

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

4 February 1987

EXAMINER HEARING

IN THE MATTER OF:

Application of Mallon Oil Company for CASE
the reinstatement of oil production 9073
allowables and an exception to the
provisions of Division General Rule
502 . . . Rio Arriba County, New
Mexico.

BEFORE: Michael E. Stogner, Examiner

TRANSCRIPT OF HEARING

A P P E A R A N C E S

For the Commission: Jeff Taylor
 Legal Counsel for the Division
 Oil Conservation Division
 State Land Office Bldg.
 Santa Fe, New Mexico 87501

For the Applicant:

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MR. STOGNER: To continue on to
page two, we'll call next Case Number 9073.

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MR. TAYLOR: The application of
Mallon Oil Company for the reinstatement of oil production
allowables and an exception to the provisions of Division
General Rule 502 for certain wells located in the Gavilan-
Mancos Oil Pool, Rio Arriba County, New Mexico.

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The applicant has requested
that this case be continued.

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MR. STOGNER: Case Number 9073
will also be continued to the Examiner's hearing scheduled
for February 18th, 1987.

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(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 this portion 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. 9073, heard by me on 4 February 1987.

[Signature], Examiner
Oil Conservation Division

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MR. CATANACH: We'll call next Case Number 9073.

MR. TAYLOR: Application of Mallon Oil Company for the reinstatement of oil production allowables and an exception to the provisions of Division General Rule 502 for certain wells located in the Gavilan-Mancos Oil Pool, Rio Arriba County, New Mexico.

MR. CATANACH: Are there appearances in this case?

MR. PEARCE: May it please the Examiner, I am W. Perry Pearce of the law firm of Montgomery and Andrews, Santa Fe, New Mexico, appearing in this matter on behalf of the applicant, Mallon Oil Company.

MR. CATANACH: Are there other appearances?

MR. KELLAHIN: If the Examiner please, I'm Tom Kellahin of Santa Fe, New Mexico, appearing on behalf of Jerome P. McHugh and Associates, Dugan Production Corporation, and Sun Exploration and Production Company.

MR. CARR: May it please the Examiner, I'm William F. Carr with the law firm Campbell & Black, P. A., of Santa Fe, appearing on behalf of Benson-Montin-Greer Drilling Corporation.

1 MR. BRUCE: Mr. Examiner, my
2 name is Jim Bruce from the Hinkle Law Firm in Santa Fe, rep-
3 resenting Mesa Grande, Limited.

4 Mesa Grande is appearing today
5 fully in support of Mallon Oil Company's application.

6 MR. CATANACH: How many witness-
7 ses are we going to have today?

8 MR. PEARCE: I have one wit-
9 ness, Mr. Examiner.

10 MR. KELLAHIN: I may have some
11 witnesses, Mr. Examiner, I'm not sure and I'd like to wait
12 till we hear the direct case of the applicant.

13 MR. CATANACH: Will the witness
14 please stand and be sworn in at this time?

15

16 (One witness sworn.)

17

18 KEVIN FITZGERALD,
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. PEARCE:

24 Q Thank you, Mr. Examiner.

25 Sir, for the record would you please

1 state your name, your employer, and your position?

2 A Kevin Fitzgerald. I'm employed with Mal-
3 lon Oil Company. I'm a petroleum engineer.

4 Q Mr. Fitzgerald, have you appeared before
5 the Division or one of its examiners previously and had your
6 credentials made a matter of record and accepted?

7 A Yes, I have.

8 Q And are you familiar with the subject
9 matter of the case under discussion here, 9073?

10 A Yes, I am.

11 MR. PEARCE: Mr. Examiner, I
12 tender the witness as an expert in petroleum engineering.

13 MR. CATANACH: Mr. Fitzgerald
14 is considered qualified.

15 Q Mr. Fitzgerald, at this time I hand you
16 what we have marked as Exhibit Number One to this proceeding
17 and I'd ask you to tell the Examiner and those in attendance
18 what's represented on that document?

19 A Okay. This is a map of the Gavilan Pool
20 area. The outlined area shows what we have on our files as
21 being the Gavilan, outline of the Gavilan Pool. The wells
22 listed there in the blue dots are the wells operated by Mal-
23 lon Oil Company.

24 Q Very briefly, sir, I notice there are
25 some wells spotted on this application. What's the purpose

1 of the application being heard today?

2 A The purpose of the application is to re-
3 instate allowables for the period of January through April
4 of 1986.

5 Q For which wells?

6 A For the -- the Ribeyowids 2-16 in Section
7 2; the Fisher Federal 2-1, also in Section 2; the Howard 1-A
8 in Section 1; the Howard 1-11 in Section 1; and the Johnson
9 12-5 in Section 12.

10 Q And in what township and range are all
11 those located?

12 A This is Township 25 North, Range 2 West.

13 Q I notice, Mr. Fitzgerald, that there are
14 also two additional wells spotted on this map, the Post 13-6
15 and the Davis 3-15. Is -- are those wells involved in this
16 case in any way?

17 A No, they are not.

18 Q All right, sir, thank you. Do you have
19 anything further on Exhibit Number One?

20 A No, I do not.

21 Q All right, sir, at this time I would like
22 you to examine what I have marked as Exhibit Number Two to
23 this proceeding and discuss for the Examiner and those in
24 attendance at the hearing the information reflected on that
25 exhibit.

1 A This exhibit has one sheet for each of
2 the wells that we're requesting the reinstatement of allow-
3 ables on.

4 On each one of these sheets the period
5 from January through April are shown.

6 The first column you'll see is the allow-
7 able assigned by the OCD; the allowable that should have
8 been assigned under the Gavilan-Mancos rules; and then the
9 last colum shows the actual production.

10 Q Now, Mr. Fitzgerald, in discussing that
11 you said the allowable that should have been assigned under
12 the Gavilan-Mancos rules. Could you briefly discuss for us
13 what went on with regard to these wells in early 1986?

14 A Okay. Mallon Oil Company participated in
15 the hearings to extend the Gavilan Pool to include the area
16 involved that would include our wells and place our wells
17 under the Gavilan-Mancos Pool rules. That became effective
18 January 1st. I believe the order was signed January 3rd,
19 1986.

20 The effect of that order changed the max-
21 imum depth allowable from I believe it was 187 barrels of
22 oil per day up to 702 barrels of oil per day.

23 Q And the 187-barrel allowable that you
24 seem to recall was based on 40-acre spacing, is that cor-
25 rect?

1 A That's correct.

2 Q And when these wells were included in the
3 Gavilan Pool the spacing changed to 320 and therefore the
4 depth bracket allowable increased, is that correct?

5 A That's correct.

6 Q All right, sir. How were these wells
7 produced subsequent to January 1st of 1986?

8 A Beginning January, 1986, we increased the
9 production on all five of these wells based on the fact that
10 we assumed that the allowable was increased to 702 barrels
11 per day.

12 Q And the column shown on each of the pages
13 of this exhibit which says "Allowable Assignable Under Gavi-
14 lan-Mancos Rules" is the allowable which would have been as-
15 signable if the 702-barrel allowable had been granted, is
16 that correct?

17 A Yes, that's true.

18 Q Do you know if for the months of January,
19 February, and March of 1986 Mallon Oil Company received oil
20 proration schedules which showed oil allowable for this
21 pool?

22 A No, we did not.

23 Q Okay.

24 A We produced these wells from January
25 through April at the rates, well, the rates shown on the

1 right column for each of the wells.

2 And the end of April we changed crude oil
3 purchasers and in changing crude oil purchasers the new pur-
4 chaser informed us that the allowables had not been assigned
5 reflecting the 702 barrels per day.

6 Q Who was the previous purchaser?

7 A It was Mancos Corporation.

8 Q And who was the new purchaser?

9 A It was (not clearly understood) Corpora-
10 tion with Permian being the trucker.

11 Q Okay. Down at the bottom of each of
12 these pages there is a line which says Theoretical Underpro-
13 duction. Could you tell us how you calculated that number?

14 A All we did was we subtracted the allow-
15 able assignable under Gavilan-Mancos rules from the actual
16 production and then added them up.

17 Q Now, subsequent to being notified by the
18 new purchaser of this oil that an incorrect allowable was
19 being used, what steps did you take to correct the situa-
20 tion?

21 A We contacted the Aztec Office and discus-
22 sed with them the problem we had and they said in fact that
23 the allowables had not been issued for the higher amount,
24 that we were required to file new gas/oil ratio tests before
25 an allowable could in fact be set up to produce that amount.

1 Q And I notice that each of these pages,
2 the month of April of 1986 is broken into two segments; one
3 from April 1st through April 27th, and the second line April
4 28th through April 31st.

5 Was it on or about April 28th that the
6 new allowable was assigned?

7 A Yes, that's true. These were based on
8 gas/oil ratio tests we submitted to the Aztec Office.

9 Q All right, sir. Without going through
10 individual wells and individual numbers, the same sort of
11 calculation has been performed on each of the five wells in
12 question, is that correct?

13 A That's correct.

14 Q And what is the total production which
15 you made up between May and August on these five wells?

16 A Okay, from May to August the Aztec Office
17 allowed us, instead of shutting our wells in immediately,
18 they allowed us to make the production up by cutting back
19 wells and shutting in wells during staggered period of time.
20 In doing that we made up a total of 90,967 barrels of oil.

21 Q I'm sorry, could you give me that number
22 again, sir, please?

23 A 90,967 barrels of oil.

24 Q All right, if I understand what you have
25 just testified it is that Mallon Oil Company restricted its

1 own production and has suffered a production short fall of
2 90,967 barrels of oil because of an administrative oversight
3 in failing to file a new gas/oil ratio test to make the al-
4 lowable effective January 1, 1986, is that correct?

5 A That's correct.

6 Q All right, sir. At this time I would ask
7 you to look at what I have marked as Exhibit Number Three to
8 this proceeding. Would you tell the Examiner, please, and
9 those in attendance what's reflected on this exhibit?

10 A These are supplemental oil proration
11 schedules for the months September through December, 1986,
12 supplied after the ruling of September 1st to reduce the al-
13 lowables in the Gavilan Pool from 702 barrels a day and a
14 2000 GOR to 400 barrels of oil a day and a 600 GOR.

15 Q Okay, now as -- looking at the top sheet
16 shown for what I will call the "Rib" Well, since I won't try
17 to pronounce that name, I notice that that particular well,
18 the allowable went from 448 barrels of oil down to 400 bar-
19 rels of oil. Can you explain why that well had a 448-barrel
20 allowable assigned previously?

21 A The 448-barrel allowable had been as-
22 signed based on the gas/oil ratio test that had been submit-
23 ted.

24 Q And these supplements to the oil prora-
25 tion schedule assigning these oil allowables were received

1 by Mallon Oil Company from the Aztec Office of the Oil Con-
2 servation Division, is that correct?

3 A Yes, they were.

4 Q And they were issued by the Oil Conserva-
5 tion Division after the Oil Conservation Commission announ-
6 ced its decision in the previous allowable and GOR restric-
7 tion case, is that correct?

8 A That's correct.

9 Q At this time, Mr. Fitzgerald, I'd ask
10 you to review what I've marked as Exhibit Number Four to
11 this proceeding. All right, sir, if you would at this time,
12 please relate to the Examiner and those in attendance what's
13 reflected on this exhibit?

14 A In December, I believe it was December
15 22nd, Frank Chavez with the Aztec Office contacted us and
16 told us that we had overproduced our wells, primarily these
17 three, from the production reports that we'd supplied for
18 September through November, and this letter was a follow-up
19 after he had reviewed the November written reports, that --
20 requiring we shut in the wells based on this overproduction.

21 Q Okay. What's -- what's your
22 understanding of what error had occurred out here?

23 A When the allowables had been issued
24 reducing allowables in September, it was our understanding
25 that new gas/oil ratio tests would be required to be run be-

1 fore the allowables would be reduced any further.

2 At one point there was conversations to
3 where the Aztec Office said that they were considering re-
4 quiring gas/oil ratio tests be run on a monthly basis and
5 that we stated that we'd be willing to do whatever we --
6 they were wondering what we were going to recommend and we
7 stated we'd be willing to do whatever -- what's been request-
8 ed.

9 Q Were those gas/oil ratio tests ever re-
10 quested, do you know?

11 A No, they were not.

12 Q All right, sir. What's the next step in
13 the -- in this case?

14 Okay, let me hand you what I've marked as
15 Exhibit Five to this proceeding and I'd ask you to discuss
16 this exhibit for the Examiner and those in attendance,
17 please, sir.

18 A Okay. In this exhibit I've made an at-
19 tempt to estimate the amount of overproduction for each of
20 the wells involved from September through December, 1986. I
21 have taken this information from the C-115's at that gas/oil
22 ratio and backed out an amount of oil that would -- that we
23 would calculate to be overproduced.

24 This shows from the five wells that we've
25 overproduced a total of 48,934 barrels of oil, 123,385 MCF.

1 Q And as I understand it, sir, the wells
2 were produced on the basis of the supplement to the oil pro-
3 ration schedule which we've marked as Exhibit Number Three,
4 which was sent to you by the Aztec Office of the OCD, is
5 that correct?

6 A That's correct.

7 Q In fact, the oil allowable reflected on
8 the pages of that exhibit is an incorrect oil allowable, is
9 that right?

10 A That's correct.

11 Q And the tabular summary, totaling 48,934
12 barrels of oil overproduced from September through December
13 of 1986 is a result of the wells having been produced pur-
14 suant to the oil proration schedule that was incorrect, is
15 that accurate?

16 A That's correct. I might add that the
17 reason that we produced the wells, we didn't produce them at
18 the maximum rates under that schedule, either, some of hte
19 time because we were working on the wells.

20 Q So that in fact if those wells had not
21 been being worked on, the actual production from the wells
22 would have been higher than the actual production, is that
23 correct?

24 A Right, that's correct. We would be over-
25 produced by a more significant amount.

1 Q All right, sir. At this time I'd like to
2 show you what I've marked as Exhibit Number Six to this pro
3 ceeding, and would you please discuss for the Examiner and
4 those in attendance the contents of this exhibit?

5 A The Exhibit Number Six is divided up into
6 three categories. We've taken the theoretical underproduc-
7 tion for January through April from Exhibit Number -- excuse
8 me, Exhibit Number Two on each page and added that up to
9 come up to the 187,065 barrels of oil.

10 The 254,631 MCF was an amount based on --
11 it's asterisked at the bottom -- based on May actual produc-
12 tion gas/oil ratio, except for the Howard 1-8 and the John-
13 son 12-5, where there was almost no production in May. We
14 used April actual production to determine a gas/oil ratio
15 and basically backed out an amount of gas that we would have
16 produced at that allowable. Even though the allowable was
17 the higher 2000-to-1 gas/oil ratio, this is more in line for
18 an estimate of what we would have produced had we produced
19 that amount.

20 Q Okay, it's my understanding, sir, that
21 the 187,065 barrels of oil is the sum of the theoretical un-
22 derproduction numbers shown in Exhibit Number Two and that
23 the MCF column shown on that exhibit is the May or April
24 gas/oil ratio for each of those wells multiplying by the
25 amount of theoretical underproduction, is that correct?

1 A That's correct.

2 Q All right, sir. Now let's look at the
3 second line of that exhibit, which is entitled Production
4 Made Up May Through August --

5 A Yes, sir.

6 Q And tell us what that is, please.

7 A The Production Made Up May Through August
8 was the production that Mallon Oil Company made up from the
9 cutbacks we discussed earlier. The amount added up to
10 90,967 barrels of oil. We've gone about the same way calcu-
11 lating the amount of gas that we would have produced had we
12 been allowed to produce that 90 -- almost 91,000 barrels of
13 oil. We've calculated it the same way as we did the theoret-
14 ical underproduction.

15 Q All right, sir, and the third line of
16 that exhibit, entitled Overproduction September Through De-
17 cember, could you discuss what that is for us, please?

18 A That's just taken straight off of the --
19 of Exhibit Number Five. That's the total amount of overpro-
20 duction for September through December of '86.

21 Q All right, sir. In this case what amount
22 of allowable is Mallon Oil Company seeking to have rein-
23 stated for each of the five wells in question?

24 A We're seeking to have just the overpro-
25 duction amount for September through December be reinstated

1 to where we could just put the wells back on production at
2 their reduced rates as per the reduced allowables of the
3 nearest -- issued under the September hearing.

4 Q All right, sir, and essentially bring
5 those wells into a zero status effective the date of the or-
6 der if your application is granted?

7 A That's correct.

8 Q All right, sir. In -- in terms of the
9 Gavilan reservoir, do you have an opinion on whether or not
10 the granting of this application would act to prevent waste
11 of the resource and protect the correlative rights of inter-
12 est owners within that pool?

13 A I do.

14 Q Is it your opinion that balancing 48,000
15 barrels of oil overproduction with almost 190,000 barrels of
16 theoretical underproduction which resulted from a clerical
17 error, is a just and equitable remedy?

18 A Yes, I do. I feel like the production
19 that we made up from May through August should have been al-
20 lowed. We should have been allowed to produce that amount.

21 And due to that error that occurred Jan-
22 uary through April, the same error occurred for September
23 through December, we were involved in calculating the num-
24 bers based on the outcome of the order as to what our actual
25 production should have been under that order and we very

1 well know how to calculate that amount that was issued under
2 the order, but we thought we -- we believed we were follow-
3 ing the procedures that we were instructed to follow under
4 the production from January through April.

5 Q Do you have anything further, Kevin?

6 A Nothing further.

7 MR. PEARCE: No further
8 questions at this time, Mr. Examiner.

9 MR. CATANACH: Mr. Kellahin,
10 any questions?

11 MR. PEARCE: Yeah, Mr. Kellahin
12 reminds me and I appreciate it.

13 I need to move the admission of
14 Mallon Oil Company Exhibits One through Six to this
15 proceeding.

16 MR. CATANACH: Any objections?

17 MR. KELLAHIN: No objection
18 here.

19 MR. CATANACH: Exhibits One
20 through Six will be admitted into evidence.

21 Mr. Kellahin.

22 MR. KELLAHIN: Thank you, Mr.
23 Examiner.

24

25

1 CROSS EXAMINATION

2 BY MR. KELLAHIN:

3 Q Mr. Fitzgerald, I'd like to focus with
4 you for a moment on the September through December produc-
5 tion in excess of the levels established by the Commission
6 pursuant to the September 11th, 1986, order, which temporar-
7 ily reduced the producing levels in the Gavilan-Mancos to
8 400 barrels a day and a gas/oil ratio of 600-to-1, I be-
9 lieve, is correct. Is that not true?

10 A Yes, that's correct.

11 Q When we look at Exhibit Number Five, do I
12 understand you to say, sir, that the magnitude of overpro-
13 duction that you have placed on this exhibit represents the
14 difference between what was the correct calculation of Mal-
15 lon's allowables, using the September order, as interpreted
16 by the Aztec Office and the Division here in Santa Fe?

17 A On the number that says "Overproduction,
18 September Through December"?

19 Q Yes, sir.

20 A Yes.

21 Q All right.

22 A Now, that's a number we calculated -- that
23 I calculated.24 Q I'm trying to understand how you calcu-
25 lated it. Determined the quantity that was in excess of a

1 certain number, I want to understand what that number was.

2 I assume from your testimony it was the
3 allowable that was calculated based upon the September or-
4 der.

5 A That's correct, based on the actual gas-
6 oil ratios produced during those months.

7 Q And for September through December we
8 have the 48-49,000 barrels of oil in excess of -- of the
9 rate established in that order.

10 A That's correct.

11 Q As of January 1st are you producing in
12 excess or within the limits of that order?

13 A Yes, we are.

14 Q Which one? It was an either/or, I'm sor-
15 ry I didn't make my question clear.

16 A All right.

17 Q Are you producing in excess of the as-
18 signed allowable pursuant to the temporary order?

19 A Well, no, we're not. We're not pro-
20 ducing.

21 Q All right, sir, we don't have this prob-
22 lem for January, February, or after December of '85.

23 A No, we do not.

24 Q '86. All right. For September through
25 December Mallon was calculating the allowable for his wells

1 by a different construction of the September order?

2 A We were producing our wells based on the
3 oil, supplemental oil allowables that had been issued from
4 the Aztec office.

5 Q Who's in charge of examining for Mallon
6 to determine whether the oil allowables you receive each
7 month for your wells are accurate and correct?

8 A We have someone in our office that does
9 and then I oversee it.

10 Q Who is it? That's not you directly?

11 A No, it's not. Indirectly, but I oversee
12 that.

13 Q You're responsible only --

14 A Yes.

15 Q -- to make sure they're correct.

16 A Yes.

17 Q Subsequent to receiving the September or-
18 der did you take any action, Mr. Fitzgerald, to calculate
19 the allowable Mr. Mallon would receive for his wells, using
20 the new level set by the order?

21 A Yes, did.

22 Q And when did you do that?

23 A Almost immediately after the hearing. We
24 had done some of that calculation prior to hearing; however,
25 due to the fact that the Aztec office had indicated to us

1 that on -- earlier in the year they had used the most cur-
2 rent GOR on file, we made those calculations based on that
3 new or the old gas/oil ratio.

4 Q When did you first become aware that you
5 were making the calculation of the producing rates for these
6 wells differently than the District Office was requiring
7 that calculation to be made?

8 A December 22nd.

9 Q And that was your meeting with Mr. Chavez
10 in which he talked to you about the fact that your produc-
11 tion was in excess of the allowable?

12 A Yes. That was in a phone call.

13 Q All right, sir. Did you have any know-
14 ledge prior to that time, Mr. Fitzgerald, that your produc-
15 tion was in excess of the allowable to be assigned pursuant
16 to that order?

17 A No, I did not. I might want to qualify
18 the answer. I know on a monthly basis that the gas/oil ra-
19 tio changes what the allowables calculate under the order;
20 however, under the procedures outlined from the Aztec Office
21 we weredoing based on what we -- making the calculations
22 based on what we thought was the correct calculation.

23 Q Is Mallon Oil Company on the Division
24 mailing list to receive notifications to operators in the
25 Gavilan-Mancos Pool?

1 A Yes, we are.

2 Q And what individual at Mallon Oil Company
3 receives those notices?

4 A Myself or Roxanne Seney.

5 Q They would ultimately come to your atten-
6 tion?

7 A Yes, definitely.

8 Q Let me show you what I've marked as Dugan
9 Exhibit Number One, Mr. Fitzgerald, and ask you, sir, if you
10 ever received a copy of this notification dated September
11 26, 1986, from Mr. Frank Chavez of the District Office of
12 the Oil Division?

13 A Yes, I did.

14 Q When did you receive that notification,
15 Mr. Fitzgerald?

16 A I'm not sure exactly but it was, I be-
17 lieve it was sometime in October.

18 Q What did -- what, if anything, did you do
19 with the memorandum received from Mr. Chavez in regard to
20 the calculation of allowables in the Gavilan-Mancos Pool?

21 A I'm sorry?

22 Q Yes, sir. You said you received the me-
23 morandum from Mr. Chavez sometime in October. Upon receipt
24 of that memorandum my question is what, if anything, did you
25 do with regards to the content of that memorandum?

1 A I verified that the rates we were pro-
2 ducing at under the current gas/oil ratio test were correct,
3 and we produced, continued to produce October, November, and
4 December under the same level.

5 Q In what way did you verify that the al-
6 lowables you were producing at, or the rates you were pro-
7 ducing at for those months, were consistent with the allow-
8 ables established by the Division?

9 A Based on our experience in the past
10 that's what we produced at.

11 Q Did you make any inquiry of Mr. Chavez in
12 October as to whether or not you were calculating your pro-
13 ducing rates correctly so that you would not exceed the al-
14 lowables?

15 A No, I did not. We did submit some cor-
16 rect production reports, though.

17 Q When did you do that?

18 A Let me see, we submit them monthly.

19 Q Did any of the personnel of any of the
20 other operators in the Gavilan-Mancos Pool notify you or
21 have conversations with you about their concerns about the
22 fact that your wells were being produced in excess of the
23 allowables that would be assigned pursuant to the temporary
24 order?

25 A No, we did not.

1 Q You don't recall any conversations with
2 Mr. John Roe of Dugan Production Corporation in October or
3 November of 1986 about that subject?

4 A No, I do not. I might add that we also
5 provided our production, our monthly production on a daily
6 basis to the -- all the members of the study committee.

7 Q Did you have any discussions with members
8 of the Gavilan-Mancos Study Committee about the producing
9 rates under the temporary order?

10 A No, we did not.

11 Q Do you know whether or not any of the
12 other operators in the Gavilan-Mancos were having difficulty
13 with calculating the allowables by which they were to pro-
14 duce their wells under the temporary order?

15 A No, I do not.

16 Q Let's go back and now discuss, Mr. Fitz-
17 gerald, the production between May through August of '86.
18 There does not appear, unless I've missed it, to be a claim
19 made that there was any type of theoretical underproduction
20 for that period of time for which you want to then apply as
21 a credit against overproduction at some other time?

22 A No, we're not -- we did underproduce the
23 wells during those months, but no, we're not trying to -- I
24 don't think we're asking for that.

25 Q From May to August were the allowables

1 assigned for the five Mallon wells allowables assigned using
2 the 320-acre acreage allocation?

3 A Yes, they were.

4 Q Your allowable then for May through
5 August would be at a rate in excess of the rate that you
6 were producing those wells at?

7 A Yes, that's correct.

8 Q Have you made a calculation to determine
9 the volume of that theoretical underproduction between the
10 actual production and the top allowable that you could have
11 produced for any of those months?

12 A No, I have not.

13 Q For May through August, what determined
14 the actual rate at which the wells were going to be pro-
15 duced?

16 A We would have produced them similar to
17 what we had produced them in the previous months, January
18 through April, with the exception that we did have to reduce
19 the production rates based on the numbers that we -- the
20 90,670 -- 90,967 barrels.

21 Q The actual rates of the wells being pro-
22 duced from May through August was a rate that's less than
23 the allowable.

24 A That's correct.

25 Q The actual rate for these wells is a

1 function of the fact that these wells not only produce oil
2 but they produce gas.

3 A That's correct.

4 Q The actual producing rate is for your
5 wells governed by your ability to dispose of the gas pro-
6 duced.

7 A That's correct.

8 Q From May through August did you have a
9 way to market and sell the gas produced without flaring it
10 in order to produce at the rates that you have reported for
11 actual production?

12 A Yes, we did.

13 Q Did you have a method by which you could
14 produce the theoretical underproduction for those months
15 without flaring the gas? Did you have a market for that
16 difference?

17 A Yes, we did.

18 Q What was your market for that gas? Did
19 you have a contract for that gas?

20 A Yes, we do. We have a contract with the
21 Gas Company of New Mexico and then an end user contract.

22 Q The purchaser of the gas produced from
23 the Mallon wells for 1986 was no other company other than
24 Gas Company?

25 A And an end user.

1 Q All right.

2 MR. PEARCE: Could we for
3 clarity restrict that time? Are we still discussing May
4 through August?

5 MR. KELLAHIN: I was asking
6 that --

7 A This is May through August.

8 Q All right. My question was broader than
9 that and let me ask you the rest of the question then.

10 From May through August we have an end
11 user contract, right?

12 A Right.

13 Q Were there -- was there a maximum volume
14 set in the end user contract for the gas produced?

15 A No, there was not.

16 Q So at least from May onward we now have a
17 contractual arrangement where we can sell the gas produced
18 from the wells up to a volume that will let you produce at
19 the top oil allowable.

20 A Or actually the capability of the well,
21 yes.

22 Q All right, deliverability or capacity of
23 the well. All right.

24 When did Mallon have -- what was the ef-
25 fective date on the end user contract by which Mallon could

1 then sell the casinghead gas so that the wells could be pro-
2 duced at their capacity?

3 A I would have to check, but I believe it
4 was effective May 1.

5 Q Prior to the end user contract in the
6 year 1986, was there another contract by which the gas pro-
7 duced from the Mallon wells was disposed of?

8 A I'm sorry, could you say that again?

9 Q Certainly. From January through April or
10 May, before you got the end user contract, the wells were
11 being produced. Along with the oil there was gas being pro-
12 duced. How was the gas being disposed of?

13 A It was being sold directly to the Gas
14 Company of New Mexico.

15 Q All right. During that period of time
16 without flaring the gas, what was the total volume on a
17 monthly basis of the gas that you could sell to Gas Company
18 under that contract?

19 A We could have -- they were taking every-
20 thing we were selling to them, but we were producing below
21 the capacity of their compressor station, their compressor
22 system that we had.

23 We were only producing, and I've have to
24 check, but I believe it's about 1200 MCF a day out of this
25 well.

1 Q I didn't make myself clear.

2 What was the contractual limitation, if
3 any, in terms of volume of gas that Gas Company would let
4 you take under that gas purchasing contract?

5 A Well, there was a -- there's a -- it's a
6 pretty technical contract.

7 They're not required to take any. They
8 say they will take up to 1500 MCF a day, yet they have taken
9 more than that.

10 Q Under the terms of the contract it's 1500
11 MCF a day per well?

12 A No, total.

13 Q Total.

14 A Yes.

15 Q All right. So your market for the gas,
16 at least under the contract, was one that limited the Mallon
17 wells to a gas rate of not more than 1500 MCF a day.

18 A Well, it didn't limit to that because we
19 have sold them more than that under that contract, a signi-
20 ficant amount more than that.

21 Q Were there exceptions made in that con-
22 tract so that you could sell an amount in excess of that
23 volume?

24 A No, there were not.

25 Q So apart from the contract would Gas Com-

1 pany then take as they could or wanted to the difference,
2 the excess?

3 A Yes.

4 Q Was the production from the Mallon wells
5 from January through April, the actual production, was that
6 limited simply because of your ability to market the gas
7 produced from those wells?

8 A No.

9 Q What was the reason that the gas -- the
10 production from those wells was produced at those rates?

11 A Part of it was cutback due to the fact
12 that we were involved in pressure interference tests that
13 had been approved by the Division, and the fact that we only
14 had compressor capacity to run approximately 12-to-1500 MCF
15 a day.

16 Q The compressor capacity at 12-to-1500 MCF
17 a day was the physical arrangement for the wells up through
18 what period of time?

19 A Through April.

20 Q In April what occurred, Mr. Fitzgerald,
21 to cause that to be changed, if at all?

22 A The end of April, the first of May, we
23 installed another compressor that could bring the capacity
24 to 2.8-million to 3-million a day.

25 Q What was the reason to size the compres-

1 sor arrangement so that you would now have a capacity of be-
2 tween 2.8 and 3-million a day?

3 A So we could produce more gas.

4 Q And did you have a means by which you
5 could dispose of that gas produced?

6 A Yes.

7 Q That was the end user contract.

8 A And the Gas Company of New Mexico.

9 Q All right. What was the reason that you
10 didn't modify the compressore capacity of the wells above
11 the 1500 MCF prior to the May or April conversion or the ad-
12 dition of additional compressor?

13 A Most of the -- the two best wells, I
14 guess all three of the best wells that we operate came on
15 production in January and they just were making a lot, pro-
16 ducing at a lot higher rates than we anticipated.

17 Q When we look at Exhibit Number Two, when
18 we -- the first well, the Ribeyowids Federal 2-16, for the
19 month of January, the assigned allowable is the allowable
20 assigned based upon the 40-acre acreage allocation?

21 A That's correct.

22 Q What is the reason that the Mallon wells
23 were produced in excess of the 3875 number for that month?

24 A The order issued to extend the Gavilan-
25 Mancos Pool to encompass 320 spacing in our area was effec-

1 tive January 1st; therefore we increased the production
2 based on the increased allowable that -- for the 320 spac-
3 ing.

4 Q So in January you realized that the al-
5 lowable assigned to you by the Oil Commission had the wrong
6 acreage factor plugged into it.

7 A No, we did not, not till the end of Ap-
8 ril.

9 Q All right. You knew in January, however,
10 that you could exceed the allowable set by the Division for
11 January because of the inclusion of your acreage now in the
12 Gavilan-Mancos Pool.

13 A That's what we thought.

14 Q That -- that was what you were thinking
15 in terms of justifying the production in excess of the as-
16 signed allowable.

17 A Right.

18 Q All right. In making the calculation to
19 determine what your new rate was going to be for 320 acres,
20 is that the number that you have put in the second column on
21 Exhibit Number Two?

22 A Yes. that number was based on a gas/oil
23 ratio test done in early January that we later submitted to
24 the Oil Division.

25 Q Those are the ones that you filed in Ap-

1 ril, April 25th, I believe, of '86.

2 A I believe so.

3 Q And there was a January test.

4 A Correct.

5 Q All right. You're satisfied that the
6 number that you have assigned for that allowable in that
7 column is correct?

8 A Yes.

9 Q All right, and have you verified that
10 with Mr. Chavez?

11 A I'm sorry, what do you mean by correct?

12 Q Well, whether or not this represents the
13 corrected amount for the allowable if you use 320 acres.

14 A The 320-acre number is -- is quite a bit
15 higher than that on -- on this particular well, but this is
16 based on the test.

17 The allowable assigned by the OCD still
18 remains, the number in the far left column.

19 Q Okay. The reason the second column is
20 different is twofold, is it not?

21 In filing your C-116, whatever the number
22 is, you calculated the proposed allowable based upon 320 ac-
23 res?

24 A That's correct. In this case it was less
25 than depth bracket allowable.

1 Q I see. The producing rate for that well
2 for the month of January is in excess of the assigned allow-
3 able, but you knew at that time that that allowable number
4 was too low, the assigned to you by the Oil Division?

5 A No, we did not. We did not know. We
6 submitted production reports, the C-115's, stating that the
7 allowable was the depth bracket allowable.

8 Q What caused you to believe that you could
9 produce in excess of that assigned allowable in January for
10 that well?

11 A We did not receive anything stating that
12 that was the allowable for that well. We did not receive
13 supplementals until the end of April.

14 Q In January when you had calculated what
15 the allowable was going to be, is that the 11,873 figure?

16 A Yes.

17 Q So in January you knew that if you'd cal-
18 culated it correctly you could produce up to that amount.

19 A No. We -- we calculated these numbers
20 after the fact.

21 Q What had you calculated in January to be
22 the allowable for the well that we're looking at here on Ex-
23 hibit Number Two?

24 Let me make sure before you give me the
25 number that we're talking about the right thing.

1 I want to know --

2 A Oh, I'm sorry.

3 Q Yes, sir. I'm looking at the Ribeyowids
4 Federal 2-16 Well for January, and I had assumed that the
5 11,873 figure was the allowable that you had calculated in
6 January for that well using 320 acres and you tell me, no,
7 that's not the right number.

8 A No. That is the number that we went back
9 and calculated based on our gas/oil ratio test after the Az-
10 tec Office explained to us how an allowable is increased.

11 Q All right. The gas/oil ratio filing was
12 made in April.

13 A Correct.

14 Q And what you want to do now is to take
15 the April filing and have that number apply retroactively
16 back through January 1st of '86 in order to establish the
17 allowable for those wells.

18 A I think what we're trying to do is under
19 the rules and regulations that we -- that I've read, the al-
20 lowable that should have been assigned should have been the
21 maximum depth bracket allowable effective January 1st; how-
22 ever, the Aztec Office in April required us to make up that
23 production that is a difference between the actual and what
24 they had actually assigned, and we're saying that they were
25 incorrect in doing it that way; therefore we're saying that

1 the amount of oil that we made up, the 90,967, we should
2 have been allowed to produce.

3 I think the theoretical underproduction
4 might be confusing had we turned in the gas/oil ratio test
5 earlier in the year. This is the allowable under the way
6 the Aztec Office told us that they issue allowables, this is
7 the number that would have been calculated.

8 Q What -- what --

9 A We were trying to show here that we did
10 not produce over that number.

11 Q I see. But the actual production for the
12 well in January, why did you select or choose to produce
13 that quantity of production from that well in that month?

14 A I don't recall other than back in January
15 through April we did have limitation due to our compressor
16 capacity, and I don't know if that was exactly it, but that,
17 I would guess, is probably why.

18 Q Would that statement apply for all the
19 wells for production from January through April?

20 A Not necessarily. We were doing some tes-
21 ting and there were wells shut in during January and part of
22 February, I believe.

23 Q Okay.

24 A Production was very erratic.

25 Q All right. During that period of time

1 did you restrict your actual production from January through
2 April because of some calculated level of allowable that you
3 had been told or you thought you had to limit yourself to?

4 A No, we did not.

5 Q So the actual production is a function of
6 either compressor capacity or shut in for tests or lack of
7 market, or whatever it was.

8 A Correct.

9 Q All right. Mr. Fitzgerald, for your
10 company do you make the decision on what volumes to produce
11 from a given well in a particular month? Is that part
12 of your function as an engineer for Mallon?

13 A Yes.

14 Q And how often do you make that decision?

15 A Generally about daily or three or four
16 times a week.

17 Q Just watch your production and decide
18 which one to produce and what volumes?

19 A Talk to the pumper on those.

20 Q Okay. So you'll be the individual who's
21 in a position to know and understand and explain why the
22 wells were produced at certain rates.

23 A Yes.

24 Q All right.

25 A As best I can remember them.

1 Q And the actual production there is pro-
2 duction that you have reported to the Oil Conservation Divi-
3 sion?

4 A Yes.

5 Q And these come from records that you have
6 kept and reports you have made?

7 A Yes.

8 Q During the period of time starting with
9 January of '86, Mr. Fitzgerald, we've been discussing five
10 of the Mallon wells.

11 A Yes.

12 Q Mr. Pearce had you identify two other
13 wells earlier in your testimony and you said that they did
14 not apply. Would you explain to me why not?

15 A The Davis 3-15 has been tested; we're
16 still completing it. We have been testing and just produc-
17 ing at marginal rates.

18 Q It's too new a well to apply to the --

19 A Right, it's still recovering load water.

20 Q All right, the Post well?

21 A The Post well has produced below the al-
22 lowables.

23 Q When did it first start producing?

24 A I believe in September. I believe it's
25 September.

1 Q Of '86?

2 A Yes. And that's the reason it's not
3 overproduced, is because we were required to send in a cur-
4 rent GOR. Since it was current we didn't overproduce it.

5 Q You said you first became aware of the
6 error in the allowable calculation in April of '86 when you
7 changed crude oil purchasers?

8 A Correct.

9 Q During the first part of that year Mancos
10 Corporation was the purchaser of the crude oil?

11 A That's correct.

12 Q I've not heard of that corporation. Who
13 are the principals of that corporation? Do you know?

14 A I believe it's Dugan Production or I
15 don't know, it's probably individuals; Tom Dugan, Greg Mer-
16 rion, Bob Bayless, and somebody else, I'm sure it is.

17 Q They were taking the oil production.

18 A Yes.

19 Q Were there any limits on your production
20 of the oil from January through May in terms of what they
21 would take from you?

22 A No, there were not. Had we not changed
23 the purchasers in the end of April, we might not have caught
24 this.

25 Q You gave me a figure awhile ago of

1 90,967.

2 A Yes.

3 Q Is that the total of the theoretical un-
4 derproduction when you take all five pages of Exhibit Two
5 and add them up?

6 A No, the 90,967 is the amount that we did
7 make up actually by cutting back production and shutting in
8 wells.

9 That's -- that's the amount that our of-
10 fice determined, the Aztec Office, as how much we were over-
11 produced for that period January through April.

12 Q All right. Tell me how you made up the
13 underproduction.

14 A We made it up in May, June, July, and I
15 believe a little bit in August, by jockeying wells due to
16 whatever our production was that month; by shutting in a
17 well this week, producing, you know, four of the others;
18 just to try and keep a constant -- or attempt to keep a con-
19 stant through-put to the plant.

20 Q In order to make up that underproduction
21 through that period of time, would you not have had to pro-
22 duce the wells in excess of their assigned allowables for
23 that month?

24 A No, we would not have. We produced them
25 pretty close to their allowables with the exception of the

1 difference for the days we were shutting them in.

2 MR. KELLAHIN: May we take a
3 moment, Mr. Examiner, and see if there's anything I need to
4 ask Mr. Fitzgerald?

5
6 (Thereupon a recess was taken.)

7
8 Q Let me see if I can understand where we
9 were last year, Mr. Fitzgerald, with regards to the produc-
10 tion from January through April of '86.

11 Am I correct in understanding that you
12 took no action on behalf of your company to have the Dis-
13 trict Office correct the allowables being assigned for the
14 Mallon wells until April of '86?

15 A Correct.

16 Q In January thorough April does not the Az-
17 tec Office supplement the oil prorationing schedules to you
18 on a regular basis?

19 A No. In this case they didn't. I believe
20 we have letters requesting -- had sent letters and requested
21 the proration books, or I'm not real familiar with that part
22 of it. But I don't know, I believe we're getting them on a
23 regular basis.

24 Q Do you receive on a regular basis supple-
25 ments to the oil prorationing schedule for your wells?

1 A I believe we do now.

2 Q But you don't recall, I don't believe you
3 received any supplemental oil prorationing schedules for any
4 of your wells from January through April of '86?

5 A We had supplements for January through
6 April but they weren't received, I don't think, until late
7 April.

8 MR. KELLAHIN: Mr. Examiner,
9 I'd like to show the witness what I've marked as Dugan Exhi-
10 bit Number Two, which is a supplement to the oil proration-
11 ing schedule for the Johnson Federal 12-5 Well, and then
12 I've marked as Exhibit Number Three a supplement dated March
13 14th, '86, on the Howard Federal 11-1 well.

14 Exhibit Number Two is dated
15 February 10th, 1986. I show that to opposing counsel for
16 his inspection.

17 Q Mr. Fitzgerald, I've shown you what is
18 marked as Dugan's Exhibits Two and Three and given you an
19 opportunity to examine them.

20 Do you remember receiving supplemental
21 orders for those two wells as indicated on Exhibits Two and
22 Three?

23 A No, I do not. (Inaudible to the repor-
24 ter.)

25 Q What is the custom and practice of you on

1 behalf of your company with regards to reviewing and deter-
2 mining the accuracy of supplemental oil prorationing sched-
3 ules that the Division sends to you?

4 A We have somebody who received these and
5 when they come in their verify that we're producing that
6 amount of oil. They come tell me that we've gotten these in
7 and we need to change, to be aware of.

8 Q But you don't recall making any adjust-
9 ments for either of those two wells based upon the supple-
10 mental orders shown to you on Exhibits Two and Three?

11 A No, I do not.

12 Q Okay. Am I correct in understanding from
13 January through April that the capacity of the compressor by
14 which those five wells were hooked in limited you to a maxi-
15 mum volume of gas of about 1200-to-1500 a day?

16 A That's correct.

17 Q And that also during that period of time
18 your contract with Gas Company of New Mexico limited you to
19 a sismilar volume of about 1500 MCF a day?

20 A I said earlier the contract is one such
21 that they don't have to take any. They have always taken
22 everything we've sold them up to, I believe, about 2.8-mil-
23 lion a day.

24 Q And the additional ability to market and
25 sell the gas was a result of the installation of additional

1 compressor capacity in April of '86?

2 A That's correct.

3 MR. KELLAHIN: Thank you, Mr.
4 Examiner, I have nothing further.

5 MR. CATANACH: Mr. Carr, do you
6 have any questions?

7 MR. CARR: No questions.

8 MR. PEARCE: If I may just for
9 a moment, Mr. Examiner.

10

11 REDIRECT EXAMINATION

12 BY MR. PEARCE:

13 Q Mr. Fitzgerald, I want to go back and
14 briefly try to walk us through what's happened here to see
15 if we can get it down clearly.

16 Effective January the 1st of 1986 the ac-
17 reage on which these wells were included, were drilled, was
18 included within the Gavilan-Mancos Pool, is that correct?

19 A That's correct.

20 Q The spacing in the Gavilan-Mancos Pool is
21 320 acres, is that correct?

22 A That's correct.

23 Q Prior to the inclusion in the Gavilan-
24 Mancos Pool those wells had been spaced on 40 acres, is that
25 correct?

1 A That's correct.

2 Q As a result of your knowledge that this
3 acreage was included within the Gavilan Pool effective Jan-
4 uary 1st of 1986, you believe that you had an allowable from
5 the Oil Conservation Division based on a 320-acre depth
6 bracket allowable, is that correct?

7 A That's correct. That was one of our pri-
8 mary reasons for supporting the (not understood).

9 Q And you began to produce those wells at a
10 rate higher than a 40-acre allowable beginning January 1st
11 of 1986, is that correct?

12 A That's correct.

13 Q In late April of 1986 you were informed
14 that in fact those wells did not have a 320-acre allowable,
15 is that correct?

16 A That's correct.

17 Q And since the wells had been producing in
18 excess of the 40-acre allowable, they were overproduced, is
19 that correct?

20 A That's correct.

21 Q And that overproduction was 90,967 bar-
22 rels, is that correct?

23 A That's correct.

24 Q And after your discussions with Mr.
25 Chavez you were allowed to curtail your actual production

1 from these wells so that you made up the 90,967 barrels of
2 overproduction.

3 A That's correct.

4 Q And you actually restricted those wells
5 for that 90,967 barrels between the months of May and August
6 of 1986, is that correct?

7 A That's correct.

8 Q In September of 1986 you received a sup-
9 plemental oil proration schedule from the Aztec Office of
10 the Oil Conservation Division, which indicated that the oil
11 allowable for these wells was 400 barrels per day, is that
12 correct?

13 A On some of the wells. Some of the wells
14 it was less.

15 Q And they were less on the basis of the
16 GOR report then on file?

17 A That's correct.

18 Q Subsequent to receiving that supplemental
19 oil proration schedule you produced the wells at or below
20 the allowable set forth in that supplemental oil proration
21 schedule, is that correct?

22 A That's correct.

23 Q You have now been informed that produc-
24 tion rates and allowables set forth on that supplemental oil
25 proration schedule were incorrect, is that correct, and they

1 were --

2 A Yes.

3 Q -- too high, is that correct?

4 A That's correct.

5 Q And the amount that you have produced
6 from these wells during the period September through Decem-
7 ber of 1986 totaled 48,934 barrels is that correct, sir?

8 A That's correct.

9 Q Is it your position that the penalty im-
10 posed upon you between May and August of 1986 was excessive,
11 was an excessive penalty for a failure to file forms with
12 the Oil Conservation Division?

13 A I believe so, yes, sir.

14 Q By reinstating 48,934 barrels of oil al-
15 lowable for these five wells the penalty that you suffer for
16 that administrative oversight will be reduced, is that cor-
17 rect?

18 A That's correct.

19 Q Is it your position that that is fair and
20 that that operates to protect the correlative rights of in-
21 terest owners in the Gavilan-Mancos Pool?

22 A Yes, I do.

23 MR. CATANACH: Recross, Mr.
24 Kellahin? Mr. Carr?

25 MR. PEARCE: Nothing further,

1 Mr. Examiner.

2 MR. KELLAHIN: I believe Mr.
3 Chavez had a presentation he wanted to make, Mr. Examiner.

4 MR. CATANACH: We'll let Mr.
5 Chavez make his presentation at this time.

6 Will you stand and be sworn in?

7

8 (Mr. Chavez sworn.)

9

10 MR. CHAVEZ: Mr. Examiner, I am
11 Frank T. Chavez, District Supervisor of the Aztec District
12 of the Oil Conservation Division.

13 I have some material I've
14 prepared which is part of the Division's regular records. If
15 you'd like me to submit it as exhibits I will, but I'll just
16 use it for reference at this time.

17 You have before you a paragraph
18 that is normally considered part or a paragraph included in
19 nomenclature orders which are produced by the Division on
20 our motion.

21 In Case Number 8713, which
22 resulted in Order No. R-8063, the Gavilan-Mancos Pool was
23 extended to include the acreage in question. The
24 application was made by Dugan Production Corporation, not by
25 the Division.

1 According to this order, on
2 January 1st the pool extension is effective; therefore 320
3 acres would be required, 320-acre dedication would be re-
4 quired of all the wells in that extension.

5 Being that this order lacked a
6 similar paragraph as shown here, which requires the operator
7 to file dedicated -- 320-acre dedication plats within a cer-
8 tain time period, a strict interpretation of the order would
9 require that wells be shut in that not have 320 acres.

10 I discussed this with the Divi-
11 sion director at that time and being that the operators
12 within the area all agreed to the expansion of the pool,
13 it's obvious that they did not desire the wells to be shut
14 in.

15 So we looked at the paragraph
16 that we had used previously in nomenclature orders expanding
17 pools and applied that interpretation to the situation.

18 Our office contacted the opera-
19 tors of the pool to -- those that hadn't filed 320-acre
20 plats, to remind them that they needed to do that in order
21 to get the 320-acre allowables.

22 Again you have before you
23 copies of the Division's records and if you'll look at the
24 second to the last page you'll see a plat that was filed by
25 Mallon Oil Company after we directed them to file the plats.

1 The date we received this is February 14th of 1986.

2 So we had contacted Mallon Oil
3 Company about the necessity of filing these plats, one, two
4 weeks before that.

5 As you'll see there just above
6 the center of the plat it says on there that -- under
7 question number three, that the applicant has -- or that the
8 operator has applied for communitization; however, they had
9 checked the box yes, that the acreage had been communitized.

10 Whenever we get a plat like
11 that we contact the operator and ask them to please clarify
12 that, whether or not they have 320 acres consolidated or
13 not. On this particular well, the Howard Federal 1 No. 8,
14 the did not have the acreage consolidated at this time.

15 If you'll look on the next
16 page, which is the last page of that group, there's a plat
17 that we received April 28th, 1986, indicating that at this
18 time the acreage was consolidated.

19 Under our Divsiion policies for
20 assigning allowables, at this time we increased the
21 allowable of this well to the 320-acre allowable they would
22 be entitled to.

23 Also, we did receive a C-116
24 accompanying this plat.

25 The second page of this group

1 of Division documents is the supplement that was issued by
2 my office in Aztec increasing the allowable on this well on
3 the basis of the communitization and the C-116. This is
4 standard Division policy in order to protect the correlative
5 rights of those people that may not yet be involved in the
6 well; however, allowing some consideration for the well to
7 be produced.

8 These particular groups of doc-
9 uments address only the Howard Federal 1 No. 8, however,
10 other Division records address the other wells that are con-
11 sidered in this application.

12 There was only one well that we
13 made an error on, as best as I can tell, and that was the
14 Federal well in Section 12, as part of the operator's appli-
15 cation. We received a plat and on that we did interpret
16 that the acreage was consolidated; however, when we later
17 found out that the acreage was not consolidated, we contac-
18 ted the operator and the -- the working interest owner who
19 had not been consolidated in that well in Section 12, who
20 was Mesa Grande Resources.

21 At this time we had the option
22 of shutting the well in because it would have bene severely
23 overproduced on the basis of a 40-acre allowable; however,
24 upon talking to the working interest owner that had not been
25 included yet, we asked them if, you know, what they thought

1 about this before we took such a severe action on this well.
2 They considered that the rights were being protected in that
3 an application was coming before the Division for consoli-
4 dating the acreage. Also they were confident that that money
5 or their proportion of the proceeds from that acreage that
6 was not consolidated was being handled correctly by Mallon.

7 So at that point we did not
8 strictly enforce the regulation requiring 320-acre dedica-
9 tion because the only working interest -- other working in-
10 terest owner involved in that felt that they were protected.

11 We have a policy that has been
12 established long ago that there's a point at which you don't
13 -- you can't protect the correlative rights of somebody who
14 doesn't want them protected or if they are satisfied with
15 the way we are protecting them, we stop it there.

16 The issue of the acreage con-
17 solidation I think is very important in this in that there
18 were some wells that did acreage consolidated early enough
19 to assign the allowables early enough, and we did that; how-
20 ever, those that were not consolidated for 320-acre tracts,
21 we wanted until we received the C-120 -- C-102 showing the
22 acreage consolidated before we increased the allowable.

23 And that is all I have.

24 MR. KELLAHIN: I have some
25 questions of Mr. Chavez, if I may?

1 QUESTIONS BY MR. KELLAHIN:

2 RESPONSES BY MR. CHAVEZ:

3

4 Q With regards to the acreage consolida-
5 tion, at some point in time the operator has given you the
6 proper forms to consolidate the acreage and get the proper
7 allocation.

8 A That is correct. It's the Form C-102 on
9 which they designate that the acreage has been consolidated.

10 Q Once that is reviewed and approved by you
11 is the assignment of the allowable based upon that acreage
12 dedication one that is made prospectively or retroactively?

13 A It's made on the basis of the day we re-
14 ceive the C-102.

15 Q Mallon as requested that for these wells
16 several things occur with regards to the allowables, one of
17 which is that the acreage allocation be applied retroactive-
18 ly to January 1 of '86 for all the wells, as opposed to the
19 date that the form was in your office ready for approval.

20 Is that consistent with the practice of
21 the Division in the District Office in assigning allowables?

22 A No. In the sense that we do not know the
23 condition of those operators who are not consolidated, we --
24 we cannot pass judgment on whether yes, all of the separate
25 interest owners are headed toward communitization or whether

1 at the last minute maybe one of these cases may come to a
2 hearing, as one did, even though we didn't realize it, that
3 it had in fact been consolidated.

4 So we cannot anticipate the approval of a
5 communitization at any one particular date.

6 Q In administering Rule 502 and the other
7 rules and regulations of the Division, Mr. Chavez, are you
8 aware of whether or not it is the custom and practice of
9 your Division or your District to allow an operator to ac-
10 cumulate a theoretical underproduction which is the differ-
11 ence between this actual production and the allowable as-
12 signed to that well, that quantity of theoretical underpro-
13 duction. Is it the custom and practice of the District and
14 the Division to allow that operator to take that theoretical
15 underproduction and apply it as a credit to offset or wipe
16 out production in excess of the allowable at some other
17 time?

18 A I guess I don't understand it, your ques-
19 tion. If I could explain it this way, how we do this.

20 Under Rule 5 -- under the -- I don't know
21 whether it's 502 or not, under the 500 series of oil prora-
22 tion rules an operator is not allowed to accumulate underpro-
23 duction in the sense that once he's assigned an allowable he
24 can underproduce it this month and make it up the next; how-
25 ever, the rule does direct the operator to underproduce his

1 wells by an amount equal to the overproduction.

2 In that sense if an operator is at an
3 overproduced status what oil he does not produce in subse-
4 quent months between his allowable and his production is
5 used to take away some of the previous overproduction. So
6 in that sense that is the common practice. It is the way of
7 balancing overproduction in an oil pool.

8 Q You heard Mr. Fitzgerald's testimony this
9 afternoon?

10 A Yes. He and I, in fact, I directed them
11 to send to me a, oh, tabulation of their overproduction and
12 how they proposed to make that up by subsequent underproduc-
13 tion over a period of time.

14 So their underproduction following April
15 was done at our direction in order to balance the pool.

16 Q The May through August discussion I had
17 with Mr. Fitzgerald was in compliance with your directive on
18 how to start balancing, then, the overproduction that had
19 occurred for the first part of '86.

20 A That's correct.

21 Q January through April.

22 A That's correct.

23 Q With regards to underproduction other
24 than what we have just described, am I correct in understand-
25 ing that under the rules an operator does not accumulate an

1 underproduction if he fails to produce his full allowable in
2 a given month?

3 A That is correct.

4 Q What is the current status of the Mallon
5 wells in terms of their producing rates at this point?

6 A Their producing rates as to their allow-
7 ables?

8 Q Yes, sir, what direction or order have
9 you imposed upon Mallon with regards to those wells now?

10 A Okay, two of their wells in -- the last
11 well when I looked at the latest production, two of their
12 wells appear to be about three months, or so, overproduced,
13 going strictly by gas volumes.

14 One of the wells was approximately a
15 month overproduced going by gas volumes.

16 Q When I discovered that I sent out an or-
17 der directing them to shut their wells in. Subsequently
18 they asked me if there was another way they could make up
19 the overproduction besides shut-in, because they were sup-
20 plying a plant that was owned by Phelps Dodge. And I told
21 them if they would supply me with the data indicating what
22 was necessary to prevent an undue hardship to a third party,
23 I would consider that amount and perhaps allow some produc-
24 tion.

25 After much correspondence I received a

1 letter from the operator of the plant who is operatig for
2 Phelps Dodge. They apprised me of what their minimum needs
3 were to operate the plant. So since then I have authorized
4 Mallon to produce their overproduced wells at a rate not to
5 exceed 100 MCF per day from the overproduced wells.

6 Q Prior to bringing this case to the
7 Examiner today, Mr. Chavez, did Mr. Fitzgerald, or anyone on
8 behalf of Mallon Oil Company present to you their case or
9 their contention that there was a clerical error that
10 required an adjustment in their allowables and their
11 producing rates?

12 A They discussed that with me and I told
13 them that under the rules, in order to grant any back
14 allowable, they would have to come to a hearing.

15 Had there been a clerical error done by
16 our office, there wouldn't have been a question as to
17 whether or not they would have been entitled to allowable.

18 Q You'd have simply given them the
19 allowable and fixed the clerical error by the Division
20 staff?

21 A That's correct.

22 Q Did that occur in this case?

23 A No, I haven't -- I haven't found any
24 evidence that would indicate that our staff made an error in
25 assigning the allowables.

1 paragraph from Order R-8273, which has nothing to do with
2 this case.

3 Q All right, and the -- this provision, if
4 I understand it correctly, allows an operator whose acreage
5 is added to a pool sixty days within which to file a new C-
6 102, is that correct?

7 A That's correct.

8 Q And when that is filed the allowable --
9 well, as I read this, he is allowed to produce at the maxi-
10 mum rate until that is filed, is that correct?

11 A No.

12 Q Okay.

13 A The -- starting about halfway through
14 that paragraph with the sentence starts "Pending", I'll just
15 go ahead and read that.

16 It says, "Pending such compliance, the
17 well shall receive a maximum allowable in the same propor-
18 tion to a standard allowable for the pool that the acreage
19 dedicated to the well bears to a standard unit for the
20 pool."

21 What that means is that Mallon had 40 ac-
22 res dedicated to these wells within this pool. This para-
23 graph, had it been in that order, would say that he could
24 produce up to top allowable that would have been allowed for
25 40 acres within the 320-acre drill tract, which is one acre

1 of the top allowable.

2 Q All right, sir, let's read the next sen-
3 tence of that, please, and go ahead and read it into the re-
4 cord so those who --

5 A Okay.

6 Q -- don't have this before them --

7 A "Failure to file Form C-102 dedicating
8 the standard unit to the well, or to obtain a nonstandard
9 unit approved by the Division within the said sixty day per-
10 iod, shall subject the well to cancellation of allowable."

11 Q If it has not been granted the increased
12 allowable during the sixty day period, how can this provi-
13 sion of this order provide for cancellation of that allow-
14 able?

15 A The allowable that's addressed here is
16 the one that was considered in the previous sentence, which
17 is the 40-acre allowable.

18 Q All right, let's see if I understand what
19 you're telling me.

20 I have an oil well on the 40-acre tract.
21 That acreage is then put into a pool that has 320-acres.
22 This provision says that I have to file a 320-acre C-102
23 within sixty days.

24 If I do not file that, your understanding
25 of this provision is that the total allowable, even the 40-
acre allowable, for that well is cancelled?

1 A That's correct.

2 Q But it has a 40-acre C-102 on file.

3 A That is correct. The purpose of that is
4 to allow an operator enough time to consolidate the acreage;
5 however, being that he's in a 320-acre pool if there had
6 been evidence presented that a well within that pool would
7 drain 320 acres, therefore those in the remaining 280 acres
8 are not participating in the proceeds from this well under
9 type of agreement, forced pooling, communitization, or what-
10 ever, therefore, we do allow the operators sixty days to get
11 this -- his act together, get this acreage put together and
12 drill in a unit, proration unit.

13 However, should he not be able to do that
14 within sixty days, we would cancel the allowable because,
15 again, those people in the 3 -- in the entire 320 are not
16 participating in the production from that well.

17 Q Even though the well had been operating
18 on a 40-acre allowable.

19 A That's correct.

20 Q Now as I understand what you testified,
21 sir, this provision was not included in Order 87 -- I mean
22 Order R-8063, is that correct?

23 A That is correct.

24 Q And Order R-8063 is the order which ex-
25 tended the Gavilan-Mancos Pool to include the acreage on

1 which these wells are located.

2 A That is correct.

3 Q And so this order did not contain an in-
4 struction to the operator to file a new C-102, is that cor-
5 rect?

6 A That's correct.

7 Q All right, sir, let's turn now to the
8 other set of documents which you've showed us.

9 The third -- I apologize, the second page
10 of this document is a supplement to an oil proration sched-
11 uler dated October the 15th of 1985. Do you have that in
12 front of you, sir?

13 A That's correct. Yes, I do.

14 Q And that shows the assignment of allow-
15 able for September and October, is that correct, sir?

16 The second page, I have two lines.

17 I will share this with you.

18 A Okay. That was in 1985. We're talking
19 about '86.

20 Q That --

21 A Yes, I see that.

22 Q That's October of 1985, that supplement
23 to the proration schedule.

24 A Yes.

25 Q The next document in my package is a sup-

1 plement to Oil Proration Schedule dated May the 26th of
2 1986.

3 A That's correct.

4 Q And that shows the allowable assigned to
5 these wells for January, February, March, and April of 1986,
6 is that correct?

7 A That's correct.

8 Q Do --

9 A I might --

10 Q I apologize, go ahead, sir.

11 A I might add, you'll notice, for the re-
12 cord, this is Supplement Number 3137/R, issued by the Aztec
13 Office.

14 The reason that this particular supple-
15 ment shows four months, although the -- is because whenever
16 we write a supplement the Santa Fe Office gets a copy of
17 this and revised the four month period of our proration
18 schedules, so although the -- we only three days of change,
19 we show all four months within that period with their appro-
20 priate allowables.

21 Q Do you have an oil supplement, a supple-
22 ment of the Oil Proration Schedule, which was issued in Jan-
23 uary of 1986?

24 I don't -- my concern is I don't under-
25 stand why I have two supplements, one dated October, one

1 dated May. Was there a supplement to an oil proration sche-
2 dule in between these two?

3 A No. In between the supplement issues we
4 issue the full proration schedule for the basin, and at that
5 time if there are any changes effective those dates, they
6 are shown within the proration schedule itself.

7 So the operator in getting a copy of the
8 proration schedule receives an allowable on that basis.

9 The supplement is issued only to show
10 changes between oil proration scheduled periods.

11 Q And have you checked the Oil Proration
12 Schedule for the months January, February, March, and April
13 of 1986 to see what allowable that schedule reflects?

14 A No, I didn't. I didn't feel it was
15 necessary. Might I add something?

16 Q Please.

17 A The supplement that we were just talking
18 about, 3137/R, shows how we have applied the rules of the
19 Oil Conservation Division for this particular well.

20 The top allowable at 40 acres was 142
21 barrels a day, which is what that well received from January
22 1 through April 27th.

23 April 28th, which was the date we re-
24 ceived both the C-116, as noted on the bottom of this form,
25 and the Form C-102, indicating acreage consolidation, which

1 is the last document in this package, is the date that we
2 assigned a 702 barrels of oil per day top allowable for the
3 320-acre Gavilan-Mancos proration unit.

4 Q Am I correct, Mr. Chavez, that monthly
5 you or a member of your staff in the Aztec District Office
6 receives from each oil producer a Form C-116?

7 A No, not on a monthly basis. Under the
8 rules the operators are required to file certain C-116's
9 through the year; however, at any time that an operator has
10 a change in gas/oil ratio which would be beneficial or a
11 change in productivity of the well, for whatever reason,
12 workover, change in line pressure, whatever, they can submit
13 a new C-116 to us at that time and we will increase their
14 allowable up to top allowable, whatever the pool rules will
15 allow for that pool.

16 Q Do you know if any From C-116's were re-
17 ceived on any of these five wells during the months January,
18 February, March, or April of 1986?

19 A I don't know that; however, if you'll
20 note like I've mentioned, the well was already receiving top
21 allowable, so had they filed a GOR test that indicated even
22 higher productivity, they could have still only received top
23 allowable on this well.

24 Q Is there a line on that form which indi-
25 cates what the producer believes the allowable for that well

1 is?

2 A Yes.

3 Q And have you checked to see if that form
4 was filed and what that record filed with your office showed
5 for the months January, February, March, and April of 1986?

6 A No, I haven't.

7 Q So that if in fact the producer reported
8 that he was producing at a rate of 702 barrels per day,
9 which he indicated was his allowable, neither you nor your
10 staff would catch that error, is that correct?

11 A Well, my staff would have caught it. The
12 staff member that -- that looks at these C-116's and calcu-
13 lates the GOR to recheck the operator's calculations, looks
14 at all the columns on there and should there be any discre-
15 pancy it is brought to me.

16 Q Excuse me, just one moment, please, Mr.
17 Examiner.

18 Division Form C-104, are you familiar
19 with that report?

20 A C-104, yes, I am.

21 Q And is that report submitted -- I apolo-
22 gize, sir, it's not 104. It is a C-116.

23 This is the form that we have been
24 discussing, the Form C-116?

25 A Yes.

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Q That is a Form C-116?

A Yes, it is.

Q And copies of the 116's are filed in your office, is that correct?

A Yes, they are. I would -- I would have to review our records to see if that particular one had been filed.

Q Mr. Chavez, I have not made copies, I can. I have turned to the third page of a stapled set of documents, that appears to be a Form C-116 for one of the Mallon wells for January of 1986, is that correct?

A No, I'm sorry. This is not a C-116. What I'm looking at now is a C-115, the Operator's Monthly Report.

Q All right. Is the Operator's Monthly Report filed in your office?

A Yes, it is.

Q I would ask you, if you would, please, sir, to look at the third column of numerical data and see what the operator indicated for the month January of 1986, the monthly oil allowable for that well was.

A The operator indicates 21,762 barrels.

Q And you now indicate that that is an incorrect monthly oil allowable, is that correct?

A Very incorrect; however, when we were

1 talking earlier about my staff reviewing documents, it was
2 the 116 you were talking about.

3 Q Your staff does not receive a 115, is
4 that what you're telling me?

5 A They do. They do receive the 115's;
6 however, we do not review all the 115's on a monthly basis.
7 There are over 17,000 wells and that is beyond the -- the
8 ability of our -- of our staff.

9 Q All right.

10 MR. PEARCE: I have nothing
11 further, Mr. Examiner. Thank you.

12 MR. CARR: I have just a couple
13 very short questions.

14
15 QUESTIONS BY MR. CARR:

16 RESPONSES BY MR. CHAVEZ:

17
18 Q Mr. Chavez, I'd like to hand you what's
19 been marked as Dugan Exhibit Number One, a September 26,
20 1986 memorandum from you to operators in the Gavilan Pool.

21 My question is, is it customary for you
22 to send a memorandum of this nature to operators in the pool
23 following an Oil Conservation Commission order affecting
24 that pool?

25 A No, it's not.

1 Q What was your reason in sending this
2 memorandum?

3 A In the past we've had confusion about how
4 to calculate allowables when the GOR's were high enough to
5 affect oil volumes, and from the information that I had un-
6 derstanding the production in the pool, I thought this might
7 be a problem to some operators. So I tried to make it clear
8 to all the operators in the Gavilan-Mancos Pool what was ex-
9 pected so that regardless of their interpretation, I tried
10 to make it clear that they were allowed only so much gas or
11 only so much oil per day per well.

12 MR. CARR: Thank you, that's
13 all.

14 MR. PEARCE: Very briefly.

15
16 QUESTIONS BY MR. PEARCE:

17 RESPONSES BY MR. CHAVEZ:

18
19 Q Mr. Chavez, when you did that did you is-
20 sue another supplemental oil proration schedule allowable?

21 A We issued a supplement, I think, prior to
22 issuing my memorandum.

23 Q And that's the one that reflected the 400
24 barrels per day, is that correct?

25 A That's correct.

1 MR. PEARCE: Nothing further,
2 thank you.

3 MR. CATANACH: Anything further
4 of this witness?

5 MR. PEARCE: Nothing further.

6 MR. CATANACH: You may be ex-
7 cused.

8 MR. KELLAHIN: Mr. Examiner, I'd
9 move for the introduction of Dugan's Exhibits One, Two, and
10 Three, I believe they were.

11 MR. PEARCE: No objection.

12 MR. CATANACH: Dugan's One
13 through Three Exhibits will be admitted into evidence.

14 Do counsel want to make any
15 closing statements?

16 MR. KELLAHIN: Yes, sir, if I
17 can continue to breath for a few minutes I'll try to plow my
18 way through this.

19 Mr. Examiner, the applicant has
20 sought some unusual relief from the Division. My
21 understanding of that relief is that for the first four
22 months of 1986 Mallon Oil Company produced a significant
23 volume of oil and gas in excess of its assigned allowables.
24 That volume is approximated for you on some of the exhibits
25 and you can find them for yourself.

1 That was the first occasion
2 this operator has significantly overproduced his allowable.

3 The second occasion occurred
4 following the implementation on September 1st of '86 of the
5 temporary producing rules in the Gavilan-Mancos and that
6 same operator then produced some 48,000 barrels of oil in
7 excess of that assigned allowable.

8 Within a single year only one
9 operator in the Gavilan-Mancos has managed to do this kind
10 of act. We've got two significant overproductions for five
11 wells over extended periods, notwithstanding the fact that
12 Mr. Chavez notified that operator in September how to calcu-
13 late those allowables.

14 In order to balance, if you
15 will, the overproduction, Mr. Mallon has suggested a rather
16 unique and novel approach to oil production. He wants to
17 take an artificial, theoretical difference between what he
18 calculates would have been the allowable for January, Feb-
19 ruary, March, and April, contrast that to his actual produc-
20 tion, and take that difference as a credit, and he wants to
21 take that credit and transfer it to the end of the year to
22 wash out, eliminate, wipe out the overproduction.

23 It is not simply a clerical er-
24 ror. It is a gross violation of the rules and regulations
25 of this Division. It's outrageous and it's trying to be

1 masqueraded today as a clerical error.

2 We spent four or five days in a
3 hearing in August talking about producing rates for this
4 pool. Mallon Oil Company was opposed to the rates that were
5 imposed and it's Mallon Oil Company that failed to abide by
6 those producing rates and generated some 49,000 barrels of
7 oil in excess.

8 We think the Division's action
9 by Mr. Chavez is appropriate, consistent with the rules, and
10 is within the spirit of the orders of the Division and you
11 ought to allow Mr. Chavez to go forward with his efforts to
12 get this operator back into compliance with the rules of the
13 Division.

14 We are concerned. We operate
15 in the same pool and this is the only operator that has
16 sought to disregard the rules.

17 Let me talk to you a moment
18 about the bogus underproduction he wants to carry forward
19 and apply as a credit.

20 I asked Mr. Fitzgerald what the
21 capabilities of those wells to produce oil and gas were and
22 he told me in several different ways that the production for
23 those months was limited by the capacity of that compressor.
24 They could not produce and handle with that existing facil-
25 ity more than 1200 to 1500 MCF of gas a day. Notwithstand-

1 ing that this operator didn't have a market for the gas and
2 didn't have the physical arrangement or facilities to pro-
3 duce this bogus allowable, he wants to take it as a credit
4 and apply it later in the year. We think that's outrageous.

5 I think what this operator did
6 is that he had a contract with Gas Company up to 1000 -- up
7 to a million a day on his gas production from these wells,
8 and you can see how closely that production tracks with that
9 gas limitation, and as soon as he got an end user contract
10 in May, he increased his capacity of his compressors and
11 started producing the additional gas. That's what happened.

12 He wasn't limited by any kind
13 of erroneous allowable assigned to this well. He was lim-
14 ited by the market and the capacity of these wells to pro-
15 duce with the physical arrangement he put on the ground.

16 The Commission has worked well
17 for a great many years based upon a very fundamental concept
18 and that is they rely and hope and believe that there will
19 be voluntary compliance with the rules and regulations of
20 this Division by the operators in this state, and thank
21 goodness, 98 percent of them make the initiate and the ef-
22 fort to understand and abide by the rules and if there's
23 some disagreement in how you're taking care of your produc-
24 tion, it's the operator's burden and not the Division. You
25 don't have the staff to be policemen. You don't have the

1 staff to go through thousands of well files and look for
2 clerical mistakes.

3 Be that as it may, Mr. Chavez
4 has testified that he's reviewed their files and the Divi-
5 sion made no clerical error, and we contend the operator did
6 not, either. He is simply faced with excessive overproduc-
7 tion in violation of the order and has found a very clever
8 way to try to masquerade and explain away the overproduction
9 without shutting in his wells.

10 We think it's unconscionable
11 and that this application ought to be denied.

12 MR. CARR: May it please the
13 Examiner, Benson-Montin-Greer Drilling Corporation is here
14 today in opposition to the application of Mallon Oil Com-
15 pany for reinstatement of oil allowables.

16 Without repeating the remarks
17 of Mr. Kellahin, I think it is important to call to your at-
18 tention that no matter what the arguments are, the bottom
19 line is if from January through April, 1986, Mr. Mallon had
20 received a 320-acre allowable for each of the wells in ques-
21 tion, it could not have been produced.

22 Since it couldn't have been
23 produced then, we submit it should not be the basis for an
24 allowable credit now, an allowable credit which will permit
25 Mallon Oil Company to avoid the effect of the order entered

1 in September, which restricted production from the Gavilan-
2 Mancos Oil Pool.

3 In this regard I would direct
4 your attention to the transcript and record in Oil Conser-
5 vation Commission Case 8951, particularly page 13, lines 3
6 through 11.

7 That case was a case filed by
8 Benson-Montin-Greer seeking authority from the Commission
9 for additional time within which to make up underproduction
10 that it has accumulated while certain interference tests had
11 been done in the West Puerto Chiquito Pool and in the Gavi-
12 lan-Mancos Pool.

13 At that time Mallon Oil Company
14 appeared in opposition to that case. Kevin Fitzgerald made
15 a statement in opposition at the end of the case, and he
16 stated that if the Commission saw fit to grant Mr. Greer's
17 application that they also should let other operators come
18 in and get underproduced allowable credit for the underpro-
19 duction accumulated while these tests were being run.

20 He said, however, if that was
21 one, and I quote, "It would defeat the purpose of the reduc-
22 tion of allowables that was installed in the beginning of
23 September."

24 We submit today they've gone
25 full circle. They're here asking you today to do what they

1 admitted last October would defeat the September order. We
2 think it impairs correlative rights; it results in waste;
3 and undermines prior action of the Commission and it should
4 not be allowed.

5 MR. PEARCE: Mr. Examiner, I
6 freely admit that this is not a particularly happy occasion.
7 As our witness has testified on the stand, mistake has been
8 made.

9 But I want us to look for a
10 minute at how much a mistake in filing papers with the Oil
11 Conservation Division should cost someone.

12 The record in this case indi-
13 cates that during the months of May through August of 1986
14 Mallon Oil Company reduced the amount of oil which their
15 wells would actually produce by 90,967 barrels. Using a
16 base price of \$15.00 a barrel, for failure to file those
17 forms Mr. Mallon has suffered \$1,300,000 in reduced revenue
18 already.

19 I wish that he hadn't reduced
20 that production; that he had come immediately to the Oil
21 Conservation Division and had a hearing for reinstatement of
22 allowable at that time.

23 In September of 1986, after we
24 had a very extensive hearing, which was attended by, I sus-
25 pect, everyone in this room now plus some, the Oil Conserva-

1 tion Division, through its Aztec District Office, sent out a
2 supplemental oil proration schedule and that schedule said
3 that the allowable for this well was 400 barrels a day.
4 That's what that supplemental schedule said. That's where
5 the number is. Mallon Oil Company began producing at that
6 level. Mallon Oil Company now finds that that was not the
7 proper allowable for those wells and they are now faced with
8 an additional overproduction number of 48,000 barrels. I
9 haven't multiplied that out, Mr. Examiner, but I suspect
10 that's about \$700,000 at \$15.00 a barrel.

11 I don't think relying on the
12 supplemental oil proration schedule, the official document
13 which Mr. Chavez indicated was issued every time the allow-
14 able was changed, I don't think relying on that document
15 ought to cost my client \$700,000. I think that's unbeliev-
16 able.

17 Mr. Kellahin would have us be-
18 lieve that there was this terrible bad faith operation out
19 there, but Mr. Fitzgerald testified that Mallon Oil Company
20 was told of the overproduction in May -- in April of 1986
21 and Mallon Oil Company contacted the Oil Conservation Divi-
22 sion office in Aztec and said it appears through some error
23 that we have greatly overproduced this well. What are we
24 going to do about it?

25 I suggest to you that if they

1 had not done that, that \$1,350,000 loss would never have
2 been suffered by Mallon Oil Company.

3 Now if that is the sort of bad
4 faith operation which Mr. Kellahin argues in his closing, I
5 don't think anybody would do that. It does not seem un-
6 reasonable to me to penalize an operator for failure to file
7 papers and for failure to understand that what an oil prora-
8 tion schedule said was not what it meant.

9 Because my client has done
10 that. They did not file those papers timely and they did
11 rely on that oil proration schedule. The way it is set up,
12 if the application is granted, as it stands now, so that Mr.
13 Mallon's wells are simply brought back into balance, the
14 penalty suffered by Mallon Oil Company, as a result of re-
15 lying on the Division document and failing to file the pa-
16 pers, will be \$630,000. That's what he's still going to
17 lose.

18 Mr. Examiner, we're not here
19 with a fancy, technical case. We're here because we think
20 the punishment ought to fit the crime. My client has gen-
21 uinely underproduced already 90,000 barrels of oil in
22 response to what Mr. Chavez indicated he should do. 90,000
23 barrels already. I think that's an excessive penalty and I
24 am quite frankly here trying to reduce that penalty. I
25 don't deny that for a minute, but I don't think combining

1 everything that you've heard about today and penalizing an
2 operator \$630,000 is leniency.

3 I'm not begging for leniency.
4 I'm begging for mercy. I mean, how hard a hit does the Div-
5 ision think somebody ought to have to take for failing to
6 file a form? I don't understand that. That is the bottom
7 line of this case. I just don't think it's fair. Mallon
8 Oil Company does not think it's fair. There is nothing in
9 this record to indicate that anybody's going to be hurt by
10 this if it's not granted.

11 Nothing further. Thank you,
12 Mr. Examiner.

13 MR. CATANACH: Thank you. Any-
14 thing further in this case?

15 If not, it will be taken under
16 advisement.

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18 (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 this portion 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. _____ heard by me on _____ 19____.

_____, Examiner
Oil Conservation Division