

1 NEW MEXICO OIL CONSERVATION DIVISION

2 STATE LAND OFFICE BUILDING

3 STATE OF NEW MEXICO

4 CASE NO. 10396

5  
6 IN THE MATTER OF:

7  
8 The Application of Yates Petroleum  
9 Corporation for Compulsory Pooling,  
10 Eddy County, New Mexico  
11  
12  
13

14 BEFORE:

15 MICHAEL E. STOGNER

16 Hearing Examiner

17 October 3, 1991  
18  
19  
20

21 REPORTED BY:

22 CARLA DIANE RODRIGUEZ  
23 Certified Shorthand Reporter  
24 for the State of New Mexico  
25

**ORIGINAL**

Voight Exhibit 1  
Complete Set



**Marathon  
Oil Company**

P.O. Box 552  
Midland, Texas 79702  
Telephone 915/682-1626

June 18, 1991

Wilma E. Voigt  
609 South 6th Street  
Carlsbad, New Mexico 88220

BEFORE EXAMINER STOGNER	
OIL CONSERVATION DIVISION	
VOIGT	EXHIBIT NO. 1
CASE NO.	10396

CERTIFIED MAIL & RETURN  
RECEIPT REQUESTED

Re: Marathon-Voigt Com #1 well - NW/4 Section 29, T-19-S, R-25-E  
Your mineral interest in NW/4 NW/4 - 20 net/40 gross acres  
Eddy County, New Mexico

Dear Mrs. Voigt:

Please be advised that Marathon Oil Company is proposing to drill the captioned well at a location 660' FNL and 660' FWL on a 160 acre proration unit as captioned. This well is being planned as an 8,000' Cisco Canyon test. In accordance with telephone conversations with Mr. Lee Voigt, Marathon proposes that we agree as follows in consideration of the mutual promises contained herein:

1. Your unleased mineral interest underlying the NW/4 NW/4 of Section 29 as captioned shall be pooled to form a standard 160 acre spacing and proration unit for any and all formations and/or pools within the vertical extent from the surface of the ground to the deepest depth drilled in the captioned well. You shall sign a standard Communitization Agreement which will be prepared upon completion of a well capable of producing in paying quantities.
2. Marathon shall commence the drilling of the captioned well on or before the 1st day of October, 1991, and thereafter continue the drilling of said well with due diligence to a depth sufficient to test the Cisco Canyon Formation and to completion or abandonment.
3. Within 90 days prior to commencing said well, Marathon shall furnish you with an itemized schedule of estimated well costs.
4. Your unleased mineral interest shall be considered a seven-eighths (7/8) working interest and a one-eighth (1/8) royalty interest for the purpose of allocating costs and charges under the terms of this agreement. You shall be treated as a non-consenting working interest owner with regard to your seven-eighths (7/8) working interest and shall not be responsible for paying your pro rata share of the costs of drilling, completing and equipping the well, or a share of the cost of operating the well prior to revenue from the well equaling twice the cost of drilling, completing,

equipping and operating the well. However, Marathon shall be entitled to recover out of production your share of the cost of drilling, completing, equipping and operating the well as provided below.

5. Any well costs or charges which are to be paid out of production shall be withheld only from your seven-eighths (7/8) working interest share of production, and no costs or charges shall be withheld from production attributable to your one-eighth (1/8) royalty interest share. You shall in all events be paid your one-eighth (1/8) royalty share of production from the unit.
6. Marathon is authorized to withhold the following costs and charges from production attributable to the seven-eighths (7/8) working interest portion of your unleased mineral interest:
  - A. The pro rata share of 100% of the actual well costs attributable to the seven-eighths (7/8) working interest portion of your unleased mineral interest for the drilling, completing, equipping and operating the well;
  - B. As a charge for the risk involved in the drilling of the well the pro rata share of an additional 100% of the actual costs attributable to the seven-eighths (7/8) working interest portion of your unleased minerals acres for the drilling, completing, equipping and operating the well.
7. \$6,000.00 per month while drilling and \$600.00 per month while producing are hereby fixed as reasonable charges for supervision (combined fixed rates); Marathon is hereby authorized to withhold from production the proportionate share of such supervision charges attributable to the seven-eighths (7/8) working interest portion of your unleased mineral interest, and in addition thereto, Marathon is hereby authorized to withhold from production the proportionate share of actual expenditures required for operating such well attributable to the seven-eighths (7/8) working interest portion of your unleased mineral interest.
8. It is understood that upon payout of the amounts provided for above, your unleased mineral interest shall automatically revert to a full working interest and you shall own an undivided 12.50% working interest in such well, the material and equipment in or pertaining thereto, and the production therefrom as you would be entitled to had you participated with your unleased mineral interest in the drilling, reworking, deepening or plugging back of said well. Thereafter, you shall be charged with and pay your proportionate share of further costs of the operation of said well in accordance with the terms of a standard A.A.P.L. Form 610 - MODEL FORM OPERATING AGREEMENT - 1982 and the Accounting Procedure attached thereto, which shall have been the operative agreement for the drilling, equipping, completing and operating of the subject well by the original working interest parties. In accordance with Article III.A of the Operating Agreement your unleased mineral interest will be treated as a 7/8ths working interest portion and a 1/8th royalty share as if you were the owner of an oil and gas lease providing for such. A form of oil and gas lease will be attached to the Operating Agreement as Exhibit "B".

You will become party to the Operating Agreement by executing it at payout.

9. Marathon shall comply with all valid laws, rules and regulations in the conduct of its operations of the subject well and unit.
10. All of the provisions hereof shall be binding on Marathon and you and on all respective successors and assigns, heirs, administrators and legal representatives.

Very truly yours,

MARATHON OIL COMPANY



Mark A. Skrabacz  
Contract Landman

MAS;mmc'

AGREED TO AND ACCEPTED this \_\_\_\_\_ day  
of \_\_\_\_\_, 1991.

---

Wilma E. Voigt

---

Lee Voigt

## A P P E A R A N C E S

FOR THE NEW MEXICO OIL CONSERVATION DIVISION:

ROBERT G. STOVALL, ESQ.

General Counsel  
State Land Office Building  
Santa Fe, New Mexico 87504

FOR THE APPLICANT:

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

Post Office Box 2208

Santa Fe, New Mexico 87504-2208

BY: WILLIAM F. CARR, ESQ.

FOR NEARBURG PRODUCING COMPANY:

RODEY, DICKASON, SLOAN, AKIN & ROBB, P.A.

Post Office Box 1357

Santa Fe, New Mexico 87504-1357

BY: PAUL A. COOTER, ESQ.

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1                   EXAMINER STOGNER: Call next case, No.  
2 10396.

3                   MR. STOVALL: The application of Yates  
4 Petroleum Corporation for compulsory pooling,  
5 Eddy County, New Mexico.

6                   EXAMINER STOGNER: Call for  
7 appearances.

8                   MR. CARR: May it please the Examiner,  
9 my name is William F. Carr with the law firm  
10 Campbell, Carr, Berge & Sheridan of Santa Fe. I  
11 represent Yates Petroleum Corporation, and I have  
12 three witnesses.

13                   EXAMINER STOGNER: Are there any other  
14 appearances?

15                   MR. STOVALL: We have the party who is  
16 sought to be pooled, I guess, and you should  
17 enter your appearance at this time. If you would  
18 like to come to the table where you can watch Mr.  
19 Carr's smiling face as he questions his  
20 witnesses, you're welcome to do so.

21                   Would you please state your name and  
22 your relationship with this case?

23                   MR. VOIGHT: My name is Lee Voight, and  
24 I represent my wife, Wilma E. Voight.

25                   MR. STOVALL: And your wife is here



1 present?

2 MR. VOIGHT: Yes, she is.

3 MR. STOVALL: Let me point out again  
4 for the record, because you're appearing pro se  
5 rather than representing anyone, we'll treat you  
6 as an entity for all purposes and you're not  
7 subject to the limitations on cross-examination  
8 and you may question the witness in this case.  
9 It's a little quirk in New Mexico law, I guess,  
10 as far as representation.

11 If you would like to question the  
12 witness after Mr. Carr is through with any one of  
13 the witnesses, you may do so with regard to  
14 specific things that he's testified about.

15 EXAMINER STOGNER: Are there any other  
16 appearances?

17 MR. COOTER: Paul Cooter appearing on  
18 behalf of Nearburg Producing Company.

19 EXAMINER STOGNER: Do you have any  
20 witnesses, Mr. Cooter?

21 MR. COOTER: No, sir, and I would like  
22 to amend our prehearing statement in that  
23 regard. We have no witnesses to call today.

24 MR. CARR: I think the record should  
25 reflect that Mr. Kellahin filed a prehearing

1 statement and appearance for Marathon Oil Company  
2 in this case.

3 EXAMINER STOGNER: And the record  
4 should state that, I assume?

5 MR. CARR: I think so.

6 MR. STOVALL: And the prehearing  
7 statement itself will state that. Anybody who  
8 may wish to offer testimony in this case, please  
9 stand and raise your right hand.

10 (At this time, the witnesses were  
11 sworn.)

12 EXAMINER STOGNER: Mr. Carr.

13 MICHAEL R. BURCH

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

16 EXAMINATION

17 BY MR. CARR:

18 Q. Would you state your name for the  
19 record, please.

20 A. My name is Mike Burch.

21 Q. Where do you reside, Mr. Burch?

22 A. I reside in Artesia, New Mexico.

23 Q. By whom are you employed and in what  
24 capacity?

25 A. Yates Petroleum Corporation as a

1 landman.

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

4 A. Yes, I have.

5 Q. At that time of that testimony were  
6 your credentials as a petroleum landman accepted  
7 and made a matter of record?

8 A. Yes, they were.

9 Q. Are you familiar with the application  
10 filed in this case?

11 A. Yes, I am.

12 Q. Are you familiar with the subject area?

13 A. Yes, sir, I am.

14 MR. CARR: Are Mr. Burch's  
15 qualifications acceptable?

16 EXAMINER STOGNER: They are.

17 Q. Would you briefly state what Yates  
18 seeks with this application?

19 A. With this application, Yates Petroleum  
20 Corporation seeks an order pooling all mineral  
21 interests from the surface to the base of the  
22 Canyon formation underlying the  
23 following-described area. In Section 29,  
24 Township 19 South, Range 25 East, and in the  
25 following matter, the northwest of the northwest

1 quarter forming a standard 40-acre spacing and  
2 proration unit for any and all formations and/or  
3 pools developed on a 40-acre spacing within said  
4 vertical extent.

5 And in the northwest quarter, forming a  
6 standard 160-acre spacing and proration unit for  
7 any and all formations and/or pools developed on  
8 160-acre spacing within said vertical extent,  
9 which presently includes but is not necessarily  
10 limited to the undesignated North Dagger Draw  
11 Upper Pennsylvanian pool.

12 Q. Have you prepared certain exhibits for  
13 presentation here today?

14 A. Yes, I have.

15 Q. Would you refer to what has been marked  
16 for identification as Yates Exhibit 1, identify  
17 this for Mr. Stogner and review it, please.

18 A. Exhibit 1 outlines in yellow the  
19 northwest quarter of Section 29, 19 South, 25  
20 East. The red dot in the northwest/northwest  
21 quarter indicates our proposed location.

22 The outside of Section 29, there are  
23 also pink dots that represent wells that Yates  
24 produces in the Canyon formation, and designated  
25 in green are Canyon producing wells operated by

1 other companies.

2 Q. There are some dark outlines on this  
3 plat. Do they have any significance in this  
4 case?

5 A. No, they don't.

6 Q. What is the primary objective in the  
7 proposed well?

8 A. Primary objective is a 8,100-foot  
9 Canyon test.

10 Q. Are there zones that are developed or  
11 could be developed on 40 acres in this area that  
12 also have secondary potentials?

13 A. There's possible Yeso formations on a  
14 40-acre spacing.

15 Q. That's just a secondary objective?

16 A. That's correct.

17 Q. What percentage of the acreage in the  
18 160-acre tract has voluntarily been committed to  
19 this well?

20 A. On the 160 acres, Yates represents  
21 62-1/2 percent voluntary commitment.

22 Q. What interest owners have not  
23 voluntarily joined in the 160?

24 A. We don't have any voluntary joinder by  
25 the Voight interest and also by the Nearburg

1 interest.

2 Q. In the 160, what percentage does  
3 Nearburg actually own?

4 A. Nearburg actually represents 25 percent  
5 and the Voight interest is 12-1/2 percent.

6 Q. If we look at the 40-acre tract being  
7 in the northwest of the northwest, what  
8 percentage of the interest in that tract has been  
9 voluntarily committed?

10 A. We show 50 percent voluntary commitment  
11 on the 40-acre tract.

12 Q. Who owns the other 50 percent?

13 A. The Voight interest is the other 50  
14 percent.

15 Q. Could you refer to what has been marked  
16 as Yates Exhibit 2 and identify that, please?

17 A. Exhibit No. 2 is Yates Petroleum  
18 Corporation's authority for expenditure on the  
19 Voight AJD Com #1.

20 Q. Could you review the totals from this  
21 exhibit for a completed well and also for a dry  
22 hole?

23 A. For a dry hole well we have \$230,500 on  
24 a dry-hole basis. For a completed well, we have  
25 \$491,200.

1 Q. Are these costs in line with what's  
2 being charged for similar wells in this pool?

3 A. Yes, they are.

4 Q. Could you summarize the efforts that  
5 have been made by Yates to reach voluntary  
6 agreement with all interest owners in the  
7 proposed spacing unit? And in doing this, you  
8 might want to refer to what has been marked as  
9 Yates Exhibit No. 3?

10 A. Exhibit No. 3 consists of a  
11 chronological summary of the contacts that we've  
12 made to try to reach voluntary joinder in this  
13 unit, starting with letters to Marathon on May  
14 24, 1991, various phone calls throughout the  
15 month of June, letters in the month of June. In  
16 July, there were certified letters mailed  
17 proposing to the parties that a well be drilled.

18 Q. Now, that is the July 10, 1991 entry?

19 A. Yes, sir, that is.

20 Q. That was the first well proposal?

21 A. Yes, sir, it was.

22 Q. It indicates that a letter was not sent  
23 to Mrs. Voight, is that correct?

24 A. That is correct.

25 Q. Why was that?

1           A.       Well, what we were working off of at  
2 that time, we didn't realize that that interest  
3 was possibly available to work with.

4           Q.       If we go on through the matters set  
5 fourth on Exhibit 3, are these just contacts  
6 initiated by Yates?

7           A.       Most of the phone--well, the phone  
8 calls are a representation of phone calls that  
9 Yates made; also, phone calls we received from  
10 other parties.

11          Q.       As to the letters, are they--

12          A.       As to the letters, they are letters  
13 which are attached, letters where we have made  
14 correspondence to the parties.

15          Q.       Then you made a second well proposal,  
16 and when was that?

17          A.       Yes, sir. There was another certified  
18 letter where we made a proposal on the 23rd of  
19 July.

20          Q.       When did you first have any  
21 communications with Mr. Voight?

22          A.       Mr. Voight and I, the first time we  
23 spoke was in the beginning of the month of  
24 August.

25          Q.       Did you contact him or did he contact



1     you?

2           A.     Mr. Voight called our office and I  
3 spoke with him.

4           Q.     Following that time, when did you next  
5 visit with Mr. Voight?

6           A.     The next was in September. There was  
7 another phone call made to our office on  
8 September the 5th.

9           Q.     Again this was by Mr. Voight to you?

10          A.     That's correct.

11          Q.     What was your understanding of the  
12 Voight interest in this proposed unit during  
13 August and September?

14          A.     Well, our understanding in it, until  
15 the first of August or the beginning of the month  
16 of August, was that that was already represented  
17 by--we thought that was already taken care of,  
18 that it was leased or somebody else had that  
19 interest.

20                 The first of August was the first time  
21 we realized, and it was because of Mr. Voight's  
22 conversation with me, that he had a deal struck  
23 with Marathon that was going to end October the  
24 1st, and that he wanted to talk with us about the  
25 possibility that, if that didn't work out, he

1 would give us the opportunity to work with that  
2 interest.

3 Q. And when you talked with him again in  
4 September, what was the nature of that  
5 conversation?

6 A. That conversation, we learned that  
7 Nearburg had made an offer to him, and he  
8 indicated that he possibly would like to work  
9 with us in putting this together.

10 Q. Did you meet with Mr. Voight?

11 A. Yes. I personally met with Mr. Voight  
12 on September 18th. I went to Carlsbad and sat  
13 down and discussed general terms with him at that  
14 time.

15 Q. What happened after that meeting?

16 A. There were no terms that were  
17 agreeable. We didn't reach an agreement at that  
18 time.

19 Q. Was any effort made by Yates to reach a  
20 voluntary agreement, other than this meeting with  
21 Mr. Voight?

22 A. Well, we did make a proposal under  
23 letter dated September the 20th, by certified  
24 mail to Mrs. Voight. We did make a bona fide  
25 letter offer at that date.

1 Q. Has that offer been accepted?

2 A. No, it has not.

3 Q. Is that letter included in the material  
4 behind this summary of contact?

5 A. Yes, sir, it is.

6 Q. Does that offer still stand?

7 A. Yes, it does.

8 Q. Have there been any other  
9 communications with either Mr. or Mrs. Voight  
10 prior to this hearing?

11 A. Yes. We also made phone contact on  
12 September 30th. There was a phone contact at  
13 that time.

14 Q. What was the purpose of that call?

15 A. To see if there was going to be any  
16 response to our letter offer, which there was no  
17 agreement reached in that phone call, either.

18 Q. Have there been subsequent calls?

19 A. Yes. I also called back to Mrs. Voight  
20 and spoke with her on the 1st of this month, and  
21 then also had a phone conversation before coming  
22 to Santa Fe on the 2nd.

23 Q. Exhibit No. 3 sets out all the contacts  
24 with Nearburg?

25 A. Yes, sir, it does.

1           Q.       In your opinion, have you made a  
2 good-faith effort to identify and obtain the  
3 voluntary joinder of all interest owners in the  
4 subject spacing units?

5           A.       Yes, sir, I have.

6           Q.       Has Yates Petroleum Corporation drilled  
7 other wells in the Upper Pennsylvanian and Canyon  
8 formations in this immediate area?

9           A.       Yes, we have.

10          Q.       Could you identify what has been marked  
11 as Yates Exhibit No. 4?

12          A.       Exhibit No. 4 is a 1977 Model Form  
13 Operating Agreement that was prepared to govern  
14 the operations of our proposed well.

15          Q.       Have all other interest owners in the  
16 proposed spacing unit, with the exception of  
17 Nearburg and Voight, agreed to the terms as set  
18 forth in this agreement?

19          A.       Yes, sir, they have.

20          Q.       Does this agreement contain overhead  
21 administrative rates while drilling and while  
22 producing this well?

23          A.       Yes, sir, it does.

24          Q.       What are those figures?

25          A.       We had, within the Joint Operating

1 Agreement, \$5,400 a month while drilling, and  
2 \$540 a month while producing.

3 Q. Are these figures consistent with the  
4 Ernst & Young figures for 1991?

5 A. Yes, they are.

6 Q. Do you recommend that these figures be  
7 incorporated into any Order which results from  
8 this hearing?

9 A. Yes, I do.

10 Q. Is Exhibit No. 5 an affidavit from the  
11 Campbell Law Firm confirming that notice of  
12 today's hearing has been provided as required by  
13 the rules of the Division?

14 A. Yes, it is.

15 Q. Were Exhibits 1 through 4 prepared by  
16 you?

17 A. Yes, they were.

18 MR. CARR: At this time, Mr. Stogner,  
19 we would move the admission of Yates Exhibits 1  
20 through 5.

21 EXAMINER STOGNER: Exhibits 1 through 5  
22 will be admitted into evidence at this time.

23 MR. CARR: That concludes my direct  
24 examination of our land witness.

25 EXAMINER STOGNER: Thank you, Mr.

1 Carr. Mr. Voight, do you have any questions of  
2 this witness at this time?

3 MR. VOIGHT: My only interest here is  
4 that he knew about my deal with Marathon, and it  
5 didn't end until October.

6 EXAMINER STOGNER: I asked for  
7 questions, Mr. Stovall. Do you have any  
8 questions of this witness?

9 MR. VOIGHT: Yes.

10 EXAMINER STOGNER: If you would get to  
11 your questions, Mr. Voight. You did sign as a  
12 witness and we can get your statements at that  
13 time, but if you would limit your statement at  
14 this time and only ask questions of this  
15 witness.

16 EXAMINATION

17 BY MR. VOIGHT:

18 Q. Mr. Burch, do you remember when you  
19 called me and said that you would go along the  
20 same lines that I had, the deal that I had with  
21 Marathon, and I could just more or less forget  
22 the forced pooling letter that I was going to  
23 get?

24 A. When was that? What date was that?

25 Q. I'm not sure what date it was, but you

1 called me and I told you I wanted to be forced  
2 pooled, and you said you would go along with the  
3 same deal that I had with Marathon. Do you  
4 remember that?

5 A. No, I don't.

6 MR. STOVALL: Mr. Voight, you have an  
7 interest in this, and do you disagree at all with  
8 what he's said? I want to make sure that if  
9 you're going to question him, that we get  
10 something to help you.

11 Do you disagree with anything he's said  
12 as far as attempts to correspond with you and  
13 communicate with you?

14 MR. VOIGHT: No. Everything he said  
15 was true.

16 MR. STOVALL: With respect to any deals  
17 you might have with Marathon, I think the  
18 Examiner is correct, you need to discuss that  
19 when it's your turn to testify.

20 The only thing would be to clarify or  
21 correct any information which Mr. Burch has  
22 testified to. And if it's essentially accurate,  
23 then I think that would be--

24 MR. VOIGHT: No, everything he  
25 testified seemed right.

1                   EXAMINER STOGNER: Thank you, Mr.  
2 Voight.

3                   Mr. Cooter, do you have any questions  
4 of this witness?

5                   MR. COOTER: One very brief question,  
6 Mr. Examiner.

7                                   EXAMINATION

8 BY MR. COOTER:

9           Q.       In answer to a question from Mr. Carr,  
10 Mr. Burch, you testified that your proposed  
11 overhead charges were in conformity with the  
12 figures last published by Ernst & Young. What  
13 were those Ernst & Young figures for wells in  
14 this area?

15          A.       I don't have that survey in front of me  
16 and don't have the exact figures. The question  
17 that was asked, he asked if they were in line  
18 with it, and they are in line with it for  
19 operations in that area.

20          Q.       Let's me add one more question, then.  
21 To the best of your recollection, were not the  
22 Ernst & Young figures \$4,000 per well while  
23 drilling and \$400 per well while producing?

24          A.       I think those figures are probably, to  
25 my recollection, are for a shallower depth than



1 what we have proposed here.

2 Q. Do you have those Ernst & Young  
3 figures?

4 A. No, sir, I don't have those with me,  
5 no, sir.

6 MR. COOTER: Thank you.

7 EXAMINER STOGNER: In line with that,  
8 I'll take administrative notice of the 1991 Ernst  
9 & Young figures in determining the overhead  
10 charges appropriate in this matter.

11 Any other questions? Are there any  
12 other questions of this witness?

13 MR. VOIGHT: I would like to ask him  
14 one more question.

15 FURTHER EXAMINATION

16 BY MR. VOIGHT:

17 Q. Do you recall talking to me on the  
18 telephone just before you made a deal with  
19 Marathon and asking me if I would take \$40,000  
20 and a third?

21 A. Mr. Voight, I remember that we  
22 discussed a lot of different terms over the phone  
23 contacts that we've had. I recall that we never  
24 came to agreement on any of the terms that we  
25 discussed, and I do recall that I did send a

1 letter after talking to management about some of  
2 the things that we had discussed, and their  
3 answer to those terms that were discussed were  
4 outlined in the certified letter we mailed you,  
5 with the proposal that we made you.

6 Q. Do you recall me calling you and asking  
7 you, would you give the \$40,000 and a third,  
8 after you had offered it?

9 A. Like I say, like I said, we did discuss  
10 general terms, mainly to try to find common  
11 ground that we could deal with. You were never  
12 made a proposal for \$40,000 and a third royalty,  
13 you never accepted those terms, and we made our  
14 offer by certified letter of the terms that we  
15 would be agreeable to.

16 A. I'll agree that I didn't get it by  
17 letter.

18 EXAMINER STOGNER: Can you refer to  
19 which certified letter he's referring to?

20 THE WITNESS: Yes, sir. It's in  
21 Exhibit 3.

22 EXAMINER STOGNER: What's the date on  
23 it?

24 MR. CARR: Third to the last document  
25 in Exhibit 3.

1                   EXAMINER STOGNER: Now, there's an  
2 entry on September 18th, "Discussed terms." I  
3 assume that was either by telephone or in person?

4                   THE WITNESS: That was in person, yes,  
5 sir. I've testified to that, that I went to  
6 Carlsbad and we discussed general terms to try to  
7 gain ground that we would be able to negotiate  
8 off of. I also noted that when we left that  
9 meeting there were no agreeable terms.

10                  EXAMINER STOGNER: You make a statement  
11 in there that you might consider a \$40,000 bonus.  
12 Now, that's the only time I see the \$40,000  
13 mentioned that is being talked about at this  
14 point, and that's what appears on your--

15                  THE WITNESS: Yes.

16                  EXAMINER STOGNER: All right. I just  
17 want to make sure it doesn't appear anywhere else  
18 in here.

19                  THE WITNESS: To my knowledge, it does  
20 not.

21                  MR. CARR: Mr. Stogner, on 9/30/91  
22 there's also a reference to \$40,000, and that's  
23 on the third or fourth page of this exhibit.  
24 It's the third entry from the end.

25                  EXAMINER STOGNER: Thank you.

## 1 EXAMINATION

2 BY MR. STOVALL:

3 Q. In conclusion, without regard to any  
4 specific proposals, it is your testimony then  
5 that you had some discussions with Mr. Voight and  
6 different terms were discussed, but at no time  
7 was there a meeting of the minds or what you  
8 would consider an offer and an acceptance to  
9 acquire their interest in any way?

10 A. That's correct, other than what's  
11 outlined in our letter.

12 Q. I didn't go through all the letters,  
13 but at any time did Yates offer the Voights the  
14 opportunity to join the well and participate?

15 A. Yes. We were informed that he did not  
16 want to participate. That offer still is open to  
17 participate.

18 EXAMINER STOGNER: Are there any other  
19 questions of this witness?

20 MR. CARR: We have no further  
21 questions.

22 EXAMINER STOGNER: You may be excused  
23 at this time or for this time.

24 MR. CARR: At this time, we would call  
25 D'Nese Fly.

1                   EXAMINER STOGNER:   Before you get  
2 started, Mr. Carr--

3                   MR. STOVALL:   Perhaps you can clarify  
4 the record.   As we examine the exhibit to the  
5 Operating Agreement, the Voight interest is with  
6 respect to the 160-acre proration unit only, is  
7 that correct?

8                   MR. CARR:   That's correct.

9                   MR. STOVALL:   The 20 mineral acres and  
10 the 160-acre unit?

11                  MR. CARR:   That is right.

12                  MR. STOVALL:   With your permission and  
13 that of the Examiner, to assist Mr. Voight, since  
14 we always try help our pro se parties that appear  
15 here and give them the most benefit of being  
16 heard, do you understand what Ms. Fly's testimony  
17 is going to be about, the purpose of her  
18 testimony, so that as you listen to it you can  
19 understand it?   Would you like to summarize it,  
20 Mr. Carr?

21                  MR. CARR:   She will be presenting  
22 geological information relating to the risk  
23 involved in drilling a well.   That's what we'll  
24 be covering with Ms. Fly.

25                  MR. STOVALL:   For the record, the

1 reason I've stated that, before the hearing Mr.  
2 Voight indicated to me that one of the things  
3 they are concerned with is the risk factor that's  
4 going to be assigned, and I want him to make sure  
5 and listen to the testimony, with the knowledge  
6 that this is what that's about.

7 MR. CARR: This is our witness on risk.  
8 We'll call Pinson McWhorter following this, and  
9 he will talk about Yates' ability to operate  
10 wells in the area, but the risk testimony will be  
11 with this witness.

12 EXAMINER STOGNER: You may continue,  
13 Mr. Carr.

14 D'NESE FLY

15 Having been first duly sworn upon her oath, was  
16 examined and testified as follows:

17 EXAMINATION

18 BY MR. CARR:

19 Q. Would you state your name for the  
20 record, please.

21 A. D'Nese Fly.

22 Q. Where do you reside?

23 A. In Artesia, New Mexico.

24 Q. By whom are you employed and in what  
25 capacity?

1           A.       I'm employed by Yates Petroleum  
2 Corporation as a geologist.

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

5           A.       Yes, sir.

6           Q.       And, at the time of that testimony,  
7 were your credentials as an expert witness in  
8 petroleum geology accepted and made a matter of  
9 record?

10          A.       Yes, sir.

11          Q.       Are you familiar with the application  
12 filed in this case on behalf of Yates?

13          A.       Yes.

14          Q.       Have you made a geological study of the  
15 area that is involved in this case?

16          A.       Yes, I have.

17                 MR. CARR: Are the witness's  
18 qualifications acceptable?

19                 EXAMINER STOGNER: They are.

20          Q.       Have you prepared certain exhibits for  
21 presentation here today?

22          A.       Yes, sir.

23          Q.       Would you refer to what has been marked  
24 for identification as Yates Exhibit No. 6,  
25 identify this exhibit and then review it for the

1 Examiner, please.

2 A. Okay. Exhibit No. 6 is a map of the  
3 eastern portion of the North Dagger Draw-Upper  
4 Pennsylvanian associated pool. It shows the  
5 eastward dipping structural configuration of the  
6 top of the Canyon or Upper Pennsylvanian dolomite  
7 reservoir in 50-foot contours.

8 These contours are limited to the  
9 southeast on this map by a zero dolomite  
10 pinchout. The circled well spots are  
11 penetrations of Canyon or deeper formations and  
12 the green-colored well spots are North Dagger  
13 Draw oil wells, with the red-circled gas well  
14 spots indicating sweet gas production from zones  
15 stratigraphically lower than the Canyon  
16 formation, such as the Strawn, Atoka or Morrow.

17 The cross-section, which will be  
18 Exhibit No. 7, is seen here as A to A'.

19 Q. The subject well is the green spot in  
20 the northwest of Section 29, correct?

21 A. Well, it should not be colored. It's  
22 not a producer. On my map it's not colored, it's  
23 just the proposed location. That's the correct  
24 location, though.

25 Q. And the northwest of 29 is the



1 indicated proposed location?

2 A. Right.

3 Q. And this map was constructed with well  
4 control information?

5 A. Yes, sir, off the porosity logs.

6 Q. There was no seismic or other data  
7 integrated into this interpretation?

8 A. No, sir.

9 Q. And the well control, you would also  
10 have well control information from the wells that  
11 are shaded red on this exhibit?

12 A. Yes, sir.

13 Q. As to Section 29, there is no well  
14 control information at this time, is that  
15 correct?

16 A. That's right.

17 Q. Let's move to Exhibit No. 7, and I  
18 would ask you to identify that, please.

19 A. Exhibit No. 7 is an east/west  
20 structural cross-section across the same portion  
21 of the North Dagger Draw field. The porosity  
22 logs were used here and were hung on a datum of a  
23 minus 3,900 feet below sea level. The vertical  
24 scales, two and a half inches equals 100 feet.  
25 The horizontal scale is proportional to map

1 distances.

2           The top of the Canyon limestone, or the  
3 Upper Penn is shown along with the Dagger Draw  
4 dolomite reservoir and the hydrodynamically  
5 tilted big water surface. This cross-section  
6 shows that from east to west the Canyon or Upper  
7 Penn dolomite reservoir has a decreasing  
8 hydrocarbon bearing column. As the dolomite  
9 structurally dips to the east, it reaches a point  
10 where the entire reservoir will become water wet.

11       Q.     In your geologic study of the area,  
12 could you briefly describe for us the nature of  
13 the reservoir?

14       A.     Yes. The Dagger Draw field produces  
15 sweet oil, sour gas and a brackish sulfur water  
16 from a combined stratigraphic, hydrodynamic and  
17 structural trap. Lithologically, the reservoir  
18 is dolomite with intercrystalline, vuggy and  
19 fractured porosity.

20           From a stratigraphic standpoint, the  
21 dolomite reservoir pinches out updip to the west  
22 into a tight, sealing limestone. The downdip  
23 producing limits to the east are constrained by  
24 economics relating to a substantial increase in  
25 water production.

1           There's no free water production in  
2 this field. However, there is a mappable  
3 hydrodynamically tilted surface below which the  
4 dolomite reservoir is virtually all water  
5 filled. This surface, which is hydrodynamically  
6 tilted from the southeast to the northeast, is  
7 referred to by Yates as the Big Water, and is  
8 shown here on Exhibit No. 7.

9           Q.     Are you prepared to make a  
10 recommendation to the Examiner as to the risk  
11 penalty that should be imposed on any interest  
12 owner who does not voluntarily participate in the  
13 well?

14          A.     Yes, sir.

15          Q.     What penalty would that be?

16          A.     I think it should be 200 percent.

17          Q.     Could you summarize the geological  
18 risks, as you see them, involved in drilling this  
19 particular well?

20          A.     Uh-huh. This Dagger Draw Reservoir,  
21 like all other carbonate reservoirs, is complex  
22 in its geometry and variable in the reservoir  
23 quality from place to place; that is, the  
24 geological risk in drilling for and developing  
25 carbonate reservoirs is always present.

1           The proposed location for the Voight  
2   AJD Com #1 is in Unit D of Section 29, Township  
3   19 South, Range 25 East, and as seen on the  
4   structure map, this location has very limited  
5   control around it.

6           The risk in this portion of the Dagger  
7   Draw field also has to do with the amount of  
8   hydrocarbon bearing column within the dolomite  
9   reservoir, as explained in the cross-section. As  
10   earlier stated, the eastern limits of the field  
11   are constrained by economics related to the  
12   substantial increase in the water production.  
13   This location is approaching those limits for an  
14   economical reservoir.

15         Q.     Let's look back to for a minute to  
16   Exhibit No. 6, and using this just for reference,  
17   could you use this to identify the location of  
18   the well that is displayed on Yates Exhibit No.  
19   10?

20         A.     Yes.   It's in Section 20 in the  
21   southwest quarter.

22         Q.     Is Exhibit No. 10 a section of the log  
23   on this well?

24         A.     Yes, it is, it's over the dolomite  
25   reservoir.

1           Q.       Could you refer to this exhibit and  
2 explain to Mr. Stogner how offsetting wells to  
3 the proposed location have actually performed in  
4 this reservoir?

5           A.       Sure.   The well in Section 20 in the  
6 southwest quarter is the Ross EG #1.   It was  
7 originally completed as a Morrow well in 1975 by  
8 Yates, and in 1989 we recompleted this well in  
9 the Canyon formation.

10                   At this time we did not have a lot of  
11 control in Section 20.   We were just getting  
12 started with our activity in the Dagger Draw  
13 Field.   When we perforated this well, we thought  
14 we were above what we map as the Big Water  
15 table.

16                   It's been a marginal well through time,  
17 making between 50 to 75 barrels of oil a day.   We  
18 went back in recently, within the last year, and  
19 recompleted this, opened up a few more holes and  
20 did another acid job on it.   We evidently were  
21 right on the limits of our water table and our  
22 initial perforations, and we're getting all water  
23 now.

24           Q.       What does Exhibit 10 show you about  
25 this well?

1           A.       It shows also the decreasing amount of  
2 hydrocarbon bearing column that we are getting,  
3 how it can vary from well to well. This one has  
4 about 200 feet or so of dolomite. We have about  
5 75 feet of hydrocarbon bearing zone.

6           Q.       And that's above the water?

7           A.       That's above the Big Water, yes.

8           Q.       Is it fair to say that this well has  
9 been a poor producer in the Canyon formation?

10          A.       Yes, I think that would be fine.

11          Q.       If we look at Exhibit 6, there's a well  
12 located in the southwest of the northwest in Unit  
13 E of Section 20. How it does that well compare  
14 structurally with the well we've just been  
15 discussing? Is it lower or higher?

16          A.       On the top of the dolomite,  
17 structurally it sits lower.

18          Q.       What kind of a producer has this well  
19 been?

20          A.       This has been a very good producer.  
21 This is the Ross EG #4. It's making about 500  
22 barrels of oil a day.

23          Q.       What do these two wells tell you about  
24 the Canyon formation in this area?

25          A.       It tells you how it can change from one

1 to another, how risky it is. You can either get  
2 a well with a small hydrocarbon column or  
3 possibly one with a larger one. It also tells  
4 the risk in completions.

5 Q. Will you know whether or not you're  
6 able to get a well until you actually drill and  
7 complete?

8 A. That's true.

9 Q. Will you been able to know that before  
10 you drill and complete?

11 A. No.

12 Q. In your opinion, Ms. Fly, is it  
13 possible that Yates could drill a well at this  
14 location that would not be a commercial success?

15 A. There is that possibility, but I feel  
16 like we will encounter reservoir. I'm just not  
17 sure how much with the lack of well control  
18 around the proposed location, or actually  
19 stepping out away from the main field.

20 Q. And you're on the eastern edge of the  
21 reservoir, is that correct?

22 A. That's correct.

23 Q. Were Exhibits 6, 7 and 10 compiled by  
24 you?

25 A. Yes, sir.

1           MR. CARR: At this time, Mr. Stogner,  
2 we would move the admission of Yates Exhibits 6,  
3 7 and 10.

4           EXAMINER STOGNER: 6, 7 and 10 will be  
5 admitted into evidence at this time.

6           MR. CARR: That concludes my direct  
7 examination of Ms. Fly.

8           EXAMINER STOGNER: Mr. Voight, do you  
9 have any questions of this witness pertaining to  
10 the risk penalty factor or the geological  
11 information that she has provided?

12           MR. VOIGHT: Just one question.

13                           EXAMINATION

14 BY MR. VOIGHT:

15           Q. Is this 200 percent risk factor, is  
16 that cost plus 200 percent or comes plus 100  
17 percent? How is that defined?

18           A. I think that's cost plus 200 percent.

19           MR. VOIGHT: That sounds like 300  
20 percent to me.

21           MR. STOVALL: It's a matter of  
22 terminology, Mr. Voight. In operating  
23 agreements, you commonly see it referred to as a  
24 300 percent nonconsent penalty. In the statute  
25 under forced pooling, the language refers to a



1 charge for risk of not more than 200 percent of  
2 the cost of the well, in addition to cost of the  
3 well.

4           You are correct in your interpretation,  
5 it's the same as a 300 percent nonconsent penalty  
6 under an operating agreement. In other words, if  
7 they get what they ask for, they will recover  
8 their costs plus an additional 200 percent of  
9 those costs before your interest would come back  
10 into effect and you would receive any share of  
11 production.

12           MR. VOIGHT: Can I say anything else?

13           MR. STOVALL: If you want to her a  
14 question about the geology. You'll have an  
15 opportunity to testify.

16           MR. VOIGHT: No other questions.

17           EXAMINER STOGNER: Mr. Cooter, do you  
18 have any questions?

19           MR. COOTER: I have no questions, Mr.  
20 Stogner.

21                           EXAMINATION

22 BY MR. STOGNER:

23           Q.     If you could bear with me and go over  
24 the factors in which you utilize to determine the  
25 200 percent risk penalty. I've jotted some notes

1 down, and you were talking about the complex  
2 geology in the area and the quality of the  
3 reservoir, limited control, and the amount of  
4 hydrocarbon bearing columns within the area, but  
5 you mentioned something about economics. Do you  
6 want to go into a little bit more detail on what  
7 I had covered?

8 A. Well, I was figuring in the economics.  
9 If you get a water-wet reservoir, it's not very  
10 economical as we approach the eastern edge of  
11 this field. Does that answer that question?

12 Q. When you said "economics," what I'm  
13 hearing is, when you said economics you're  
14 referring to just the water saturation of your  
15 perforations or of the column in which you would  
16 produce out of?

17 A. Yes. As we approach the eastern edge,  
18 the water-wet reservoir increases to eventually  
19 where it encompasses the entire amount of  
20 dolomite. Therefore, the wells become less and  
21 less economic as you move eastward, moving into  
22 the total water-wet reservoir.

23 MR. STOVALL: Is your question, what  
24 does the term "economic" mean? You want her to  
25 define that term as she used it?

1           A.       We speak of a well being economic if it  
2 will make oil or gas and less water. If it makes  
3 all water, it's not a very economic well. It  
4 won't make you any money.

5           Q.       I know what you're saying, but the word  
6 economics in this particular instance is very,  
7 very, very limited, just to the water bearing of  
8 the zone, correct?

9           A.       I think we're agreeing on the same  
10 thing.

11          Q.       The word economics is very broad, but  
12 your terminology of it and your definition is  
13 just very, very limited. We have 200 percent  
14 risk penalty, what you're seeking for. I'm  
15 trying to make a column here, since we're talking  
16 about a mathematical number, and what to assign  
17 perhaps each and every one of these variables to  
18 come up with 200 percent. I want to make sure I  
19 have the correct listing of what you stated would  
20 be the risk penalty.

21                    So far, what I've heard, it's all  
22 determined on geology, this risk penalty factor,  
23 am I correct?

24          A.       I feel like that, yes.

25          Q.       When I look at your Exhibit No. 6,

1 these wells which are green are Canyon dolomite  
2 oil wells. Are those wheels in the North Dagger  
3 Draw-Pennsylvanian pool or what pool are they in?

4 A. Yes, they're in the North Dagger  
5 Draw-Pennsylvanian pool.

6 Q. Am I correct, is that pool spaced on  
7 160 acres?

8 A. Yes, sir, with a 700 barrel allowable  
9 for the 160.

10 Q. Naturally it appears there are some  
11 160-acre proration units that have more than one  
12 well, but your 700 barrel limit is on the  
13 proration unit, not the well, is that correct?

14 A. Yes.

15 Q. Are there any dry holes in here not  
16 shown on this map, or does it show all the wells  
17 that have penetrated the--

18 A. This shows all the wells that have  
19 penetrated. There is a dry hole down here in  
20 Section 32.

21 Q. Looks like there's two of them.

22 A. There's two, one encountered zero  
23 dolomite, the one in the northeastern quarter.  
24 The one in the northwestern quarter encountered  
25 19 feet of dolomite. With the limited amount of

1 control, I'm not sure how far up into Section 29  
2 this zero dolomite limit will travel up into  
3 Section 19-29.

4 Q. Leading up to my next question. Were  
5 there any other parameters besides wellbore or  
6 logs utilized in preparing your Exhibit No. 6,  
7 such as seismic?

8 A. No, sir.

9 EXAMINER STOGNER: Are there any other  
10 questions of this witness?

11 MR. CARR: I have one.

12 FURTHER EXAMINATION

13 BY MR. CARR:

14 Q. Ms. Fly, does Yates Petroleum  
15 Corporation desire to be designated operator of  
16 the proposed well?

17 A. Yes, sir.

18 MR. CARR: That's all I have.

19 EXAMINER STOGNER: I have another  
20 question.

21 FURTHER EXAMINATION

22 BY MR. STOGNER:

23 Q. In Section 30, in the northeast quarter  
24 of the southeast quarter, that well is marked  
25 green but it's also shown as a gas well, and

1 there are two or three others like that, also.

2 A. Yes. Some of these have been drilled  
3 as initial Morrow producers and have been  
4 recompleted back up into the Canyon at this time.

5 Q. So the original gas well designation,  
6 and that's the spider looking legs coming out of  
7 it, notifies that it was a Morrow completion or  
8 Morrow producer at one time, and doesn't reflect  
9 the dolomite production?

10 A. No. There's no gas production on this  
11 side of the field in the dolomite reservoir.

12 Q. And, of course, the Morrow formation is  
13 far below the Canyon formation in which we're  
14 seeking forced pooling today, is that correct?

15 A. Yes, sir.

16 EXAMINER STOGNER: Any other  
17 questions? Mr. Voight?

18 EXAMINATION

19 BY MR. VOIGHT:

20 Q. I know I heard you mention water being  
21 a factor there. Doesn't Yates have a water  
22 disposal near this well?

23 A. Yes, sir, they do, over in Section 21.  
24 Disposing of the water would not be a problem.  
25 If we do encounter some water, which we're going

1 to because every well out here produces water  
2 along with the oil or gas, but we don't want to  
3 get into the limits of the field where it's  
4 totally water saturated with no hydrocarbon.

5 MR. VOIGHT: That's all.

6 EXAMINER STOGNER: Any other questions?  
7 If not, Mr. Carr?

8 MR. CARR: Mr. Stogner, we have present  
9 Pinson McWhorter, an engineer, to testify about  
10 Yates' ability to operate the well. He was  
11 identified because we thought Mr. Cooter might be  
12 here challenging operations today. I don't  
13 believe there is anything that Mr. McWhorter's  
14 testimony would add to our presentation at this  
15 time, and therefore I do not intend to call him.  
16 That concludes our direct presentation.

17 EXAMINER STOGNER: Thank you, Mr.  
18 Carr.

19 In that case, Mr. Voight, we're ready  
20 for you to make some statements or enlighten us.

21 MR. VOIGHT: First of all, I would like  
22 to point out that I was hindered to make a deal  
23 with Yates or Nearburg at the time they started  
24 contacting me, because I had signed a contract  
25 with Marathon which was good until October the

1 1st.

2 I have an agreement, signed agreement  
3 with Marathon, on a 100 percent penalty, cost  
4 plus 100 percent.

5 MR. STOVALL: To clarify this, you say  
6 you have a signed agreement with Marathon. What  
7 type of agreement is that?

8 MR. VOIGHT: It was almost like a  
9 forced pooling agreement. Would you like to see  
10 it?

11 MR. STOVALL: If you would like to  
12 submit it into the record, you have the right to  
13 do so. Mr. Carr, would you help him mark that?

14 MR. CARR: Yes, sir.

15 EXAMINER STOGNER: Mr. Carr, I see that  
16 you have stamped that.

17 MR. CARR: I've marked it Voight  
18 Exhibit No. 1.

19 MR. STOVALL: Would you care to look at  
20 it, Mr. Carr, before he gives it to us?

21 MR. CARR: No.

22 EXAMINATION

23 BY MR. STOVALL:

24 Q. Mr. Voight, did you ever actually sign  
25 a copy of this and send it back to Marathon?



1 This copy is not signed.

2 A. Yes, I did.

3 Q. Whatever happened? Did Marathon not  
4 drill the well?

5 A. Marathon thought that they had the  
6 Nearburg percentage, and they found out later  
7 that they didn't. And that's when they contacted  
8 me and told me they weren't going to be able to  
9 drill the well.

10 He suggested that I start trying to  
11 negotiate a deal with Mr. Nearburg or Yates, or  
12 whoever I preferred. He didn't advise me one way  
13 or the other which way to go, he just said they  
14 weren't going to be able to drill the well.

15 Q. Was this around the August time frame,  
16 when the Yates witness testified that you  
17 contacted him?

18 A. Yes. I don't remember if I called Mr.  
19 Burch or he called me, but he understood the kind  
20 of deal that I had signed with Marathon, and he  
21 told me that it looked like it was a total  
22 surprise to him that they were trying to drill  
23 the well. He said it looked like he was going to  
24 have to force pool them and Nearburg in order to  
25 get their attention, and they would have to

1 include me, and for me to more or less just  
2 disregard it, that they would go along with the  
3 same kind of deal that I had with Marathon.

4 Q. You're saying that Mr. Burch told you  
5 that, that he would go along with the deal?

6 A. Yes, he did.

7 Q. His testimony was otherwise.

8 A. I understand that.

9 Q. Had he seen this agreement at the time  
10 he told you that?

11 A. I don't know if he had seen a copy of  
12 it or not. I had told him of the agreement. I  
13 don't suppose he had.

14 Q. Pardon me if I'm interrupting your  
15 testimony, but am I correct in understanding the  
16 main reason you're submitting this is evidence of  
17 the fact that something less than a 200 percent  
18 risk penalty factor would be appropriate based  
19 upon Marathon's willingness to carry you for 100  
20 percent? Is that your main concern with respect  
21 to this exhibit?

22 A. Yes.

23 Q. Why don't you proceed with whatever  
24 else you would like to say.

25 A. I told him I would be happy with this

1 kind of deal, and he indicated to me that at that  
2 time they didn't know how Marathon was going to  
3 go, if they were going to go with Nearburg or if  
4 they were going to go with Yates Petroleum.

5 My 20 acres was going to decide who  
6 would be the operator of this well, if Nearburg  
7 decided to petition the deal. But eventually  
8 Marathon went with Yates.

9 As soon as that happened, all of my  
10 deals that I had with him went back to a letter  
11 that he had written. He had offered me more  
12 money than what the letter indicates here. But  
13 as soon as he got Marathon through all their land  
14 into them, then my deal was off with them.

15 Q. What you're saying is, while your  
16 arrangement with Marathon was still active and in  
17 effect, it's your understanding that Yates  
18 offered you a proposal that included more money  
19 than what they offered you after your deal with  
20 Marathon expired? Is that essentially correct?

21 A. Exactly. Right. I made several  
22 proposals to Mr. Yates how I would do it, and he  
23 asked me--at one time he asked me if I would take  
24 a third and \$40,000, and I actually at the time  
25 said "No" and I told him that I would take

1     \$40,000, a quarter, and after one payout I wanted  
2     the royalty interest to convert to a half royalty  
3     interest.

4                     And then later, after Marathon threwed  
5     in with--I mean Nearburg throwed in  
6     with--Marathon throwed in with Yates, I called  
7     him back and asked him if he would still give the  
8     \$40,000 and a third, and he didn't say anything.  
9     I told him to call my wife if he still wanted to  
10    do it, and when he called her I told him, "Just  
11    give her a 'yes' or 'no,'" and then he started  
12    offering her this same thing he had written in  
13    the letter.

14            Q.     So we understand your background and  
15    understanding, do you or your wife own any other  
16    mineral interests?

17            A.     Sure do.

18            Q.     Where are they located?

19            A.     In Eddy County, Lea County and Chaves  
20    County.

21            Q.     Are any of those interests lease?

22            A.     Yes. We have producing wells.

23            Q.     But you're actually, in those cases,  
24    receiving a royalty and not a working interest?  
25    I'm trying to develop a base of your

1 understanding of this business.

2 A. I've been force pooled before and I've  
3 made deals before on percentage on risk factor.

4 Q. You feel that you're reasonably  
5 knowledgeable in these operations and this type  
6 of deal making?

7 A. Uh-huh. I'm perfectly happy with the  
8 deal that I signed there, and they were, too. I  
9 have been told that the risk factor there is  
10 probably 75 percent that you'll hit a well. That  
11 may not agree with her testimony, but other oil  
12 companies have told me that. I know there's a  
13 risk, and I'm not wanting any company to drill  
14 the well for nothing, and without getting paid  
15 back for their trouble. It's my opinion that 200  
16 percent is a pretty good risk factor.

17 Q. So we understand, what we're talking  
18 about specifically is pooling your interest as an  
19 unleased mineral interest, and that under the  
20 statute as such, one-eighth of that interest  
21 would be treated as a royalty and you would not  
22 have to bear any costs. Do you understand that?  
23 In other words, you have a 20-acre mineral  
24 interest in this proration unit?

25 A. Right.

1 Q. It's not leased to anybody at this  
2 time?

3 A. No.

4 Q. If your interest is forced pooled,  
5 under the forced pooling statutes of the laws of  
6 New Mexico, one-eighth of that 20 acres will be  
7 treated as a royalty, just as if you had signed a  
8 one-eighth lease?

9 A. I understand that.

10 Q. And you'll get that revenue cost free?

11 A. Right.

12 Q. And the proceeds. So we're talking  
13 about the seven-eighths of your 20 acres becomes  
14 a working interest, as if you were the  
15 lessee/operator of that acreage, correct?

16 A. Right.

17 Q. Do you have any objection to Yates  
18 being the operator of the well?

19 A. None whatsoever.

20 Q. What about the operating costs they  
21 propose, the overhead charges? Do you have any  
22 problems with those?

23 A. It seems to be better than other  
24 figures that I've heard from other companies.

25 Q. I think it's lower than Marathon was

1 giving you, wasn't it? by a couple hundred  
2 dollars?

3 A. Yes.

4 Q. You're not objecting at this time to  
5 the AFE costs or any of the operational costs  
6 associated with--

7 A. No.

8 Q. You're only objection is to the risk  
9 penalty to be assigned to the recovery of costs  
10 for the drilling of this well?

11 A. Yes, sir.

12 Q. Do you have any other information other  
13 than the deal which Marathon made with you which  
14 would support your contention that something less  
15 than a 200 percent risk is appropriate in this  
16 hearing?

17 A. What do you mean by that?

18 Q. Is there anything that you would like  
19 to make a comment on with respect to your own  
20 knowledge of information Ms. Fly presented, or  
21 other information about wells, or knowledge that  
22 says they shouldn't get the--

23 A. All I know is what I have been told by  
24 Nearburg's landman and Marathon's landman, and  
25 that's the only thing I know. They say the wells

1 out there produce anywhere from 150 gallons to  
2 1,300 gallons a day.

3 Q. Gallons or barrels?

4 A. Barrels. 1,300 barrels.

5 Q. That could affect the risk factor  
6 significantly. You haven't done any independent  
7 geological study or don't consider yourself a  
8 knowledgeable geologist?

9 A. No, sir.

10 Q. Do you have any interest in any other  
11 production in this area?

12 A. Not right in the immediate area, no.

13 Q. Do you have anything else you would  
14 like to add as far as supporting your position  
15 with respect to the risk penalty?

16 A. No.

17 EXAMINATION

18 BY MR. STOGNER:

19 Q. Could you describe your interest? What  
20 quarter section is it in?

21 A. It's Section 29. 19-25, I think, is  
22 the range on it.

23 Q. What quarter/quarter section is your  
24 interest in? And I assume it's a 20-acre  
25 undivided?



1           A.       Yes, sir.

2           Q.       Which quarter/quarter section is it in  
3 in 29?

4           A.       It's in the northwest quarter.

5           Q.       The northwest quarter, but what  
6 quarter/quarter?

7                   MR. STOVALL:   Which 40-acre portion of  
8 the northwest quarter, do you know?

9                   MR. CARR:   If it please the Examiner,  
10 it's in the northwest of the northwest, because  
11 it would be in a Yeso well where he would have 50  
12 percent of the acreage there.

13                   EXAMINER STOGNER:   Does that mean that  
14 your evaluation or description of his acreage in  
15 your Exhibit No. 4 is incorrect?

16                   MR. CARR:   Exhibit No. 4 is a  
17 representation of the interest in the 160, being  
18 the northwest quarter.

19                   EXAMINER STOGNER:   Okay. I refer to  
20 the unleased interest of Wilma Voight.

21                   MR. STOVALL:   It's Item No. 20 on the  
22 exhibit to the operating agreement. It's part of  
23 Exhibit A.

24                   MR. CARR:   I may be wrong. Let me  
25 check with Mr. Burch. Mr. Stogner, entry 20

1 attached to Exhibit 4 is in error. It is in the  
2 northwest of the northwest.

3 EXAMINER STOGNER: So the description  
4 on the Marathon letter, which you seemed to have  
5 been familiar with, is correct?

6 MR. CARR: Yes, sir.

7 EXAMINER STOGNER: Just for  
8 clarification, Mr. Voight has been referring to  
9 Neuburg--my dad makes the same reference to  
10 Nearburg--so throughout this record we'll know  
11 we're talking about the same parties.

12 MR. STOVALL: It's Mr. Cooter's  
13 client.

14 EXAMINER STOGNER: Yes, and Mr. Cooter  
15 didn't have any objections. That's just for the  
16 records.

17 Mr. Carr, do you have any questions of  
18 Mr. Voight?

19 MR. CARR: Just a few.

20 EXAMINATION

21 BY MR. CARR:

22 Q. Mr. Voight, when was it that Yates or  
23 Mr. Burch contacted you and indicated they would  
24 go along with the same deal as Marathon? Do you  
25 recall when that was?

1           A.       No, sir, not exactly, but it was  
2 recently.

3           Q.       You received the letter they wrote you  
4 dated September 20, which set out a particular  
5 offer to you?

6           A.       Uh-huh.

7           Q.       Did you contact them and say, "This  
8 isn't the offer we talked about," or anything?

9           A.       I think that letter came before we  
10 talked at our office. But he sent another  
11 letter. The last letter came after we talked at  
12 my office.

13          Q.       Did you call him and say "The terms in  
14 the letter are not what we talked about or I'm  
15 interested in"?

16          A.       No. I never had occasion to do that.  
17 He knew what we talked about and knew what it  
18 took to get me to sign the lease with him.

19          Q.       While you were talking to Yates you  
20 were also talking to the Nearburg land people,  
21 were you not?

22          A.       Yes.

23          Q.       How recently had you continued those  
24 negotiations or discussions with the Nearburg  
25 folks?

1           A.       I was talking to both of them nearly  
2 every day.

3           Q.       Within the last week have you talked to  
4 Nearburg, do you think?

5           A.       Uh-huh, uh-huh.

6           Q.       Was it Nearburg as well as Marathon  
7 that told you they thought this was a low-risk  
8 venture?

9           A.       Yes.

10          Q.       Did they ever explain to you if it was  
11 low risk why they weren't participating in the  
12 well?

13          A.       I don't know that they're not  
14 participating in the well, and it was my  
15 understanding, at the time I was talking to them,  
16 that they both wanted to be the producer.

17          Q.       At this time do you believe you have a  
18 voluntary agreement with anyone for inclusion of  
19 your well in this particular spacing unit?

20          A.       No, I don't have an agreement with  
21 anyone.

22                   MR. CARR:   That's all I have.

23                   EXAMINER STOGNER:   Mr. Cooter, do you  
24 have any questions?

25                   MR. COOTER:   No questions, Mr.

1 Stogner.

2 EXAMINER STOGNER: Are there any other  
3 questions of this witness? Is there anything  
4 further by any of the parties involved today in  
5 this case?

6 Would anybody like to make a final  
7 statement? Mr. Cooter?

8 MR. COOTER: No, sir.

9 EXAMINER STOGNER: Mr. Voight?

10 MR. VOIGHT: No, sir.

11 EXAMINER STOGNER: Mr. Carr?

12 MR. CARR: Very briefly. Yates stands  
13 before you, we believe, in full compliance with  
14 the compulsory pooling statute. We're an  
15 operator in the proration unit, we have a right  
16 to drill and propose to drill.

17 I think the evidence here today clearly  
18 shows that we have made efforts to reach  
19 voluntary agreement with the other interest  
20 owners, and have at this time been unable to  
21 reach those agreements. Offers are still on the  
22 table and can be accepted, but at this moment we  
23 stand before you with interest owners who have  
24 not voluntarily committed to the prospect.

25 Our negotiations with Nearburg go back

1 to early July. Mr. Voight contacted us in early  
2 August, and there has been ongoing negotiation  
3 since that time with him, and that negotiations  
4 were not just commenced after the Marathon deal  
5 failed because there has even been a written  
6 offer on the table since September the 20th. We,  
7 therefore, believe that we are entitled to a  
8 compulsory pooling order.

9 As to risk, we believe that the only  
10 evidence before you is the geologic testimony of  
11 Ms. Fly. Everything else is secondary or hearsay  
12 from parties who, for various reasons--you can  
13 look at the record--are being pooled and have not  
14 voluntarily joined even though they're perhaps  
15 telling others it's a low-risk venture.

16 Accordingly, we believe a 200 percent  
17 risk penalty is appropriate and that the case  
18 should be taken under advisement and an order  
19 entered.

20 EXAMINER STOGNER: Thank you, Mr.  
21 Carr.

22 MR. STOVALL: Mr. Examiner, before you  
23 close the record, I would like to make one thing  
24 clear. Mr. Voight you do understand if an order  
25 is entered force pooling your interest in this

1 well, that under the terms of that order you will  
2 again be offered the opportunity to participate  
3 in the well and prepay your costs, which can  
4 avoid the imposition of any risk penalty by  
5 voluntarily paying your costs?

6 MR. VOIGHT: Yes, sir.

7 MR. STOVALL: And furthermore, you can  
8 always reach an agreement with Yates even  
9 subsequent to the order which would, in effect,  
10 make the order null and void as to your  
11 interests?

12 MR. VOIGHT: Okay.

13 MR. STOVALL: Nothing further.

14 EXAMINER STOGNER: I'll take that one  
15 step further. Being a party to this case, you  
16 can appeal any decision made by this Division  
17 today.

18 Anything further in this case?  
19 Nothing? Then Case No. 10396 will be taken under  
20 advisement, and the hearing is adjourned.

21 (And the proceedings concluded.)

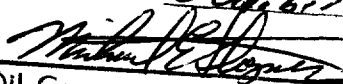
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I do hereby certify that the foregoing is  
a complete and correct transcript of the proceedings in  
the Exd. hearing of Case No. 10396,  
heard by me on 3 October 1991.

  
\_\_\_\_\_, Examiner  
Oil Conservation Division


## 1 CERTIFICATE OF REPORTER

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

5  
6 I, Carla Diane Rodriguez, Certified  
7 Shorthand Reporter and Notary Public, HEREBY  
8 CERTIFY that the foregoing transcript of  
9 proceedings before the Oil Conservation Division  
10 was reported by me; that I caused my notes to be  
11 transcribed under my personal supervision; and  
12 that the foregoing is a true and accurate record  
13 of the proceedings.

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

19 WITNESS MY HAND AND SEAL October 11,  
20 1991.

21  
22  
23   
24 CARLA DIANE RODRIGUEZ, RPR  
25 Certified Shorthand Reporter No. 91