

NEW MEXICO OIL CONSERVATION DIVISION
STATE LAND OFFICE BUILDING
STATE OF NEW MEXICO
CASE NO. 10498

IN THE MATTER OF:

The Application of Charles Gillespie
for compulsory pooling and a
nonstandard oil spacing and proration
unit, Lea County, New Mexico.

BEFORE:

DAVID R. CATANACH
Hearing Examiner
State Land Office Building
June 25, 1992

REPORTED BY:

DEBBIE VESTAL
Certified Shorthand Reporter
for the State of New Mexico

FINAL

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:

HINKLE, COX, EATON, COFFIELD & HENSLEY

Post Office Box 2068

Santa Fe, New Mexico 87504-2068

BY: JAMES BRUCE, ESQ.

I N D E X

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1 EXAMINER CATANACH: And at this time
2 we'll call Case 10498.

3 MR. STOVALL: Application of Charles
4 Gillespie for compulsory pooling and a
5 nonstandard oil spacing and proration unit, Lea
6 County, New Mexico.

7 EXAMINER CATANACH: Are there
8 appearances in this case?

9 MR. BRUCE: Mr. Examiner, Jim Bruce
10 from the Hinkle law firm representing the
11 applicant. I have two witnesses to be sworn.

12 EXAMINER CATANACH: Any other
13 appearances?

14 Will the witnesses, please, stand and
15 be sworn in.

16 [The witnesses were duly sworn.]

17 CRAIG HUBBARD

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

20 EXAMINATION

21 BY MR. BRUCE:

22 Q. Will you, please, state your name and
23 city of residence?

24 A. My name is Craig Hubbard. I live in
25 Midland, Texas.

1 Q. And what is your occupation?

2 A. I'm an independent petroleum landman.

3 Q. And who are you employed by in this
4 case?

5 A. Currently doing contract work for
6 Charles Gillespie, Jr.

7 Q. Have you previously testified before
8 the Division as a landman?

9 A. No, I have not.

10 Q. Would you, please, summarize your
11 educational and work background for the Examiner?

12 A. I graduated from Texas Tech University
13 in 1977, and this is my fifteenth year as an
14 independent petroleum landman. And I have been a
15 Certified Professional Landman since 1986.

16 Q. And has your land experience been in
17 the Permian Basin in eastern New Mexico?

18 A. Mostly, yes, in the Permian Basin and
19 some in New Mexico, eastern New Mexico.

20 Q. And are you familiar with the land
21 matters involved in this case?

22 A. Yes.

23 MR. BRUCE: Mr. Examiner, I tender the
24 witness as an expert petroleum landman.

25 EXAMINER CATANACH: Mr. Hubbard is so

1 qualified.

2 Q. (BY MR. BRUCE) Mr. Hubbard, state
3 briefly what Charles Gillespie seeks in this
4 application.

5 A. Charles Gillespie seeks an order
6 pooling all mineral interests from the surface to
7 the base of the Strawn Formation under Lot 3 of
8 Section 1, Township 16 South, Range 35 East for
9 all pools or formations spaced on 40 acres.

10 Q. What is the location of the proposed
11 well? And I refer you to Exhibit 1.

12 A. Exhibit 1 is a land plat which
13 highlights the proposed well unit. The well will
14 be located 2310 from the west line and 660 from
15 the north line of Section 1 and will be drilled
16 to the depths sufficient to test the Strawn
17 Formation.

18 Please note that Lot 3 is 51.08 acres
19 in size, and therefore we request a nonstandard
20 spacing and proration unit.

21 Q. Referring to Exhibit 2, could you
22 identify the parties whom Mr. Gillespie seeks to
23 force pool?

24 A. Exhibit 2 is a listing of the parties
25 who have not joined in the well. There are two

1 groups. The first group consists of unleased
2 mineral owners who cannot be located. They are
3 Henry Lawton, Amanda K. Parks, Edward O'Neil, and
4 Violet O'Neil Stadwick.

5 The second group consists of persons
6 whom we have contacted but who have not agreed to
7 commit their interests. These include Rio Pecos
8 Corporation, Berkeley N. Moynihan, Francis J.
9 Moynihan, Jr., Geraldine Anderson Hill, and
10 Leonardo S. Anderson, Jr.

11 Q. There are two additional parties listed
12 under Section B. Barbara M. Gallagher, what is
13 her status?

14 A. I have received a signed oil and gas
15 lease from Ms. Gallagher.

16 Q. Is that recent?

17 A. Yes.

18 Q. And so you do not seek to force pool
19 her?

20 A. That is correct.

21 Q. And what about Bridge Oil?

22 A. We have made an arrangement, an
23 agreement with Bridge Oil. They are assigning
24 their interest in a lease to us.

25 Q. And there's a letter from Bridge Oil on

1 that?

2 A. That is correct.

3 Q. And so you do not seek to force pool
4 Bridge Oil?

5 A. Yes.

6 Q. Regarding the first group of interest
7 owners, the ones you could not locate, would you
8 describe the efforts you made to attempt to
9 locate those people?

10 A. Initially I searched all the records of
11 Lea County, New Mexico, to find some lead to
12 their whereabouts. I searched the alphabetical
13 miscellaneous card file in the Lovington Abstract
14 Company records for divorce or abstract or
15 judgment, et cetera. And then I checked the
16 telephone directory assistance in and around
17 their last known addresses for telephone
18 listings.

19 After that I called the county clerks'
20 offices in the counties of their last known
21 addresses to request a probate search. And then
22 checked the Polk's directories in the Midland
23 County Library for the areas in and around their
24 last known addresses. And all proved futile.

25 Q. And referring to Exhibit 3 just

1 briefly, could you state what addresses or what
2 their last known addresses were for those four
3 people?

4 A. Yes. For Edward O'Neil, he last
5 appeared in the records as a resident of Detroit
6 Michigan. Violet Stadwick was last in the
7 records in Wayne County, Michigan, which is the
8 county where Detroit is located. Henry H.
9 Lawton, Cattaraugus County, New York. And Amanda
10 K. Parks' last known address was Rural Farm
11 District 2, Olean, New York.

12 Q. These addresses were quite some time
13 ago, were they not?

14 A. 40s and 50s.

15 Q. Moving on to the parties you could
16 locate, would you describe the efforts to obtain
17 the joinder of I think it was five parties whom
18 you seek to force pool in that group?

19 A. Yes. Berkeley and Francis Moynihan
20 have indicated to me verbally that they have
21 signed their oil and gas leases and mailed them
22 to me, but I do not have them or did not by the
23 time we left for this hearing.

24 Q. And if you do subsequently receive
25 those leases, will you notify the OCD that they

1 are no longer to be pooled?

2 A. Yes, we will. I have made numerous
3 attempts to secure oil and gas leases from Ms.
4 Hill and Mr. Anderson, and they have indicated to
5 me that they will not lease regardless of terms.

6 Q. And what about Rio Pecos Corporation?

7 A. The principals of Rio Pecos have
8 indicated that they wish to participate, but at
9 this time we have nothing signed.

10 Q. No AFE or no operating agreement?

11 A. That is correct.

12 Q. And Exhibit 3 also contains your
13 records of contacts with all of those parties?

14 A. Yes, that's correct.

15 Q. In your opinion have you made a good
16 faith effort to obtain the voluntary joinder and
17 to locate all of these parties?

18 A. I have.

19 Q. And does Charles Gillespie request that
20 he be named operator of the well?

21 A. Yes. Mr. Gillespie controls more than
22 50 percent of the working interest in the well.

23 Q. Would you, please, refer to Exhibit 4
24 and just state the cost of the proposed well?

25 A. As per the AFE, a dry hole cost of

1 \$375,000 and a producing well cost of \$640,500.

2 Q. And, to the best of your knowledge, is
3 this cost in line with the cost of similar wells
4 drilled to this depth in this area of Lea County?

5 A. Yes.

6 Q. And do you have a recommendation as to
7 the amounts which should be charged for
8 supervision and administrative expenses?

9 A. Yes. It is our recommendation that
10 \$5,000 a month be allowed for a drilling well and
11 \$500 per month be allowed for a producing well.

12 Q. And are these amounts lower than the
13 Ernst & Young rates for 1991?

14 A. Yes, they are.

15 Q. And also are these amounts in line with
16 those charged by Charles Gillespie and other
17 operators in operating agreements in this area?

18 A. Yes.

19 Q. Regarding the penalty against
20 nonconsenting interest owners, what do you
21 recommend?

22 A. Our recommendation is cost plus 200
23 percent. This is a figure used in operating
24 agreements in this area of New Mexico. And our
25 geologist will also discuss the reasonableness of

1 the proposed penalty.

2 Q. And was notice of this hearing given to
3 the unsigned interest owners?

4 A. Yes.

5 Q. And are the affidavit of notice and the
6 notice letters submitted as Exhibit 5?

7 A. Yes, they are.

8 Q. Were Exhibits 1 through 5 prepared by
9 you or under your direction or compiled from
10 company records?

11 A. They were compiled from company
12 records.

13 Q. Is the granting of this application in
14 your opinion in the interests of conservation and
15 the prevention of waste?

16 A. Yes.

17 MR. BRUCE: Mr. Examiner, at this time
18 I move the admission of Exhibits 1 through 5.

19 EXAMINER CATANACH: Exhibits 1 through
20 5 will be admitted as evidence.

21 MR. STOVALL: Where is Mr. Crow? Is
22 that the other witness?

23 MR. BRUCE: He is the geologist.

24 EXAMINATION

25 BY EXAMINER CATANACH:

1 Q. Mr. Hubbard, the interest of Rio Pecos
2 Corporation says a split between five
3 individuals. Did you individually deal with each
4 of those parties?

5 A. I dealt with a Mr. John Echols and a
6 Mr. Mark Wilson who hold themselves out to speak
7 for the other three. It's a family. It's split
8 among five family individuals. After I contacted
9 Mr. Echols, he began what he termed the polling
10 process.

11 Q. So you don't know the status of that
12 interest?

13 A. They have indicated that they wished to
14 participate in the well, all five interests.

15 Q. Okay. I see where Ms. Hill is against
16 oil well drilling because of what it does to the
17 environment?

18 A. That's correct.

19 Q. The proposed location was 2310 feet
20 from the west and 660 feet from the north?

21 A. That's correct.

22 Q. And this nonstandard proration unit is
23 due to a variation in the public land survey?

24 A. In the lot size.

25 Q. EXAMINER CATANACH: I believe that's

1 all we have of the witness.

2 WILLIAM R. CROW

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

5 EXAMINATION

6 BY MR. BRUCE:

7 Q. Would you, please, state your name and
8 city of residence for the record?

9 A. William R. Crow. I'm from Midland,
10 Texas.

11 Q. And what is your occupation, and who
12 are you employed by?

13 A. I'm a geologist employed by Charles
14 Gillespie, Jr.

15 Q. And have you previously testified
16 before the Division as an expert petroleum
17 geologist?

18 A. Yes.

19 Q. And your credentials were accepted as a
20 matter of record?

21 A. Yes.

22 Q. And are you familiar with the geology
23 involved in this prospect in this case?

24 A. Yes, I am.

25 MR. BRUCE: Mr. Examiner, I tender Mr.

1 Crow as an expert geologist.

2 EXAMINER CATANACH: Mr. Crow is so
3 qualified.

4 Q. (BY MR. BRUCE) Mr. Crow, what is the
5 primary target of this well?

6 A. The Strawn Formation.

7 Q. Referring to Exhibit 6 would you
8 describe, actually 6 and 6-A, would you describe
9 potentially productive formations in this area?

10 A. All right. Exhibit 6 is a production
11 plat showing Strawn production in the area. It
12 indicates that there's only one prolific Strawn
13 producer within the area, and it's located 2-3/4
14 miles to the south in the Shoe Bar Strawn North
15 Field. Big Dog Strawn Field located a
16 mile-and-a-half to the northwest is a very poor
17 field, and I wouldn't call it a prolific
18 producer.

19 Plat 6-A indicates Wolfcamp production
20 in the area, which is secondary potential. We
21 believe it will be a very minor secondary target,
22 as the actual drill site is not within the
23 Townsend Reef Trend, but it is in the Backreef
24 area, which is a very hit-and-miss type
25 situation.

1 Q. Okay. Would you refer to the
2 cross-section marked Exhibit 7 and discuss its
3 contents for the Examiner?

4 A. Exhibit 7 is a north-south
5 structural --

6 EXAMINER CATANACH: Hang on a second.

7 THE WITNESS: All right.

8 EXAMINER CATANACH: Go ahead.

9 A. Exhibit 7 is a north-south structural
10 cross-section showing the Strawn Formation
11 highlighted in blue. It begins at point A in the
12 Big Dog Strawn Field and continues south down
13 through Shoe Bar North.

14 The cross-section has a horizontal
15 scale of 1 inch equals 500 feet. And it shows
16 the limited lateral extension of these algal
17 mounds which are being explored for in this
18 area.

19 Within one location you can drop off
20 and lose 100 feet of structure. And so Shoe Bar
21 field there indicates the steepness of the sides
22 of the mound, and so that's why these things are
23 such high risk.

24 The mound that we've shown there where
25 the proposed location is is solely interpreted on

1 seismic.

2 Q. (BY MR. BRUCE) Okay. Would you move
3 on to Exhibit 8 and discuss that a little further
4 then?

5 A. Exhibit 8 is a structure map which is
6 contoured on top of the Strawn limestone. It
7 just shows Lots 3 through 6 in Section 1. And
8 this data was obtained primarily from seismic
9 data as there's very limited well control within
10 the area.

11 The seismic data that Gillespie shot is
12 indicated with shot points on the map. And each
13 shot point has been given a subsea elevation
14 based upon velocity data obtained from that
15 seismic we shot. And the prospect is basically a
16 seismic prospect. It's very high risk.

17 Q. And what penalty do you recommend
18 against any nonconsenting interest owners?

19 A. Cost plus 200. We feel that this is
20 adequate as it's such a high risk due to the
21 seismic prospect that it is.

22 Q. And were Exhibits 6 through 8 prepared
23 by you or under your direction?

24 A. Yes, they were.

25 Q. And in your opinion is the granting of

1 this application in the interests of conservation
2 and the prevention of waste and the protection of
3 correlative rights?

4 A. Yes.

5 MR. BRUCE: Mr. Examiner, I move the
6 admission of Exhibits 6 through 8.

7 EXAMINER CATANACH: Exhibits 6 through
8 8 will be admitted as evidence.

9 EXAMINATION

10 BY EXAMINER CATANACH:

11 Q. Mr. Crow, these are the same type of
12 algal mounds that are produced in northeast
13 Lovington and Strawn and all that?

14 A. Yes, sir.

15 Q. Has Gillespie utilized seismic before
16 to determine the location of these mounds?

17 A. Yes, sir. We drilled, oh, four or five
18 wells southeast of Lovington in the Humble City
19 area, and it was all based solely on seismic.

20 Q. How successful has it been?

21 A. We had one good discovery down there,
22 and we drilled a couple dry holes. It's a hit
23 and miss. There's a -- you can see the mounds
24 with the seismic, but there's always a risk due
25 to the migration problems of actually penetrating

1 one, even though you think you see it on
2 seismic.

3 EXAMINER CATANACH: I have nothing
4 further.

5 MR. BRUCE: I have nothing further.

6 EXAMINER CATANACH: Any geologic
7 questions?

8 MR. STOVALL: Are these rocks?

9 EXAMINER CATANACH: I guess not.
10 Anything further, Mr. Bruce?

11 MR. BRUCE: No, sir.

12 EXAMINER CATANACH: There being nothing
13 further, Case 10498 will be taken under
14 advisement.

15 [And the proceedings were concluded.]

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I do hereby certify that the foregoing is
a complete record of the proceedings in
the Examiner hearing of Case No. 10498,
heard by me on June 25 19 92.

David R. Calant, Examiner
Oil Conservation Division


1 CERTIFICATE OF REPORTER

2
3 STATE OF NEW MEXICO)
4 COUNTY OF SANTA FE) ss.
5

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

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

18 WITNESS MY HAND AND SEAL JULY 7, 1992.
19
20

21 
22 _____
23 DEBBIE VESTAL, RPR
24 NEW MEXICO CSR NO. 3
25

BEFORE THE
NEW MEXICO OIL CONSERVATION COMMISSION
SANTA FE, NEW MEXICO
JULY 22, 1993

COMMISSION HEARING

IN THE MATTER OF:

Case 10498 being reopened upon application of
Monty D. McLane to exempt certain working
interests from the compulsory pooling provisions
of Division Order No. R-9690, Lea County, New
Mexico.

CASE 10498
(DE NOVO)

BEFORE: William J. LeMay, Director

TRANSCRIPT OF HEARING

A P P E A R A N C E S

For the New Mexico Oil

Conservation Commission:

Robert G. Stovall
Legal Counsel for the Commission
State Land Office Building
Santa Fe, New Mexico

MR. LEMAY: The hearing will come to order. Call Case 10498.

MR. STOVALL: In the matter of Case No. 10498 being reopened upon application of Monty D. McLane to exempt certain working interests from the compulsory pooling provisions of Division Order No. R-9690, Lea County, New Mexico, to be heard De Novo upon the application of Charles B. Gillespie, Jr. The applicant has requested that this case be continued to the next Commission hearing.

MR. LEMAY: Without objection Case 10498 is hereby continued to the Commission hearing scheduled for August 19, 1993.

BEFORE THE
NEW MEXICO OIL CONSERVATION COMMISSION
SANTA FE, NEW MEXICO
AUGUST 19, 1993

COMMISSION HEARING

IN THE MATTER OF:

Case 10498 being reopened upon application of Monty D. McLane to exempt certain working interests from the compulsory pooling provisions of Division Order No. R-9690, Lea County, New Mexico.	CASE 10498 (DE NOVO)
--	-------------------------

BEFORE: William J. LeMay, Director

TRANSCRIPT OF HEARING

A P P E A R A N C E S

For the New Mexico Oil Conservation Commission:	Robert G. Stovall Legal Counsel for the Commission State Land Office Building Santa Fe, New Mexico
--	---

MR. LEMAY: Call next Case 10498.

MR. STOVALL: In the matter of Case No. 10498 being reopened upon application of Monty D. McLane to exempt certain working interests from the compulsory pooling provisions of Division Order No. R-9690, Lea County, New Mexico, to be heard De Novo upon the application of Charles B. Gillespie, Jr. The applicant has requested that this case be continued to the next Commission hearing.

MR. LEMAY: Without objection Case 10498 is hereby continued to the Commission hearing scheduled for September 22, 1993.

NEW MEXICO OIL CONSERVATION COMMISSION

STATE OF NEW MEXICO

CASE NO. 10498

IN THE MATTER OF:

The Application of Case 10498 Being
Reopened Upon Application of
Monty D. McLane to Exempt Certain
Working Interests From the Compulsory
Pooling Provisions of Division
Order R-9690, Lea County, New Mexico.

BEFORE:

CHAIRMAN WILLIAM LEMAY

COMMISSIONER BILL WEISS

COMMISSIONER JAMI BAILEY

FLORENE DAVIDSON, Staff Specialist

State Land Office

August 19, 1993

REPORTED BY:

CARLA DIANE RODRIGUEZ
Certified Court Reporter
for the State of New Mexico

20 1993

ORIGINAL

A P P E A R A N C E S

FOR THE NEW MEXICO OIL CONSERVATION DIVISION:

ROBERT G. STOVALL, ESQ.

General Counsel
Post Office Box 2088
State Land Office Building
Santa Fe, New Mexico 87504-2088

1 CHAIRMAN LEMAY: Good morning. This is
2 the Oil Conservation Commission meeting. My name
3 is Bill LeMay. On my left is Commissioner Bill
4 Weiss, representing the Secretary of Energy,
5 Minerals and Natural Resources. On my right,
6 commissioner Jami Bailey, representing the
7 Commissioner of Public Lands.

8 This is our proration hearing. We
9 welcome you to Santa Fe.

10 We'll begin by calling Case No. 10498.

11 MR. STOVALL: This is in the matter of
12 Case No. 10498 being reopened upon the
13 application of Monty D. McLane to exempt certain
14 working interests from the compulsory pooling
15 provisions of Division Order No. R-9690, Lea
16 County, New Mexico.

17 The Applicant has requested this case
18 be continued to the next Commission hearing.

19 CHAIRMAN LEMAY: Is there any objection
20 to the continuance of Case 10498? If not, it
21 shall be continued to the September 22nd
22 hearing.

23 (And the proceedings concluded.)

24

25

CERTIFICATE OF REPORTER

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

I, Carla Diane Rodriguez, Certified
Court Reporter and Notary Public, HEREBY CERTIFY
that the foregoing transcript of proceedings
before the Oil Conservation Commission was
reported by me; that I caused my notes to be
transcribed under my personal supervision; and
that the foregoing is a true and accurate record
of the proceedings.

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

WITNESS MY HAND AND SEAL September 8,
1993.


CARLA DIANE RODRIGUEZ, RPR
CCR No. 4

STATE OF NEW MEXICO

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION COMMISSION

CASES 10,345, 10,346, 10,719, 10,693, 10,498

CONTINUED AND DISMISSED CASES

TRANSCRIPT OF PROCEEDINGS

BEFORE: WILLIAM J. LEMAY, CHAIRMAN

WILLIAM WEISS, COMMISSIONER

JAMI BAILEY, COMMISSIONER

STATE LAND OFFICE BUILDING

SANTA FE, NEW MEXICO

September 22, 1993

1 WHEREUPON, the following proceedings were had
2 at 9:07 a.m.:

3 CHAIRMAN LEMAY: Good morning to all of you.

4 MR. CARR: Good morning. You still outnumber
5 us.

6 CHAIRMAN LEMAY: This is the Oil Conservation
7 Commission. I'm Bill LeMay, on my left Commissioner
8 Bill Weiss, to my right Commissioner Jami Bailey, and
9 we're here to serve you.

10 To begin, we shall -- We don't even have a
11 lawyer, do we? We do have a court reporter.

12 We shall call Case Number 10,345 and 10,346,
13 companion cases, which are the Applications of Louise
14 Y. Locke to consider objections to well costs, San Juan
15 County, New Mexico.

16 I have here that there's a motion to continue
17 to the November 10th hearing?

18 MR. CARR: May it please the Commission, my
19 name is William F. Carr. I've entered an appearance, a
20 very long time ago, for Louise Locke, and I've been
21 advised by Jim Bruce that they're requesting the case
22 be continued to November. They are still negotiating,
23 and it is my belief the case will ultimately be
24 settled.

25 CHAIRMAN LEMAY: Is there any objection to

1 the continuance of these cases to November 10th?

2 If not, those cases shall be continued to
3 November 10th.

4 * * *

5 CHAIRMAN LEMAY: And we will call Case Number
6 10,719, the Application of Application of Anadarko
7 Petroleum Corporation for directional drilling and an
8 unorthodox bottomhole gas well location, Eddy County,
9 New Mexico.

10 I understand there's a motion to continue
11 this case until the October 14th hearing. Is there any
12 objection to continuing the case?

13 If not, it shall be continued to the November
14 14th hearing -- I'm sorry, October 14th hearing.

15 * * *

16 CHAIRMAN LEMAY: And we shall call Case
17 Number 10,693, which is the Application of Pronghorn
18 SWD System for salt water disposal, Lea County, New
19 Mexico.

20 MS. AUBREY: May it please the Commission, my
21 name is Karen Aubrey. I represent the Applicant.

22 We've requested the case be continued
23 indefinitely on the Commission's docket while we will
24 try to work out some other details.

25 CHAIRMAN LEMAY: Ms. Aubrey, without

1 objection Case Number 10,693 will be continued
2 indefinitely.

3 * * *

4 CHAIRMAN LEMAY: Okay, we shall call Case
5 Number 10,498, Application of Monty D. McLane to exempt
6 certain working interests from the compulsory pooling
7 provisions of Division Order No. R-9690, Lea County,
8 New Mexico.

9 MR. CARR: May it please the Commission, my
10 name is William F. Carr, and I represent Monty D.
11 McLane.

12 An agreement has been reached with Mr.
13 Gillespie and Mr. McLane.

14 I can tell you as of Friday, which is the
15 last time I talked to anyone about the case, the only
16 question outstanding was whether or not Mr. McLane
17 would pay his proportionate share of the well and then
18 receive money back, or whether or not it would just be
19 an accounting question and they would just deduct the
20 amount that Mr. McLane owned.

21 It's my understanding that's how close they
22 are to wrapping this up. But as of this morning, they
23 haven't signed everything.

24 For that reason, I hate to, but I have to ask
25 one more time that we continue this case. I'm

1 convinced that it will never come back to you. But
2 until the documents are actually signed, the parties
3 prefer, if it's agreeable with you, to let this stay on
4 your docket.

5 CHAIRMAN LEMAY: Would you want to continue
6 it till November --

7 MR. CARR: I think that would be --

8 CHAIRMAN LEMAY: -- or in October?

9 MR. CARR: I think so because, one, that will
10 also keep the parties moving to get these papers
11 signed. I had hoped they would be done today, but I've
12 called and I can't tell you that they have been.

13 CHAIRMAN LEMAY: So your recommendation is
14 the October 14th hearing?

15 MR. CARR: Yes, sir.

16 CHAIRMAN LEMAY: Is there any objection to
17 continuing Case 10,498 to the October 14th Commission
18 hearing?

19 If not, Case 10,498 shall be continued to the
20 October 14th hearing.

21 * * *

22 (Thereupon, these proceedings were concluded
23 at 9:11 a.m.)

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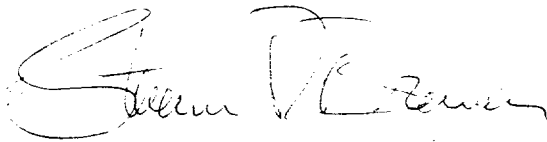
1 CERTIFICATE OF REPORTER
2

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

5
6 I, Steven T. Brenner, Certified Court
7 Reporter and Notary Public, HEREBY CERTIFY that the
8 foregoing transcript of proceedings before the Oil
9 Conservation Commission was reported by me; that I
10 transcribed my notes; and that the foregoing is a true
11 and accurate record of the proceedings.

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

16 WITNESS MY HAND AND SEAL September 22nd,
17 1993.

18 
19

20 STEVEN T. BRENNER
CCR No. 7

21 My commission expires: October 14, 1994
22
23
24
25

STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION DIVISION

CASE 10,498

EXAMINER HEARING

IN THE MATTER OF:

In the matter of Case No. 10,498 being reopened
upon application of Monty D. McClane to exempt
certain working interests from the compulsory
pooling provisions of Division Order No. R-9690,
Lea County, New Mexico

TRANSCRIPT OF PROCEEDINGS

ORIGINAL

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OIL CONSERVATION DIVISION

BEFORE: MICHAEL E. STOGNER, EXAMINER

STATE LAND OFFICE BUILDING

SANTA FE, NEW MEXICO

November 19th, 1992

A P P E A R A N C E S

FOR THE DIVISION:

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* * *

I N D E X

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Appearances

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MONTY D. McCLANE

Direct Examination by Mr. Carr

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Cross-Examination by Mr. Bruce

28

CRAIG HUBBARD

Direct Examination by Mr. Bruce

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Cross-Examination by Mr. Carr

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Redirect Examination by Mr. Bruce

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53

Certificate of Reporter

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* * *

E X H I B I T S

McCLANE EXHIBITS:

Exhibit 1

8

Exhibit 2

20

Exhibit 3

23

Exhibit 4

13

GILLESPIE EXHIBITS:

Exhibit A

32

Exhibit B

35

* * *

1 WHEREUPON, the following proceedings were had
2 at 1:18 p.m.:

3 EXAMINER STOGNER: This hearing will come to
4 order.

5 I'll call the next case, which is the
6 reopened Case of 10,498.

7 (Off the record)

8 MR. STOVALL: In the matter of Case No.
9 10,498 being reopened upon the application of Monty D.
10 McClane to exempt certain working interests from the
11 compulsory pooling provisions of Division Order No.
12 R-9690, Lea County, New Mexico.

13 EXAMINER STOGNER: Call for appearances.

14 MR. CARR: May it please the Examiner, my
15 name is William F. Carr with the Santa Fe law firm
16 Campbell, Carr, Berge & Sheridan.

17 I represent Monty D. McClane, and I have one
18 witness.

19 MR. BRUCE: Mr. Examiner, Jim Bruce from the
20 Hinkle law firm in Santa Fe, representing Charles B.
21 Gillespie, Jr., and I have one witness to be sworn.

22 EXAMINER STOGNER: Any other appearances?

23 Will the witnesses please stand to be sworn
24 at this time?

25 (Thereupon, the witnesses were sworn.)

1 EXAMINER STOGNER: Mr. Carr?

2 MONTY D. McCLANE,

3 the witness herein, after having been first duly sworn

4 upon his oath, was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. CARR:

7 Q. Will you state your name for the record,
8 please?

9 A. Monty D. McClane.

10 Q. And where do you reside?

11 A. I live in Midland, Texas.

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

14 A. I'm an independent petroleum landman and
15 investor.

16 Q. Have you previously testified before the New
17 Mexico Oil Conservation Division?

18 A. No.

19 Q. Could you --

20 MR. STOVALL: Mr. Carr, are you going to
21 qualify him as a landman?

22 MR. CARR: I'm going to qualify Mr. McClane
23 as a petroleum landman.

24 MR. STOVALL: Is it for the purpose of giving
25 expert opinion, or is he going to simply testify as to

1 facts relating to his specific --

2 MR. CARR: He's going to testify as to the
3 facts relating to his situation and also going to give
4 his opinion as to what he does as a landman when he's
5 trying to locate --

6 MR. STOVALL: Okay.

7 MR. CARR: -- some unknown interest owners.

8 MR. STOVALL: Okay. Most of our witnesses
9 are experts, but sometimes they don't have to be.
10 That's why I was asking the question.

11 Q. (By Mr. Carr) Could you summarize your
12 educational background and then review briefly your
13 work experience?

14 A. Okay. I graduated in 1977 from Southwest
15 Texas State University in San Marcos, Texas, with a
16 bachelor's of business administration, immediately went
17 to work for Texaco in Midland, Texas, in their land
18 department for slightly over three years, left them to
19 go to work for Pogo Producing Company in Midland also,
20 worked for them for a little over nine years in the
21 Midland office.

22 During that interim period in 1984 I took a
23 test to become a certified petroleum landman
24 designation with the American Association of Petroleum
25 Landmen and passed that.

1 It was in January of 1989 when I left Pogo
2 and became an independent landman and have been doing
3 so for the last four years.

4 Q. And you are a certified petroleum landman at
5 this time?

6 A. Yes, sir.

7 Q. In the State of Texas?

8 A. Uh-huh.

9 Q. What is your particular interest in this
10 case?

11 A. I'm the owner of a working interest under Lot
12 3, Section 1, Township 16 South, Range 35 East, in Lea
13 County, New Mexico, and this interest was previously
14 force-pooled by Order Number R-9690, which was entered
15 on July 1, 1992.

16 Q. And you are the Applicant in this case here
17 today?

18 A. Yes, sir.

19 Q. And are you familiar with the status of the
20 lands in the acreage which is the subject of this
21 hearing?

22 A. Yes.

23 MR. CARR: We tender Mr. McClane as an expert
24 witness in petroleum land matters.

25 EXAMINER STOGNER: Are there any objections?

1 We recognize Mr. McClane as a petroleum
2 landman.

3 Q. (By Mr. Carr) Mr. McClane, would you briefly
4 state what you're seeking in this case?

5 A. I'm seeking an order declaring that the
6 interest that I now hold is not subject to the pooling
7 Order, because Charles Gillespie, the operator, did not
8 properly pool the interest.

9 Our position, he didn't properly pool because
10 he didn't give notice to the owners of this interest,
11 and those owners were not afforded the opportunity to
12 join in a well.

13 Q. Could you identify what has been marked as
14 McClane Exhibit Number 1, please?

15 A. That's a copy of the Order Number R-9690,
16 whereby this interest was force-pooled.

17 Q. I think initially, by way of background, it
18 would be helpful for you to explain to the Examiner how
19 you acquired your interest in this property.

20 A. Okay, I immediately became interested or
21 aware of this particular property due to a wildcat well
22 that was announced by Charles Gillespie in the section
23 immediately north. It's called the Hamilton Federal.
24 It was going to below 11,000 feet.

25 I ran the records under that particular tract

1 of land, which was federal minerals, to determine if
2 there were any interests that an investor might be able
3 to purchase. I primarily try to purchase minerals and
4 royalty as an investor.

5 Q. Were you successful in that effort?

6 A. I was unsuccessful in that effort. There
7 were several owners of overrides under that tract, but
8 I was unable to purchase any of them.

9 Q. When did you next become aware of this
10 property?

11 A. It was in late June. I was over in
12 Lovington, running some records again, and one of the
13 things that I always do is check the daily register to
14 find out what's -- just keep up on activity in the
15 county.

16 And I noticed that all of these royalty
17 owners under the Hamilton Federal had just executed
18 instruments whereby they conveyed their interest to --
19 about half of the owners sold to an independent landman
20 in Midland, and the other owner that represented 2 1/2
21 percent override had sold to a broker that immediately
22 sold -- assigned it into Charles Gillespie, the
23 operator.

24 Q. And what did this tell you?

25 A. Well, I was -- You know, since I had

1 previously talked to all these people and tried to buy,
2 I knew that they wouldn't -- they couldn't have bought
3 them very cheap. I knew something had to be done to
4 change their minds. They did not want to sell back
5 when it was a drilling well. And they were aware that
6 it was a drilling well; I had told them of such.

7 So I knew they must have offered them a lot
8 of money, and I knew the only way that they could have
9 done that is, it probably had made a good well.

10 And so that made me more interested in the
11 area, made me pull out a plat to see if there was
12 anything else that me as an investor might be able to
13 do to use that information to my own -- my gain.

14 Q. What other tracts were there that might be
15 available?

16 A. Well, immediately south of that acreage and
17 immediately south direct offset of that well is a fee
18 tract which is this 182 acres, which includes this lot
19 3. It's fee acreage. The other acreage, close by, is
20 state acreage. And so I zeroed in due to closeology
21 and also due to the fact that this was probably the
22 only tract that I could pursue.

23 I did a mineral takeoff on the tract that day
24 while I was in the courthouse, which was June 23rd,
25 1992. And on June 24th, 1992, I was making phone

1 calls, trying to buy mineral owners under that tract of
2 land.

3 Q. How much of the interest in this pooled unit
4 is really involved in this case today?

5 A. The interest that's at stake today in this
6 case is a 2.5-percent working interest. It's a -- Two
7 of the parties that were previously force-pooled were
8 Henry H. Lawton and Amanda K. Parks.

9 Henry H. Lawton acquired an interest of
10 4/160, which is 2.5 percent working interest, by deed
11 dated March 24th, 1941, which is recorded in Volume 68,
12 Page 173 of the Deed Records of Lea County, New Mexico.

13 Two months later, on March -- I'm sorry,
14 April 17th, 1941, Henry Lawton, joined by his wife
15 Florence Lawton, conveyed a fourth of what they
16 acquired, a 1/160th interest, to Amanda K. Parks.

17 Q. Is that also recorded in the records of Lea
18 County?

19 A. That deed is recorded in Volume 68, page 343
20 of the Deed Records of Lea County.

21 Q. Now, have you acquired these interests as of
22 this time?

23 A. Yes, I have acquired -- I've acquired leases
24 from the heirs of these parties.

25 Q. And how did you go about securing those?

1 A. Well, the first thing I had to do was locate
2 them.

3 Q. And where did you look?

4 A. Well, the first thing we did is, we went -- I
5 went to the county records in Lea County and did a
6 search of the records there, and then made some
7 telephone calls to New York, specifically Cattaraugus
8 County, and talked to various agencies there, the
9 clerk's office, the probate office, and also their tax
10 assessor's office.

11 Q. What information did you find concerning
12 these interests when you looked at the records of Lea
13 County?

14 A. The -- First of all, the information on this
15 particular tract of land, this 182 acres which includes
16 this lot 3, as in the pervious testimony given back
17 when it was force-pooled, the chain of title, so to
18 speak, ends in 1955 with an oil and gas lease that was
19 signed by Henry Lawton and Florence Lawton, as well as
20 Amanda K. Parks.

21 So that's quite some years ago, and I was
22 hoping to find something more recent.

23 And what I did is check the direct and
24 indirect indexes in Lea County, which is just a -- Let
25 me explain what that is, but that's -- In other words,

1 it's not specific to a particular tract of land. By
2 doing this, you're going to search every tract of land
3 in Lea County and see if Henry Lawton or Amanda K.
4 Parks or Florence Lawton shows up in that courthouse.

5 And in doing that, I came across six
6 additional instruments. We've got an exhibit
7 describing them, but they -- I believe the chain of
8 title brings you all the way up to 1970.

9 Q. Is Exhibit Number 4 a list of those six
10 additional instruments that you discovered that were
11 conveyances from Henry Lawton and his wife?

12 A. Yes, they are. They're certified copies of
13 the additional instruments that I found. Again, I
14 specify they're not covering this tract of land.
15 They're additional tracts of land in Lea County.

16 And if you're looking at the synopsis, at the
17 beginning of it you can see that they started in --
18 Well, the oldest one is September of 1964, and the most
19 recent one was February of 1970.

20 And one of the most interesting things to me
21 was that these people now showed up in the chain of
22 title in Lea County from 1941 all the way to 1970, a
23 period of approximately 30 years. They're always in
24 Cattaraugus County, New York, and when an address is
25 given, they're always at 834 South Union Street in

1 Olean, New York.

2 So I was encouraged by that information.

3 Q. Now, what did you do with this particular
4 information?

5 A. I next got to a telephone, and I called the
6 tax office in Cattaraugus County, New York. I wanted
7 to find out who owns that house at 834 South Union
8 Street, hoping by chance it might still be the Lawtons.

9 I found out that in fact they did not own it
10 any longer, but the tax office could tell me that the
11 Lawtons had it as late as February, 1988.

12 So by now I'm really getting encouraged, I'm
13 thinking these people aren't that far lost.

14 And so I immediately called the Cattaraugus
15 County Clerk and got her to run her direct and indirect
16 indexes. And she found this deed in February of 1988
17 from -- It wasn't from the Henry Lawton that shows up
18 in the Lea County records; it was from the Henry W.
19 Lawton, same name, different middle initial. And it
20 was also from two ladies, and it gives the -- and it
21 was to a third party.

22 And these three people, the three grantors'
23 addresses were all given in this deed which the County
24 Clerk read to me. And as it turns out later -- I
25 didn't know it at the time, but all three of those

1 addresses are still current today.

2 Q. Okay, who are those three people?

3 A. There are three of them, lessors. Henry W.
4 Lawton is the son of Henry H. Lawton, and he's got two
5 sisters. One, I believe, is Joan Sermak, S-e-r-m-a-c
6 [sic]. Let me refer to my leases. Nancy O'Connor, who
7 lives in Fairfax, Virginia, is a daughter. Henry W.
8 Lawton, as I said, was the son. He lives in Portville,
9 New York, is his mailing address. And Joan Sermak,
10 S-e-r-m-a-k, is the other daughter, and she lives in
11 San Bernardino, California.

12 Those addresses were all given in that deed,
13 and they're still current today.

14 Q. Now, at this point in time you have looked at
15 the records in Lea County and you have called the
16 Clerk, the County Clerk in Cattaraugus County, New
17 York?

18 A. I've called the tax assessor first and I've
19 called the County Clerk second.

20 Q. And the County Clerk reviewed what for you?

21 A. The County Clerk was able to look up the deed
22 that was just three years old -- Is that right?
23 February of 1988 -- was able to look up that deed for
24 me and tell me who the grantors were in that deed,
25 conveying the property on Union Street.

1 Q. Now, in those two steps you have located
2 the --

3 A. You know, I still don't know who they are.
4 I've got a pretty good guess, since they've got the
5 same name.

6 But then I talked to the Probate Office in
7 Cattaraugus County, who's at the same number as the
8 County Clerk; they can transfer you.

9 Q. And what did you ask the Probate Office?

10 A. I asked them to look for a will on Henry H.
11 Lawton, and I asked them to look for a will on Florence
12 Lawton and also Amanda K. Parks.

13 Q. And were they able to find those wills?

14 A. They were not only willing to look them up,
15 they were willing to read them to me over the phone.

16 They read to me, and obviously I was able to
17 determine that Florence dies first -- There's
18 exemplified copies of these probates, is one of the
19 exhibits. But Florence died first. She left
20 everything to Henry.

21 Henry dies next, leaves everything to his
22 three kids. And the three kids' addresses are given in
23 that probate proceeding, and they're the same as on the
24 deed and they're the same as what's there today.

25 So I knew I'd found Henry Lawton's side at

1 that time.

2 I also found the probate on Amanda K. Parks
3 at that same telephone conversation. They read that
4 one to me, and she left it to her son, John Parks,
5 everything that she owned.

6 And I didn't have a clue as to how I might
7 find him, but while I had them on the phone I let them
8 go ahead and search their records, the probate records,
9 for John Parks.

10 And they found his probate also and read it
11 to me, and it left everything he owns to Lewis and Lois
12 McLaughlin, a married couple that live in Florida, and
13 they're my lessees of my fourth lease here that I've
14 negotiated.

15 Q. Okay. Now, Mr. McClane, you were able to
16 look at the Lea County records first, talk to the tax
17 assessor --

18 A. -- and the clerk.

19 Q. -- and the county clerk, and find these
20 people?

21 A. (Nods)

22 Q. You could also find them by, from what you've
23 just said, looking at the Lea County records and then
24 checking the probate records?

25 A. That's right.

1 Q. Did you do anything else to try and locate
2 these individuals? Did you make any telephone
3 contacts?

4 A. Well, immediately after I got that far, I
5 hung up and called information and got Henry W.
6 Lawton's phone number.

7 Q. And when you called information, where did
8 you call?

9 A. I called and asked for Olean, New York, and
10 they gave me Henry W. Lawton's phone number. And
11 there's only five Lawtons in Olean, New York. His
12 address is in Portville, New York.

13 I'm talking to him, he says if he got his
14 mail at his house, he would actually have an Olean, New
15 York, address. I guess that's why he's listed in the
16 Olean, New York, information. However, Portville is
17 only five or six miles away.

18 Q. Now, you had identified these individuals.
19 You visited with them?

20 A. Yes.

21 Q. Would you describe those conversations for
22 me, Mr. McClane?

23 A. Yes, my first contact with Henry Lawton was
24 to get phone numbers for his sisters, of course, but I
25 also immediately advised him of what's happening out

1 here and what I think he owns.

2 I told him about the discovery -- the
3 Hamilton Federal well. I told him that on his tract
4 that a company was already drilling a well and that
5 they had force-pooled his interest, in effect, got the
6 right to drill on his interest by force-pooling his
7 interest here at the Oil Commission.

8 Q. And then what did you propose?

9 A. I proposed purchasing his minerals from him,
10 and --

11 Q. Did he agree to that?

12 A. Yes, he did. I made him an offer, he
13 counter-offered, and I accepted, and I put it in
14 Federal Express to him, and one of the few times
15 Federal Express has dropped the ball for me. They took
16 four days to get it there.

17 Q. And then what happened?

18 A. And then by the time he had gotten it, he had
19 changed his mind. He no longer wanted to sell. His
20 sisters wouldn't do it any longer either. They were
21 going to do what he did.

22 Q. Well, what happened?

23 A. And so then I started talking to about, since
24 you won't sell them, will you sell me an oil and gas
25 lease?

1 And we negotiated terms of an oil and gas
2 lease, knowing that -- you know, full well knowing that
3 his interest was force-pooled and knowing that I had
4 maybe a battle on my hands.

5 I told if they'd sell me the lease, I'd
6 approach the operator, try to get his interests removed
7 from being force-pooled. If that was unsuccessful, I
8 was prepared to come up here.

9 Q. Can you identify what has been marked as
10 McClane Exhibit Number 2?

11 A. Certified copies of the four oil and gas
12 leases I've acquired, which represent the heirs of the
13 people they force pooled, Henry Lawton and Amanda K.
14 Parks.

15 Q. Did they accept the lease in the form you
16 proposed it to them?

17 A. Well, initially we tried to make a trade at
18 3/16 royalty, and then he wouldn't agree to that. He
19 negotiated and made me pay him a 1/5 royalty.

20 Q. So --

21 A. And then since he did that, I did the same
22 thing with everybody else. His sisters obviously would
23 have gotten the same trade, but the McLaughlins in
24 Florida was considering the 3/16 offer.

25 And I just called him up and said, I'll -- I

1 had to increase my offer to these folks; I'll do the
2 same thing for you.

3 Q. So under this leasehold relationship with
4 you, he got a 1/5 royalty?

5 A. That's correct.

6 Q. Do you know what the royalty obligation is
7 under the pooling Order?

8 A. Under the pooling Order, it's my
9 understanding he's entitled to 1/8, a share of 1/8.

10 Q. Are you aware of any other contacts with him
11 by other companies for the leasing of his minerals?

12 A. Yes, I know that he's got other properties
13 that he inherited that he's negotiating. I mean, he
14 calls himself on the fringe of the oil business. He
15 knows about the oil and gas business.

16 And he -- Frankly, when I told him he was
17 force-pooled, he wanted to know how can they do that
18 without contacting us?

19 And I said, Well, I assume they testified
20 they couldn't find you.

21 And he said, Were we hard to find?

22 And I said, No, you weren't.

23 Q. You've testified you were able to find him in
24 the Lea County records on numerous occasions.

25 A. Oh, yes.

1 Q. That you were able to find him through
2 directory assistance once you knew who he was?

3 A. Yes.

4 Q. That you were able to find evidence about
5 recent conveyances by going to the county deed records
6 in the community where the deeds from his parents were
7 executed.

8 A. Sure, sure.

9 Q. You've indicated you've been able to find
10 evidence of his whereabouts through the probate
11 records?

12 A. That's correct.

13 Q. You were able to find evidence of his
14 whereabouts from the tax records as well?

15 A. Yes.

16 Q. What about Amanda Parks?

17 A. Amanda K. Parks, I found her by just calling
18 the probate office. That's all I had to do. I was
19 talking to them about the Lawtons, and they found her
20 will for me.

21 I would have also found her through the
22 Lawtons, because she's an old family friend. I think
23 she was a schoolteacher that Mr. Lawton kept conveying
24 her mineral interests like that.

25 Q. And you also secured a lease from her?

1 A. Yes, from her heirs, from her predecessors in
2 title.

3 MR. STOVALL: Successors?

4 THE WITNESS: Her successors, I'm sorry. Get
5 the terminology right.

6 Q. (By Mr. Carr) Can you just identify what's
7 been marked as McClane Exhibit 3?

8 A. These are the four probates, certified copies
9 that have now been filed in Lea County, the first one
10 being Henry H. Lawton.

11 Well, the first one I guess I should discuss
12 is Florence E. Lawton. She leaves everything in it to
13 Henry H. Lawton.

14 Henry H. Lawton then indicates that he leaves
15 it to his three children, whom I have leased.

16 The next one here is a certified copy of
17 Amanda K. Parks' will in probate proceedings. She
18 leaves everything to her son, John C. Parks.

19 And then John C. Parks' probate is also
20 attached, and he leaves it to the McLaughlins in
21 Florida, and I have a lease covering their interest.

22 Q. There was another interest owner in this same
23 property, an Edward O'Neil. Have you attempted to
24 secure a lease from him?

25 A. Well, I attempted to find him initially.

1 Q. And what did you do?

2 A. Well he's -- This is a totally different
3 matter. He's just another one of the parties that they
4 had force-pooled.

5 He's -- Unlike the Lawtons, he shows up in
6 the county records in Lea County on numerous occasions
7 too, but never with an address. And he doesn't have a
8 middle initial, and he always shows up -- not always
9 but in the last X number of years, he's always in Wayne
10 County, Michigan, which is Detroit and all of its
11 suburbs.

12 And so with a name like Edward O'Neil, no
13 middle initial, I knew that was probably going to be a
14 lot tougher to find. I made one attempt. I called
15 their probate office there and their county records in
16 Wayne County and asked them to do a search for Edward
17 O'Neil, and they advised me that they would not do a
18 search over the telephone, that I would have to write
19 them a letter and send in a fee, and I -- and that's
20 the end of that.

21 Q. In your experience as a petroleum landman,
22 have you been called upon periodically to locate
23 interest owners?

24 A. Sure.

25 Q. And --

1 A. That's --

2 Q. -- what is the common practice, in your
3 experience, for trying to track somebody down?

4 A. Well, I'd say the common practice is similar
5 to some of the things that I've done. There's even
6 more things that you can do. But obviously the first
7 thing you do is, you check all the records of the
8 county where the land is, where you're trying to locate
9 these people.

10 Otherwise, if you just stop and just run the
11 records on that particular tract, they may own the
12 section right next door to it or right adjacent to it,
13 and they might have signed a lease to Exxon last month,
14 and you might have a current address on them.

15 So how can you -- You know, I don't think a
16 landman should ever stop, you know, without searching
17 the county records where the land is, all the records,
18 not just rely on an abstractor's tract book on that one
19 tract.

20 Q. If that initial search is done inaccurately,
21 does that impact the remainder of the search?

22 A. I would think it would impact it drastically.

23 Q. Is it customary to check probate records?

24 A. Very customary, then, to check probate
25 records in the county where the land is, as well as in

1 the counties where the last known addresses of where
2 the parties were.

3 Q. Is it customary to review tax records?

4 A. If you want to make a serious look and find
5 them, I think it's very customary to check tax records.
6 They can tell you, for one thing -- If they wouldn't
7 have had the house on Union Street, they may have been
8 living on another street there in -- I'm sorry, Olean
9 or Cattaraugus County, New York.

10 So I'd certainly, before I was willing to say
11 I couldn't find them, I'd want to make sure they
12 weren't alive and living in Cattaraugus County.

13 Q. Is it useful to you to actually have the
14 street address where they most recently lived?

15 A. I think it's critical to know the street
16 address. In this particular case I didn't have to go
17 this far.

18 But if nothing else, with a street address,
19 if you can't track it down through tax records and
20 other ways, you can talk to neighbors on that street.

21 Again, you know, I think these are all things
22 that a serious search ought to take into consideration.

23 And especially, you know, in this particular
24 case, here's a man, Henry Lawton, who we know through
25 the records of Lea County lived at the same address for

1 a period of about 30 years, and he died in the county
2 and left his will.

3 Well, in talking to his son and explaining --
4 keeping him posted on what's happening here, I
5 mentioned something like that to him.

6 And he said, Well, as a side note, he said,
7 My father was born in that house on Union Street and he
8 died there, owning that house on Union Street, and he
9 died at 86 years of age.

10 So that's the man we say we can't find, is a
11 guy that lived in one place his entire life.

12 Q. Are the -- In your experience as a landman,
13 are the things that you have done to locate the Lawtons
14 and the Parks customary and normal things you do to try
15 and identify and locate unknown interest owners?

16 A. I don't really -- Yes, I think they're very
17 customary and standard and not extreme at all.

18 Q. Do you have an opinion, based on your
19 experience, as to whether or not the whereabouts of the
20 Lawtons and Amanda K. Parks were easily ascertainable?

21 A. I think they were very easily ascertainable,
22 could have been found numerous different ways.

23 Q. Did you contact Mr. Gillespie concerning this
24 matter after you acquired the leases?

25 A. Yes, I contacted Gillespie's office and

1 talked with -- their manager was Bill Crow, and advised
2 him that I had acquired these leases, or I told him I
3 had acquired some leases that they had force-pooled.

4 He wasn't interested in knowing who I had
5 acquired or what I had done to find them. He just
6 informed me that they were properly force-pooled and I
7 should get an attorney.

8 Q. Were Exhibits 1 through 4 either prepared by
9 you or compiled under your direction?

10 A. Yes, they were.

11 MR. CARR: At this time, Mr. Stogner, we move
12 the admission of Monty McClane Exhibits 1 through 4.

13 EXAMINER STOGNER: Any objections?

14 MR. BRUCE: No objection.

15 EXAMINER STOGNER: Exhibits 1 through 4 will
16 be admitted into evidence at this time.

17 MR. CARR: And I pass the witness.

18 EXAMINER STOGNER: Thank you, Mr. Carr.

19 Mr. Bruce?

20 MR. BRUCE: Just a few questions, Mr.

21 Examiner.

22 CROSS-EXAMINATION

23 BY MR. BRUCE:

24 Q. Once again, you agree it's reasonable to call
25 the clerk's office or wherever and ask for probate

1 records, Mr. McClane?

2 A. Yes.

3 Q. And your examination of the chain of title on
4 this particular tract, not on any other tracts, you
5 agree that with respect to the Lawton and Parks
6 interest, it ended in nineteen- --

7 A. Yes, I think I even testified to that. The
8 last lease was in 1955, on this particular tract of
9 land.

10 It certainly does not include the rest of Lea
11 County.

12 MR. BRUCE: I don't have anything further,
13 Mr. Examiner.

14 EXAMINER STOGNER: Thank you, Mr. Bruce.

15 Mr. Stovall?

16 MR. STOVALL: No, I don't think I've got any
17 questions.

18 EXAMINER STOGNER: You may be excused, Mr.
19 McClane.

20 THE WITNESS: Thank you.

21 EXAMINER STOGNER: Mr. Carr, do you have
22 anything further?

23 MR. CARR: No, that concludes our direct
24 presentation.

25 I have a closing statement.

1 EXAMINER STOGNER: Mr. Bruce? Any evidence?

2 MR. BRUCE: Call Mr. Hubbard to the stand.

3 MR. STOVALL: Mr. Bruce, before we start, do
4 you have any -- are you raising any issues with respect
5 to the validity of the chain of title from the last
6 recorded date in 1954 and all the information that Mr.
7 McClane has presented with respect to the transition of
8 title from that time?

9 MR. BRUCE: I mean, I can't dispute what --
10 if Mr. McClane got the probates and recorded them. I
11 mean, there's nothing I can dispute.

12 MR. STOVALL: Those are not issues in
13 dispute?

14 MR. BRUCE: Now, I mean, you know, as a side-
15 issue, I don't think title is marketable in New Mexico
16 until a New Mexico probate is conducted, so I won't
17 confess that.

18 MR. STOVALL: Okay. So we don't have to sit
19 here and listen to a title issue which we can't
20 resolve?

21 MR. BRUCE: No, I -- We're not going to --

22 MR. STOVALL: Okay.

23 MR. BRUCE: -- be discussing those issues.

24 MR. STOVALL: Good.

25 That's --

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CRAIG HUBBARD,

the witness herein, after having been first duly sworn
upon his oath, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BRUCE:

Q. Mr. Hubbard, would you please state your name
for the record?

A. My name is Craig Hubbard.

Q. And where do you reside?

A. Midland, Texas.

Q. And what is your occupation?

A. I'm a petroleum landman.

Q. And have you previously testified before the
Division as a professional petroleum landman?

A. I have.

Q. And are you also a certified petroleum
landman?

A. I am.

Q. And with respect to this case, were you
employed by Mr. Gillespie to perform land work for him?

A. Yes, I was.

Q. And in fact, you testified before the
Division in the original case as the landman, did you
not?

A. That's correct.

1 MR. BRUCE: Mr. Examiner, I would tender the
2 witness as an expert petroleum landman.

3 EXAMINER STOGNER: Are there any objections?

4 MR. CARR: No objection.

5 EXAMINER STOGNER: Mr. Hubbard is so
6 qualified.

7 Q. (By Mr. Bruce) Mr. Hubbard, would you refer
8 to Gillespie Exhibit A and just very briefly identify
9 what that is for the Examiner?

10 A. Exhibit A is Exhibit 3 from the original
11 hearing, and the exhibit lists my efforts to contact
12 the various interest owners in the well unit.

13 Q. Okay. Now, if you turn to page 2 of Exhibit
14 A, you've highlighted some of the interests.

15 Could you summarize what you did to attempt
16 to contact the Lawton and Parks interests?

17 A. Well, first I'd like to point out that both
18 Mr. Lawton and Miss Parks acquired their interests in
19 1941, but the last oil and gas lease they issued and
20 their last dealings of record with respect to this
21 tract were in 1955.

22 I examined the Lea County records for this
23 specific tract, and there was nothing in the records
24 concerning these two interests since 1955.

25 I then called the Cattaraugus County, New

1 York, Clerk's Office and asked them to search the
2 probate records for Mr. Lawton and Ms. Parks.

3 The person I spoke to on the telephone could
4 find no records for either person.

5 I then searched *Polk's Directory* for western
6 New York State, and again came up with no one under
7 these names.

8 Q. And for western New York State, that would
9 cover more than just the town of Olean, I believe it
10 is?

11 A. Well, *Polk's Directories* don't have
12 directories for small towns; it's usually larger towns.
13 And in hopes of having -- in finding them having moved
14 to a larger city, I checked the larger cities in
15 western New York State.

16 Q. Now, before we go any further, Mr. McClane
17 said he called up whoever in the Clerk's Office and got
18 names of the probates, and you were here to hear him
19 testify about that, weren't you?

20 A. That's correct.

21 Q. How do you explain that he got names and you
22 didn't?

23 A. I do not know why he got a different answer
24 than I did. Perhaps the person he got ahold of at the
25 office was more experienced than the one that answered

1 my telephone call.

2 However, I did the exact same thing he did
3 and was told that there were no Parks or Lawton
4 probates. They could have misunderstood the period
5 that I requested to be searched. I'm not certain, I
6 don't know why I got that answer.

7 Q. Okay. And is it a common practice among
8 landman to call a county clerk or a probate clerk and
9 rely upon someone in that office to do a search like
10 this?

11 A. I believe it is.

12 Q. One thing on page 2 of Exhibit A, Mr.
13 Hubbard, I believe there's a typo, and it describes
14 your attempts to contact the Lawton and Parks
15 interests. It says 1991; is that correct?

16 A. No, if you'll go back to my handwritten notes
17 on pages 6 and 7, you'll find the dates listed there as
18 March 7th and April 11th, no year. And when I prepared
19 this exhibit, I just -- I put in 1991 instead of 1992.

20 We did not begin our full search for the
21 lost mineral owners until after we had acquired all our
22 leases, and we began that final push sometime around
23 the early spring of 1992.

24 Q. Okay. Keeping it open to pages 6 and 7 of
25 Exhibit A, would you also -- Would you describe what

1 those phone numbers are and refer to Exhibit B and tell
2 us what that is also?

3 A. Well, the first is an area code, 716. And
4 Exhibit B is a copy of my telephone records that showed
5 that I made those two directory assistance calls to the
6 716 area code in May of 1991. That was initially when
7 we first got going on this project, and I was trying to
8 find all the mineral owners. And those -- and I made
9 those directory assistance calls.

10 Later, after we tied up most of the leases
11 that we could and began our final push for the lost --
12 the owners we considered lost, is when I tried to get a
13 probate search in Cattaraugus County Clerk, and that
14 number there is for the County Clerk's Office.

15 Q. Okay. And once again, you came up with
16 nothing.

17 On Amanda Parks there are some other phone
18 numbers listed there, on page 7. What are those?

19 A. I got some Parks in the area. I thought I
20 could try those. And apparently -- None of those
21 panned out. They were not the right Parks.

22 Q. Okay. Now, has this area, where this well is
23 located, has this been an active area over the past 10,
24 15 years?

25 A. Yes, this area has been an active place since

1 the early 1980s. During that time, Exxon, Sun,
2 Mitchell and Rio Pecos Corporation had leased and re-
3 leased this area.

4 However, none of these companies were
5 apparently able to locate the Lawton and Parks
6 interests, since there were no recorded leases from
7 those persons to those companies.

8 Q. Now, with respect to the unleased interests,
9 were you under instructions or directions from Mr.
10 Gillespie to lease the unleased interests?

11 A. Yes, they instructed me to find those lost
12 mineral owners. Operators would rather lease those
13 interests than force-pool them.

14 Q. Okay. And in conclusion, do you believe that
15 you made a reasonable, good-faith search to locate the
16 Lawton and Parks interest?

17 A. Yes, I did.

18 Q. And were Exhibits A and B prepared by you or
19 under your direction?

20 A. Yes.

21 MR. BRUCE: Mr. Examiner, at this time I
22 would move the admission of Gillespie Exhibits A and B.

23 EXAMINER STOGNER: Are there any objections?

24 MR. CARR: No objection.

25 EXAMINER STOGNER: Exhibits A and B will be

1 admitted into evidence at this time.

2 Mr. Carr?

3 CROSS-EXAMINATION

4 BY MR. CARR:

5 Q. Mr. Hubbard, you're a professional landman?

6 A. That's correct.

7 Q. If I understood your testimony, you were
8 under a contract for Mr. Gillespie to do this land work
9 for him? Is that your relationship with Mr. Gillespie?

10 A. There was no formal contract. They contacted
11 me to do the work for them.

12 Q. You're an independent landman?

13 A. That's correct.

14 Q. In your experience, you have been asked, I
15 assume, on repeated occasions to try and locate
16 interest owners in various mineral properties?

17 A. At times, yes.

18 Q. And in doing that, would you agree with me
19 that it is -- a common starting point are the county
20 records?

21 A. That's correct.

22 Q. I think in your prior testimony you indicated
23 that you had searched all the records of Lea County,
24 New Mexico; is that right?

25 A. My meaning there was that I had searched all

1 the records pertaining to that tract.

2 I did run other records, and I did do some
3 index research that would -- that showed other leases
4 signed by Mr. Lawton. However, they all led me to the
5 same place that I went to with my search.

6 Q. When you looked at these other sources, were
7 you able to discover the leases which Mr. McClane has
8 discovered, which are in Exhibit Number 4?

9 A. I don't recall if I looked up every one of
10 those. I know that I saw other leases signed by Mr.
11 Lawton after the 1955 date associated with this
12 particular tract.

13 Q. If you would go to your Exhibit Number --
14 Well, it was 3 in the original hearing, and I think
15 it's A in this hearing. If you go to paragraph number
16 3, it says, Henry H. Lawton. Do you see that?

17 A. Yes.

18 Q. And then it -- further over on that line it
19 says, "Last appeared in County records on Oil and Gas
20 Lease 11/15/55."

21 Are you saying that that is the last time he
22 appeared, or were you only looking at this particular
23 lease?

24 A. I was referring to this tract. That was
25 worded poorly.

1 Q. Did you look at the grantor/grantee indexes
2 to try and locate or find other references to Mr.
3 Lawton?

4 A. I did. I'm not sure if I -- I can't recall
5 whether I ran every name all the way up back and forth.
6 I did find other instruments.

7 Q. Wouldn't you want to see those instruments to
8 determine the whereabouts of Henry Lawton?

9 A. Yes. They were leading me to the same place.

10 Q. Did you look at every one of those leases and
11 every record?

12 A. I can't recall that; I don't know.

13 Q. If you were doing a diligent search, wouldn't
14 you want to do that if you were trying to actually find
15 out where they are?

16 A. I believed that I was making a diligent
17 search, and it led me, even the most recent one -- and
18 I can't recall whether I saw that or not -- but even
19 the most recent one led me to where I already was.

20 MR. STOVALL: Mr. --

21 Q. (By Mr. Carr) But you don't recall whether
22 or not you looked at every lease or record in the
23 grantor/grantee index?

24 A. I don't recall that.

25 Q. You indicated you looked at some other

1 records. I think in prior testimony you indicated you
2 looked into the alphabetical miscellaneous card file at
3 the Lovington Abstract Company. What is that?

4 A. Well, they keep a card file of instruments
5 that come in that don't reference a certain property
6 that they can't abstract in their books, divorces,
7 abstracts of judgments, a lot of different instruments,
8 and I thought maybe I could get a lead by looking in
9 there.

10 Q. These are actually documents that don't have
11 legal descriptions; is that what they'd be?

12 A. That's correct.

13 Q. And where is the Lovington Abstract Company
14 located? Is it in Lovington, New Mexico?

15 A. Right, I think it's across -- The one I use
16 is directly across the street north from the
17 courthouse.

18 Q. Did you actually go through any records in
19 the courthouse itself?

20 A. Yes.

21 Q. So when you say -- You previously stated you
22 had searched all the records of Lea County, New Mexico.
23 That didn't mean that you actually checked each
24 document?

25 A. All the records pertaining to this tract,

1 yes.

2 Q. But not to other tracts where the Lawtons
3 might have had an interest?

4 A. No, I did not do a mineral search on the rest
5 of Lea County.

6 Q. Now, when you -- you took -- If I understand
7 your testimony, you took the information from this
8 search of the records in Lea County and then you did
9 what with that information? You contacted the County
10 Clerk in --

11 A. Initially directory assistance, and nothing
12 there. And then I believe the sequence was the County
13 Clerk's Office.

14 Q. Did you go to directory service, directory
15 assistance, before you went to the County Clerk?

16 A. Yes.

17 Q. Exhibit B shows the calls, directory
18 assistance, having been made on May 23rd, 1991; is that
19 right?

20 A. (Nods)

21 Q. Wouldn't -- If I look at your Exhibit A, you
22 indicated that you called the County Clerk's Office in
23 March, on March 7th.

24 A. I previously explained that that was March
25 7th, 1992.

1 Q. Okay, All right. And the 1991 dates are
2 correct on the telephone log?

3 A. I assume that -- Yes.

4 Q. Do you have similar telephone logs to
5 evidence your calls to the County Clerk?

6 A. I do not. I do in-house work for several
7 clients, and there are several phones that I make calls
8 from. These were the only telephone records that I had
9 access to.

10 Q. When you called the County Clerk, what did
11 you ask them for?

12 A. A probate search of those two names.

13 Q. And did you say you had the name of the
14 person to whom you talked?

15 A. No, I did not say.

16 Q. And you asked them to do a probate search of
17 what records, of what names?

18 A. For the Henry H. Lawton and Amanda K. Parks.

19 Q. And they told you they were unable to find
20 either?

21 A. That's correct.

22 Q. How long did that telephone call last?

23 A. I can't --

24 MR. STOVALL: Mr. Carr --

25 THE WITNESS: -- a long time ago.

1 MR. STOVALL: -- I hate to interrupt you, but
2 I think we're -- in my mind, at the moment we're
3 pursuing an avenue that I'm not sure is decisive in
4 this case.

5 MR. CARR: Well --

6 MR. STOVALL: Let me go and explain why I
7 think so and see where you come.

8 The issue that you are pursuing and that has
9 been discussed is whether a reasonable and diligent
10 search was made --

11 MR. CARR: Ye.

12 MR. STOVALL: -- in order to attempt to
13 locate parties who could not be found.

14 MR. CARR: That's correct.

15 MR. STOVALL: The facts as they appear, and
16 do not appear to be controverted, is that there are
17 successors in interest to Henry Lawton and Amanda Parks
18 who have subsequently been located --

19 MR. CARR: Yes.

20 MR. STOVALL: -- and documents have been
21 located which would -- if they do not now, could be
22 used to establish their title to the property.

23 Now, my question, and this question is
24 directed to the lawyers --

25 MR. CARR: Uh-huh.

1 MR. STOVALL: -- and I think it takes us away
2 from the issue of -- I mean, obviously Mr. McClane was
3 more effective in his search. Whether he did a
4 professionally comparable or better job is, I don't
5 think, the issue.

6 The issue is, in my mind at the moment, is if
7 you have owners who are subsequently identified and
8 located, successors in interest, is the failure to give
9 them notice in and of themselves, effectively create a
10 situation where there is no jurisdiction over the
11 owners of that interest --

12 MR. CARR: I --

13 MR. STOVALL: -- without regard to what
14 efforts were made to search. I'm not sure that we need
15 to --

16 MR. CARR: I believe, though, I believe that
17 if we look at the recent *Uhden* decision, the standard
18 there is easily ascertainable individuals and due
19 diligence.

20 And I'm just trying to go back through and
21 establish what was actually done, because I'm not just
22 going to be inquiring as to whether or not the
23 telephone call resulted in a different result. And if
24 you'll let me go forward, I think I can also show that
25 even the questions were different, and it goes to the

1 diligence of the search.

2 MR. STOVALL: Well, I understand that. What
3 I'm suggesting to you is that I'm not sure that once
4 you actually locate somebody -- The distinction in the
5 *Uhden* case is there was never any question as to where
6 the person was; it was just a question of whether they
7 were entitled to notice --

8 MR. CARR: But the *Uhden* court --

9 MR. STOVALL: -- and there's not in my mind
10 that a party, that an applicant attempting to force-
11 pool an interest, must give notice in a force-pooling
12 case, which was the question in *Uhden*, was whether you
13 have to go to give notice at all.

14 Now, in this case, the question that I'm
15 asking -- and it's the lawyer's question, now -- is,
16 upon subsequent identification and location of these
17 parties who appear to be the interest owners in the
18 tract, is the failure to give them personal notice
19 without regard to the effort of the search that was
20 made, assuming at least some minimal search was made --
21 does that, in fact, mean that they were not subject to
22 the jurisdiction of this Division and that the force-
23 pooling Order does not affect their interest?

24 MR. CARR: My opinion is, if you give notice
25 by publication only, when you could ascertain, you do

1 not have jurisdiction to pool their interest because
2 their due-process rights are violated.

3 MR. STOVALL: Mr. Bruce, would you like to
4 respond?

5 MR. BRUCE: I think if they are easily
6 ascertainable, yes, if somebody knows where they are,
7 yes, then notice by publication is insufficient.

8 But then you get to, were they reasonably
9 ascertainable?

10 And like you said, Mr. Stovall, *Uhden*
11 involved a case where Amoco knew Mrs. Uhden's address
12 and, in fact, had been sending her royalty checks for
13 years and years and years and years and years.

14 That's not our case. And I think what you
15 have to do is, you have to, to a certain extent, use
16 the language of the *Uhden* case, but also Section
17 70-2-18, which requires an operator to make a good-
18 faith effort to obtain the joinder of the parties in
19 the well or otherwise get their interests committed.

20 And so once again, it comes down to good
21 faith or a diligent search. Did they do it?

22 And it's our position that, yes, based upon
23 what was revealed in the county records, Mr. Gillespie
24 made a good-faith effort to locate those parties. And
25 when they couldn't be located, then publication by

1 notice was sufficient to subject them to the
2 jurisdiction of the Division.

3 MR. STOVALL: Would I be correct -- I mean,
4 it is my opinion, legal opinion -- and I think we're
5 really in a legal case; I don't think we're in a
6 factual case at this point.

7 The most analogous civil-law case that I can
8 think of is a quiet-title action in which you seek to
9 determine rights to property through an adjudication,
10 and which has certain notice requirements.

11 Can anybody, either of you, offer anything
12 that is more analogous?

13 MR. CARR: I don't think, though, that you
14 can quiet title to people unless you've made a diligent
15 effort to locate them, and there's a factual component
16 to that.

17 MR. BRUCE: I agree with Mr. Carr.

18 MR. STOVALL: Now, let me ask the next
19 question, then, is, if you had made what at the time of
20 the quiet-title action is determined to be a diligent
21 effort and these people are subsequently located, is
22 their title, in fact, quieted? Or are they effectively
23 divested of title?

24 MR. BRUCE: Well, we could argue that all
25 day. I mean, you know, I understand where Mrs. Carr --

1 MR. CARR: Mrs. Carr has no interest --

2 MR. BRUCE: -- Mr. Carr is coming from.

3 But I think there has to be some component on
4 the owner of an interest to -- you know, whether by
5 affidavit or something. I mean, you just can't file a
6 deed with no address on it or something and leave it go
7 for 50 years and then show up after a quiet-title suit
8 and say, Here I am. That's a void against me. I'm not
9 saying that this is this case. But, you know, I'm
10 using an extreme example.

11 MR. CARR: But I think before we get to your
12 hypothetical, there is a question of due diligence --

13 MR. BRUCE: No.

14 MR. CARR: -- and I think that has to be
15 resolved. And then the legal issue comes forward.

16 But there are factual issues here I think
17 that need to be questioned.

18 MR. BRUCE: And, you know, depending upon
19 what the ruling of the Division is -- I mean, if you
20 find in Mr. McClane's favor, then it might well be my
21 position that, fine, they're not subject to the
22 compulsory pooling Order but we can still come back and
23 pool them --

24 MR. CARR: And if they could still come back
25 and pool them --

1 MR. BRUCE: -- and ask for a penalty.

2 MR. CARR: -- we'd have an opportunity to
3 join and avoid that penalty.

4 MR. STOVALL: Would you agree with that, Mr.
5 Bruce?

6 MR. BRUCE: I'm not sure if I do.

7 MR. CARR: Mr. Stovall, I could have long ago
8 finished my cross.

9 MR. STOVALL: Well, we still have these same
10 arguments. We still need the answers to these
11 questions. I think these are the crux of the...

12 The next question then is, do we look at it
13 in terms of diligence as of the time that it was done?

14 MR. CARR: I don't see how else you can do
15 it.

16 MR. BRUCE: I think that you have to.

17 MR. CARR: I think you must.

18 MR. STOVALL: Okay. If you wish to continue
19 I won't --

20 MR. CARR: I do wish to continue, with your
21 permission, Mr. Stogner.

22 EXAMINER STOGNER: You may continue, Mr.
23 Carr.

24 Q. (By Mr. Carr) Mr. Hubbard, we were talking
25 about the inquiry that you made of the County Clerk in

1 Cattaraugus County, New York.

2 My question is, at the time you made that
3 inquiry, you had seen documents, I assume, in which
4 Mrs. Lawton, Florence Lawton, had also joined; is that
5 correct?

6 A. I think that's correct.

7 Q. Wouldn't that tell you that she might have an
8 interest in the property?

9 A. It would. The names that I requested
10 searched through probate were the interest owners that
11 I saw, Henry H. Lawton and Amanda K. Parks.

12 Q. And you didn't ask for a search on Florence
13 Lawton?

14 A. I don't believe that I did.

15 Q. Did you ask the county officials in
16 Cattaraugus County, or did you talk to their tax
17 officials?

18 A. I did not call the tax office.

19 Q. Did you ask for any kind of a search of their
20 deed records?

21 A. Just the probate records.

22 Q. Okay. You indicate in your Exhibit Number A
23 that in trying to locate Mr. O'Neil you were able to
24 call the Wayne County Clerk's Office, and they ran a
25 title or a probate search for you there?

1 A. That -- Apparently what I got from my notes,
2 I did not know that they were going to discuss Mr.
3 O'Neil.

4 Q. It says the search was negative. Does that
5 mean there was a search and it showed nothing, or there
6 was no search?

7 A. I don't recall that.

8 Q. Okay. So what, basically -- Your testimony
9 is that you went to the county records and you focused
10 on this particular tract, and you --

11 A. Primarily, but I ran probate indexes and
12 other indexes as well -- indices as well.

13 Q. And that you called information and you could
14 find no one?

15 A. That's correct.

16 Q. And that you called the probate records, and
17 you could find none?

18 A. No, they could find none.

19 Q. They could find none.

20 And that you didn't request any sort of a
21 search of the tax records or the deed records?

22 A. No, at that point, given the fact that these
23 people had not leased when this area was white hot in
24 the Eighties, I think we mutually determined that that
25 was a diligent search, and we had tried in good faith

1 to find these people.

2 Q. When you say "we", who do you mean?

3 A. Mr. Gillespie. I mean, me, acting as a
4 representative.

5 Q. And you didn't attempt to pursue any evidence
6 of where Florence Lawton might be?

7 A. No, I did not.

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

9 EXAMINER STOGNER: Thank you, Mr. Carr.

10 Mr. Bruce, any redirect?

11 MR. BRUCE: Just very briefly, Mr. Examiner.

12 REDIRECT EXAMINATION

13 BY MR. BRUCE:

14 Q. Just to get into something Mr. Carr was
15 asking, you go to an abstract company, and they
16 maintain tract books, do they not, besides
17 grantor/grantee indices?

18 A. Well, the grantor/grantee indices are in the
19 courthouse and not in the abstract company. The tract
20 books are in the abstract company.

21 Q. And it's common for landmen to go there
22 because everything is right in one tract, isn't it?

23 A. Yes.

24 Q. And it saves a lot of time and money for the
25 operator?

1 A. Yes, and some people are of the opinion you
2 get a better search, that if you had to search every
3 name in a tract where there are this many mineral
4 owners, 30, I think, 30-plus, and had to run the
5 indices back and forth, you can miss something pretty
6 easily, instead of going to the tract books.

7 MR. BRUCE: Thanks. Nothing further.

8 MR. STOVALL: One question.

9 EXAMINATION

10 BY MR. STOVALL:

11 Q. What about using both?

12 A. Well, after you have your run sheet from the
13 abstract company and do your mineral takeoff, if there
14 are any discrepancies, yes, you do both.

15 If there are any lost minerals, you can go to
16 those indices and do that, yes.

17 EXAMINER STOGNER: Any other questions of
18 this witness?

19 If not, he may be excused.

20 Mr. Carr, are you finished at this time?

21 Do you have anything else, Mr. Bruce?

22 MR. CARR: I have a closing --

23 MR. BRUCE: I have nothing further, Mr.

24 Examiner.

25 EXAMINER STOGNER: Other than closing

1 statements, I'm going to allow Mr. Stovall to, since
2 this is a legal issue, I'll let go first.

3 Mr. Bruce, I'll allow you to go second.

4 And then, Mr. Carr, I'll allow you to go.

5 MR. STOVALL: I've essentially said what I
6 want to do.

7 I think what we need -- What I would like to
8 request -- and I have a feeling I may somehow get
9 involved in this decision -- is some sort of memorandum
10 kind of addressing the questions which I have.

11 My bottom -- My first question is, does the
12 fact that somebody appears to have that interest and
13 not been notified, do they have a remedy at this point
14 in the game, whether or not there is a -- Let's assume
15 for the purpose of that discussion that there is a
16 diligent search.

17 I think if -- Because if the answer to that
18 is that they do have a remedy, then the question of
19 whether or not there's a diligent search is not
20 important.

21 If the answer is no, they -- the Order is
22 effective as to them, if there is a diligent search,
23 then we reach that factual analysis of whether or not
24 this search by Mr. Gillespie and his landman is in fact
25 -- meets the standard for diligence.

1 And those appear to me to be the two
2 questions that have to be -- One's a threshold, and the
3 other one...

4 Is that -- I mean, have I made myself clear
5 as to what I perceive the issues to be?

6 MR. CARR: Uh-huh.

7 MR. BRUCE: We can discuss that after the
8 hearing.

9 MR. CARR: I understand what your concerns
10 are.

11 MR. BRUCE: I think I have -- I think I
12 understand, but rather than argue it on the record --

13 MR. STOVALL: Yeah, I don't want to -- I'm
14 just telling you what I think it is, and I think I need
15 some authority to check to see which way we should be
16 going.

17 EXAMINER STOGNER: With that, I'd like to
18 have some sort of commitment on time for the record at
19 this point.

20 MR. CARR: Mr. Stogner, would it be possible
21 to have ten days to two weeks?

22 EXAMINER STOGNER: It would be up to all
23 three of these gentlemen.

24 MR. BRUCE: Two weeks.

25 MR. CARR: I've got a very big hearing here

1 on the 3rd. Thanksgiving falls in the middle of that,
2 and I have two briefs due, and it will be hard to meet
3 this within two weeks.

4 MR. STOVALL: Well, let me do this: From the
5 standpoint of Mr. Gillespie, this well is drilling and
6 producing, and there's money to be accounted for, and
7 those facts aren't going to change; is that not
8 correct?

9 MR. BRUCE: Yeah, this well is producing, and
10 I think under the terms of the Order, it's being held
11 in escrow.

12 MR. STOVALL: It's going to be a money
13 settlement in this case. It's not -- There's nothing
14 critical in terms of needing to get an order out,
15 because whatever the Division resolves, it can be
16 resolved with checks or accountings, as the case may
17 be.

18 So I think the time frame is -- I also happen
19 to think that -- I think this is a very -- As I
20 mentioned before this case started, in my five years at
21 the Division, this is the first time that this issue
22 has come up, although it is one I have raised as a
23 concern in several circumstances where we have
24 unlocated parties, and I would prefer that it be done
25 well and that we get some good law upon which to base a

1 decision, rather than that it be done quickly.

2 So if two weeks is not enough, please say so,
3 and I --

4 MR. BRUCE: It may not be, frankly.

5 MR. CARR: Frankly, Bob, it will not be, to
6 do it right. I would think that we should target by
7 December the 15th.

8 Is that all right, Jim?

9 MR. BRUCE: That's fine with me.

10 MR. CARR: And that way we can do a proper
11 job --

12 MR. STOVALL: Yeah, I think it's much more
13 important --

14 MR. CARR: -- and not just regurgitate what
15 will be an eloquent closing statement.

16 MR. STOVALL: I think that's much more
17 important in this case, because I think this has
18 implication for force-pooling in the future of this
19 Division.

20 EXAMINER STOGNER: Okay, with that, December
21 15. I wanted something on the record so if we're asked
22 or we're held to the fire, how to go on that.

23 If you are through, Mr. Stovall, I'll allow
24 Mr. Bruce to go next.

25 MR. BRUCE: Very briefly, Mr. Examiner, I

1 only have a couple of paragraphs.

2 I'm sure Mr. Carr will mention the *Uhden*
3 case. Of course, I'd be reluctant to give credence to
4 what Mr. Carr says. I don't think he was the winning
5 attorney on that.

6 But more importantly --

7 MR. STOVALL: Watch yourself, Mr. Bruce.

8 MR. BRUCE: I'm skating.

9 More importantly, what I've stated before is
10 that I believe the Division has to determine is whether
11 under the statutes, a good-faith effort was made by Mr.
12 Gillespie to locate the Lawton and Parks interest and
13 to get them to join in the well.

14 Mr. Gillespie asserts that such a search, a
15 good faith search, was made.

16 Mr. Hubbard did virtually the same search as
17 Mr. McClane. Unfortunately, he received a different
18 answer regarding the probate search of the Cattaraugus
19 County, New York, records. If the person he had talked
20 to had located the probates, we wouldn't be here today.
21 Mr. Gillespie himself probably would have leased these
22 interests.

23 We believe the search was proper and would
24 request that the pooling order be affirmed and that Mr.
25 McClane's working interest be made subject to the

1 Order.

2 And as an aside, I would also like to assert
3 that there were some other unpooled interests, and we
4 believe they are still subject to the pooling Order and
5 that this case would only apply to the Lawton and Parks
6 interest.

7 EXAMINER STOGNER: Mr. Bruce.

8 Mr. Carr?

9 MR. CARR: May it please the Examiner, I
10 would not want to let Mr. Bruce down in terms of my
11 quote of the *Uhden* decision. He noted that he was the
12 winning attorney and stated he was skating.

13 I would suggest that he might be skating on
14 thin ice, because the *Uhden* decision is a carefully
15 crafted opinion by our New Mexico Supreme Court in
16 which this Court adopted opinions asserted by Mr.
17 Bruce.

18 And they said, and I quote, that when the
19 names and addresses of affected parties are known or
20 are easily ascertainable by the exercise of diligence,
21 notice by publication does not satisfy Constitutional
22 due-process requirements.

23 We'll expand on this, but I suspect that Mr.
24 Stovall's questions are answered right there.

25 You see, the pooling statute is a mechanism

1 whereby the State invokes its police power to force
2 property interests together. And when that action is
3 taken by the State, there are certain constitutional
4 safeguards, certain things that must be done to avoid
5 abuse.

6 And as the New Mexico Supreme Court stated in
7 *Uhden*, when they are easily ascertainable the
8 jurisdiction isn't there.

9 If they cannot be found, that does not thwart
10 the State; it doesn't prevent it from bringing these
11 interests together.

12 And so we get to the second question, and the
13 question is, was due diligence exercised here?

14 It seems to me that when you look at this
15 record, if you went to the county records and looked at
16 all of them, you would have had the address of Mr.
17 Lawton. You needed to do nothing more than go there
18 and to the probate records, and, boom, you've found
19 them. Or you needed to go to the county records and
20 then to the tax records and deeds, and you've found
21 them again. Or you needed to go to the county records
22 and just take a walk through the yellow pages, and
23 there again, you've found them.

24 In this case all roads led to Rome, but they
25 didn't take any of them. They didn't find any of them

1 at all, because they did not meet the standards that
2 are required of landpersons going out and trying to
3 locate individuals so that they can be subject to this
4 agency's jurisdiction, so that their interests can be
5 pooled.

6 Here, the Lawtons lived in the same place for
7 at least 30 years. They were not difficult to locate.

8 We submit a serious search would have and did
9 locate the parties, and that by pooling these interests
10 and imposing a risk penalty without giving the then or
11 now interest owners an opportunity to participate,
12 you're depriving them of a Constitutionally protected
13 property interest.

14 You see, they were given a 1/8 interest under
15 your Order. Had they been notified, they would
16 probably have negotiated with Mr. Gillespie what they
17 negotiated with Mr. McClane, a 1/5th royalty.

18 Their interests have been adversely affected.
19 And what happened here violates *Uhdén*, it violates due
20 process standards, it confiscates their properties.
21 And we are therefore asking that the interests of Mr.
22 McClane, and also thereby the interests of Lawton and
23 Parks, be exempted from the pool Order Number R-9690.

24 And in that scenario, then, Mr. Gillespie
25 will have to come to us, propose the well, and then we

1 will give -- ordered an opportunity to participate.

2 EXAMINER STOGNER: Thank you, Mr. Carr. Does
3 anybody else have anything further in Case Number
4 10,498 at this point?

5 If not, the record will remain open for 15
6 days for --

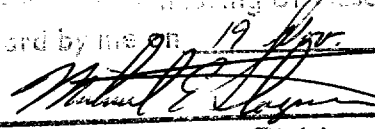
7 MR. STOVALL: Till December 15th.

8 EXAMINER STOGNER: I'm sorry. December
9 15th -- at least I had one part of it right -- for you
10 three gentlemen to submit the proper documentations and
11 all, and at that time it will be taken under
12 advisement.

13 With that, let's take a five-minute recess at
14 this time.

15 (Thereupon, these proceedings were concluded
16 at 2:20 p.m.)

17 * * *

18
19
20 I do hereby certify that the foregoing is
21 a true and correct copy of the proceedings in
22 the hearing of Case No. 10498,
23 heard by me on 19 Apr. 1992.
24
25  Examiner
Oil Conservation Division

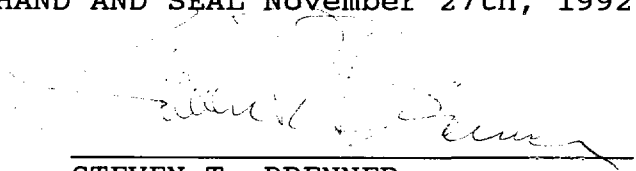
CERTIFICATE OF REPORTER

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

I, Steven T. Brenner, Certified Court Reporter and Notary Public, HEREBY CERTIFY that the foregoing transcript of proceedings before the Oil Conservation Division was reported by me; that I transcribed my notes; and that the foregoing is a true and accurate record of the proceedings.

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

WITNESS MY HAND AND SEAL November 27th, 1992.


STEVEN T. BRENNER
CCR No. 7

My commission expires: October 14, 1994

STATE OF NEW MEXICO

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION COMMISSION

CASES 10,498, 10,719, 10,653, 10,773

CONTINUED AND DISMISSED CASES

TRANSCRIPT OF PROCEEDINGS

BEFORE: WILLIAM J. LEMAY, CHAIRMAN
WILLIAM WEISS, COMMISSIONER
JAMI BAILEY, COMMISSIONER

ORIGINAL

STATE LAND OFFICE BUILDING

SANTA FE, NEW MEXICO

October 14, 1993

1 WHEREUPON, the following proceedings were had
2 at 9:05 a.m.:

3
4 CHAIRMAN LEMAY: Good morning. This is the
5 Oil Conservation Commission. My name is Bill LeMay,
6 I'm Chairman.

7 To my left, Commissioner Bill Weiss. To my
8 right, Commissioner Jami Bailey, representing the
9 Commissioner of Public Lands, the State of New Mexico.

10 We will start with Case Number 10,498.

11 MR. STOVALL: In the matter of Case 10,498
12 being reopened upon application of Monty D. McLane to
13 exempt certain working interests from the compulsory
14 pooling provisions of Division Order Number R-9690, Lea
15 County, New Mexico.

16 This case is finally being dismissing; is
17 that correct?

18 MR. CARR: May it please the Commission, Mr.
19 McLane and Mr. Gillespie have resolved their
20 differences, and this case can be dismissed.

21 CHAIRMAN LEMAY: Thank you, Mr. Carr.

22 Without objection, Case Number 10,498 will be
23 dismissed.

24 * * *

1 CHAIRMAN LEMAY: We will now call Case Number
2 10,719.

3 MR. STOVALL: Application of Anadarko
4 Petroleum Corporation for directional drilling and an
5 unorthodox bottomhole gas well location, Eddy County,
6 New Mexico.

7 I think this case has been requested to be
8 continued to November 10th.

9 CHAIRMAN LEMAY: Without objection, the
10 Application of Anadarko Petroleum Corporation for
11 directional drilling, *de novo* case, will be continued
12 to November 10th.

13 * * *

14
15 CHAIRMAN LEMAY: I will now call Cases Number
16 10,653 and 10,773.

17 MR. STOVALL: Number 10,653 is the
18 Application of Armstrong Energy Corporation for special
19 pool rules, Lea County, New Mexico.

20 And 10,773 is the Application of Armstrong
21 Energy Corporation for pool extension and abolishment,
22 Lea County, New Mexico.

23 Both of these cases have been requested to be
24 continued to the November 10th Commission docket.

25 CHAIRMAN LEMAY: Without objection, Cases

1 number 10,653 and 10,773 will be continued to the
2 November 10th, 1993, docket.

3 * * *

4
5 (Thereupon, these proceedings were concluded
6 at 9:07 a.m.)

7 * * *


CERTIFICATE OF REPORTER

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

I, Steven T. Brenner, Certified Court
Reporter and Notary Public, HEREBY CERTIFY that the
foregoing transcript of proceedings before the Oil
Conservation Commission was reported by me; that I
transcribed my notes; and that the foregoing is a true
and accurate record of the proceedings.

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

WITNESS MY HAND AND SEAL October 15th, 1993.


STEVEN T. BRENNER
CCR No. 7

My commission expires: October 14, 1994