appearances.

MR. VANDIVER: Mr. Examiner, my name is David Vandiver of Dickerson, Fisk, and Vandiver of Artesia, New Mexico, and I'll be representing TXO Production Corporation in this case, and I have two witnesses to be sworn.

MR. STOGNER: Call for further appearances.

MR. KELLAHIN: If the Examiner please, I'm Tom Kellahin of Santa Fe, New Mexico, appearing on behalf of Joseph S. Sprinkle and Mr. Lewis B. Burleson.

MR. STOGNER: Do you have any witnesses?

MR. KELLAHIN: Yes, sir, I have one.

MR. STOGNER: Are there any other appearances?

Will all witnesses stand and be sworn at this time?

1 (Witnesses sworn.)

2
3 MR. STOGNER: Mr. Vandiver, how
4 many witnesses did you have?

5 MR. VANDIVER: Two.

6 MR. STOGNER: Okay, we got
7 everybody.

8 Please continue, Mr. Vandiver.

9 MR. KELLAHIN: Excuse me. Be-
10 fore Mr. Vandiver starts his testimony, Mr. Stogner, I would
11 like to make a couple of motions.

12 The subject matter of my
13 motions is going to be addressing two points: One is to re-
14 quest the Examiner to continue this case to the hearing on
15 December 18th.

16 In the alternative, you may
17 elect to dismiss the case; however, it is not our desire to
18 frustrate the process of the hearing and we believe a con-
19 tinuance to the December 18th hearing, we think, would be
20 appropriate once I explain to you the basis for our request.

21 The second part of our request
22 will solicit from the Examiner an order to TXO in the form
23 of a subpoena or otherwise to produce documents at the Exa-
24 miner Hearing on December 4th. We want to request documents
25 that TXO has withheld from us that Mr. Sprinkle needs in or-

1 der to make a fully informed, conscious decision about his
2 participation in the subject well.

3 I'd like to make a tender of
4 evidence to you on those two points. I have certain corres-
5 pondence and documentation that explain the factual basis
6 upon which I make my request.

7 Mr. Stogner, I have given you
8 what we propose to authenticate during our presentation as
9 Exhibit Number One, which is simply the production map taken
10 out of the Commission files in a case held on January 11th.
11 It was an application by TXO for compulsory pooling of Mr.
12 Sprinkle's interest for one of the four well locations.

13 The second exhibit which I'll
14 refer to is TXO's letter of October 24th, 1985, proposing
15 the third well. It is my information that this represents
16 TXO's first proposal with regards to the third well.

17 The third exhibit, the first
18 page of which is taken from -- both of these letters are
19 taken from Commission files in this case, the first letter
20 is a letter over Mr. Vandiver's signature dated October
21 25th, the day following TXO's letter to the working interest
22 owners trying to form a voluntary unit.

23 The October 25th letter re-
24 quests the forced pooling.

25 The attachment to Exhibit Three

1 that follows is a November 6th letter showing that they have
2 mailed notice to Mr. Sprinkle of the hearing on the 21st.

3 The basis for our position, Mr.
4 Stogner, can be explained by looking at Exhibit Number One.
5 On that exhibit I have outlined for you four 40-acre tracts.
6 This case involved the third of four forced pooling cases.

7 The first well is identified as
8 No. 1, the Sprinkle Federal 1, in the northwest of the
9 northwest of the section. That was the subject of a forced
10 pooling hearing in February of 1985. That hearing involved
11 two parts: One, the forced pooling of the north half of 26
12 for a Morrow test; as a back-up formation, the Bone Springs.

13 The well drilled pursuant to
14 that forced pooling order was a dry hole in the Morrow. It
15 was completed as a Bone Springs producer. The exhibit shows
16 that in August '85 it had an initial potential of 235 bar-
17 rels of oil a day.

18 The second well is located in
19 the northeast of the northwest and that's the Sprinkle No.
20 2. That is a subject of a forced pooling hearing from which
21 this exhibit was taken. It was heard on September 11th,
22 1985.

23 The No. 3 represents the 40-
24 acre tract to be pooled in this hearing.

25 No. 4 represents TXO's fourth

1 location for a Bone Springs well for which we believe they
2 will also seek to pool Mr. Sprinkle's interest.

3 Mr. Sprinkle's interest is
4 31.25 percent of this quarter acre -- quarter section. It's
5 the 160-acre tract.

6 This is not simply an isolated
7 forced pooling for the third well. Mr. Sprinkle has sent to
8 TXO his check to participate in the second well. He's ten-
9 dered to them \$192,000 plus, and while that is going on they
10 send him the notice for the third well on October 24th. It
11 is our position, Mr. Examiner, that this represents a lack
12 of good faith to voluntarily form a unit for the drilling of
13 this well when they send a letter on the 24th because on the
14 25th, the very next day, they're asking the Commission to
15 pool our interest. We think that represents an inadequate
16 period of time in which for the parties to get together to
17 determine whether or not they can form a voluntary unit.

18 As a matter of fact, you can
19 see from the exhibit that Mr. Sprinkle did not receive the
20 letter to form the unit until after the case had already
21 been filed. He received it on Monday, the 28th.

22 I think that the pattern that
23 you can see developed is one that violates the spirit and
24 the practice of the Commission with regards to forced pool-
25 ing.

1 On the 25th of October TXO
2 knows who the parties to be pooled are. They know the hear-
3 ing is going to be on November 21st, yet they do not send
4 Mr. Sprinkle notice of that hearing until they send it on
5 November 20 -- on November 6th, the following letter.

6 We believe this demonstrates a
7 lack of good faith; that it is a conscious effort to use the
8 forced pooling procedure as a bludgeon in order to get ac-
9 quiescence in this voluntary unit.

10 We think that is not the way
11 forced pooling ought to be done before this Division. We
12 believe that forced pooling is the court of last resort and,
13 as the statute is interpreted by this Division, to be used
14 only when parties, having failed a reasonable opportunity to
15 work it out on a voluntary basis, cannot form a unit.

16 In this case forced pooling is
17 being used as a court of first resort. We believe that vio-
18 lates the spirit or the practice before this Division.

19 You can see from TXO's letter
20 that they admit in the last paragraph of the October 24th
21 letter that they say, due to rig schedules and a continuous
22 development obligation, they're filing the compulsory pool-
23 ing action to include all the uncommitted acreage.

24 Regardless of whether or not
25 those are reasons for TXO, they do not represent reasons

1 that should require Mr. Sprinkle to have to accelerate a de-
2 cision in order to determine whether he wants to be pooled
3 or whether he wants to again send his \$192,000 to TXO.

4 I think I would not be so dis-
5 turbed, Mr. Examiner, about this process if it did not also
6 include the conscious effort by TXO to keep from Mr. Sprin-
7 kle drilling information about the first two wells, which
8 other working interest owners have received and which he has
9 not. They have kept him in the dark about what has happened
10 on the No. 2 Well. It is done so that he will not be in a
11 position to make a conscious choice about what he does with
12 the third well.

13 He has sent letters through his
14 Denver attorney requesting a full disclosure of production
15 documents, cost figures on the first two wells. I've made
16 that request as of last Friday and as of today we're re-
17 ceived no additional documentation.

18 Mr. Stogner, our point is it's
19 not fair to us. We want this case continued to December
20 18th and we want TXO directed to give us full and complete
21 disclosure of actual well costs, of production data, of a
22 complete, accurate drilling report on all wells current
23 through today, so that we can know what they know, so that
24 we can make a choice about the third well based upon infor-
25 mation that they're choosing to decide that well on.

1 For those reasons, and based
2 upon this documentation, Mr. Stogner, we would implore you
3 to continue this case and to require TXO to give us the doc-
4 umentation that we so badly need.

5 MR. VANDIVER: Mr. Examiner,
6 only the evidence to be presented by TXO Production Corpora-
7 tion in this case can answer this motion.

8 The evidence will show that TXO
9 Production Corporation has gone far beyond the call of duty
10 in revealing information to Mr. Sprinkle. It has gone far
11 beyond anything statutorily, regulatorily, any moral or
12 ethical obligation that they ever had to Mr. Sprinkle to re-
13 veal information to him.

14 The evidence will show that Mr.
15 Sprinkle had ridden TXO down on the No. 2 Well and TXO al-
16 lowed Mr. Sprinkle a look at the well, allowed Mr. Sprinkle
17 a look at the logs before the time expired within which he
18 was allowed to elect to pay his estimated share of the well
19 costs.

20 The evidence will show that TXO
21 has -- has revealed everything in its possession to Mr.
22 Sprinkle and only when TXO has rested will the Examiner have
23 a complete appreciation for how inappropriate this motion
24 is.

25 The motion is intended to de-

1 lay; to obfuscate the issues; to cloud the waters; and to --
2 it's an effort by Mr. Sprinkle again to ride TXO down.

3 TXO Production Corporation has
4 a continuous development obligation that it must meet. If
5 not, it will lose an interest under a farmout, and the sole
6 reason for this motion today is for Mr. Sprinkle to again
7 get in a position where he will be able to avoid the risk
8 of drilling a well and make his decision after the well has
9 been drilled, which will not happen a second time as it did
10 on the No. 2 Well.

11 From the time that the case was
12 first filed Mr. Sprinkle has had a month to deal with TXO
13 Production Corporation. From the day the order is entered
14 in this case Mr. Sprinkle will have another month to decide
15 whether or not he wants to pay his share of estimate well
16 costs.

17 Only when you have heard all
18 the evidence will you appreciate how TXO has been dealing
19 with Mr. Sprinkle and how Mr. Sprinkle has been dealing with
20 TXO, and this motion must be denied. TXO has got to drill
21 its well and he wants to move the hearing closer to the time
22 that the development obligation must be met so that he will
23 have -- so that the well will be drilling within the thirty
24 day period that he's allowed to pay his share of the well
25 costs. That's the purpose of this motion and no other

1 reason.

2 I cannot respond really without
3 going through all of the evidence but I can tell you that
4 TXO has been dealing with Mr. Sprinkle for months now and
5 it's true he paid his share of the estimated well costs on
6 the No. 2 Well after he was shown a log by TXO, who had no
7 obligation to show him the log. He was a force pooled party;
8 he had not put up a penny for the drilling of that well;
9 they had shown him the production history on the No. 1 Well;
10 they had shown him the well costs that they knew to date on
11 the No. 1 Well, and now he would come in at this time and
12 again attempt to delay and make unreasonable demand and not
13 deal fairly with TXO Production Corporation, and I suppose
14 that my response is that my response will be completed when
15 TXO has rested in this case and I respectfully request that
16 you deny that motion.

17 MR. KELLAHIN: May I close ar-
18 gument on the motion, Mr. Stogner?

19 MR. STOGNER: Mr. Kellahin.

20 MR. KELLAHIN: Nothing Mr. Van-
21 diver has offered by way of proof explains why his client
22 proposes a well on October 24th. Knowing that they have
23 continuous drilling obligations they wait until the day be-
24 fore they file with the Commission a compulsory pooling ap-
25 plication.

1 If you allow this to continue
2 in this manner, it will be the first case that I am ever
3 aware of that fails to give a proposed party being force
4 pooled any opportunity to reach a voluntary agreement. I
5 believe it's unconscionable to continue and nothing Mr. Van-
6 diver has said detracts from what's on these two documents.

7 MR. VANDIVER: Mr. Examiner,
8 TXO has no objection at this time to Mr. Sprinkle paying his
9 share of estimated well costs on the No. 3 Well and from the
10 time that the order is entered, assuming an order force
11 pooling his interest is entered, from that time he will have
12 thirty days.

13 He has all the information in
14 TXO's possession. He has all of the information in TXO's
15 possession. We gave it to him voluntarily. He has -- he
16 has now signed the AFE and the operating agreement on the
17 No. 2 Well and he has agreed with the drilling of that well
18 after he was given a free look; after he was given a free
19 ride down, and that's what he's making an effort to do right
20 now.

21 TXO has to drill this well. I
22 cannot testify for my client. If you want the testimony as
23 to the reasons for this well proposal, I suggest we get on
24 with the hearing, but Mr. Sprinkle has had complete disclo-
25 sure of all information. He has had a perfect opportunity

1 to arrive at an agreement for the drilling of this well and
2 I think that you will see that the proposals that he is mak-
3 ing in connection with a farmout are completely unreason-
4 able; would not be accepted by anyone in the oil and gas
5 business; and putting this off is not going to assist him in
6 making a decision at all.

7 What he wants is assistance in
8 that the well will be drilled and then he wants to see the
9 logs and then he wants to see the production history on the
10 previous wells, and then may be he can make up his mind.

11 Maybe once he's seen the log he
12 can decide for himself whether he wants to risk his money.

13 Well, TXO is going to risk its
14 money right now and if, based upon the information that he
15 has been given, he wants to join in the drilling of the
16 well, he may put up his money today, but he has -- you will
17 see from the evidence, it is not TXO that has been unreason-
18 able and it is not TXO that has tried to hide anything from
19 Mr. Sprinkle.

20 And only the evidence in this
21 case will respond to that motion.

22 MR. STOGNER: Mr. Kellahin, Mr.
23 Vandiver, I'm going to go ahead and continue with the hear-
24 ing today, hear the evidence on both sides, before I decide
25 on both of your motions.

1 Is there any further opening
2 statements before we continue with the evidence?

3 Mr. Vandiver, you may proceed.
4

5 JEFF BOURGEOIS,
6 being called as a witness and being duly sworn upon his
7 oath, testified as follows, to-wit:

8
9 DIRECT EXAMINATION

10 BY MR. VANDIVER:

11 Q Would you state your name and your occu-
12 pation and by whom you're employed, please, sir?

13 A My name is Jeff Bourgeois. I'm a petro-
14 leum landman, employed by TXO Production Corporation.

15 Q Where do you -- where do you -- where is
16 your office, Mr. Bourgeois?

17 A Our West Texas District Office is located
18 in Midland, Texas.

19 Q And how long have you been so employed by
20 TXO Production Corporation?

21 A Employed for approximately 22 months.

22 Q In the recent past have you testified be-
23 fore the New Mexico Oil Conservation Division as an expert
24 petroleum landman and had your qualifications accepted by
25 the Oil Conservation Division?

1 A Yes, sir. I testified at the Examiner
2 Hearing held on October 9th and 10th of this year.

3 Q And your qualifications were accepted?

4 A Yes, they were.

5 Q And are you familiar with the area in
6 question?

7 A Yes, I am.

8 Q And are you familiar with TXO's applica-
9 tion in this case?

10 A Yes, I am.

11 MR. VANDIVER: Mr. Examiner, is
12 the witness qualified?

13 MR. STOGNER: Any objection?

14 MR. KELLAHIN: No objection.

15 MR. VANDIVER: Mr. Bourgeois is
16 so qualified.

17 Q Mr. Bourgeois, what is the nature and
18 purpose of TXO Production Corporation's application in Case
19 Number 8755?

20 A In Case Number 8755 TXO seeks an order
21 pooling all mineral interest in the southwest quarter of the
22 northwest quarter of Section 26, Township 18 South, Range 32
23 East, Lea County, New Mexico, from a depth of 4825 feet be-
24 neath the surface of the earth down through the base of the
25 Bone Spring formation at approximately 8700 feet.

1 In this order TXO seeks to have a 40-acre
2 standard oil spacing and proration unit dedicated to the
3 Sprinkle Federal No. 3 Well, to be drilled at a standard lo-
4 cation.

5 TXO also seeks to be considered the cost
6 of drilling and completing said well; the overhead charges
7 to be assessed to the non-operating parties, and a charge
8 for risk involved in drilling this well, and have TXO desig-
9 nated as operator of the Sprinkle Federal No. 3 Well.

10 Q Mr. Bourgeois, I'll refer you to what's
11 been marked for identification as TXO's Exhibit Number One
12 and ask you what that is.

13 A Exhibit Number One is a land plat showing
14 the proposed location of the TXO Sprinkle Federal No. 3.
15 The proposed location is encircled in red. The standard 40-
16 acre proration unit to be dedicated to this well is outlined
17 in yellow.

18 Q What is TXO Production Corporation's ap-
19 proximate working interest in the southwest quarter north-
20 west quarter of said Section 26?

21 A Approximately 57 percent.

22 Q And are there parties who have not agreed
23 to join in the drilling of your proposed Sprinkle Federal
24 No. 3 Well?

25 A Yes, sir. Mr. Joseph Sprinkle, with a

1 working interest of 31.25 percent, and Mr. Lewis B. Burle-
2 son, with a working interest of 1.30209 percent.

3 Q And was Exhibit Number One prepared by
4 you or under your direction and supervision?

5 A Yes, it was.

6 Q Now, Mr. Bourgeois, I will hand you
7 what's been marked for identification as TXO's Exhibit Num-
8 ber Two in this case and ask you what that is?

9 A Exhibit Number Two is copies of corres-
10 pondence from TXO and the working interest owners.

11 By letter dated October 24th TXO proposes
12 the drilling of our Sprinkle Federal No. 3 Well, and sent
13 copies of the AFE for the drilling of this well to the par-
14 ties.

15 Also offered in the well as an alterna-
16 tive to joining is a farmout proposal in which TXO would
17 agree to farm-in the interest of any party who so desired on
18 the basis of a trade where their interest would be delivered
19 at a 75 percent net revenue and their interest would be con-
20 vertable at the assignor's option at payout to a 25 percent
21 working interest proportionately reduced.

22 Q And did you receive responses to your
23 letter of October 24th, 1985?

24 A Yes, I have. Mr. Cecil Rhodes has signed
25 and returned an AFE indicating his desire to participate in

1 the drilling of this well.

2 TXO has reached an agreement with Mr. O.
3 H. Berry to purchase his interest in this tract and have not
4 received AFE's back from Mr. Sprinkle or Mr. Burleson.

5 Q And those are the only two parties that
6 have not agreed to either join or farmout the drilling of
7 this well?

8 A With the exception of Mr. Berry, who has
9 agreed to sell his interest to TXO.

10 Q Mr. Bourgeois, can I ask you what caused
11 you to write this letter on October 24th, 1985, for the
12 drilling of this well? What caused you to send this letter
13 out proposing this well at this time?

14 A I was so instructed by management due to
15 the drilling of our Sprinkle Federal No. 2; when we pene-
16 trated the Bone Spring formation it looked desirable to pro-
17 pose the No. 3 Well and in light of the previous forced
18 pooling cases, in line with the continuous development obli-
19 gations, we felt we had to get the well proposed and a sub-
20 sequent hearing scheduled in order to have time for an Exa-
21 miner Hearing and for the Examiner to review the case mater-
22 ial and render an order and any subsequent time required af-
23 ter that to comply with the orders of the -- provisions of
24 the order.

25 And also attached is copies of the return

1 receipts indicating that all the parties did receive this
2 proposal.

3 Q Mr. Bourgeois, you have testified that
4 you have a farm-in covering this acreage?

5 A Yes.

6 Q And what -- and that the farm-in contains
7 a continuous development obligation?

8 A Yes.

9 Q And what are the terms of that continuous
10 development obligation?

11 A The term says that the operator shall
12 commence a subsequent well within ninety days from the com-
13 pletion of the previous well.

14 Q And when was the Sprinkle Federal No. 2
15 completed?

16 A I do not know the exact date. It would
17 be sometime in the first week of November.

18 Q And so you proposed the drilling of your
19 Sprinkle Federal No. 3 Well before the completion of your
20 No. 2 Well, is that correct?

21 A Yes.

22 Q And your No. 2 Well was in the northwest
23 quarter of the northwest quarter of said Section 26?

24 A No, the No. 2 is in the northeast --

25 Q Okay.

1 A -- quarter of the northwest quarter.

2 Q All right, and so your management, as I
3 understand, decided to propose the well after seeing the
4 logs or -- or what?

5 A Yes, after drilling through the Bone
6 Spring formation in the No. 2 Well and reviewing information
7 revealed by drilling through it, the shows or drilling
8 breaks or whatever, they decided was sufficient evidence for
9 them to propose a subsequent well.

10 Q I will refer back to Exhibit Number Two.
11 let me ask you first, were all of the correspondence either
12 prepared by you or under your direction or supervision or is
13 it correspondence you received in response to correspondence
14 that you had sent out?

15 A Yes.

16 Q I will be referring back to Exhibit Num-
17 ber Two, but now I will refer you to what's been marked for
18 identification as TXO's Exhibit Number Three and ask you
19 what that is.

20 A Exhibit Number Three is the Authority for
21 Expenditure for the TXO Sprinkle Federal No. 3 as prepared
22 by our Drilling Department, with a total completed well cost
23 of \$615,550; dry hole cost at an estimated \$286,050.

24 Q And you have previously testified that
25 TXO has drilled Bone Spring wells in this area to equivalent

1 depth of your proposed Sprinkle Federal No. 3 Well?

2 A Yes, it has.

3 Q And based on your experience is this AFE
4 -- does it represent fair and reasonable well costs for the
5 drilling of this well?

6 A Yes, it does.

7 Q Now, Mr. Bourgeois, I'll refer you to
8 what's been marked for identification as TXO's Exhibit Num-
9 ber Four and ask you what that is?

10 A Exhibit Number Four is the proposed oper-
11 ating agreement to cover the drilling, completing, operating
12 of the TXO Sprinkle Federal No. 3. It is a standard indus-
13 try AAPL Form 610, the 1977 version. This is a short form
14 with any changes, additions, or deletions to the standard
15 form outlined on the exhibit.

16 We are asking that Exhibit C, COPAS ac-
17 counting procedure, that the overhead charges that be al-
18 lowed to be charged to the non-operating parties be \$5,374 a
19 month for a drilling well and \$538 a month for a producing
20 well rate, and --

21 Q In -- excuse me, go ahead.

22 A And also TXO requests that a 400 percent
23 nonconsent penalty be used in the operating agreement under
24 Article VI.

25 Q Mr. Bourgeois, have the other parties who

1 have agreed to join in the drilling of the Sprinkle Federal
2 No. 3 Well signed this operating agreement?

3 A We have an operating agreement covering
4 the entire northwest quarter with Peto Atlas Corporation,
5 who is a working interest owner in this well. They origin-
6 ally farmed out to TXO and on subsequent wells have election
7 to take a working interest, and have done so.

8 They have agreed to the overhead rates
9 that have been proposed and the nonconsent penalties.

10 Also, Mr. J. Cecil Rhodes participated in
11 the No. 2 Well on the operating agreement covering that
12 unit; agreed to all the overhead charges and nonconsent pen-
13 alties and has informed me to prepare an operating agreement
14 for both -- for the remaining 80 acres, being the south half
15 northwest quarter of Section 26, on the same terms as the
16 previously signed agreement by him.

17 Q And were the overhead rates set forth in
18 the COPAS accounting procedure form attached to this Exhibit
19 Number Four approved by the OCD in the previous Case Number
20 8698 on the Sprinkle Federal No. 2 Well?

21 A Yes. In Case Number 8698 we requested
22 these rates and they were approved in Order R-8043.

23 MR. VANDIVER: Mr. Examiner, I
24 would ask that you take administrative notice of proceedings
25 in Case Number 8698 and Order R-8043.

1 MR. STOGNER: I will take ad-
2 ministrative notice of said Case Number 8698 and the subse-
3 quent Order R-8043.

4 Q Mr. Bourgeois, when you say "a 400 per-
5 cent nonconsent penalty provided in this operating agree-
6 ment" you mean the equivalent to 300 percent under the sta-
7 tute, is that correct?

8 You mean 100 percent of the drilling cost
9 plus a 300 percent penalty.

10 A Yes, that's what I mean.

11 Q And if I will -- if I could refer you to
12 what's been marked for identification as TXO's Exhibit Num-
13 ber Five, that is the operating agreement that you were re-
14 ferring to with Petro Atlas, is that correct?

15 A Yes, it is, covering the whole northwest
16 quarters. I'll split the contract area on Exhibit A to dif-
17 ferent tracts to varying working interest to make it a lit-
18 tle more clear to the parties. In this operating agreement
19 they agreed to the overhead charges and nonconsent penal-
20 ties.

21 Q Mr. Bourgeois, if I could refer you to
22 what's been marked for identification as TXO's Exhibit Num-
23 ber Six and ask you to describe that, please.

24 A Exhibit Number Six is an interoffice memo
25 prepared by our Dallas Accounting Office which sets forth

1 the overhead rates for the different TXO districts to use,
2 and ours being the West Texas District, and this well being
3 within the 4000 to 12,000 foot interval, the rates we are
4 requesting are the rates that have been handed down by our
5 Dallas Accounting Office.

6 Q And were these exhibits prepared by you
7 or under your direction or supervision, and can you attest
8 to their accuracy with the exception of the AFE, which is
9 Exhibit Number Three?

10 A Right. Exhibit Number Three was prepared
11 by our Drilling Department and Exhibit Number Six prepared
12 by Dallas Accounting, and those are used throughout TXO
13 company-wide organization.

14 Q And you testified with respect to the AFE
15 that the costs are fair and reasonable and equivalent to the
16 costs for drilling the Sprinkle Federal Nos. 1 and 2 Wells?

17 A Yeah, we feel this is a fair representa-
18 tion of the costs associated with the drilling and complet-
19 ing of this well.

20 MR. VANDIVER: Mr. Examiner,
21 I'd move the admission of Exhibits -- TXO's Exhibits One
22 through Six.

23 MR. STOGNER: Are there any ob-
24 jections?

25 MR. KELLAHIN: Yes, Mr. Exa-

1 miner, we'll object to the Exhibit Number Three, which is
2 the AFE.

3 We believe a proper foundation
4 for the admission of that exhibit has not been laid.

5 MR. VANDIVER: Mr. Examiner, a
6 proper foundation has been laid. He has testified that it
7 is an AFE equivalent to the other Bone Spring wells drilled
8 in the area; that TXO has experience in drilling Bone Spring
9 wells; that these represent the fair and reasonable well
10 costs and we would submit that a proper foundation has been
11 laid and move the admission of that exhibit as well.

12 MR. KELLAHIN: I still object,
13 Mr. Examiner.

14 MR. STOGNER: Mr. Kellahin, I'd
15 like to ask Mr. Bourgeois some questions before I -- on this
16 particular Exhibit Number Three.

17

18 VOIR DIRE EXAMINATION

19 BY MR. STOGNER:

20 Q These figures, are they based on the
21 other two previous wells drilled to the north?

22 A Yes, and also TXO Burleson Federal No. 1,
23 which is a Bone Spring well to the same depth, which is lo-
24 cated in the northwest quarter of the northeast quarter of
25 the same section, township, and range, has just recently

1 been drilled to total depth by TXO and which is -- we feel
2 that with the experience of these three wells that this is a
3 fair representation of the cost to be associated with these
4 wells.

5 We have had no objections from some work-
6 ing interest owners who have signed an AFE and recognized
7 the AFE is fair and reasonable.

8 Q Is this an -- okay, so it's based on
9 three other previous wells?

10 A Yes.

11 Q Is it based on an average of those three
12 wells?

13 A No, it's not an average. It's only esti-
14 mated well costs. The associated costs with all three wells
15 has not yet come through and been invoiced (not clearly un-
16 derstood) but this is a -- you know, to the best of their
17 ability what they deemed very reasonable.

18 Q Is this an average on the other three
19 AFE's on the same well; let me restate my question?

20 A No, it wasn't.

21 Q How does it correspond with the averages
22 of those three?

23 A I think on the No. 1 Well we used -- Bur-
24 leson Federal No. 1, we used almost, if not totally, identi-
25 cal costs to be the estimated costs.

1 On the No. 1, the Sprinkle No. 1, it was
2 drilled to a total depth of 13,350 feet and therefore the
3 AFE cost varied greatly as it was drilled down to test the
4 Morrow.

5 And the No. 2 Well was a re-entry of an
6 abandoned dry hole, as was testified to in the Case 8698,
7 and this is the AFE that our Drilling Department prepared
8 and we have not received any other objections to AFE costs
9 other than --

10 Q Thank you.

11 A -- this.

12 Q Compare with the third well that you al-
13 luded to --

14 A The Burleson Federal?

15 Q Yes, sir.

16 A I assume they're in line. I don't have
17 the actual costs with me because that well was just --
18 reached total depth this past weekend.

19 Q Well, how about its -- how about its AFE?

20 A Right in line with the AFE on the Burle-
21 son Federal No. 1.

22 MR. VANDIVER: I believe he
23 testified that it was almost the same, Mr. Examiner.

24 A It is not totally identical.

25 Q Okay, almost the same, what's different?

1 A Well, I don't have the Burleson Federal
2 AFE with me, but --

3 Q But you said it was almost the same. Is
4 it high or low?

5 A I said almost the same if not identical.
6 I believe that it is identical. I don't want to make --
7 without having them side by side, but I do believe the costs
8 on this AFE and the costs on the Burleson Federal AFE, Fed-
9 eral No. 1 AFE, which is a new well from surface to 8700
10 feet, is the identical cost.

11 Q What you mean by that is ballpark fig-
12 ures.

13 A Well.

14 MR. KELLAHIN: If the Examiner
15 please, I'd like to clarify my objection for the record.

16 MR. STOGNER: Please.

17 MR. KELLAHIN: We objected to
18 the authenticity of this document. Try as he might, what
19 this witness knows is simply hearsay of what someone else
20 has told him.

21 The document on its face says
22 it was prepared by Randall Cate. This witness cannot tell
23 you enough information of his own knowledge as to the
24 authenticity and the accuracy of this document.

25 We believe there is not a pro-

1 per foundation laid until Mr. Cate, or a knowledgeable
2 drilling engineer, comes and verifies these numbers for you.

3 That is the purpose of our ob-
4 jection and we think it still has merit.

5 MR. STOGNER: Mr. Vandiver, is
6 your other witness an engineer?

7 MR. VANDIVER: No, sir. Mr.
8 Examiner, with respect to the objection, we might address
9 the Sprinkle Federal No. 2 and compare the well costs on
10 that, which was, I believe you testified a re-entry, is
11 that correct?

12 A Yes, it was.

13 MR. VANDIVER: A re-entry with
14 the well costs on this proposed Sprinkle Federal No. 3.

15 Mr. Sprinkle has signed the AFE
16 on the Sprinkle Federal No. 2 and we might compare the well
17 costs proposed in Case Number 8696 with the well costs in
18 this case.

19 Q Mr. Bourgeois, when did you first see
20 this document?

21 A The No. 3 AFE?

22 Q Uh-huh.

23 A Somewhere during the week of October
24 24th, 1985, before I prepared the well proposal letters that
25 was mailed to the working interest partners.

1 Q In your employment with TXO is it your
2 normal duties to review these?

3 A My duty is to receive the AFE from the
4 Drilling Department, make sure the heading is correct as far
5 as the well location, name, and depth and formation. Other
6 than that I do not review the -- the costs associated with
7 the AFE. That is not under my job (not understood).

8 MR. VANDIVER: Mr. Examiner, if
9 I might add, the well costs presented by the No. 3 Well, Mr.
10 Bourgeois has testified that they are equivalent if not the
11 same as the Burleson well that you alluded to earlier. The
12 objection goes to hearsay. This admittedly is hearsay but
13 under the rules of evidence I think that it has sufficient
14 indicia of reliability coming from this witness to overcome
15 a hearsay objection.

16 Mr. Bourgeois testified it was
17 equivalent to an earlier well. It was given to him by the
18 Engineering Department, and it has sufficient indicia of
19 reliability and would not even be questioned by Mr. Kellahin
20 if the engineer was here.

21 MR. KELLAHIN: One of the spe-
22 cific findings my make in this order, which you're required
23 to make, that you find these well costs are fair and reason-
24 able.

25 This witness has already told

1 you he doesn't know any more about this AFE than what's on
2 the caption. You cannot make an accurate finding based upon
3 this tender of evidence.

4 We objected to its authenti-
5 city. If Mr. Vandiver wants to bring his engineer in here
6 to talk about well costs, that's fine, but what he'd done
7 yet is not sufficient for you to enter the kind of finding
8 he needs in his forced pooling order, and that's the predi-
9 cament.

10 MR. VANDIVER: The evidence has
11 showed that other working interest owners have approved this
12 AFE and that is sufficient evidence to show that it is a
13 fair and reasonable estimate of the well costs on the Sprin-
14 kle Federal No. 3 Well.

15 A technical hearsay objection
16 to this AFE is just another effort by Mr. Sprinkle to delay
17 this matter, and in fact, if the Examiner would like, I
18 would be more than happy before the week is out to have an
19 affidavit in the mail to the OCD attesting to the authenti-
20 city and the reasonableness and fairness of the well costs
21 set forth in this AFE by the engineer that prepared it.

22 MR. STOGNER: Division counsel
23 will answer this.

24 MR. TAYLOR: I think what we're
25 going to do is admit the document as a business record but

1 because there is no testimony that it is in line specific-
2 ly with other well costs, we're not going to take it to
3 prove any of the costs in there. We're just going to take
4 it as a document that shows that somebody pulled out those
5 costs, but without testimony to the effect that -- that they
6 relate to cost of these previous wells that have been drill-
7 ed similarly and the costs are the same or they're similar
8 or the same, I think we are not going to take it as proving
9 that those costs are reasonable.

10 MR. VANDIVER: That's fine, Mr.
11 Examiner. We will at this point defer to your earlier rul-
12 ing that we would quit at 4:45 and we'll have Mr. Cate here
13 in the morning.

14 MR. STOGNER: Mr. Kellahin?

15 MR. KELLAHIN: That's just what
16 I need, Mr. Examiner.

17 MR. STOGNER: In light of this,
18 we will break for a -- until 8:00 o'clock in the morning.

19
20 (Thereupon the hearing was in recess. Thereafter at the
21 hour of 8:00 o'clock a. m. on the 22nd day of November,
22 1985, the hearing was again called to order and the follow-
23 ing proceedings were had, to-wit:
24
25

1
2 MR. STOGNER: This hearing will
3 resume to order.

4 We're on Case 8755, application
5 of TXO Production Corporation for compulsory pooling.

6 MR. VANDIVER: Mr. Examiner,
7 continuing with the information I made at the closing of the
8 hearing I made yesterday, I would move the admission of
9 TXO's Exhibits One, Two, Four, Five, and Six and Eleven,
10 which is the affidavit of mailing I have just handed to the
11 Examiner and opposing counsel.

12 Those are all the exhibits I've
13 introduced so far except the AFE, and I would move the ad-
14 mission of Exhibit Three, the AFE as a business record.

15 MR. TAYLOR: Three was not ad-
16 mitted for the purpose of --

17 MR. VANDIVER: Okay. Okay,
18 then I would move admission of TXO's Exhibit Number Eleven
19 reflecting that the application in this case was mailed to
20 Mr. Sprinkle, Mr. Berry, Mr. Burleson, and Mr. Rhodes on
21 November 6, 1985.

22 MR. KELLAHIN: No objection.

23 MR. STOGNER: Who is -- is that
24 Patty Menefee?

25 MR. VANDIVER: Yes, sir.

1 MR. STOGNER: Who is this per-
2 son?

3 MR. VANDIVER: She is my secre-
4 tary and this was prepared under my direction and supervi-
5 sion and I can attest to the facts you see although I did
6 not personally put it in the mail.

7 MR. STOGNER: If there is no
8 objection, Exhibit Eleven will be admitted at this time.

9 We stand now for cross examina-
10 tion.

11 MR. VANDIVER: No, sir, I'm not
12 through with my direct.

13 MR. STOGNER: Okay. You may
14 then proceed, Mr. Vandiver.

15
16 DIRECT EXAMINATION CONT'D

17 BY MR. VANDIVER:

18 Q Mr. Bourgeois, I will hand you what's
19 been marked for identification as TXO's Exhibit Number
20 Twelve and ask you to describe what that is.

21 A Exhibit Number Twelve is a copy of a let-
22 ter sent to Mr. Sprinkle dated October 1st, 1984.

23 This is our first written correspondence
24 to Mr. Sprinkle in which we attempted to gain a farmout of
25 his interest and this came about as our Geology Department

1 had generated prospects in this section and without any in-
2 terest in the section we were in need of some kind of farm-
3 out agreement or something to establish an interest in the
4 section and it offered a farmout on the basis of a trade
5 where the farmor, Mr. Sprinkle, would deliver his interest
6 to TXO at a 75 percent net revenue interest and at payout of
7 the initial well drilled under the terms of the farmout
8 agreement Mr. Sprinkle would then have the option to convert
9 his reserved overriding royalty interest to a 25 percent
10 working interest proportionately reduced.

11 A similar letter was sent to all the
12 other interest owners in the lease on this quarter section.

13 Q What response did you receive to this
14 proposal?

15 A We were able to obtain three farmouts
16 from parties in the northwest quarter of Section 26.

17 Mr. Sprinkle countered with a 40 percent
18 back-in.

19 Q What do you mean by 40 percent back-in?

20 A Well, as opposed to the 25 percent work-
21 ing interest at payout, he would come back in for 40 percent
22 of his 31.25 percent.

23 Q And this was unacceptable to TXO?

24 A Yes. So we deemed this counter offer
25 unacceptable due to the economics of the prospect.

1 Q And then I'll hand you what's been marked
2 for identification as TXO's Exhibit Number Thirteen and ask
3 you what that is?

4 A Exhibit Number Thirteen is a letter dated
5 January 11th, 1985, again addressed to Mr. Sprinkle. This
6 is after the time we had obtained farmouts from approximate-
7 ly 51 percent of the working interest in the northwest quar-
8 ter of Section 26.

9 We again offered the farmout trade, same
10 terms as the previous letter and the same terms which the 51
11 percent had farmed out to TXO, and as an alternative, pro-
12 vided Mr. Sprinkle with an AFE for our Sprinkle Federal No.
13 1 Well should he elect to join this proposed farmout.

14 Said letter also mentions the fact that
15 we will be in the process of scheduling a compulsory pooling
16 application with the NMOCD should we not receive a response
17 to this letter.

18 Q And did you receive any response to that
19 letter?

20 A No, we didn't.

21 Q And you testified yesterday that you
22 filed an application for compulsory pooling in Case Number
23 8494. Do you recall when that case was heard?

24 A I believe it was February 27th, 1985.

25 Q And Mr. Sprinkle's interest was force

1 pooled in that case?

2 A Yes, sir, it was. The case was totally
3 unopposed and we received an order in mid-March.

4 Q And that was Order R-7850 of which the
5 Examiner has taken administrative notice?

6 A Yes, he has.

7 Q And did you subsequently write a similar
8 letter to Mr. Sprinkle proposing the Sprinkle Federal No. 2
9 Well?

10 A The Sprinkle Federal No. 2 Well was pro-
11 posed to Mr. Sprinkle and the letter was similar; the basic
12 change being that it was an 8700-foot Bone Spring test as
13 opposed to a 13,000-foot Morrow test.

14 The terms of the farmout offer were the
15 same and again an AFE was provided.

16 Q Do you recall the date on which you pro-
17 posed the drilling of the Sprinkle Federal No. 2 Well to Mr.
18 Sprinkle?

19 A I should have that in my briefcase.

20 It would be in August.

21 Q Of 1985?

22 A Yes.

23 Q And you subsequently filed an application
24 for compulsory pooling in Case Number 8698.

25 A Yes, and that case was heard at the Exa-
miner Hearing September 11th of this year.

1 aminer Hearing September 11th of this year.

2 Q And Order R-8043 was entered as a result
3 of that case force pooling Mr. Sprinkle's interest?

4 A Yes, it was, and again no opposition was
5 presented at the Examiner Hearing.

6 MR. VANDIVER: Mr. Examiner, if
7 I have not already requested it, I will request that you al-
8 so take administrative notice of Case 8698 and Order 8043.

9 MR. STOGNER: I believe yester-
10 day I took administrative notice of that. I'll let the re-
11 cord so show.

12 MR. VANDIVER: Okay, thank you.

13 Q And, Mr. Bourgeois, what did Order R-8043
14 provide with reference to a nonconsenting working interest
15 owner's or force pooled owner's ability to pay his share of
16 the estimated well costs?

17 A The order stated that within thirty days
18 after the receipt of the date that the estimated well cost
19 was furnished to any nonconsenting working interest owner he
20 shall then have thirty days to furnish the operator with his
21 share of estimated well cost in lieu of paying his share of
22 well cost out of production, and this interest will still be
23 subject to any overhead charges that were set forth in the
24 order but if the nonconsenting interest owner did provide
25 the money within the allotted time period, his interest

1 would not be subject to any risk penalties of the order.

2 Q And what was the risk penalty provided in
3 Order R-8043?

4 A The risk penalty awarded was 180 percent.

5 Q Did you receive any response from Mr.
6 Burleson responding to Order R-8043?

7 A Yes, I did. We had contacted Mr. Burle-
8 son as well as Mr. Sprinkle in attempts to purchase their
9 interest. Both declined the offers and Mr. Burleson said
10 that he will -- he would just allow to have his interest be
11 pooled by virtue of the order.

12 Q And did you receive a response from Mr.
13 Sprinkle? I take it you -- you furnished Mr. Sprinkle with
14 a copy of the Order R-8043.

15 A Yes. We sent a copy of the order along
16 with a copy of the AFE.

17 Q And your testimony was the order provided
18 that he was allowed to pay his share of the cost within 30
19 days from what date?

20 A The date he receives the -- the Schedule
21 of Estimated Well Costs.

22 Q And what date was that that he received
23 that information?

24 A Best we can determine is we used a green
25 return receipt and it was postmarked receiving at the Denver

1 post office October 16th; however, when it was returned to
2 us it was not signed by the recipient and dated, so we used
3 November 16th as the date it was received.

4 Q You mean October 16th?

5 A Excuse me, October 16th.

6 Q So what date would his -- if he was going
7 to participate in drilling the Sprinkle Federal No. 2 Well,
8 what date would his share of the well costs have been due in
9 your office?

10 A November 15th.

11 Q Mr. Bourgeois, referring you to the cor-
12 respondence in Exhibit Number Two, which has been admitted
13 into evidence, could you point out the response that you re-
14 ceived from Mr. Sprinkle responding to Order R-8043?

15 A Yes. By letter dated October 21st Mr.
16 Sprinkle acknowledged receipt of the orders entered in Case
17 Number 8698, along with the AFEs that were attached.

18 The letter further states that during his
19 conversations with me about a discussion about the possible
20 sale of his interest to TXO we gave him information on the
21 No. 1 Well in which he has a force pooled interest, and he
22 felt that the interest -- information we had furnished him
23 was not sufficient for him to make a decision and that if we
24 did not furnish the information requested in this letter he
25 will ask for a continuance of the order, and in response to

1 this letter --

2 Q May I ask you, Mr. Bourgeois, is there
3 anything in Order R-7850 on the Sprinkle Federal No. 1 Well
4 that requires TXO to furnish Mr. Sprinkle with any of the
5 information set forth in his letter of October 21?

6 A No, sir, it does not provide for that.

7 Q What does the order provide with regard
8 to information you're required to furnish to Mr. Sprinkle?

9 A Required to furnish Mr. Sprinkle with a
10 copy of the estimated well costs and have his thirty day
11 election period in which to (not understood) his share of
12 estimated well costs.

13 And it does not state the -- that we are
14 to notify him when the payout of his 200 percent penalty
15 time has occurred, although I feel that's implied about that
16 point. When the well is paid out plus a 200 percent penalty
17 we will notify him of -- of this.

18 Q So when you received the letter of Octo-
19 ber 21, 1985, did you feel that you -- that TXO had the ob-
20 ligation to furnish Mr. Sprinkle with (not understood) com-
21 pletion data as to further testing, production, reservoir
22 engineering, bottom hole pressure, et cetera, on the Sprin-
23 kle Federal No. 1 Well?

24 A No, we did not feel we were required to
25 by the order set forth in the mentioned order.

1 Q What did you do in response to the letter
2 of October 21?

3 A In response, in attempt to appear to be
4 reasonable, Mr. O'Hare of our office and Geology Department,
5 furnished Mr. Sprinkle a cumulative production to date on
6 the Sprinkle No. 1, as well as recent bottom hole pressure
7 readings and average daily production readings, along with
8 flowing tubing pressure and associated numbers.

9 I do not have a copy of that but in a
10 conversation with Mr. Earl Johnson, Mr. Sprinkle's attorney
11 in Denver, he verbally acknowledged receipt of this infor-
12 mation and --

13 Q Do you know when that information was
14 furnished to Mr. Sprinkle?

15 A It was probably mailed out of our office
16 around the 25th of October.

17 Q Did that mailing also include the logs on
18 the Sprinkle Federal No. 1 and the Sprinkle Federal No. 2
19 Well?

20 A Yes, sir, it did.

21 Q At that point Mr. Sprinkle's interest had
22 been forced pooled in both the Sprinkle Federal No. 1 and
23 the Sprinkle Federal No. 2, is that correct?

24 A Yes, it had.

25 Q And do you -- does TXO ordinarily provide

1 force pooled parties with logs and the other information
2 that you described with regard to the wells in which their
3 interests have been force pooled?

4 A No, sir. It's not common practice to
5 forward information like that to a pooled interest who has
6 not paid any money toward the drilling and completing, oper-
7 ating of a well.

8 Q To your knowledge are you aware of anyone
9 in the industry furnishing logs and the other information to
10 a force pooled party during the period of time that they're
11 allowed to elect to pay their share of the estimated well
12 costs?

13 A No, I'm not. That essentially gives the
14 force pooled interest a risk-free look at the well and we do
15 not feel it is common industry practice.

16 Q What response did you receive to the in-
17 formation that had been forwarded to Mr. Sprinkle?

18 A A phone conversation of November 6th,
19 1985, with Mr. Earl Johnson. We discussed that he had re-
20 ceived information forwarded to Mr. Sprinkle, however, it
21 was still insufficient and although Mr. Sprinkle was a force
22 pooled party still in his election period, he felt he was
23 entitled to much more information.

24 Q What information did he request?

25 A He requested -- he requested drilling re-

1 ports.

2 Q On both wells?

3 A On both wells. And he followed up the
4 conversation by letter dated November 6th, which is fur-
5 nished in Exhibit Twod. He requested that we were to fur-
6 nish all reports of every nature, including legal reports
7 which pertained to Wells Nos. 1 and 2; also to furnish all
8 reports of every nature, including legal documents on Wells
9 Nos. 1, 2, and the proposed No. 3, to his office on or be-
10 fore the 11th of November, by noon, and that if we did not
11 do this they will commence the necessary legal action for
12 the clarification of this matter.

13 Q What -- did Mr. Johnson also send you a
14 letter of October 29, which is contained in Exhibit Number
15 Two?

16 A Yes. This is where he acknowledges the
17 receipt of the information Mr. O'Hare sent to Mr. Sprinkle.
18 The letter states that Mr. Sprinkle finds it difficult to
19 make any type of evaluation as to whether or not to join or
20 farm out his interest, and again requests post-completion
21 data regarding the two wells drilled and states that if in-
22 formation requested is not received within ten days they
23 will commence the necessary legal action to prohibit any
24 further drilling operations on the acreage.

25 Q Going back now to the letter of November

1 6th from Earl Johnson, what did you respond to that letter?

2 A By letter dated November 8th I responded
3 to Mr. Johnson's request, where we sent Mr. Sprinkle, still
4 being in his election period, having not paid any money to-
5 ward the well, a copy of the drilling reports from surface
6 down through the date in which casing was run in the well,
7 and at that point I informed Mr. Johnson that this is all
8 the information we would forward to Mr. Sprinkle.

9 Q Did you feel you had any obligation to
10 furnish a force pooled interest owner with the information
11 that you had furnished?

12 A No, again we didn't feel it was an obli-
13 gation required of TXO to furnish a force pooled interest
14 this information when the interest was still subject to a
15 forced pooling order in which the thirty day election period
16 had not expired.

17 Q Why did you furnish this information to
18 Mr. Sprinkle and his attorney?

19 A Upon persistent demands by Mr. Sprinkle
20 and his attorney we felt an attempt to be fair and reason-
21 able, due to the anticipated continuing development of this
22 tract, in order to improve future working relationships, we
23 would furnish him this information, again giving him an ex-
24 treme amount of information to a well which he had not paid
25 any money for this information.

1 This information is furnished to all the
2 working interests who had signed the AFE and JOA and were
3 active working interest owners. It was not furnished to
4 nonconsenting interest owners.

5 Q At the time that you furnished all this
6 information to Mr. Sprinkle, what other than what you had
7 furnished did you furnish to participating parties who had
8 paid their share of the well costs in the Sprinkle Federal
9 No. 1 and the Sprinkle Federal No. 2 Well? What other in-
10 formation could you have furnished to Mr. Sprinkle that you
11 furnished to those parties, which you did not furnish to Mr.
12 Sprinkle?

13 That's kind of a confusing question but

14 --

15 A Yes.

16 Q -- my question is what information could
17 you have furnished to Mr. Sprinkle at that time that you did
18 not furnish to Mr. Sprinkle?

19 A Well, we could have given him the com-
20 plete set of drilling reports where he could see what inter-
21 val was perforated, what the tests were, and so on and so
22 forth, on the subsequent drilling operations on this well,
23 but we felt we had given him more than enough information to
24 make a prudent decision as to whether or not to join in this
25 well and it was much more information than any other party

1 had, including TXO before they decided to drill this well.

2 Q Mr. Bourgeois, you testified that Mr.
3 Sprinkle has now paid his share of the estimated well costs
4 on the Sprinkle Federal No. 2 Well as of November 15th, is
5 that correct?

6 A Yes, that's correct.

7 Q And is there any further information that
8 you intend to furnish to him on the Sprinkle Federal No. 2
9 Well as a result of his paying his share of the cost?

10 A Yes. We will furnish him now a complete
11 set of drilling reports and he does have a well log on it
12 and he will now start receiving joint interest billings and
13 run checks when the oil has started to reach the market.

14 Q From the time that you received -- by the
15 way, Mr. Bourgeois, you testified that Mr. Sprinkle paid his
16 share of the well costs on November 15th. What is the basis
17 for that determination that he paid them on that date?

18 A The letter was dated, postmarked in the
19 Denver post office on November 12th. The green -- it was
20 sent by certified mail, return receipt requested. The
21 return receipt was not attached by the post office and
22 returned to Mr. Sprinkle. It was left on the envelope but
23 it was stamped at the Midland post office on November 15th
24 and therefore we had no objection to the monies being
25 furnished in due time.

1 Q But when did you receive his check?

2 A It reached our office Monday morning.

3 Q Was that the 18th of November?

4 A Yes, it was.

5 Q And so as far as you know the money was
6 not received in your office until the 18th of November.

7 A That's correct.

8 Q And although it was due on the 15th of
9 November, you're not going to rely on the technical demands
10 of Order No. R-8043 and not accept that money, are you?

11 A That's correct. We -- we are considering
12 it received in time to have accepted the check.

13 Q From the time that Mr. Sprinkle paid his
14 share of the estimated well costs on the Sprinkle Federal
15 No. 2 Well, have you received any request or demand for fur-
16 ther information from Mr. Sprinkle or his attorney?

17 A I have not received any further demands.

18 Q You testified yesterday, and Exhibit Two
19 was admitted into evidence, that you proposed the drilling
20 of the Sprinkle Federal No. 3 Well by the letter dated Octo-
21 ber 24, 1985, which is the first correspondence appearing
22 on Exhibit Two.

23 A Yes, that's correct.

24 Q And that was the result of the management
25 decision based upon the evidence that you had obtained from

1 the drilling of the Sprinkle Federal No. 2 Well.

2 A Yes. They were pleased with the drilling
3 and operation of the No. 2 Well and decided to propose No.
4 3.

5 Q Did you immediately propose the well to
6 the other interest owners at the time you were -- management
7 made the decision to drill the No. 3 Well?

8 A Yes. By letter, by this letter dated Oc-
9 tober 24th that was sent to all parties who were not tied
10 down to any type of agreement and we needed to propose the
11 well to.

12 Q And you, as in your previous proposals to
13 Mr. Sprinkle, advised him that you were also filing a com-
14 pulsory pooling application in conjunction with your well
15 proposal?

16 A Yes. This is very similar to the method
17 we proposed the Sprinkle Federal No. 2 Well, where due to
18 the tight time schedule with these hearings and continuous
19 devleopment obligations, we by written letter proposed this
20 well and mentioned the possibility of a compulsory pooling
21 hearing and furnished them with an alternative to farmout
22 and stated that I would be free to discuss any questions
23 anyone had with the information contained in the letter and
24 this is the same process we used on the No. 2 and received
25 no responses to -- or no oppositions to the pace in which we

1 were pursuing it.

2 Q Why -- is it unusual to propose a well
3 and, from your experience in the oil industry, is it unusual
4 to propose a well and in conjunction with your proposal file
5 an application for compulsory pooling?

6 A No, it is not. It has been accepted pre-
7 viously by the OCD without any opposition.

8 Q In your opinion, do you think that your
9 letter of October 24th was -- well, first let me ask you,
10 was it a good faith effort to have Mr. Sprinkle either join
11 in the drilling of the well or farmout upon the terms set
12 forth in your letter?

13 MR. KELLAHIN: Mr. Examiner,
14 I'd like to object to that question. It calls for a legal
15 conclusion by the witness. That is the very subject for
16 which you are to decide this case. He opinion on that sub-
17 ject is not appropriate.

18 MR. VANDIVER: I rephrased my
19 question and I did not ask him for his opinion. I asked him
20 was this TXO's good faith effort to have Mr. Sprinkle either
21 join in the well or farmout.

22 MR. KELLAHIN: Same objection.

23 MR. STOGNER: Objecton over-
24 ruled.

25 A Yes, this was our effort to gain volun-

1 tary pooling of the uncommitted interest in the tract.

2 MR. VANDIVER: And I would call
3 the Examiner's attention to the fact that Mr. Sprinkle was
4 not notified of the forced pooling for two weeks, until No-
5 vember 6th.

6 Q Mr. Bourgeois, did you receive any re-
7 sponse to your proposal contained in your letter of October
8 24th?

9 A Yes, I did. We have testified yesterday
10 I received a signed AFE from Mr. Cecil Rhodes. We have
11 reached an agreement with Mr. Berry to purchase his inter-
12 est. Mr. Burluson to date has not signed an AFE or indi-
13 cated he will farmout or participate, and Mr. Sprinkle has
14 not signed an AFE and in telephone conversations with him he
15 felt very strongly, apparently, that TXO was -- that our
16 method of procedure was a joke, with several epithets de-
17 leted, and said that -- that's when he began the correspon-
18 dence to us through his attorney.

19 Q Mr. Bourgeois, you testified that you
20 made deals with some of the parties that you propose to
21 force pool in this application.

22 A Yes.

23 Q And you had conversations with them in
24 response to your well proposal?

25 A Yes.

Q And what was their reaction to proposing

1 the well and filing a forced pooling application at the same
2 time?

3 MR. KELLAHIN: I'm going to ob-
4 ject; that's hearsay.

5 MR. VANDIVER: Mr. Examiner, it
6 is hearsay but it has -- I believe all of these parties are
7 -- I have not subpoenaed them but they are beyond the juris-
8 diction of the OCD and they're unavailable to testify and
9 Mr. Bourgeois was a party to these conversations and he can
10 very ably testify as to their response.

11 MR. KELLAHIN: Mr. Examiner,
12 it's inappropriate to consider hearsay evidence from Mr.
13 Bourgeois about conversations with other working interest
14 owners whether they be nonconsenting or otherwise.

15 We do not have them here to
16 cross examine. We do not know the motives or the basis by
17 which they have agreed or disagreed with Mr. Bourgeois on
18 participation in this well.

19 It's totally irrelevant to your
20 decision and we continue our objection.

21 MR. STOGNER: Mr. Kellahin,
22 your objection is sustained.

23 Q Mr. Bourgeois, what response did you re-
24 ceive from Mr. Sprinkle or his attorney to your proposal of
25 October 24th?

1 A It was a letter stating that until he re-
2 ceived information on the previous two wells in which he was
3 force pooled in -- by letter dated October 29th, 1985, Mr.
4 Johnson states, requests for Mr. Sprinkle all post-comple-
5 tion data regarding the two wells drilled; requests that no
6 further wells be drilled until the data be furnished to him;
7 and in no event will he agree to the drilling of the Sprin-
8 kle Federal No. 3 on the basis of TXO's rig schedule and
9 continuous drilling obligations.

10 Q Mr. Bourgeois, did you not receive a
11 counter proposal from Mr. Sprinkle or his attorney, which is
12 the last letter under Exhibit Number --

13 A Yes.

14 Q -- Two?

15 A By letter dated November 13th, 1985, from
16 Mr. Earl Johnson, Mr. Sprinkle refused -- Mr. Johnson re-
17 fuses our offer stated in my letter of October 24th and
18 counters with the following proposal: Mr. Sprinkle, on the
19 Sprinkle Federal No. 3, will farmout his interest, will re-
20 tain a 10 percent net overriding royalty until payout. His
21 interest will then convert to a 20 percent working interest.

22 Q What do you -- do you know what he means
23 by a 10 percent net overriding royalty or how do you -- what
24 -- how do you interpret that?

25 A I interpret that as meaning a 10 percent

1 of 8/8ths override and a 20 percent of 8/8ths working inter-
2 est after payout.

3 Q In proportion to Mr. Sprinkle's 31-1/4
4 percent interest in the lease in question, what proportion
5 of the override is he requesting? If this had been an over-
6 riding royalty proportionately reduced and attributable only
7 to his 31-1/4 percent interest in the lease, what overriding
8 royalty is he asking for?

9 A Approximately 32 percent.

10 Q So he's asking for a 32 percent overrid-
11 ing royalty proportionately reduced before payout and what
12 working interest is he asking for after payout?

13 A He's asking to back in for approximately
14 66 percent working interest attributable to his interest.

15 Q Is TXO willing to enter into an agreement
16 on that basis with Mr. Sprinkle?

17 A No.

18 Q Why not?

19 A It is far better than any deal we've of-
20 fered any of the other interest owners in the tract and is
21 totaly unacceptable. That would in essence mean his inter-
22 est would be delivered to 50 percent -- excuse me, approxi-
23 mately 57 percent net revenue, which is very uncommon in the
24 industry and to my knowledge TXO has never accepted a deal,
25 a trade like that.

1 Q You consider that to be a -- does TXO
2 consider that to be a reasonable offer to have Mr. Sprinkle
3 farmout his interest for the drilling of the Sprinkle Fed-
4 eral No. 3 Well?

5 A No.

6 Q You testified yesterday that you have
7 certain farmouts covering the entire northwest quarter of
8 Section 26 and that the farmouts contain a continuous dev-
9 elopment obligation, is that correct?

10 A Yes, it is.

11 Q What is the -- what are the terms of that
12 continuous development obligation?

13 A TXO must commence the drilling of a sub-
14 sequent well within ninety days after the completion of the
15 previous well.

16 Q And you testified that the Sprinkle Fed-
17 eral No. 2 Well was completed when?

18 A The first week in November, I believe, I
19 testified to that.

20 Q So when under the continuous development
21 obligation of your farmout agreements, when must the Sprin-
22 kle Federal No. 3 Well be commenced?

23 A I would say the first week of February.

24 Q Mr. Bourgeois, you are still willing to
25 accept Mr. Sprinkle's share of the estimated well costs on

1 the Sprinkle Federal No. 3 Well, are you not?

2 A Yes, we are.

3 Q And Mr. Sprinkle will have the right to
4 pay his share of the estimated well costs for any time up to
5 30 days after -- assuming an order force pooling his inter-
6 est is entered in this case -- how long will Mr. Sprinkle
7 have to pay his share of the estimated well costs in the
8 Sprinkle Federal No. 3 Well?

9 A From this date up until 30 days after the
10 receipt of notice of the order entered in this case.

11 Q And you still, because he has paid his
12 share of estimated well costs on the Sprinkle Federal No. 2
13 Well, you intend to furnish him with such additional infor-
14 mation as you have furnished to the other working interest
15 owners who have paid their share of the Sprinkle Federal No.
16 2 Well and signed the AFE and signed the joint operating
17 agreement?

18 A Yes, we will furnish them with identical
19 information.

20 Q Will Mr. Sprinkle at that time have any
21 less information than any of the other parties, any less in-
22 formation furnished by TXO than any of the other parties who
23 have joined in the drilling of the Sprinkle Federal No. 3
24 Well?

25 A No.

1 Q And in fact, other than proprietary data,
2 will Mr. Sprinkle have any less information than TXO on the
3 Sprinkle Federal No. 2 Well?

4 A No.

5 MR. VANDIVER: I pass -- Mr.
6 Examiner, I will at this time move the admission of TXO's
7 Exhibits Twelve and Thirteen.

8 MR. STOGNER: Any objection?

9 MR. KELLAHIN: No.

10 MR. VANDIVER: And I will pass
11 the witness, Mr. Examiner.

12 MR. STOGNER: Exhibits Twelve
13 and Thirteen will be admitted into evidence.

14 Mr. Kellahin, your witness.

15 MR. KELLAHIN: Thank you, Mr.
16 Examiner.

17
18 CROSS EXAMINATION

19 BY MR. KELLAHIN:

20 Q Mr. Bourgeois, did you have any telephone
21 conversations with Mr. Lewis Burleson about the risk factor
22 that TXO thought they could obtain with regards to the
23 drilling of the Sprinkle No. 3 Well?

24 MR. VANDIVER: Mr. Examiner,
25 I'm going to object to the -- that calls for hearsay.

1 MR. KELLAHIN: Mr. Examiner, I
2 represent Mr. Burleson and it's a fair question to ask him
3 what he's done in conversations with my client, and that's
4 what I've asked him.

5 MR. STOGNER: Objection over-
6 ruled.

7 Q Do you remember the question, Jeff?

8 A Yes, I do. Mr. Burleson did call me.

9 Q Approximately when was this, sir?

10 A I would say sometime in the last two
11 weeks. I can't remember the date on it, but he advised me
12 that he would have an attorney present to contest the risk
13 penalty in this case.

14 Q Did you advise Mr. Burleson in that tele-
15 phone conversation that TXO expected to get a reduced risk
16 factor penalty applied to the No. 3 Well?

17 A I don't know that's a fact. I assume any
18 conversation would be in the line that we would expect to
19 get something similar or equal to 180 percent that was
20 awarded to TXO in the Sprinkle No. 2.

21 Q To make sure I understood you, Mr. Bour-
22 geois, you don't recall, or that you have refreshed your me-
23 mory and you specifically do not remember saying to Mr. Bur-
24 leson that you expected to get less than the 180 percent
25 penalty?

- 1 A I do not recall that for certain.
- 2 Q All right. Do you know whether or not
3 TXO has a minimum risk factor that they consider acceptable
4 to apply to the No. 3 Well?
- 5 A Yes, we do.
- 6 Q And what is that number?
- 7 A Mr. O'Hare will testify to that based on
8 his geological evidence.
- 9 Q What is your understanding of what that
10 percentage is?
- 11 A My understanding is that we will request
12 180 percent risk penalty, identical to the penalty awarded
13 in the No. 2 Well in Order No. 8043.
- 14 Q Yesterday, Mr. Bourgeois, you talked
15 about the operating agreement and the risk factor that is
16 set forth in the proposed operating agreement, and if my
17 memory is correct, you gave us the number of 400 percent.
18 Was that your testimony?
- 19 A Yes.
- 20 Q Do you know how the percentage penalty
21 for a nonconsenting working interest owner under the oper-
22 ating agreement equates to the risk factor penalty applied
23 in the pooling orders?
- 24 A Yes, I do.
- 25 Q All right, would you explain to the re-

1 cord what that relationship is?

2 A The maximum statutory 200 percent in the
3 New Mexico statute means that the operator shall recover 100
4 percent of the pooled interest or costs attributable to the
5 pooled interest and then an additional 200 percent.

6 Q All right, sir.

7 A As I said on the operating agreement,
8 this 400 percent means that operator will recover 100 per-
9 cent of the cost attributable to any nonconsenting owner
10 plus an additional 300 percent.

11 Q Would it not be correct to say that under
12 the proposed operating agreement the penalty proposed under
13 the operating agreement would exceed the statutory maximum
14 under a forced pooling order by 100 percent?

15 A It exceeds the statutory maximum in the
16 forced pooling order.

17 Q Yes, sir.

18 A Yes, it does.

19 Q All right. You testified before the Exa-
20 miner at the February hearing for the Sprinkle No. 1 Well,
21 didn't you, Mr. Bourgeois?

22 A Yes.

23 Q In fact that was the first hearing in
24 which you had testified as a landman, I believe.

25 A Uh-huh.

1 Q The purpose of that hearing was to have a
2 Morrow well pooled for the north half of Section 26, was it
3 not?

4 A That's correct.

5 Q And to set up that hearing you had sent
6 Mr. Sprinkle Exhibit Number Thirteen, which is your January
7 11th, 1985, proposed farmout, and this had to do with the
8 Morrow. Yes, sir?

9 A Yes.

10 Q The terms proposed to Mr. Sprinkle for
11 the Morrow well was a farmout by which TXO would receive a
12 25 -- 75 percent net revenue interest in the lease. Was
13 that before or after the payout of the well?

14 A It would be before the payout of the
15 well.

16 Q All right. The 75 percent net revenue
17 lease that TXO had proposed to Mr. Sprinkle was for the Mor-
18 row well in the north half of 26?

19 A It was for a well to be drilled down to
20 test the Morrow. Any subsequent or any up-hole formation to
21 be completed.

22 Q Was it your understanding of TXO's posi-
23 tion at that point that the Morrow represented a high risk
24 wildcat prospect for this area?

25 A I do not recall that it was a wildcat.

1 Q Did you consider this, or was it your un-
2 derstanding that TXO considered this to be a high risk pros-
3 pect for which you felt justified in seeking the maximum
4 forced pooling with respect to penalty?

5 A Yes.

6 Q In terms of your flexibility as a landman
7 to propose deals to individuals, Mr. Bourgeois, did you have
8 any flexibility?

9 A As to this offer, no, I didn't. We had
10 received farm-ins in the north half of Section 26 on 100
11 percent of the interest in the northeast quarters, 51 per-
12 cent of the interest in the northwest quarter, on these same
13 terms, and that was the bottom line and that was the best
14 deal we were going to offer.

15 Q Mr. Bourgeois, do you make that judgment
16 or those decisions, or do you have a superior that makes
17 those decisions?

18 A I can make that decision subject to man-
19 agement approval and it would have to be approved.

20 Q When you talk about management approval
21 for this type of transaction, particularly here, what's the
22 name of the individual you're talking about?

23 A It would be Mr. Jack Huppler and Mr.
24 Frank Keiffer.

25 Q Mr. Huppler performs what duties for TXO?

1 A He's our Senior Vice President with TXO
2 Production Corp. and District Manager of the West Texas Dis-
3 trict.

4 Q And the other gentleman whose name es-
5 capes me, Frank what?

6 A Keiffer, K-E-I-F-F-E-R. He's Assistant
7 District Manager.

8 Q Do either of these gentlemen hold a pro-
9 fessional degree, to your knowledge, Mr. Bourgeois?

10 A Yes, they do.

11 Q What degrees do they hold?

12 A I can't testify to that. I know that Mr.
13 Huppler does have a doctorate at some level. I cannot tes-
14 tify as to the particulars of their education.

15 Q All right, sir. I believe your testimony
16 back in February of '85, Mr. Bourgeois, you told the Exam-
17 iner that insofar as the Bone Spring rights are concerned in
18 the northwest quarter of Section 26 that at that point in
19 the hearing TXO did not have an interest in the Bone Springs
20 for the northwest quarter, is that correct?

21 A I don't recall. I'd have to review a
22 transcript of that hearing.

23 Q Mr. Bourgeois, I show you a copy of the
24 transcript in 8494 for February 27th, 1985, and let me have
25 you take a moment to look at the bottom of page five and

1 page six.

2 Yes, sir, have you had an opportunity to
3 read through that?

4 A (Not clearly understood).

5 Q And is that your testimony?

6 A Yes.

7 Q And does that refresh your memory with
8 regards to what TXO's ownership in the Bone Springs was at
9 the date of that hearing in the northwest quarter of this
10 section?

11 A Yes, it states that in the northwest
12 quarter we had to this date negotiated farm-in agreements
13 with three parties who owned leasehold interest in the
14 northwest quarter from a depth of 4825 feet below the sur-
15 face through the base of the Morrow formation.

16 Q All right, sir.

17 A Which does encompass the Bone Spring.

18 Q The farmout agreements that you've
19 discussed with us at the hearing today, Mr. Bourgeois, do
20 you have copies of those farmout agreements with you?

21 A No.

22 MR. KELLAHIN: Would you be
23 willing to supply me copies of those farmout agreements sub-
24 sequent to the hearing, counsel?

25 MR. VANDIVER: TXO has no ob-

1 jection to furnishing those farm-in agreements to you, Mr.
2 Kellahin, subject to Mr. Bourgeois' ability to testify as to
3 the content of those farm-in agreements at this hearing, of
4 which he is very familiar.

5 MR. KELLAHIN: Thank you.

6 Q Would the interval in the northwest quar-
7 ter above 4825 feet, would the interval from the surface to
8 4825 feet cover the Bone Springs?

9 A No.

10 Q It would be above the Bone Springs?

11 A Yes.

12 Q After the January 11th, 1985, proposal,
13 Mr. Bourgeois, TXO has drilled the Sprinkle No. 1 Well in
14 the northwest of the northwest of the section, and that is a
15 commercial well in the Bone Springs, is it not?

16 A That's correct.

17 Q Subsequent to drilling that well did you
18 make a proposal to Mr. Sprinkle with regards to the drilling
19 of the No. 2 Well?

20 A Yes, I did.

21 Q And that was the subject of a hearing in
22 September of this year, was it not?

23 A That's correct.

24 Q And notwithstanding the fact that you now
25 had a commercial Bone Springs well in the Sprinkle No. 1,

1 your proposal to Mr. Sprinkle for the No. 2 Well was the
2 same terms as you had proposed for the Morrow test.

3 A That's correct.

4 Q All right, sir. We now have the Sprinkle
5 1 and the Sprinkle 2. What is the -- is the Sprinkle No. 2
6 a commercial well in the Bone Springs?

7 A Yes, I believe it will be.

8 Q All right, sir. And notwithstanding the
9 fact that we now have two commercial Bone Springs wells, is
10 your proposal to Mr. Sprinkle the same as it was back in
11 January of 1985?

12 A The same, yes. It is the same, yes.

13 Q You've said that you've agreed to provide
14 Mr. Sprinkle with the complete daily drilling reports on the
15 No. 2 Well and that you will do that, I assume, after the
16 hearing? Can we count on having those next week?

17 A You bet.

18 Q All right.

19 A No problem.

20 Q And have you -- have you provided Mr.
21 Sprinkle the daily reports on the Sprinkle No. 1?

22 A Yes, I did furnish those to Mr. Sprinkle
23 upon his request and he did acknowledge in a phone conversa-
24 tion his receipt of those.

25 Q With regards to the No. 1 Well, the, Mr.

1 Bourgeois, to your knowledge has TXO provided Mr. Sprinkle
2 with all the information that they would make available to
3 any of the consenting working interest owners in that well?

4 A I believe we have furnished him with the
5 same information the consenting interest owners have, other
6 than monthly billing statements to the parties who are ac-
7 tually paying monies toward the operating of the well.

8 Q Would you agree to give Mr. Sprinkle
9 copies of the monthly billing statements for both the No. 2
10 and the No. 1 Well, Mr. Bourgeois?

11 A The No. 2 Well, certainly, as he is now a
12 consenting working interest owner, and it is our intention
13 to comply to the letter of the order of the Division for the
14 Sprinkle Federal No. 1, to furnish him with everything we're
15 required so to do.

16 Q All right, sir, and you're aware that un-
17 der those pooling orders Mr. Sprinkle -- you're required to
18 furnish Mr. Sprinkle within ninety days of the completion of
19 the first well the accurate well costs for that well and
20 thereafter he has forty-five days in which to ask for a Com-
21 mission hearing on that subject.

22 A That's correct.

23 Q All right. Don't you think it would be
24 fair and reasonable if he had the joint billing statements
25 from the No. 1 Well so he can satisfy himself that he's

1 being charged his fair share of those costs without the ne-
2 cessity of going to a cost hearing?

3 A Yes, and we have furnished him by letter
4 -- excuse me just a second, please-- by letter dated October
5 31st under the signature of Mark Roberts, an accountant in
6 our Midland Office, we sent Mr. Sprinkle and all the noncon-
7 senting interests pooled by Order 7850 in the Sprinkle Fed-
8 eral No. 1 the copy of the actual well cost to date that we
9 had on our books, and stated in the letter that there is a
10 possibility of subsequent costs coming in and that they will
11 be furnished.

12 Q These costs represent the total cost as
13 available at that time for the well that was the Morrow
14 test, does it not?

15 A That's correct.

16 Q That's the one we're talking about.

17 A Uh-huh.

18 Q Have you attempted to account to Mr.
19 Sprinkle for his actual share of those costs as they apply
20 to the Bone Spring formation?

21 A No, I have not made an attempt to do
22 that.

23 Q With regards to your November 8th, Mr.
24 Bourgeois, to Mr. Sprinkle's attorney, Mr. Johnson, I be-
25 lieve it's contained in your package of exhibits --

1 A Yes.

2 Q -- Number Two.

3 A I have it here.

4 Q All right, sir. You have provided him
5 the daily drilling report summaries from the spud date to
6 the date the casing was run in the well.

7 A Yes.

8 Q Have you reviewed your files to ascertain
9 whether or not all the information up to that point that's
10 contained on the attachment is complete and accurate?

11 A Now this is the information that is fur-
12 nished to the working interest owners. This in the interof-
13 fice dirlling report that is prepared in our office.

14 Q Are there any entries that are deleted or
15 changed?

16 A Yes, there are. We have deleted the run-
17 ning cost total on the information we've supplied in this
18 letter.

19 Q Why did you delete the running cost to-
20 tals, Mr. Bourgeois?

21 A At the request of management I did so.
22 We felt we had been more than reasonable to supply Mr.
23 Sprinkle with all this information to a well which he still
24 had not made an election, and I did so upon that request.

25 Q All right, sir. Will the complete daily

1 drilling report that you submit to me following the hearing
2 contain those running cost numbers in it?

3 A Yes, it will.

4 Q Okay. So I'm clear on what was done, on
5 the second page of the attachment following the entry on Oc-
6 tober 22nd, '85, there was daily drilling report information
7 available to you all the way up to November 8 and it was
8 that portion of the reports that were withheld from Mr.
9 Sprinkle?

10 A Yes.

11 Q And what is your understanding of the in-
12 formation that was contained from October 23rd through Nov-
13 ember 8th? What was the subject matter of those entries?

14 A The subject matter was running the pro-
15 duction string of casing, perforating intervals desired, and
16 subsequent testing fo the perforated intervals.

17 Q And the information that you're to supply
18 me following the hearing will include all that then?

19 A Yes.

20 Q Did you negotiate the farmout agreements
21 with these other owners in the northwest quarter of Section
22 26, Mr. Bourgeois?

23 A Yes.

24 Q At the time you negotiated those farmout
25 agreements, Mr. Bourgeois, did you know or anticipate that

1 you would have to pool Mr. Sprinkle's interest or any other
2 interest?

3 A We were anticipating the necessity of
4 compulsory pooling, yes.

5 Q Was the farmout agreements proposed to
6 these other people forms and agreements drafted and fur-
7 nished by TXO?

8 A Yes.

9 Q Did TXO provide these farmers a draft
10 that proposed a continuous drilling obligation of ninety
11 days?

12 A I'm not sure I understand your question.

13 Q Was the farmout agreement that TXO
14 drafted and prepared for these individuals a draft that in-
15 cluded a continuous drilling obligation?

16 A Yes, it was; did have an article in there
17 discussing continuous development on the farmed-in area.

18 Q Is that a -- is that a typical practice,
19 to the best of your knowledge, of TXO when it deals with in-
20 dividuals on a farmout?

21 A Yes.

22 Q You typically commit yourself to contin-
23 uous drilling obligation insofar as the farmout acreage is
24 concerned?

25 A Yes, TXO favors the ability to be able to

1 continue to develop the farmout area.

2 Q Does TXO typically propose a ninety day
3 period between the completion of one well and the commence-
4 ment of the next?

5 A I wouldn't say there's any typical agree-
6 ment. Many times it is requested by the farmers as to what
7 length it will be. Many times it's requested by the opera-
8 tor. This was just something that we committed to, 90 days.
9 I've seen it 30 days, 60 days, 120, 90.

10 Q Did you propose to any of these farmers
11 that the continuous drilling paragraph be 120 days?

12 A No, I didn't.

13 Q You didn't propose to them that it be any
14 more than the 90 days that ended up in the agreement?

15 A That's correct.

16 Q What is your understanding of the com-
17 mencement date for the No. 3 Well, Mr. Bourgeois?

18 A Commencement date will be subject to hav-
19 ing an order in this case and having the -- any and all
20 election period expire, and we intend to commence prior to
21 the expiration of our continuous development.

22 Q Do you have an explanation, Mr. Bourgeois,
23 as to why the No. 2 Well was spudded and tested in the Bone
24 Springs prior to the 30-day notice period to Mr. Sprinkle
25 having expired? How did you end up with that?

1 A Management decision. They wanted to
2 drill this well in order to continue development of a separ-
3 ate farm-in agreement on the northeast quarter and had to
4 essentially prove up the acreage by drilling toward that
5 other acreage as covered by the farm-in agreement.

6 Q What's the approximate completion date of
7 the Sprinkle No. 1 Well, do you recall?

8 A August 7th, I believe.

9 Q And when did you commence the Sprinkle
10 No. 2?

11 A The Sprinkle No. 2, according to the
12 drilling report, on October 2nd. It says, "Rig up, rotary
13 tools, will spud late today," and then on the 3rd it says,
14 "Prepared to spud this morning." So sometime on the 3rd of
15 October.

16 Q All right. Addressing yourself to the
17 farmouts in the northwest quarter, now, with the 90-day
18 clause, if the No. 1 Well is completed on August 7th, then
19 you would have approximately until November 6th or 7th in
20 which to spud the next well?

21 A I think it was the 4th.

22 Q The 4th, all right, and the well was ac-
23 tually spudded on October 2nd, approximately a month before
24 the end of the 90-day period for that farmout.

25 A October 3rd.

1 Q Had you not spudded the well on October
2 2nd and waited until the end of October or the first week in
3 November, that would have allowed the 30-day election period
4 for Mr. Sprinkle to have expired and he would not have had
5 an opportunity to know the results of the Sprinkle 2 Well
6 before he was committed to participate.

7 A If we would have allowed his election
8 period to expire, it would have surpassed our continuous de-
9 velopment obligation and we would have lost the farm-in
10 agreements.

11 The continuous development obligations
12 required us to spud on the 4th of November and his period in
13 which to elect expired on the 15th of November, so if we
14 would have waited that required amount of time for his elec-
15 tion period to expire, we would have lost the farm-in agree-
16 ments as to any subsequent acreage.

17 Q You could have spudded the well on, say,
18 November 4th.

19 A That would have been the last day on
20 which we could have spudded in order to comply with our
21 agreements.

22 Q And Mr. Sprinkle's election period
23 expired on approximately November 15th, I believe we've
24 decided?

25 A Yeah.

1 Q And the well could have been drilled in
2 that two-week period and you wouldn't have had to complete
3 it or test it, would you?

4 A Probably not.

5 Q What are the plans for the No. 4 Well,
6 Mr. Bourgeois?

7 A The No. 4 Well, we plan a Bone Spring
8 test in the southeast quarter of the northwest quarter. We
9 have notified all uncommitted interest owners with a letter
10 similar to the -- to my letter of October 24th, subject to
11 the description changes and pertinent information, and again
12 have scheduled a compulsory pooling hearing, which I believe
13 is docketed for the 18th of December.

14 Q Has management already made the decision
15 to drill the No. 4 Well regardless of the outcome of the No.
16 3 Well?

17 A If something unforeseen should happen,
18 I'm sure if we received a dry hole in No. 3, they would may-
19 be take another look at the area, but (not clearly under-
20 stood) the commercial capacities or capabilities of the No.
21 1 and 2 Wells they wanted to propose the No. 4 Well.

22 Q In terms of TXO's decision upon drilling
23 wells after the first well, the Sprinkle 1, the decisions
24 made to drill the 2, 3, and 4, what is your understanding of
25 TXO's commitment? Are they required to drill all four wells

1 regardless of what happens to the others or are they making
2 a decision about what to do with the next well based upon
3 information they learn from the others?

4 A It's not an obligation to drill all four
5 wells. If we don't, we lose the rights to develop the ac-
6 reage in the farm-in agreements and it's information gained
7 by drilling each well.

8 Q So the farmout agreements do not contrac-
9 tually bind you to four wells?

10 A No.

11 Q If you don't drill a well, then you lose
12 the 40-acres for that well.

13 A Right.

14 Q Mr. Bourgeois, are you aware of whether
15 or not TXO has any engineering studies of the Bone Springs
16 for these wells?

17 A We have done some reservoir work.

18 Q Has that information been available --
19 made available to you?

20 A Not in written form.

21 Q Who would be the individuals that would
22 know about or would have performed any engineering studies,
23 Mr. Bourgeois?

24 A I believe Mr. Randall Cate would be able
25 to help us with that and also a reservoir engineer from our

1 office.

2 Q Who would be the reservoir engineer from
3 your office?

4 A Mr. Dean Woods.

5 Q Has either of those individuals or anyone
6 else with TXO provided you with any reserve numbers for any
7 of the wells?

8 A I've heard verbal quotes of their esti-
9 mated recoverable reserves.

10 Q And what have you heard in terms of ver-
11 bal quotes of estimated recoverable reserves?

12 MR. VANDIVER: I'll object to
13 that. Hearsay, calling for hearsay.

14 MR. STOGNER: Objection sus-
15 tained.

16 MR. KELLAHIN: I'd like to ar-
17 gue the point, Mr. Stogner. These are admissions of a party
18 here and employees of this party and if he has knowledge as
19 to what the reserves are, he could answer the question.

20 MR. STOGNER: This man is not
21 an engineer and I believe we have an engineer that you're
22 going to have testify today, don't you, Mr. Vandiver?

23 MR. VANDIVER: Yes, sir.

24 MR. KELLAHIN: Do we have an
25 engineer available today that can discuss the reserve, re-

1 serve, recoverable reserves for these wells, Mr. --

2 MR. VANDIVER: I do not know.
3 I have an engineer. I do not know whether he is capable of
4 testifying as to recoverable reserves.

5 Q Mr. Bourgeois, do you know whether or not
6 the No. 1 Well has reached payout yet?

7 A No, it hasn't.

8 Q In terms of the proposed operating agree-
9 ment, Mr. Bourgeois, which of the working interest owners
10 have executed this operating agreement for the No. 3 Well?

11 A For the No. 3 Well we have Petro Atlas
12 Corporation, who has signed the operating agreement we have
13 marked as Exhibit Number Five there in front of you, and
14 that covered the entire northwest quarter.

15 Mr. Cecil Rhodes was in our office last
16 Friday, furnished me with signed AFEs for both the No. 3 and
17 4 locations and informed me to prepare an operating agree-
18 ment similar to the one he signed for No. 2 location, and
19 with contract area for the new operating agreement to cover
20 the south half of the northwest quarter as to his interest
21 and told me upon preparation of it executed by our signatory
22 party and forward it to him for his execution.

23 Q You said in response to counsel's ques-
24 tion about Mr. Sprinkle's last proposal to you, the November
25 13th, '85, proposal, I believe you said it was unacceptable

1 and I quote you as saying "due to economics of prospect".

2 What did you mean when you said "due to
3 the economics of the prospect"?

4 A That an override of that interest of that
5 proportion will not be favorable to TXO and to have to sus-
6 tain those kind of overriding royalty burdens in addition to
7 the currently existing burdens of record, which is 12-1/2
8 percent to the Federal government and another half percent
9 override to Mr. Thomas Curran.

10 Q Under the proposed farmout agreement, the
11 75 percent net revenue interest, does that represent under
12 the economics that you have made this decision on, does that
13 represent the minimum net revenue interest that TXO must
14 realize in order to drill the Bone Springs well?

15 A They feel -- yes, management feels it is
16 the minimum net revenue we must have.

17 Q All right. Are the economics of this
18 process -- prospect something you studied, Mr. Bourgeois, or
19 something someone else did and gave to you?

20 A I do not prepare the economic evaluation
21 of the (not understood) well.

22 Q What individual with TXO would prepare
23 the economics for a well like this, or for this well?

24 A That is being done in our Engineering De-
25 partment.

1 MR. KELLAHIN: Mr. Stogner, I
2 wonder if I might have a few minutes to ask my client a few
3 questions?

4 MR. STOGNER: Let's take about
5 a three minute recess and go off the record.

6
7 (Thereupon a recess was taken.)

8
9 MR. STOGNER: You may continue,
10 Mr. Kellahin.

11 MR. KELLAHIN: I have no fur-
12 ther questions of Mr. Bourgeois.

13 MR. STOGNER: Redirect?

14 MR. VANDIVER: Yes, sir.

15
16 REDIRECT EXAMINATION

17 BY MR. VANDIVER:

18 Q Mr. Bourgeois, just to clarify your ear-
19 lier testimony, you testified that the Sprinkle Federal No.
20 2 was spudded October 2nd, 3rd?

21 A 3rd, according to the drilling reports.

22 Q And although your farmouts on the north-
23 west quarter of Section 26 would have allowed a spud date of
24 November 4th, you had other farmouts on the northeast quar-
25 ter, did you not?

- 1 A That's correct.
- 2 Q And they required you to commence drill-
3 ing on what date?
- 4 A The 24th of November.
- 5 Q You had no earlier date to commence under
6 the farmouts on the northeast quarter.
- 7 A No.
- 8 Q But you had to prove up the acreage.
- 9 A Right.
- 10 Q You testified that you proposed the No. 4
11 well on the southeast quarter of the northwest quarter of
12 Section 26, is that correct?
- 13 A Yes.
- 14 Q Have you propose that well to Mr. Sprin-
15 kle?
- 16 A Yes.
- 17 Q Have you received any response from Mr.
18 Sprinkle?
- 19 A As to the No. 4, no, I haven't.
- 20 Q You testified with respect to the farm-
21 outs that if you did not commence within 90 days you would
22 lose only the 40-acre tract in question, is that correct?
- 23 A We would lose any additional acreage on
24 the farm-in area, which the farm-in area was 160 gross acres
25 and if we don't continue the 90-day drilling program, the

1 first time we let that expire we lose all remaining undevel-
2 oped acreage on that 160 acres.

3 Q Mr. Bourgeois, when TXO proposes the
4 drilling of a well to other working interest owners owning
5 an interest in the tract to be drilled, what information
6 does TXO provide to those parties?

7 A The well proposal with a copy of the AFE.

8 Q Is there any other information that TXO
9 furnishes to the other parties?

10 A No.

11 Q From your experience and knowledge of the
12 industry, are you aware of anyone furnishing further infor-
13 mation when they propose the drilling of a well?

14 A No.

15 Q You testified that Mr. Sprinkle proposed
16 a farmout the terms of which he would retain a 32 percent
17 overriding royalty proportionately reduced before payout of
18 the Sprinkle No. 3 Well and a 66 percent working interest
19 proportionately reduced after payout.

20 Has TXO ever taken a farmout under such
21 terms as that, to your knowledge?

22 A No.

23 MR. VANDIVER: I will pass the
24 witness.

25 MR. STOGNER: Mr. Kellahin?

1 MR. KELLAHIN: Let me have a
2 second.

3
4 CROSS EXAMINATION

5 BY MR. TAYLOR:

6 Q Mr. Bourgeois, could you tell me how much
7 -- how much Mr. Sprinkle contributed to the No. 2 Well? You
8 said he, after 30 days, on the 15th sent you a check?

9 A Yes, it was for an amount of \$192,265 and
10 some odd cents. I don't recall the exact amount.

11 Q \$192,000?

12 A Uh-huh.

13 Q How much time do you think it's normal in
14 the industry to give a person who you're asking to join to
15 decide whether he wants to join in the prospect if he's
16 going to be required to give you a check for \$192,000?

17 A We -- we treat all working interest
18 equally regardless of their interest being one percent or
19 75, and it may vary from well to well but each party is
20 granted the same amount of time to make a decision.

21 Q Well, in this case you sent -- you sent
22 him a letter on October 24th, I believe.

23 A That was proposing the No. 3.

24 Q Okay, on this one you sent him a letter
25 on October 24th proposing the (not clearly understood) and

1 the next day, I believe it was the next day, you sent a let-
2 ter to us asking for a forced pooling. Do you think that's
3 essentially coercion, telling Mr. Sprinkle that if -- that
4 you're going to force pool this regardless of what he does
5 or doesn't?

6 A No, I do not think it's coercion. We
7 have done this in the past with no objection from the exam-
8 iners and it's an attempt to meet our drilling program.

9 Q In the cases where you've done it with no
10 objection was there another party objecting or were these
11 parties unknown?

12 A There were no objections and --

13 Q Was the party that you were force pooling
14 somebody that you were dealing with or was it somebody that
15 was unknown and you were just force pooling their interest
16 because they could not be contacted?

17 A No, it was a recent case, for example,
18 would be Sprinkle Federal No. 2, when we forwarded the
19 interest owners a similar letter proposing a well and short-
20 ly thereafter filed a compulsory pooling application, which
21 was heard on September 11th.

22 Q How long do you think is common in the
23 industry to give somebody to determine whether they want to
24 join in the well before you move to force pool?

25 A That varies greatly upon the circumstan-

1 ces of the situation.

2 Q Do you think one day is reasonable?

3 A We had to schedule that hearing on the
4 25th you say you received the letter, and we did not notify
5 the people on the application until the 6th in order to give
6 them a little time to review the proposal.

7 MR. TAYLOR: Okay, that's all
8 the questions I have.

9

10 CROSS EXAMINATION

11 BY MR. STOGNER:

12 Q Mr. Bourgeois, I'd like to refer now to
13 Exhibit Number Two and Exhibit Number Thirteen.

14 In Exhibit Number Thirteen, which was
15 your letter to Mr. Sprinkle of January 11, 1985, concerning
16 the Sprinkle Federal No. 1, on the last paragraph you said
17 that within two weeks after the date of this letter that if
18 that party had failed to join, then you would take steps to
19 come into the Oil Conservation Division and seeking a forced
20 pooling; however, in Exhibit Number Two you did it within
21 the second day.

22 Would you please elaborate a little fur-
23 ther on why you --

24 A Okay.

25 Q -- changed your procedure?

1 A Yes. Due to the time crunch we're in, I
2 did, on my letter proposing the No. 3 Well, I did not say
3 within two weeks. I said TXO's -- I said, "TXO is filing a
4 compulsory pooling application with the New Mexico Oil Con-
5 servation Commission to include all uncommitted interest in
6 the proration unit"; that TXO regrets the necessity of in-
7 cluding your interest in this compulsory pooling application
8 but it is necessary to the above noted circumstances; and
9 should they have any questions please not hesitate to con-
10 tact me.

11 Q But in the January 11th letter you give
12 them two weeks before you file.

13 A At that time we were not under a
14 continuous development obligation. This is the -- that was
15 the initial well and we had until June 1st to spud that well
16 in accordance with the Order 7850 and the farm-in
17 agreements.

18 Q When is the last, absolute, possible time
19 that the No. 3 well was to be spudded?

20 A I do not know the actual completion date
21 for the No. 2 and it would be, the anticipated crucial spud
22 date would be the first week of February, I believe.

23 Q So it's 90 days after the completion on
24 the No. 2 Well?

25 A Yes, sir.

1 Q When TXO receives a proposal to farm-in
2 or join in the voluntary pooling, what's TXO's process?
3 Could you give me a step by step procedure on what happens?

4 A The well proposal is received by a land
5 secretary, who makes a copy and send it to my attention and
6 the original letter goes down to the Geologic Department
7 with a copy of the AFE sent to the Engineering Department
8 for their review.

9 Q Okay. What happens after the Geologic
10 Department reviews it?

11 A Each department makes their recommenda-
12 tions and I forward the response to the proposing party.

13 Q Each department, you mean the Land
14 Department and the Geology Department or is there another
15 department involved with this?

16 A The Engineering reviews the AFE. Geology
17 reviews the geology. Land reviews the terms of trade. And
18 the -- all proposals are written on interoffice correspon-
19 dence forwarded to -- back to the Land Department, who then
20 responds to the proposing party.

21 Q Where's the -- this proposal goes to your
22 Midland Office?

23 A Yes.

24 Q Okay, where's the Engineer -- Engineering
25 Department located?

- 1 A It's all in the same building.
- 2 Q Okay, where's the Geology Department?
- 3 A It's all -- it's all in the same building.
- 4 Q Once this proposal is received by you in
5 the Land Office, you forward it to the engineer and geologi-
6 cal, -- once you receive this proposal and you forward it on
7 to the Engineering Department and Geological Department, and
8 you make your recommendations, what's the timeframe before
9 you get all the recommendations back and be ready to respond
10 to a party?
- 11 A There is no set timeframe. It varies.
12 We, if the letter notes any amount of urgency or time urgen-
13 cy problem, it is rushed through in order to properly res-
14 pond to the proposing party so the party can get along with
15 preparing farmout agreements, JOA's, or compulsory pooling
16 applications; whatever are in response to our response;
17 whatever our response requires.
- 18 Q What do you mean by rushed through? What
19 is the least amount of time that you have seen one go
20 through, or rushed through, as you said?
- 21 A The least amount of time is when I took
22 an AFE downstairs and on a counter-proposal from Yates and
23 said this is what I received; this is their AFE; they want
24 to operate, and I had the signatory party sign it on the
25

1 spot and I forwarded it back to Yates.

2 Q How long did this process of receiving
3 the thing and getting the response out, what time period?

4 A It was -- by the time our response letter
5 went out, less than 24 hours.

6 Q This was highly unusual, wasn't it?

7 A Yes, it was, but --

8 Q All right, let's talk about a usual time
9 period.

10 A Usual time period is a week and a half to
11 two weeks.

12 Q Thank you. Let's refer now to Exhibit
13 Number Six. Where was this prepared at?

14 A In our Dallas office.

15 Q How long has these figures been in ef-
16 fect?

17 A April 1, '85.

18 Q Okay. Let's go down to West Texas Dis-
19 trict before April 1st, 1985, do you remember what the fig-
20 ures were at that time?

21 A They will be 2.7 percent less than the
22 figures stated on this memo.

23 Q How often are they changed?

24 A They're evaluated annually and if the
25 COPAS, which is the Council of Petroleum Accountants Society

1 approves an increase, due to their method of evaluation, we
2 -- we coincide with that approved increase in overhead
3 rates.

4 Q Do you know how those figures are cal-
5 culated?

6 A No, that is by the COPAS, Council of Pet-
7 roleum Accountants Society, their independent determination.
8 I do not know how they arrive at that.

9 Q Have you seen their booklet or where they
10 get their figures?

11 A No, I haven't.

12 Q Why is the well in Alabama at the same
13 depth cheaper than in West Texas?

14 A I can't testify to that.

15 Q What are overhead charges?

16 A Overhead charges are charges assessed to
17 nonoperating parties by the operator for their overhead that
18 they incur in drilling a well, whether it be employee
19 salaries, inneroffice work, various expenses that they incur
20 in drilling of a well other than stated on an AFE or addi-
21 tional invoices that are sent.

22 Q So your proposed overhead charges are es-
23 sentially corresponding to your Exhibit Number Six.

24 A Yes.

25 Q In Exhibit Number Two, the AFE, which is

1 part of Exhibit Number Two --

2 A Yes.

3 Q -- it was dated September 24th, 1985.
4 What -- could you explain to me between September 24th,
5 1985, and October 24th, 1985, TXO's procedure in transfer-
6 ring the AFE to the Land Department and then getting a let-
7 ter out to the interest owners to join?

8 A Okay. This AFE is identical to the AFE
9 used on the Burleson Federal No. 1 Well, which was Bone
10 Spring test drilled new hole from surface to total depth,
11 and they used an identical AFE but changed pertinent infor-
12 mation in regards to well location.

13 Q That's not what I asked.

14 A Well --

15 Q September 24th, 1985, that would be after
16 this thing was filled out. When did you receive it?

17 A Well, as I said, this is the same one we
18 used in the Burleson and it was originally prepared for the
19 Burleson well.

20 Q Uh-huh.

21 A We changed the pertinent information,
22 well name and location, and used the same AFE.

23 Q But you didn't change the date.

24 A Right.

25 Q So if this thing was prepared in 1976,

1 the date would still be 1976.

2 A Yeah.

3 MR. STOGNER: I have no further
4 questions of Mr. Bourgeois.

5 Any other questions of this
6 witness?

7 MR. KELLAHIN: Mr. Examiner, I
8 have one follow up question to something you asked.

9 Perhaps I should ask it and let
10 Mr. Vandiver follow up if he needs to. Is that all right?

11 MR. VANDIVER: Fine.

12

13

RECROSS EXAMINATION

14 BY MR. KELLAHIN:

15 Q Mr. Bourgeois, the Examiner asked you
16 about the two week notice to Mr. Sprinkle in the January
17 proposal for the No. 1 Well.

18 A Right.

19 Q All right? I believe Mr. Vandiver has
20 asked the Examiner to take administrative notice of the Sep-
21 tember case for the Sprinkle No. 2. That was Case 8698.
22 Am I correct on that?

23 MR. VANNDIVER: Yes, you are.

24 Q I'd like to show you, Mr. Bourgeois, Ex-
25 hibit Number Two from that case.

1 A Okay.

2 Q Which is a letter of August 14th to Mr.
3 Sprinkle.

4 My question, sir, is the August 14th let-
5 ter to Mr. Sprinkle your proposal to him for the No. 2 Well
6 that then resulted in the forced pooling case heard on Sep-
7 tember 11th?

8 A Yes.

9 Q And what was the period of time that you
10 gave Mr. Sprinkle for the No. 2 Well in your August 14th
11 letter?

12 A Within two weeks.

13 MR. VANDIVER: Could I see that,
14 please?

15 MR. STOGNER: That was Exhibit
16 Number Two from the Case Number 8698, a letter dated August
17 16th, Mr. Kellahin?

18 MR. KELLAHIN: I believe it's
19 dated August 14th.

20 MR. STOGNER: 14th.

21 MR. VANDIVER: Do you have the
22 remainder of that file?

23 MR. KELLAHIN: I think that's
24 all, Mr. Bourgeois.

25 MR. VANDIVER: Do you have any

1 other questions?

2 MR. KELLAHIN: No, sir.

3 MR. VANDIVER: If the Examiner
4 please.

5

6

REDIRECT EXAMINATION

7

BY MR. VANDIVER:

8

Q Mr. Bourgeois, did you receive any
9 response to this letter of October 14th from Mr. Sprinkle?

10

A I received no written --

11

MR. KELLAHIN: Excuse me, I
12 think you misspoke. I think you said October.

13

MR. VANDIVER: No, I said Aug-
14 ust 14th.

15

MR. KELLAHIN: August, I'm sor-
16 ry. I must have misunderstood.

17

Q Did you receive any response to this let-
18 ter of August 14th from -- to Mr. Sprinkle?

19

A We received no written response and at
20 that time it was evident that a compulsory pooling applica-
21 tion would be necessary.

22

MR. VANDIVER: Mr. Examiner,
23 I'll ask you to take administrative notice of the fact that
24 the application for compulsory pooling for the Sprinkle Fed-
25 eral No. 2 Well was filed August 22, 1985, which was eight

1 days following the letter to Mr. Sprinkle.

2 Q Mr. Bourgeois, you have previously testi-
3 fied that as of this past Monday Mr. Sprinkle has paid you
4 \$192,000 in payment of his share of the estimated well costs
5 for the Sprinkle Federal No. 2 Well and that you have accep-
6 ted that although it was received by your office three days
7 beyond the date on which it was due, is that correct?

8 A Correct.

9 Q And Mr. Sprinkle will have from now until
10 his election period runs out to pay his estimated share of
11 the well costs for the Sprinkle Federal No. 3, is that cor-
12 rect?

13 A Correct.

14 Q Mr. Bourgeois, you testified with regard
15 to the overhead rates, did you not, that the other working
16 interest owners who had agreed to join in the drilling of
17 thke Sprinkle Federal No. 3 Well have agreed with those
18 overhead rates, is that correct?

19 A Yes, it is.

20 Q And you have also testified that the or-
21 der in Case Number 8696, that was Order Number R-8043, ap-
22 proved those rates, overhead rates for a well to be drilled
23 to the same depth, is that correct?

24 A Yes, it is.

25 MR. VANDIVER: I have no fur-

1 ther questions of this witness.

2 MR. STOGNER: Any further ques-
3 tions of Mr. Bourgeois?

4 MR. KELLAHIN: No, sir.

5 MR. STOGNER: Does anybody have
6 any questions of this witness?

7 If not, he may be excused.

8 We'll take a fifteen minute re-
9 cess.

10

11 (Thereupon a recess was taken.)

12

13 MR. STOGNER: This hearing will
14 come to order.

15 Mr. Vandiver.

16 MR. VANDIVER: Mr. Examiner, I
17 would like to state something concerning an issue that has
18 arisen concerning the information furnished to Mr. Sprinkle
19 and the timing of the information furnished to Mr. Sprinkle,
20 and yesterday in his motion Mr. Kellahin made the statement
21 that he had requested information from me last Friday, and
22 that is correct, and I would like to respond with that and
23 if you deem it necessary to be sworn, that conversation con-
24 sisted of a general assertion that more information was
25 requested by Mr. Sprinkle, and my request to know what that

1 information was, and Mr. Kellahin told me that he would call
2 me back this past Monday and tell me what information but he
3 failed to mention that he did not call me back and request
4 information, and I would like to have that clear and on the
5 record since he made the assertion that he has requested in-
6 formation that has been refused.

7 At this time I'll call Mr.
8 Cate, who has not been sworn.

9
10 (Witness sworn.)
11

12 RANDALL S. CATE,
13 being called as a witness and being duly sworn upon his
14 oath, testified as follows, to-wit:
15

16 DIRECT EXAMINATION

17 BY MR. VANDIVER:

18 Q Would you state your name, your occupa-
19 tion, and by whom you are employed, please?

20 A My name is Randall Cate. I'm employed by
21 TXO Production Corp. as District Drilling Engineer.

22 Q And what office are you in, Mr. Cate?

23 A I'm in the Midland office, which is our
24 West Texas District.

25 Q How long have you been employed by TXO,

1 Mr. Cate?

2 A Approximately 4-1/2 years.

3 Q Have you previously testified before the
4 New Mexico Oil Conservation Division?

5 A No, I have not.

6 Q Mr. Cate, would you describe for the Exa-
7 miner your education and work experience?

8 A Yes. I received a Bachelor of Science
9 degree in mechanical engineering from the University of
10 Texas in May of 1979. I was hired by Gulf Oil in June in
11 Odessa, and had a field training six months, some drilling
12 background, pumping, et cetera.

13 Went into the Odessa office for Gulf;
14 about a year and a half as a reservoir engineer; transferred
15 to Midland and worked in their Proration Department where I
16 did do testifying at the Texas Railroad Commission hearings.

17 Then I joined TXO, I believe it was '81,
18 February or July of '81, I think, and been with them ever
19 since.

20 I've been through Production Department,
21 Reservoir Department and now in the Drilling Department.

22 Q Are you familiar with the northwest quar-
23 ter of Section 26 in Township 18 South, Range 32 East, in
24 Lea County, New Mexico?

25 A Yes.

1 Q And are you familiar with the application
2 in this case?

3 A Yes.

4 MR. VANDIVER: Mr. Examiner, I
5 would tender Mr. Cate as an expert witness.

6 MR. STOGNER: Any objections?

7 MR. KELLAHIN: No objection.

8 MR. STOGNER: Mr. Cate is so
9 qualified.

10 Q Mr. Cate, I will hand you what's been
11 marked for identification as TXO's Exhibit Number Three and
12 ask you what that is.

13 A This is our AFE, Authority for Expendi-
14 ture, on our Sprinkle Federal No. 3 Well that we have pro-
15 posed as a Bone Spring test, approximate depth of 8700 foot.

16 Q Did you prepare that?

17 A Yes, I did.

18 Q Did you also prepare AFE's on the Sprin-
19 kle Federal No. 1, the Sprinkle Federal No. 2, and the Bur-
20 leson, is it No. 1 Well?

21 A Yes.

22 Q And what's the location of the Burleson
23 well?

24 A The location of the Burleson No. 1 is 660
25 from the north line and 2310 from the east line of Section

1 26, T 18, 32 East.

2 Q And is that approximately half a mile
3 from your proposed Sprinkle Federal No. 3 Well?

4 A Yes.

5 Q And what was the proposed depth of the
6 Burleson Federal No. 1 Well?

7 A 8700 foot.

8 Q And that's the same depth to which you
9 propose -- TXO proposes to drill the Sprinkle Federal No. 3
10 Well?

11 A Yes.

12 Q How do the costs reflected on the AFE,
13 which is Exhibit Number Three in this case, compare to the
14 costs of the Burleson well?

15 A The estimates are identical and we would
16 expect the costs virtually to be identical with some minor
17 fluctuations.

18 Q Mr. Cate, given your knowledge and ex-
19 perience in the industry, do you believe that those repre-
20 sent a fair and accurate estimate of the costs for the pro-
21 posed Sprinkle Federal No. 3 Well and is it your opinion
22 that those are reasonable costs?

23 A Yes, I do.

24 Q There are other parties who have approved
25 this AFE, is that correct?

1 A To my knowledge, yes.

2 MR. VANDIVER: Mr. Examiner, I
3 would move the admission of Exhibit Number Three in evi-
4 dence.

5 MR. KELLAHIN: No objection.

6 MR. STOGNER: Exhibit Number
7 Three will be admitted into evidence at this time.

8 MR. VANDIVER: And I will pass
9 the witness.

10 MR. STOGNER: Mr. Kellahin.

11

12 CROSS EXAMINATION

13 BY MR. KELLAHIN:

14 Q Mr. Cate, I appreciate you coming on
15 short notice to the hearing today. In coming, sir, did you
16 bring copies or information by which you can give us what
17 the estimated well costs were for the other wells you've
18 talked about; for example, the Sprinkle No. 1?

19 A I did not bring Sprinkle No. 1 data.

20 Q If I showed you the AFE from the hearing
21 for the Sprinkle Federal No. 1, I'm not sure, sir, that I
22 have the one out of the case file, but I will show you my
23 copy and see if you can recognize it.

24 Would that be the AFE for the Sprinkle
25 No. 1?

1 A Yes, sir.

2 Q It indicates on the AFE for the Sprinkle
3 No. 1 that a Mr. Mark Wideman (sic) prepared it?

4 A That's Wideman and he is a drilling
5 engineer that did work for me (inaudible).

6 Q And that was prepared on January 10th,
7 1985?

8 A Uh-huh.

9 Q And the total AFE costs were \$1,023,500?

10 A Yes, that's what I remember.

11 Q All right, sir. How do the actual costs
12 of that well compare to the actual estimates that you gave
13 for that well?

14 A Well, what I understand, it was -- we
15 probably spent some extra \$3-to-400,000 above this AFE, is
16 what I believe the total costs will finally show.

17 Q Okay. Do you have a recollection as to
18 why that occurred?

19 A Yes. Number one, the Morrow zone, we did
20 substantial testing there. The Wolfcamp, we tested two sep-
21 arate zones in the Wolfcamp with stimulations. We also came
22 up and into the Bone Spring; had a severe water flow in one
23 of the zones we perforated. We had to squeeze that off to
24 come down, re-perforate, re-test, then re-acidize; basically
25 that was like two whole completions at once and we did fin-

1 ally get the water shut off and made our completion and we
2 did have to frac it.

3 Q Let me show you, sir, Exhibit Number
4 Three from Case 8698. This was in the Commission file for
5 the September hearing. It is the AFE for the re-entry on
6 the Sprinkle No. 2. Do you recognize that?

7 A Yes, I do.

8 Q It indicates it's prepared by you, sir?

9 A Yes, sir. Uh-huh.

10 Q The estimated well costs for the No. 2
11 was what number, sir? For a completed well?

12 A For a total well cost, \$615,250.

13 Q And what is the date on that AFE?

14 A The date is August 12th, 1985.

15 Q That was a re-entry of an existing well?

16 A That's correct.

17 Q How do the actual costs compare to the
18 estimates for the No. 2 Well?

19 A In this case the actual costs would prob-
20 ably be roughly a \$120-to-150,000 less than this.

21 Q What's the explanation for the savings of
22 the \$120,000?

23 A Due to the fact that it was a re-entry,
24 there are inherent problems that we must anticipate. A lot
25 of operators may not want to admit it, but they will leave

1 junk in the hole. You never know what you're going to get
2 into until you do get that surface plug out of the hole.

3 Plus we had a salt section that was open
4 for a number of years. Normally in this area you set an in-
5 termediate string through that salt section because it
6 washes out so bad. In this case we couldn't do it because
7 we had 8-5/8ths surface pipe there.

8 So due to the inherent associated risk
9 associated with the re-entry, I thought the costs were jus-
10 tified. Not only that, on our timing within two or three
11 days we're going to know if our attempts were successful or
12 if we would have to plug back that hole, move the rig, and
13 then spud a new well, and this AFE actually more reflects
14 that, also, as a move over and spud the new well.

15 Q All right, sir. Is there any anticipated
16 cost savings between drilling a new hole to the Bone Spring,
17 such as the No. 3, versus the attempted re-entry, such as
18 the No. 2?

19 A Yes, we hope, we hope there is. If
20 everything goes just perfect, then we hope that we can save
21 some money and in this case we save probably \$120,000.

22 Q When we look at the Burleson No. -- it's
23 in Section 24?

24 A Section 26.

25 Q 26.

1 MR. VANDIVER: In Unit B in the
2 northeast northwest.

3 Northwest northeast, I'm sorry.

4 Q The Burleson Well, sir, you prepared the
5 AFE on that well?

6 A Yes, I did.

7 Q And it came in, I believe your testimony
8 was that the Sprinkle 3, the one we're discussing at today's
9 hearing, is an AFE that's identical to the one used for the
10 Burleson well.

11 A That's correct.

12 Q And you prepared the one on the Burleson
13 well?

14 A Yes.

15 Q How did the actual cost for the Burleson
16 Well compare to the AFE?

17 A Okay, to date we have not completed the
18 Burleson No. 1 but I've got my total estimated costs from
19 our field, what our field people call in daily on the Burle-
20 son No. 1, and as of the completion date it is within, on my
21 Burleson AFE we are within less than a \$10,000 difference
22 just for the total drilling costs, and the completion costs,
23 we really won't know until, of course, we complete it.

24 Q Are you still comfortable with the accu-
25 racy of the AFE for the Sprinkle No. 3, bases upon what you

1 know about the other wells?

2 A Yes.

3 Q Do you anticipate any mechanical problems
4 or risks for the operator in the No. 3 Well that you had
5 anticipated for the No. 2 Well?

6 A I would anticipate virtually the same
7 risks as if we had drilled the No. 2.

8 We won't have the risks of the washout.
9 We did get our pipe stuck in the Sprinkle No. 2 re-entry due
10 to that soft section, and then we had to drill new hole.

11 It's kind of a different creature. What
12 I would anticipate more of a problem being is possible water
13 problems once we get into the Bone Springs and test it. If
14 we get water we might have to repeat what we did in the No.
15 1, which would be squeeze and re-perforate and try to
16 isolate the production zone from the water zone.

17 Q The mechanical problems that you would
18 experience in a re-entry such as the No. 2 does not exist
19 for the No. 3.

20 A No, it really shouldn't.

21 Q In performing your duties for TXO do you
22 do any reserve calculations?

23 A Not at the present. I did prior to now
24 when I was in the Reservoir Department.

25 Q In the Drilling Department do you utilize

1 in your work any reserve data generated out of your Engine-
2 ering Department?

3 A No.

4 Q Do you know what the reserve numbers
5 attributable to any of these Sprinkle wells are?

6 A By hearsay.

7 Q You've not participated in generating any
8 of those calculations?

9 A No, I have not.

10 Q Have you prepared an AFE for the No. 4
11 Sprinkle well?

12 A Yes.

13 Q And is that identical to the No. 3?

14 A Yes.

15 Q All right, sir. Thank you, Mr. Cate.

16 MR. STOGNER: Mr. Vandiver?

17 MR. VANDIVER: I have no
18 further questions.

19

20

CROSS EXAMINATION

21 BY MR. STOGNER:

22 Q Mr. Cate, when did you actually prepared
23 this AFE on the Sprinkle No. 3?

24 A On the Sprinkle No. 3 it would have been
25 the same -- at the same time for the -- well, actually, I

1 prepared that AFE for the Sprinkle No. 2, which would have
2 been back in August, and the AFE's are identical and the
3 costs would be so close, so I prepared it prior, you know,
4 prior to the drilling of the other one.

5 Q Let me see if I have this straight. You
6 prepared this AFE around August, sometime in August? Did
7 you know that it was going to be the Sprinkle Federal Well
8 No. 3?

9 A No, not at that time.

10 Q But you knew of its location?

11 A No, I did not. The actual AFE period did
12 not change from Sprinkle Fed No. 2 AFE.

13 Q Well, let me --

14 A Okay, I did re-evaluate the AFE at the
15 time that we did propose it in September.

16 Q Mr. Cate, who informs you, or who asks
17 you to prepare AFE's?

18 A Our Land Department; when they are ready
19 to propose a well they require an AFE.

20 Q Do you recall when the Land Department, a
21 representative of your Land Department approached you about
22 preparing an AFE?

23 A Not exactly. I believe it would have
24 been within the week prior to the date that, you know, I've
25 got on my AFE.

1 Q So that would have been the week prior to
2 September 24th, 1985.

3 A I believe that's probably correct.

4 Q And at that time did you know whether the
5 location was?

6 A Yes.

7 MR. STOGNER: I have no further
8 questions of Mr. Cate.

9 Is there any other questions of
10 this witness?

11 MR. VANDIVER: Yes, sir, Mr.
12 Examiner, I think you -- I think that he has been confused
13 by the sequence of events.

14

15 REDIRECT EXAMINATION

16 BY MR. VANDIVER:

17 Q You prepared the AFE for the Sprinkle
18 Federal No. 3 Well using the AFE from the Burleson Well, is
19 that not correct?

20 A Yes, that's right.

21 Q And you prepared the AFE for the Burleson
22 Well in September 24th, 1985, is that correct?

23 A That's correct.

24 Q And so when the -- when management, TXO
25 management proposed the drilling of the Sprinkle Federal No.

1 3, you re-evaluated the costs on the Burleson well, is that
2 correct?

3 A Yes, and --

4 Q And the No. 2 Well?

5 A Yes.

6 Q And you at that time furnished the AFE to
7 the Land Department, is that correct?

8 A That's correct.

9 Q So you did not actually prepare this on
10 September 24th, 1985, in response to a request for an AFE
11 for the Sprinkle Federal No. 3, is that correct?

12 A Not as a whole, new series of --

13 Q This was prepared on September 24th,
14 1985, for the drilling of the Burleson Well, was it not?

15 A Yes.

16 Q And then later when the Sprinkle Federal
17 No. 3 was proposed, you changed the top of this giving the
18 location, but you did not change the date, is that not cor-
19 rect?

20 A Yes, that's correct.

21 Q And so you didn't prepare this for the
22 Sprinkle Federal No. 3 in September 24th, 1985.

23 A Correct.

24 Q You prepared it for that well approxi-
25 mately a month later, did you not?

1 Vandiver.

2
3 RECROSS EXAMINATION

4 BY MR. STOGNER:

5 Q Mr. Cate, in your own words, when did
6 management come to you and say prepare an AFE or re-evaluate
7 an AFE or sign an AFE or get an AFE out on the specific
8 Sprinkle Federal Well No. 3, located 2310 feet from the
9 north line and 333 -- 30 feet from the west line of Section
10 26, Township 18 South, Range 32 East, Lea County, New Mexi-
11 co?

12 A Well, I don't -- I don't remember the
13 exact dates.

14 Q Can you narrow it down to a week?

15 A Oh, I'd say it was probably within a,
16 probably, two or three weeks of when we did this Burleson
17 No. 1. I know that they were very close together as far as
18 time period goes, subsequent to that.

19 Q Would it be safe to say, then, maybe the
20 middle of October?

21 A Yes, I think so.

22 MR. STOGNER: Okay, I have no
23 further questions of this witness.

24 Are there any other questions
25 of Mr. Cate?

1 MR. VANDIVER: Yes, sir.

2
3 REDIRECT EXAMINATION

4 BY MR. VANDIVER:

5 Q Mr. Cate, who asked you to prepare that
6 AFE for the Sprinkle Federal No. 3 Well? What person?

7 A Actually Dave Hundley, who is Jeff's im-
8 mediate supervisor. We have a weekly drilling meeting in
9 which we do decide that we are going to drill wells, and at
10 that time I was notified they needed an AFE.

11 MR. VANDIVER: No further ques-
12 tions.

13 MR. STOGNER: Any questions of
14 Mr. Cate?

15 If not, he may be excused.

16 Mr. Vandiver?

17
18 ANDREW T. O'HARE,

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

21
22 DIRECT EXAMINATION

23 BY MR. VANDIVER:

24 Q Would you state your name, your occupa-
25 tion, and by whom you're employed, please, sir?

1 A My name is Andrew T. O'Hare. I'm a geo-
2 logist for TXO Production Corporation in Midland.

3 Q Have you in the recent past testified be-
4 fore the New Mexico Oil Conservation Division and had your
5 qualifications as a geologist accepted by the OCD?

6 A Yes, several times.

7 Q Have you made a geological study of the
8 area in question and are you familiar with TXO's application
9 in this case?

10 A Sure am.

11 MR. VANDIVER: Mr. Examiner, I
12 tender Mr. O'Hare as an expert petroleum geologist.

13 MR. STOGNER: Any objection?

14 MR. KELLAHIN: No objections.

15 MR. STOGNER: Let the record
16 also show that Mr. O'Hare was sworn in yesterday as a wit-
17 ness and his qualifications are accepted.

18 Q Mr. O'Hare, I will refer you to what's
19 been marked for identification as TXO's Exhibit Number Seven
20 and ask you what that is?

21 A Exhibit Number Seven is an updated pro-
22 duction map from -- the previous one was instituted in the
23 hearing on the Sprinkle No. 3 and the number has just been
24 updated to reflect production since then.

25 There are nineteen wells shown on the

1 plat. Of that, seven wells, designated in pink, are Bone
2 Springs producers.

3 The well in Section 34 produces from a
4 carbonate interval which does not correlate with the sand
5 interval which we have completed in -- are completed in our
6 remaining six wells, and also completed in our Sprinkle No.
7 1 and Sprinkle No. 2, and is the propose objective for the
8 Sprinkle No. 3.

9 Of those six wells three have been pro-
10 ducing for a significant period of time, which by "signifi-
11 cant", I would say greater than a year and a half or two
12 years. One, in fact, has been plugged and abandoned.

13 The well in Section 35, the William Hen-
14 don, Jr., the 1-35, was recompleted in the Bone Spring in-
15 terval which correlates with our production in the No. 1 and
16 No. 2 in the mid-seventies, and has produced just in excess
17 of 5000 barrels of oil to date, and there is no current
18 listing of daily production, although I think it is still
19 producing. I saw the pumpjack going up and down when I was
20 out in the field last week.

21 The Shell Oil Querecho Plains Unit No. 2
22 in Section 27 was a deeper test but then recompleted in the
23 Bone Spring, a correlative interval with our No. 1 and No.
24 2, and produced 40,000 barrels of oil and has since then
25 been abandoned.

1 The Mewbourne Oil Federal 1-G was origin-
2 ally a Morrow test and was subsequently completed in several
3 Bone Spring intervals. It has produced 70,000 barrels of
4 oil from the combined completions in the Bone Springs and
5 has produced just in excess of 48,000 barrels of oil from
6 the correlative sand pay to our Sprinkle No. 1 and Sprinkle
7 No. 2.

8 That well came on flowing for 235 barrels
9 of oil a day and is currently producing 45 barrels of oil a
10 day. It was recompleted in the correlative zone in February
11 of 1984, and as I previously said, has since then produced
12 48,000 barrels of oil from the same correlative interval.

13 There are no production statistics avail-
14 able for the Mewbourne Federal 10-E. It was completed in 7-
15 85 and our most recent records on microfiche are to 6-85.

16 Our Sprinkle No. 1 has produced 10 -- in
17 excess of 10,000 barrels of oil since coming on line Septem-
18 ber 22nd, 1985, and is currently producing just in excess of
19 200 barrels of oil a day.

20 The Sprinkle No. 2 was recently completed
21 and there is no significant production history to date.

22 That basically does that.

23 Q Was Exhibit Number Seven prepared by you?

24 A Yes.

25 Q And can you attest to its accuracy?

1 A Yes, I can.

2 Q If I can refer you to what's been marked
3 for identification as TXO's Exhibit Number Eight and ask you
4 what that is.

5 A Exhibit Number Eight is a structure map
6 on top of the Bone Spring, loosely referred to as K Sand.
7 The seven Bone Springs producers are indicated by pink.
8 Again only six of those produce from the correlative inter-
9 val or have produced from the correlative interval. The well
10 being in Section 34 is excluded from those.

11 The structure map designates two noses,
12 structural noses. One trends roughly north/south in Section
13 27 and Section 34, and the other smaller one trends roughly
14 northwest/southeast in Section 23 and Section 25.

15 As mapped, our Sprinkle Federal No. 3
16 should come in at a structural elevation at or about equiva-
17 lent to the Sprinkle No. 2.

18 The sandstone reservoir in question is a
19 combination trap, which involves both structure and strati-
20 graphy. One needs a favorable structural position in combi-
21 nation with porosities in excess of 10 percent to produce
22 oil, or so it seems.

23 Again, of the six wells that have pro-
24 duced from this correlative pay the Mewbourne Oil Federal 1-
25 G has produced the highest volume of oil to date and is

1 still currently producing.

2 In conversations with the reservoir en-
3 gineer in our office, he has given me a figure of 60,000
4 barrels of oil requisite to recover 2-to-1 of return on in-
5 vestment. It is TXO's practice, and the other company that
6 I worked with before coming to TXO, to engage themselves in
7 oil drilling ventures which have a return or predicted re-
8 turn on investment of 2-to-1.

9 So therefore, I would suppose that to be
10 a commercial producer, as in getting a 3-to-1 return on your
11 money, you would need to produce in excess of 80-to-90,000
12 barrels of oil from this sand reservoir.

13 No wells in the area have produced that
14 to date.

15 Q I'd like to refer you to what's been mar-
16 ked for identification as TXO's Exhibit Number -- if I could
17 strike that and back up and ask you, was Exhibit Number
18 Eight prepared by you and can you attest to its accuracy?

19 A Yes.

20 Q Now I'll refer you to what's been marked
21 for identification as TXO's Exhibit Number Nine and ask you
22 to describe what that is.

23 A Exhibit Number Nine is a Bone Springs pay
24 sands Isopach of porosity, designating the number of feet of
25 sand that has porosity in excess of 10 percent.

1 As can be seen, there are two porosity
2 thicknesses, one running roughly north/south from Section 27
3 down into Section 34, and again one running roughly north-
4 west/southeast from Section 23 into Section 25.

5 These porosity thicknesses appear to cor-
6 relate with the structural noses previously discussed on Ex-
7 hibit Number Eight.

8 Based on optimistic mapping on my part,
9 it appears to indicate that we will penetrate a thickness
10 just in excess of 20 feet of sand with porosities greater
11 than 10 percent.

12 One can see in Section 25 the NORTEX Oil
13 and Gas Uncle Sam Federal Com No. 1-25 Well from my best
14 judgment appears to have 46 feet of porosity in excess of 10
15 percent, whereas, less than a half a mile away, in the same
16 zones, the L. R. French, Jr. Uncle Sam No. 1 has zero feet
17 of sand demonstrating 10 percent or greater porosity.

18 Therefore, there is a certain chance and
19 a certain possibility that we could penetrate a Bone Spring
20 pay sand interval with insufficient quantities of porosity
21 in excess of 10 percent to be a commercial venture.

22 As I've previously said, it appears quite
23 unlikely and I have therefore mapped it as shown.

24 Q And was Exhibit Number Nine prepared by
25 you and can you attest to its accuracy?

1 A Yes.

2 Q Now, Mr. O'Hare, I'll refer you to what's
3 been marked for identification as TXO's Exhibit Number Ten
4 and ask you to describe that for the examiner.

5 A Exhibit Number Ten is a stratigraphic
6 cross section which is indicated on Exhibits Number Eight
7 and Exhibit Number Nine. From A to A' the cross section
8 runs roughly southwest to northeast across the indicated
9 structural nose in Section 27 and Section 34.

10 At the southwestern end of the cross sec-
11 tion is the Shell Oil Querecho Plains Unit No. 2 Well with
12 porosities estimated in excess of 10 percent designated in
13 green and the pay sands with an estimated gamma ray cutoff
14 due to the old scale on that log of 70 API units. Perfora-
15 tions in the sands in that well and subsequent wells are in-
16 dicated in pink.

17 As indicated on my porosity Isopach, the
18 Shell well penetrated 22 feet of sand thickness demonstra-
19 ting greater than 10 percent porosity, yet has only produced
20 40,000 barrels of oil.

21 The sandstone is very fine-grained as in-
22 dicated and supported by gamma ray on the log; permeabili-
23 ties appear to be extremely low, and at best insignificant.
24 The resistivity log appears to indicate no apparent perme-
25 ability and consequently, the reservoir needs to be consid-

1 erably stimulated before any hydrocarbons can be recovered
2 from the reservoir.

3 As discussed by our engineer, Randall
4 Cate, in our Sprinkle Federal No. 1 Well, as can be seen on
5 the log second from the right, we penetrated the pay sands
6 indicated in green and yellow and then two sandstones above
7 that.

8 Upon initial perusal of the log I, and
9 others, assume that the two upper sands had better looking
10 log character and had in fact some resistivity separation,
11 possibly indicating permeability, and I, and others, were
12 therefore relatively pessimistic about the ability for the
13 sands below 8500 feet to produce, if at all.

14 We therefore separated off the two upper
15 sands via a packer, and acidized those sandstones and conse-
16 quently flowed substantial quantities of formation water and
17 little, if any, hydrocarbons.

18 Not wanting to give up, we squeezed those
19 sandstones off and moved further down the wellbore and per-
20 forated the lower sands. Again we acidized those sandstones
21 as is common, and swabbed back no greater than 5 percent oil
22 and swabbed dry.

23 At this point our upper management was
24 leaning towards plugging the well, yet we decided as a last
25 ditch effort to frac the sandstones similar to the way Mew-

1 bourne Oil had treated the same sandstones in Section 27,
2 and consequently, the well came on as indicated on the pro-
3 duction map.

4 The initial flow rates are by anyone's
5 best estimate substantial and would indicate, would appear
6 to indicate a favorable reservoir situation.

7 Although, as I just previously discussed,
8 production histories are minimal on the three new wells, the
9 three wells on the righthand side of the cross section, and
10 the significant production histories we have, as I said,
11 more than a year and a half of production, have not met to
12 date economic limits for a drilling venture at a depth of
13 8700 feet.

14 Q Mr. O'Hare, was Exhibit Number Ten pre-
15 pared by you?

16 A Yes.

17 MR. VANDIVER: Mr. Examiner, I
18 would move the admission of Exhibits -- TXO's Exhibits
19 Seven, Eight, Nine, and Ten.

20 MR. STOGNER: Any objection?

21 MR. KELLAHIN: No objection.

22 MR. STOGNER: Exhibits Seven,
23 Eight, Nine, and Ten will be admitted into evidence at this
24 time.

25 Mr. Kellahin, your witness.

1 MR. VANDIVER: I'm sorry, Mr.
2 Examiner, maybe I'm going out of order.

3 Q Mr. O'Hare, based upon your geologic
4 study of the area have you arrived at an opinion with regard
5 to the risk penalty to be imposed in this case?

6 A Yes.

7 Q What is your opinion?

8 A Drilling any well is a risky venture re-
9 gardless of how close you are to apparently substantial pro-
10 duction.

11 Again, as I previously mentioned, there
12 is a certain chance that we could penetrate an interval with
13 little significant producible porosity. Therefore I would
14 recommend a risk penalty no greater than what we received on
15 the No. 2, which is no greater than 180 percent.

16 Q And, Mr. O'Hare, in your opinion will the
17 granting of TXO's application avoid the drilling of unneces-
18 sary wells, prevent waste, and protect correlative rights,
19 and be in the interest of conservation?

20 A Yes.

21 MR. VANDIVER: I'll pass the
22 witness.

23 MR. STOGNER: Thank you, Mr.
24 Vandiver.

25 Mr. Kellahin, your witness.

1 MR. KELLAHIN: Thank you, Mr.
2 Stogner.

3

4

CROSS EXAMINATION

5 BY MR. KELLAHIN:

6 Q Mr. O'Hare, when your reservoir engineer
7 gave you the number 60,000 barrels of oil --

8 A Uh-huh.

9 Q -- was it your understanding that that
10 number simply represented a 2-to-1 rate of return --

11 A Uh-huh.

12 Q -- for a Bone Springs well?

13 A Uh-huh.

14 Q All right. It would be better if you
15 said yes or no.

16 A Okay, yes, instead of uh-huh.

17 Q In making your study of geology for the
18 No. 3 Well, Mr. O'Hare --

19 A Uh-huh.

20 Q -- did you --

21 A Yes.

22 Q Did you receive from your engineers their
23 estimates of recoverable reserves for any of the wells?

24 A Yes, I have. I have not perused those
25 and I don't know the exact figures.

1 Q What is your best recollection of what
2 the recoverable reserves were for any of the wells?

3 A I couldn't testify to that.

4 Q The number you've given us of the 60,000
5 barrels of oil simply is nothing more than recovering the
6 costs of the well twice. Is that what you mean by rate of
7 return?

8 A Yes.

9 Q I believe you said awhile ago that you're
10 dealing here with at least the two Sprinkle wells and maybe
11 one other, the Mewbourne well; those three have not given
12 you very significant production history to date, have they?

13 A They haven't.

14 Q Would it enable you as a geologist to
15 better assess the risk involved in drilling the No. 3 Well
16 if you had more production history from those three wells?

17 A There's a possibility but I think it
18 would -- it would take upwards of 10 to 15 years to tell
19 that kind of -- see that kind of information.

20 Q If we look at the Sprinkle Federal 1 --

21 A Uh-huh.

22 Q -- we had initial potential flow rate, I
23 believe you've told us, of about 235 barrels of oil a day?
24 Yes?

25 A Yes.

1 Q Did you testify in Case 8698 before Exa-
2 miner Quintana on September 11th, 1985, about the risk fac-
3 tor to be assessed in the No. 2 Well?

4 Do you recall testifying to Mr.
5 Quintana's question about the status of the Federal No. 1
6 Well, that "last week we did production tests, limited pro-
7 duction tests, and it's been flowing at an approximate rate
8 of 100 barrels a day." Do you remember that testimony?

9 A Yes.

10 Q And you said, "I do predict a steep de-
11 cline and feel as if there is not enough evidence to tell
12 whether the well will be productive." Was that your testi-
13 mony?

14 A Yes. I still feel that same way.

15 Q Has the Federal No. 1, Sprinkle No. 1,
16 experience a steep decline?

17 A Not to date.

18 Q Not to date.

19 A It's been a very short time period.

20 Q What is the production information you
21 have since it started production?

22 A What do you mean by that?

23 Q What's the daily producing rate?

24 A Approximately 200 barrels a day.

25 Q Okay, and has it continued from inception

1 at that rate?

2 A Uh-huh. Yes.

3 Q Have you experienced or been provided
4 information that showed that the pressure was declining in
5 the well?

6 A I can't (not clearly understood) about
7 pressure.

8 Q When you prepared the Isopach here for
9 presentation today, it's your Exhibit Number Nine, Mr.
10 O'Hare, if you'll look at the cross section, Exhibit Number
11 Ten, would you identify for me on the cross section exactly
12 what it is that you've mapped on the Isopach when you've
13 mapped the Bone Springs pay sands?

14 A The (not clearly understood.)

15 Q In each instance?

16 A Uh-huh.

17 Q Is that the same process you used when
18 you prepared the cross section and Isopach for the September
19 11th hearing?

20 A No. I've since then re-evaluated the
21 geology based on new evidence and research on similar reser-
22 voir characteristics.

23 Q Were the September 11th exhibits prepared
24 based upon the same pick of this Bone Springs pay section?

25 A No, the structure map on that was the top

1 of the 1st Bone Spring Sand, which is indicated on my pre-
2 sent cross section by a dashed line, which reflects a total-
3 ly different thickness between that and the top of the pay
4 zone.

5 Q All right. Do you know or did you know
6 the TXO geologist that testified before the Commission in a
7 hearing before Examiner Stogner on February 27th, 1985,
8 whose name is John Tittl?

9 A Yes, I'm acquainted with him.

10 Q Is he still employed with TXO?

11 A Yes, he is.

12 Q In making your preparation for this hear-
13 ing today, Mr. O'Hare, did you review his testimony and ex-
14 hibits from the February hearing?

15 A Not recently.

16 Q Would you disagree or agree with Mr.
17 Tittl having mapped the 1st Bone Springs Sand as being in
18 his opinion the only commercial sand within the Bone
19 Springs?

20 A In the extreme immediate vicinity, okay,
21 within this plat.

22 Q That is correct; you would agree with Mr.
23 Tittl's opinion about within the area of Section 26 --

24 A The geology appears to indicate that.

25 Q That the 1st Bone Springs that we're

1 looking at is the commercial zone.

2 A Uh-huh; yes.

3 Q Mr. O'Hare, I'd like to give you copies
4 of your porosity map, your structure map, and your produc-
5 tion map from the September hearing and I'd like to ask you
6 some questions about those.

7 A Sure.

8 Q I've marked these as a convenience as
9 Sprinkle Exhibit Five, and the first one is your porosity
10 map from the September hearing. Is that an accurate photo-
11 copy of your exhibit from that hearing?

12 A Sure, that's it.

13 Q All right, sir. Now if you'll take the
14 Exhibit Number Nine from today's hearing, which is the Bone
15 Springs Isopach as you map it now, would you explain to us
16 first of all whether or not you're mapping the same interval
17 in each of the Isopachs or whether they're different inter-
18 vals.

19 A I mapped the same interval based on a
20 different deposition, or depositional fabric, or design that
21 it has now.

22 Q Were you using the same porosity percen-
23 tage cutoff?

24 A Yes.

25 Q All right, and what does "CI" mean?

1 A Contour interval.

2 Q One is on 5 feet and the other is on 10
3 feet.

4 A Yes, correct.

5 Q Since the last hearing, Mr. O'Hare, we
6 have only one wellbore that has been drilled to the Bone
7 Springs and that's the No. 2 Sprinkle Well, is it not?

8 A The Burleson Federal was recently com-
9 pleted but -- the Burleson Federal No. 1 was completed on
10 Tuesday of this week and these maps (not clearly under-
11 stood.)

12 Q All right, so the only new geologic data
13 used between the two exhibits is the data utilized by you
14 for the Sprinkle No. 2.

15 A That and my ability to rethink the geo-
16 logy and map another horizon which would be the top of the
17 pay sand, which would appear to indicate a different poro-
18 sity designation than I mapped on the (not understood). It
19 doesn't appear to be one big pod. It appears to be two sep-
20 arate pods, which agree with the two structural maps indi-
21 cated on my regional (not clearly understood.)

22 Q If we look at the cross section, Exhibit
23 Ten for today's hearing, and if you look at the Isopach from
24 the September hearing, and the Isopach from today's hearing,
25 are you mapping the same Bone Springs interval in each

1 Isopach?

2 A Yes, with some re-evaluation, of course,
3 and that is the reason for the difference.

4 Q All right, let's look at the structure
5 maps now. The second page of Sprinkle Exhibit Five is an
6 accurate reproduction of your structure map from the Septem-
7 ber hearing?

8 A Yeah.

9 Q And then if you'll compare that to the
10 structure map, Exhibit Eight, for today's hearing, --

11 A Yes.

12 Q -- would you explain why you've mapped
13 the structure differently now?

14 A They are two different structural hori-
15 zons.

16 Q Okay. One structural horizon is the top
17 of the Bone Springs Sand?

18 A Yes, which is indicated on the cross sec-
19 tion for today's hearing by the dashed line.

20 Q All right, and the structure map for to-
21 day's hearing is the top of the Bone Spring Sand --

22 A Pay sand.

23 Q -- pay sand, which is also shown on the
24 cross section being the solid line some distance below the
25 dotted line.

1 A Yeah, uh-huh.

2 Q All right. What is the reason that
3 you've changed your perspective on the structure map and
4 decided now to map the top of the Bone Springs pay sand
5 versus the top of the Bone Springs?

6 A If you look at the cross section for to-
7 day's hearing, for the Sprinkle Federal No. 1 Well and the
8 Sprinkle Federal No. 2 Well, there appears to have been in
9 interval from the top of the 1st Bone Spring Sand to the top
10 of the best correlative pay sand; therefore indicating that
11 there is a change in depositional history or an idea I just
12 hadn't thought about previously due to the lack of that in-
13 formation, and, consequently, I thought to better reflect
14 the reservoir it would be more appropriate to map the top of
15 the Bone Spring pay sand.

16 Q You said awhile ago that structure was
17 important for a commercial well in the Bone Springs. Is
18 there a --

19 A It appears to be important.

20 Q All right, sir.

21 A In combination with porosity as well.

22 Q Let's look at the range or latitude you
23 have in the structure that gives you the minimum and maximum
24 structural position for a Bone Springs well. What would be
25 the top structural position and what would be the lower

1 structural position for the Bone Springs in which you could
2 project an economic well?

3 A Based on the William Hendon Well in Sec-
4 tion 35, it appears that anything below the -4900 structure
5 contour line would be uneconomic.

6 Q It's too deep that way. All right, 4900
7 --

8 A It appears that way, unless there is some
9 complicated change in porosity.

10 Q All right. Let's look to the shallower
11 structural position, what is the minimum depth in that
12 direction in which to encounter the Bone Springs structural-
13 ly?

14 A It doesn't appear to have a minimum. A
15 minimum doesn't appear to have any (not clearly understood)
16 today.

17 Q Would you want to be at a structural
18 position above the Mewbourne oil well at -4756?

19 A If you could possibly be there.

20 Q We have the Sprinkle No. 1 at a struc-
21 tural position and you'll have to tell me with the footage
22 interval between the two, it's about -4725?

23 A It's -4712.

24 Q I'm sorry. So if we can get at a struc-
25 tural position that's at least below the 4700 contour line,

1 we are in a favorable structural position.

2 A It may indicate that but it has not -- it
3 hasn't been up dip -- the up dip limit to this reservoir has
4 not been established to date.

5 Q Okay.

6 A Therefore production could go up to -2500
7 probably, but it appears that wells capable of -- there
8 could be wells capable of producing as high as -4650.

9 Q And the best Bone Springs producer, or at
10 least the one that's produced the longest, is the Mewbourne
11 Oil Well in 27, the 1-G?

12 A It cumed the most oil to date.

13 Q Okay. When was that well completed, do
14 you recall?

15 A Okay. It was recompleted in that inter-
16 val on 2-84.

17 Q On your Isopach you map 14 feet of Bone
18 Springs pay for the Mewbourne Well, correct?

19 A I might add --

20 Q Yes, sir.

21 A -- that that log is a different type of
22 log than used for the other three wells on the righthand
23 side of the cross section. It is a compensated (not under-
24 stood) velocity log and porosity may fluctuate; porosity es-
25 timates may fluctuate to a certain degree on that.

1 So it could have actually had more pay or
2 less pay than indicated. That was my best estimate.

3 Q Looking at the Hedron well in 35, you've
4 mapped that as having 10 feet of net pay in the Bone Springs
5 and that well's not done very good in the Bone Springs, has
6 it?

7 A No, it hasn't.

8 Q Would you project as a geologist that
9 you're going to need at least 10 feet of net pay on the Bone
10 Springs to have a commercial well?

11 A Remains to be seen.

12 Q All right, what do you think is the mini-
13 mum number of footage, then, in which you'll be comfortable
14 with that projection?

15 A It remains to be seen.

16 Q It could be less than the 10 feet?

17 A Yes, I think it could be in a favorable
18 structural position.

19 Q Okay. Using your Isopach and structure
20 map for today, does the proposed No. 3 Well have a compar-
21 able thickness and structural position as the No. 1 Well?

22 A It appears to be projected down dip
23 structurally but it appears to, as I have it mapped, it ap-
24 pears to indicate that it would penetrate just in excess of
25 20 feet, again optimistically.

1 Q Production in the Bone Springs is some-
2 thing that is obtained by these operators, including TXO, by
3 fracturing the wells.

4 A It appears to be that in the Bone Springs
5 formation, yes.

6 Q Right. Did you prepare the geology for
7 the proposed No. 4 Well that we've discussed today?

8 A I've mapped the whole area.

9 Q Have you been requested by management to
10 make your geologic opinions about the fourth well?

11 A It's basically proposed right now. Until
12 we have more geologic control I've mapped it, but further
13 data would be of use, if necessary.

14 Q Is the decision to be made about drilling
15 the No. 4 Well one that will be contingent upon a favorable
16 geologic opinion rendered by you?

17 A That would be the best case.

18 Q And is that what TXO will do in this
19 case?

20 A That's a possible procedure.

21 Q Are you prepared to make a geologic
22 recommendation about the No. 4 Well today without benefit of
23 the wellbore information from the No. 3 Well?

24 A Based on my map that you see in front of
25 you.

1 MR. KELLAHIN: May I have just
2 a moment, please?

3 Q The Harvey Yates Sweeney Federal well in
4 Section 25?

5 A That's the well designated in purple?

6 Q Yes, sir.

7 A On the production map?

8 Q Right. That's the only Delaware well in
9 the area?

10 A Yes.

11 Q Thank you, sir. I have no further
12 questions.

13 MR. STOGNER: Mr. Vandiver?
14 Redirect?

15 MR. VANDIVER: I have no
16 further questions, Mr. Examiner.

17 MR. STOGNER: I have no
18 questions of this witness.

19 Are there any other questions
20 of Mr. O'Hare? If not, he may be excused.

21 We'll take a ten or fifteen
22 minute recess.

23

24 (Thereupon a recess was taken.)

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MR. STOGNER: The hearing will
come to order.

Mr. Vandiver?

MR. VANDIVER: Mr. Examiner, if
I could, I would like to recall Mr. Bourgeois just a very
short series of questions, if there is no objection.

MR. KELLAHIN: No objection.

JEFF BOURGEOIS RECALLED,
and being previously sworn and still under oath, testified
as follows, to-wit:

REDIRECT EXAMINATION

BY MR. VANDIVER:

Q Mr. Bourgeois, you testified previously
in this hearing and you've heard the testimony. Is there --
are there -- or a question has been raised with regard to
the timing of the application filed in this case and the
well proposal.

Are there -- have there been any times
when TXO has received an application or a well proposal and
been informed at the same time that a compulsory pooling ap-
plication was being scheduled?

A Yes, there is.

1 Q Can you give us an example of such a sit-
2 uation?

3 Q At the Examiner Hearing held on October
4 9th and 10th Pennzoil had on the docket two compulsory pool-
5 ing applications.

6 In their initial well proposal to TXO
7 they stated that they were in the process of filing compul-
8 sory pooling applications and their letter was similar to
9 mine in that it furnished TXO with an AFE and also an oppor-
10 tunity to farmout its interest as opposed to joining in the
11 well.

12 Q And what was TXO's attitude about that
13 procedure?

14 MR. KELLAHIN: I'm going to ob-
15 ject, Mr. Examiner. I think this is irrelevant to the hear-
16 ing today about the dispute between Pennzoil and TXO for
17 force pooling each other for wells in the Shipp Strawn Pool.
18 I think there are reasons why those cases were set up like
19 they were and they have no bearing on what we're doing now.
20 They're not relevant.

21 MR. VANDIVER: Mr. Examiner,
22 the witness has testified that each situation is different
23 and is approached by the company differently and what I am
24 trying to establish is that it is not unusual to make a well
25 proposal and at the same time schedule an Examiner Hearing

1 before the Examiner and for that reason I think that it is
2 relevant to negate the argument that we were some how trying
3 to coerce Mr. Sprinkle and that it is usual and ordinary in
4 the industry to make a well proposal and schedule a hearing
5 at approximately the same time.

6 MR. STOGNER: I have brought up
7 several questions today and yesterday concerning practices
8 by TXO and I'm going to overrule your objection, Mr. Kella-
9 hin.

10 Please continue, Mr. Vandiver.

11 Q You may answer the -- the question. What
12 was TXO's attitude about that procedure?

13 A We were advised in the letter from Penn-
14 zoil that they were going to schedule forced pooling hearing
15 and with that information I therefore expedited the proces-
16 sing of that proposal through the necessary departments, and
17 we had no problem in reaching decisions on what we were
18 going to do in both of these separate compulsory pooling ap-
19 plications.

20 Q And other than that circumstance, are you
21 -- are there other situations that you are aware of where
22 well proposals have been made at approximately the same time
23 that an application for compulsory pooling was filed before
24 the Division?

25 A We received an AFE. We received a farm-

1 out request from an operator of a well in Chaves County in
2 which we had an interest. We declined the farmout and sub-
3 sequently they sent us an AFE and again a farmout request
4 with the news that they were going to schedule a forced
5 pooling.

6 Our intention was to just -- we had no
7 objection to that and we were force pooled in that instance.

8 Q When an application for forced pooling
9 has been filed naming TXO as one of the parties who has not
10 agreed to join in the drilling of a well, what information
11 does TXO request of the party, the applicant, applying for
12 compulsory pooling?

13 A We request the -- the information we re-
14 quest is the location of the well and AFE to be associated
15 with the drilling of this well.

16 Q And if there is a delay in evaluating the
17 well proposal, what does TXO do and what information does it
18 request of the applicant?

19 A None.

20 Q Do you -- do you tell the applicant in
21 that situation what you propose to do or how it's going to
22 be handled or how they should handle it, if there is such a
23 delay?

24 A We will say, depending on circumstances,
25 if we're going to farmout we'll tell them we'll farmout. If

1 we anticipate joining we say we're anticipating joining, and
2 if we have no interest in it at all, we'll say we will just
3 let our interest be pooled.

4 Q But with regard to information, when a
5 hearing is scheduled and there's a delay in signing the AFE
6 when TXO proposes joining a well, what information do you
7 then request, if there is a delay in signing the AFE for
8 any reason and you anticipate joining?

9 A If we anticipate joining a well and for
10 some reason the proper parties who are to sign the AFE and
11 operating agreement are inaccessible and out of the office,
12 I inform the operating party that we anticipate joining but,
13 however, if they must spud the well prior to receiving the
14 information from us, just to tight hole us until we are --
15 furnish us with no information on the well until we have
16 furnished them with the necessary signature pages.

17 MR. VANDIVER: I will pass the
18 witness.

19 MR. KELLAHIN: No questions.

20 MR. STOGNER: I have no ques-
21 tions of this witness.

22 Is there anything further of
23 Mr. Bourgeois?

24 If not, he may be excused.

25 Do you have anything?

1 MR. VANDIVER: No, sir, that is
2 all the evidence and testimony I intend to introduce in the
3 case in our direct examination.

4 I could call rebuttal witnesses
5 but I don't anticipate doing so at this time.

6 MR. STOGNER: Mr. Kellahin?

7 MR. KELLAHIN: Mr. Stogner,
8 we'll renew our motion we made yesterday for a continuance
9 and a subpoena of documents. We are not prepared to go for-
10 ward with our case today.

11 TXO has set upon a course of
12 action that is a surprise to us in the notice process. It
13 is not reasonable to do what they have done. We need addi-
14 tional time to hire experts and to talk about the risk fac-
15 tor penalty. We need additional time to evaluate this pros-
16 pect and to determine what Mr. Sprinkle would like to do.

17 I said yesterday, and I'll say
18 it again today, on October 25th Mr. Vandiver filed for his
19 client a compulsory pooling action. That was one day after
20 they proposed the well to us. That is inconsistent with
21 TXO's operation with Mr. Sprinkle on the first two wells.
22 We contend they gave him very little time in those cases.
23 They at least gave him two weeks notice and proceeded to
24 pool him.

25 In this case, the third case,

1 they have not even seen fit to give him two weeks to res-
2 pond. They filed a pooling case the very next day.

3 Mr. Vandiver makes a point of
4 the fact of, well, we delayed notification of the hearing
5 until November 6th. Thanks a lot. They could have told us
6 on the 25th that they were setting this for hearing and may-
7 be we'd have had another eleven days to track down an
8 engineer and a geologist to talk about the things that we
9 learned today.

10 TXO expends no amount of time
11 and effort to bring a drilling engineer to talk about an AFE
12 but you see how carefully they hide from telling us what the
13 reserve calculations are on the first two wells on leases
14 that Mr. Sprinkle owns.

15 He's entitled to this informa-
16 tion and he's not getting it because they perceive the rules
17 in a different way. They are using the forced pooling rules
18 as bludgeon against people and it's not the purpose or in-
19 tent (nto clearly understood) put together.

20 Mr. Bourgeois sat here and tes-
21 tified that he intentionally withheld data from Mr. Sprinkle
22 on the No. 2 Well. He's told us we could have it next week.
23 We need that information. We need to know that data in or-
24 der to respond adequately to 180 percent risk factor on a
25 direct offset development well that offsets a well that pro-

1 live with it. They have a drilling commencement date of No-
2 vember 4th, if I recall Mr. Bourgeois' testimony correctly.
3 There is plenty of time if we have a hearing before this
4 same examiner on the 18th of December to finish this case
5 and to give us time to respond, to enter an order, get Mr.
6 Sprinkle served with his notice, run the thirty days, and
7 drill the well. It sill works. There's no reason that we
8 have to be steamrolled because TXO can't plan their drilling
9 operations to preclude the problem that they foresee them-
10 selves to be in.

11 I think this is unfair. The
12 Commission in the past, over objections, to the best of my
13 recollection tries to accommodate applicants in presenting a
14 full and complete case.

15 Mr. Bourgeois refers to the
16 Pennzoil/Texaco dispute. I'm not aware that he testified
17 that either one of those operators asked for a continuance
18 and you may remember Mr. Quintana spent seven hours in a
19 hearing over that case. Both sides came well prepared; no
20 one asked for a continuance. That's not what this is about.
21 We've been sandbagged, Mr. Examiner, and we need some time.

22 MR. STOGNER: Mr. Vandiver,
23 before I hear your rebuttal let me take just a few minutes
24 to review something here.

25 Go ahead, Mr. Vandiver.

1 MR. VANDIVER: Mr. Examiner,
2 this motion, I think it has become obvious is just, as I
3 stated yesterday, another attempt by Mr. Sprinkle to delay
4 and cloud the issues arising in this case. He knows that
5 TXO has a continuous development obligation requiring them
6 to commence the drilling of the Sprinkle Federal No. 3 be-
7 fore the first week of February and he hopes that the exam-
8 iner will delay this hearing so that -- until December 18th
9 so that there will then be another delay of maybe a couple
10 of weeks. He hopes it will be longer than a couple of weeks
11 in entering an order force pooling his interests so that he
12 can get closer to the spud date and hopefully TXO will have
13 commenced the drilling of the well before his election time
14 has expired.

15 Mr. Sprinkle, I think it is ob-
16 vious, rode TXO down on the Sprinkle Federal No. 2 Well.
17 That, unfortunately, was the result of the timing in the
18 commencement of the Sprinkle No. 2 Well and he was allowed
19 to do it in that case and regardless of the protestations of
20 the unreasonableness of TXO in this case, I think that any-
21 one in the industry would agree that it is unprecedented to
22 present a force pooled party with the information that he
23 was allowed to have during the period of his election and to
24 get a free look at the well.

25 Why is he in here saying that
TXO is unreasonable? TXO furnished him with almost all of

1 of the information that those parties who were willing to
2 take a risk along with TXO were furnished with, and finally,
3 at the last minute, he was able to make his election and he
4 has now signed the AFE and he has now signed the joint oper-
5 ating agreement, and TXO has a contractual obligation to
6 furnish him with additional information, which includes the
7 drilling report from October, whatever date this drilling
8 report closed, October 24th, I believe, until the current
9 date, and that information will be furnished.

10 But you'll remember that Mr.
11 Sprinkle has not been a joining party in this well until
12 this past Monday. His money arrived late; three days late.
13 TXO is not going to rely on the technical terms of the order
14 and say that, no, his interest is force pooled and he's not
15 going to be allowed to join. TXO is going to accept that
16 money gladly and TXO is going to comply with its contractual
17 obligation to furnish him all the information that the con-
18 tract provides but if he wants to hire engineers and geolo-
19 gists to evaluate this prospect he is free to do so, but TXO
20 is not going to give its proprietary information, to which
21 Mr. Sprinkle is not entitled, to Mr. Sprinkle in order to
22 allow him another free look at this well.

23 It is contrary to what Mr. Kel-
24 lahin says, the testimony just previous to this motion with
25 regard to the Pennzoil Shipp Estate No. 1 Well, where Penn-

1 zoil proposed the drilling of a well and at the same time
2 filed a compulsory pooling application. That application
3 was unopposed by TXO and TXO subsequently joined in the
4 drilling of the well.

5 In this case Mr. Sprinkle was
6 given a well proposal and he was told in that proposal that
7 we're sorry but we're going to have to include you in a com-
8 pulsory pooling application and it is the result of the time
9 limitation and the time limitation will end this February
10 4th, and the reason that TXO wanted to file the application
11 is that they want to have Mr. Sprinkle, if he is unwilling
12 to join, which he has plenty of information to decide
13 whether or not to join, information freely given to him by
14 TXO, which had no obligation to give to a force pooled in-
15 terest, if we wants to join he can join at any time and if
16 he does not want to join, TXO wants his interest force
17 pooled, and the statute says that when two or more parties
18 have not agreed to the drilling of a well that the Division
19 shall enter an order pooling the mineral interest, pooling
20 all interests, and TXO, if he is unwilling to join in the
21 well, TXO wants his interest force pooled and they want his
22 election time to have expired before they commence the
23 drilling of the well, and that is the purpose of their ap-
24 plication and that is the purpose of the forced pooling
25 statute, so that Mr. Sprinkle cannot again ride them down

1 and get a free look at the well as he is attempting to do.

2 He is not going to do it again
3 to TXO. He has not agreed to join but he has from now until
4 the time that the order is entered and thereafter thirty
5 days from the time that the cost information is furnished to
6 him to pay his share of the estimated reasonable well costs,
7 and if he doesn't like -- if he doesn't like the order en-
8 tered in this case, he can ask for de novo review before the
9 Commission. But he is going to have plenty of time to eval-
10 uate this, but his interests need to be force pooled now so
11 that he cannot take advantage of TXO as TXO allowed him to
12 do previously.

13 TXO is not the party doing the
14 sandbagging in this case. TXO has done nothing but be free
15 and open with its information and honest and aboveboard with
16 Mr. Sprinkle and has told him what they're going to do and I
17 would think that Mr. Sprinkle would be happy to have his
18 lease developed by TXO. But apparently he -- he's going to
19 try to do again what he did before.

20 Unfortunately we're all human
21 and none of us can divine what is underneath the surface of
22 the earth. We're just incapable of doing it. But Mr.
23 Sprinkle thinks he's found an antidote to that. Maybe he'll
24 be able to get the logs again before his time has expired
25 and maybe he'll be able to get the drilling reports, and

1 maybe TXO will give up this information again, and now he
2 asks for a subpoena to give up the proprietary information
3 which TXO is not going to give up, so that he can evaluate
4 whether or not he should join in the drilling of this well.

5 He -- he thinks that he has
6 found an antidote to the human inability to look underneath
7 the surface of the earth. We'd all be rich if we could know
8 before we put up our money that the well was going to be a
9 good well or a dry hole. We'd all, if we could all look at
10 the logs before we paid our money, we'd all be fabulously
11 wealthy and there would be no risk to the oil business. But
12 there is risk and the risk has to be allocated and if Mr.
13 Sprinkle wants to take his chances with TXO based upon the
14 information that they have given him, or based on what other
15 information he can obtain for himself, then he is free to do
16 so. TXO is happy to have him and they will fulfill their
17 contractual obligation to him.

18 But with regard to the Sprinkle
19 No. 1 Well and with regard to the Sprinkle No. 3 Well, TXO
20 has no contractual obligation to Mr. Sprinkle. TXO has a
21 right to drill a well. It is a co-tenant in the ownership
22 of this lease. It has the right to recover the oil in place
23 underneath this tract. Mr. Sprinkle is not willing to join;
24 the Division shall pool his interest.

25 MR. STOGNER: Mr. Kellahin?

1 MR. VANDIVER: I'm sorry, I was
2 thinking.

3 MR. STOGNER: Oh, I'm sorry.
4 My apologies.

5 MR. VANDIVER: There is nothing
6 in Orders R-7850 or R-8043 on the Sprinkle Federal Nos. 1
7 and 2 requiring TXO to furnish the information which they
8 did. There's nothing in the law or the regulations that re-
9 quire TXO to furnish this information to Mr. Sprinkle.
10 There's nothing in case law that requires TXO to furnish
11 this information to Mr. Sprinkle, and we're getting to the
12 essence of the rights and duties among co-tenants in the
13 ownership of an oil and gas lease. TXO -- Mr. Sprinkle had
14 no right, TXO had no duty, nevertheless, in an effort to
15 amicably resolve this matter, in an effort to get along with
16 Mr. Sprinkle, TXO gave him the information that he request-
17 ed.

18 But TXO is not going to give
19 its engineering reports on the reservoir to the other work-
20 ing interest owners who have agreed to join in the No. 3
21 Well. They're not going to give that information on the No.
22 1 and 2 Well. They have no contractual obligation to give
23 that information and they're not going to give it out and
24 they're not going to give it out to Mr. Sprinkle.

25 He has more than the informa-

1 tion that he was allowed. He's trying to delay. He's
2 trying to do to TXO what he has done before and the motion
3 must be denied. TXO is trying to be reasonable. TXO is
4 trying to comply with the law that requires them to get an
5 order force pooling his interest before they spud the well
6 and an order needs to be entered so that the time can be
7 running and Mr. Sprinkle can be thinking about it, and he's
8 going to get all the future information on the No. 2 Well
9 that he is -- that TXO is contractually obligated to give
10 him. He's going to get everything that TXO is obligated to
11 give him and all the information that they're going to give
12 to the other parties. It will be in the mail on Monday to
13 Mr. Sprinkle.

14 And if he is capable of eval-
15 uating the prospect between now and the time that it runs
16 out he can join or he can elect not to join but the motion
17 is nothing more than an effort to delay and to cloud the is-
18 sue which is should this be force pooled and the statute
19 says that it shall be force pooled.

20 If he wants to go out and hire
21 his own people to evaluate this tract, he can do so but TXO
22 needs this order entered so that he cannot take advantage of
23 them again, and I especially request that the order be
24 denied, that we get on with the hearing, and that an order
25 be entered force pooling all mineral interests from the

1 depth of 4800 feet to the base of the Bone Springs formation
2 so that TXO can get on with the drilling of its well and
3 meeting its contractual obligations.

4 The motion is inappropriate and
5 should be denied.

6 Thank you.

7 MR. STOGNER: Mr. Kellahin?

8 MR. KELLAHIN: Nothing further,
9 Mr. Stogner.

10 MR. STOGNER: Mr. Kellahin,
11 first off I'm going to deplore the use of profanity in my
12 proceedings. I'm sure it won't happen again in the future.

13 Regarding Section 70-20 -- I'm
14 sorry, 70-2-17 of the New Mexico Statutes which address the
15 issue of force pooling, statutory pooling, it's been a
16 policy of the Division in the past that voluntary agreement
17 by all parties should be obliged by all concerned.

18 I don't think this has been
19 done.

20 And also, the forced pooling
21 provision should not be used as a tool. We see it as a last
22 ditch effort in seeking agreement of acreage.

23 For that reason I'm going to
24 sustain Mr. Kellahin's motion to continue this case to De-
25 cember 18th, 1985, at which time I'll be prepared to either

1 take more testimony or take this case under advisement.

2 As for the additional motion
3 made by Mr. Kellahin for a subpoena, in general rules -- in
4 the general rules and regulations of the Oil Conservation
5 Division Rule 1211, I don't think the procedure has been
6 followed; therefore I'm going to overrule your objection to
7 subpoena any additional information.

8 MR. VANDIVER: I'm sorry, sir,
9 I don't understand that -- that ruling. You're going to
10 deny his motion for a subpoena?

11 MR. STOGNER: Right.

12 MR. VANDIVER: All right.

13 MR. STOGNER: But I will sus-
14 tain or continue this case for any additional testimony to
15 be presented by either party at the December 12th -- I'm
16 sorry, December 18th, 1985, hearing, which is before me.

17 One more request by both par-
18 ties, if you all, both of you would see that a carbon copy
19 of any correspondence, written correspondence between both
20 companies, TXO and Mr. Sprinkle, see that this case file has
21 copies of that.

22 Is there anything further?

23 MR. KELLAHIN: I apologize to
24 you, Mr. Stogner, I didn't mean to use profanity in your
25 hearing room. This case upsets me greatly and I got carried

1 away.

2 MR. STOGNER: Thank you, Mr.
3 Kellahin.

4 Mr. Vandiver? Anything?

5 MR. VANDIVER: No, sir.

6 MR. STOGNER: Therefore this
7 case will continued to the Examiner Hearing scheduled for
8 December 18th, 1985.

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10 (Hearing concluded.)

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C E R T I F I C A T E

I, SALLY W. BOYD, C.S.R., DO HEREBY CERTIFY 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

I do hereby certify that the foregoing is a complete record of the proceedings in the Examiner hearing of Case No. 8755, heard by me on 21 Nov. 1985.

Michael P. Hooper Examiner
Oil Conservation Division