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

IN THE MATTER OF THE HEARING CALLED BY THE OIL CONSERVATION DIVISION FOR THE PURPOSE OF CONSIDERING:

CASE NO. 11510

APPLICATION OF MITCHELL ENERGY CORPORATION FOR COMPULSORY POOLING AND AN UNORTHODOX GAS WELL LOCATION, LEA COUNTY, NEW MEXICO.

MITCHELL ENERGY CORPORATION'S MEMORANDUM OF LAW AND STATEMENT OF FACTS

Mitchell Energy Corporation ("Mitchell") provides the following factual summary and legal authority in support of its DeNovo Application to the New Mexico Oil Conservation Commission requesting that the Commission set aside Findings (18) and (19), vacate Ordering Paragraph (1) of Order R-10672 and decide:

> (1) that actual notice to "each known working interest owner" of an application for compulsory pooling shall be limited to those working interest owners whose interest is evidenced by a valid and enforceable written instrument of conveyance the existence of which is known to the applicant at the time the application for compulsory pooling was filed; **and**

(2) that "each known working interest owner" to be furnished with an election opportunity pursuant to a compulsory pooling order shall be limited to: (a) those working interest owners whose interest is evidenced by a valid and enforceable written instrument the existence of which is known to the applicant at the time the application for compulsory pooling was filed; and (b) to those transferees of said working interest owners whose transfer is evidenced by a valid and enforceable written instrument of transfer which has been delivered to the applicant.

INTRODUCTION

On December 9, 1992, Mitchell served Strata Production Company (Strata") with a compulsory pooling application in NMOCD Case 10656. (TR-I, Mitchell Exhibit 19). Mitchell had obtained a title opinion which showed that Strata was the owner of 100% of the record title and operating rights for a federal lease covering 80 acres (25%) of the 320 acres sought to be pooled by Mitchell. (TR-I, p 26-27, Mitchell Exhibit 7).[1] This was confirmed by Mr. Mark Murphy, President of Strata, who testified on January 21, 1993 that Strata owned 100% of the record title and operating rights for this federal lease. (TR-I p. 140-141).

[1] TR-I refers to the transcript and exhibits for NMOCD Case 10656 heard on January 23, 1993.

Beginning on October 26, 1992, Mr. Steve Smith, a petroleum landman for Mitchell, engaged in numerous conversations and exchanged numerous correspondence with Mr. Mark Murphy. (Tr-I, Mitchell Exhibits 10-16). By exchanging letters dated January 7th and 12, 1993 Mr. Smith and Mr. Murphy described in great detail their recollections. TR-I, Mitchell Exhibits 15 and 16). On numerous occasions prior to January 13, 1993, Mr. Murphy told Mr. Smith that Strata had "partners" but Mr. Murphy did not disclose the fact that any of these partners claimed to have any ownership interest in the subject lease until December 16, 1992 (TR-I, Mitchell Exhibit 16). Mr. Murphy consistently used the term "partners" when he referred to these undisclosed or other leasehold owners.(TR-I, Mitchell Exhibit 16; TR-II p 23, 56).[2] On November 18, 1992, Mr. Murphy told Mr. Smith that Strata would defend itself and its partners' rights during any proceeding including a force pooling hearing. (Tr-I; Mitchell Exhibit 16). By letter dated December 30, 1992, Mr. Murphy represented and warranted to Mitchell that Strata had the right, power and authority to sell 100% of the lease for the benefit of such undisclosed owners. (TR-I Mitchell Exhibit 12).

At the time Strata was served with the compulsory pooling application, Strata was the only individual or entity with a property interest in this lease whose identity was known to Mitchell. (Tr-I p.23). At the time Strata was served with the compulsory pooling application, all Mitchell knew was that a search of public records showed that

[2] TR-II refers to the transcript and exhibits for NMOCD Case 10151 heard on May 2, 1996.

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Strata still held 100% of both record title[3] and operating rights title[4] and that Strata claimed to have "partners" but did not know who these partners were, what if any property interest they might have or how to contact them. (TR-I, Mitchell Exhibits 11, 15, 16). Mr. Smith of Mitchell had inquired of Mr. Murphy, "as to who these partners were" and Mr. Murphy described them, "as long term investors of Strata or people that we've been involved in." (TR-II, p 23). By its actions, Strata induced Mitchell into not making further inquiry into the identity of Strata's "*undisclosed partners*". (Tr-I p. 29, 40, 51-52, 57-59; Mitchell Exhibit 12; TR-II, p. 56, 61-62, 63, 67). Mitchell had no actual acknowledge nor constructive notice of any written instrument conveying any interest in this lease to these "*undisclosed partners*" nor did Mitchell know the identity of any of these "undisclosed partners" until after the pooling application was served on Strata. (TR-I p. 28-29, 47, 60; TR-II, p 23).

On January 13, 1993, just a week before the Division hearing in this case, and in an effort to delay the pooling proceedings, Strata for the first time disclosed to Mitchell the identity of Strata's partners. Strata claimed there were 15 working interest owners and three overriding royalty owners involved in the Strata lease. (TR-I p 28, 47; Mitchell Exhibit 16; TR-II p. 23, 71).

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[3] record title means the party with the primary interest in a federal oil & gas lease who is responsible to the BLM for lease obligations including the payment of rents and who is the party entitled to assign and relinquish the lease.

[4] is synonymous with "working interest owner" and means an interest obtained from the record title owner which authorizes the holder to conduct drilling and related operations, including production and so share in revenues from the sale of that production.

On January 21, 1993, Division conducted a hearing in this case at which Strata sought to have the case continued and contended that Mitchell should be required to provide additional notice because Mitchell had failed to provide notification to Strata's "*undisclosed partners*". (TR-I p. 6).

On February 15, 1993, the Division issued Order R-9845. (See Exhibit "A" attached). On February 17, 1993 and in accordance with this order, Mitchell sent Strata an election letter requesting Strata to elect within thirty days to voluntary participate with its 25% working interest under the pooling order. (TR-II, Mitchell Exhibit 1).

Strata filed and then withdrew its request for a DeNovo hearing before the Commission and failed to timely elect to participate in this well. (TR-II, p 48-49).

Then, Mr. Murphy waited until he was satisfied that Mitchell's well was profitable and by letter dated November 6, 1995, told his partners that Mitchell's well had now produced sufficient gas to have paid for its costs and that they may have a claim against Mitchell to avoid having to pay any of the 200% risk factor penalty set forth in the Compulsory Pooling Order R-9845. (TR-II, p. 59, Branko Exhibit 27).

On November 7, 1995,[5] some six years after the Strata partners claimed to have acquired an interest in this lease and more than 31 months after the entry of the compulsory pooling order in this case, Strata finally signed written instruments conveying interests to its undisclosed partners which was recorded in Lea County on November 8, 1995. (TR-II, Branko Exhibit 17).

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[5] The assignments are dated and notarized on November 7, 1995 while the letter transmitting copies to the *undisclosed partners* is dated November 6, 1995.

On January 29, 1996, certain of these partners (collectively "Branko") filed a Motion with the Commission seeking to reopen Case 105656.

On May 3, 1996, the Division held a hearing on this motion and on October 2, 1996, entered Order R-10672, (See Exhibit "B" attached).

Among other things, the Division found that:

> "(10) It would circumvent the purpose of the New Mexico Oil and Gas Act to allow a record owner of a working interest in the spacing unit at the time said party was served with a compulsory pooling application to avoid or delay having that entire percentage interest pooled by (I) assigning, conveying, selling or otherwise burdening or reducing that interest; or (ii) disclosing previously undisclosed partners or other interest owners who obtained either ownership through the record owner and who are not of public record; after the application and notice of hearing are filed with the Division and served on the party. Taken to the extreme, Strata could have disclosed, one at a time, each of its "partners' each week before a hearing date to delay the hearing 15 times."

The Division then determined that "(11) a cutoff date for notification of affected interest owners is necessary." However, the Division then found that because Mitchell had not sent notice to Strata's partners affording them a post order election, then Case 10656 should be reopened to examine the share of costs that should be apportioned.

Mitchell contends that certain paragraphs of Order R-10672 should be set aside because the order ultimately allows Strata to do exactly what the Division sought to prevent.

FACTUAL SUMMARY

(1) In Case 10656, Mitchell sought an order pooling all mineral interests from the top of the Wolfcamp formation to the base of the Pennsylvanian formation underlying the W/2 of Section 28, T20S, R33E, NMPM, Eddy County, New Mexico forming a standard 320-acre gas spacing and proration unit for any and all formations and/or pools developed on 320-acre spacing within said vertical extent, which presently includes, but is not

necessarily limited to, the South Salt Lake Morrow Gas Pool. Said unit to be dedicated to its Tomahawk "28" Federal Com Well No 1 to be drilled and completed at an unorthodox gas well location 1650 feet FNL and 1980 feet FWL (Unit F) of said Section 28. (See OCD case file Case 10656).

(2) Strata Production Company ("Strata") appeared at the hearing held on January 21, 1993 in Case 10656 in opposition to the granting of Mitchell's application. (TR-I, p.5).

(3) The operating rights (working interests) for all of Section 28, except the S/2S/2 and the SW/4NE/4, are subject to Joint Operating Agreement No. 1130 between Mitchell Energy Corporation, Santa Fe Energy Partners, and Maralo which designates Mitchell Energy Corporation as the operator. The SW/4NE/4 is an unleased federal oil & gas tract. The S/2SW/4 and SW/4SE/4 is a federal oil & gas lease with record title and operating rights (no overriding royalty) held by Strata Production Corporation. The SE/4SE/4 is a federal oil & gas lease held by Pitche Energy. (TR-I p. 23-28, Mitchell Exhibit 7).

(4) Mitchell has proposed to all working interest owners the formation of the subject spacing unit and drilling of the subject well and has obtained the voluntary agreement of 75% of the working interest ownership in the subject spacing unit for the proposed well. (TR-I, p. 24-25).

(5) At all times relevant hereto, the S/2SW/4, which constitutes the remaining 25% working interest in the subject spacing unit, has been under the ownership and control of Strata. (TR-I, p. 25-40, 120, 141).

(6) Beginning in October, 1992, Mr. Steve Smith, a petroleum landman for Mitchell, engaged in numerous conversations and exchanged numerous correspondence with Mr. Mark Murphy. (Tr-I, Mitchell Exhibits 10-16).

(7) On or about October 28, 1992, Steve Smith of Mitchell, and Mark Murphy of Strata, discussed Mitchell's proposed well in the NW/4 of Section 28 with a W/2 spacing unit. (TR-I, Mitchell Exhibits 10, 15, 16).

(8) Mr. Murphy characterized these "partners" as long time investors and from October 26, 1992, through January 23, 1993, Mr. Murphy negotiated on their behalf with Mitchell. (TR-II, p. 23, 25, 38).

(9) On numerous occasions prior to January 13, 1993, Mr. Murphy told Mr. Smith that Strata had "partners" and characterized them as "long term investors..." but Mr. Murphy did not disclose the identity, percentage of interest or how to contact these partners (TR-I, p. 28) (TR-II, p 23).

(10) Prior to being served with the pooling application, Mr. Murphy consistently used the term "partners" when he referred to these undisclosed or other leasehold owners. (TR-I, Mitchell Exhibits 15 & 16; TR-II, p 56).

(11) On November 18, 1992, Mr. Murphy told Mr. Smith that Strata would defend itself and its partners' rights during any proceeding including a forced pooling hearing. (Tr-I; Mitchell Exhibit 16).

(12) On November 20, 1992, Mitchell wrote to Strata formally proposing Tomahawk Well and its spacing unit. (TR-I, Mitchell Exhibit 10).

(13) On December 7, 1992, Mitchell filed the compulsory pooling application which was set for hearing on January 7, 1993. (See OCD case file Case 10656).

(14) On December 9, 1992, in accordance with Division Rule 1207, Strata was served with the pooling application by certified mail-return receipt requested. (TR-I, Mitchell Exhibit 19).

(15) On December 9, 1992, Strata, by letter, offered for itself and its undisclosed partners to either sell or farmout its interest to Mitchell. TR-I, p. 33-34, Mitchell Exhibit 11).

(16) By letter dated December 30, 1992, and signed by Mark Murphy, Strata advises Mitchell, among other things, that Strata:

> "7. Undisclosed Owners: There are certain undisclosed owners of undivided interest in the Subject Lease whose interest are not reflected in the county or Bureau of Land Management records. Strata hereby represents and warrants unto Mitchell that it has the right, power and authority to sell 100% of the Subject Lease for the benefit of such undisclosed owners."

> "8. Authority: The undersigned signatories hereby represent and warrant unto each other that they have actual, express authority to execute this Agreement and bind their respective companies to perform under the terms hereof."

> "11. Binding Effect: The terms, limitations and conditions of this Agreement shall be covenants running with the ownership of the Subject Lease and, as such, shall be binding upon and shall insure (sic) to the benefit of the parties hereto, their heirs, personal representatives, successors and assigns." (TR-I p. 36-38, 57, Mitchell Exhibit 12).

(17) By letter dated January 5, 1993, Mitchell accepted Strata's proposal of December 23, 1992. (TR-I, p. 34-41 Mitchell Exhibit 13).

(18) On January 5, 1993, Mitchell and Strata have a disagreement concerning what each thought were the terms of the "deal". (TR-I, p. 41-43

(19) On January 6, 1993, the afternoon before the hearing, and almost thirty days after Strata was served with the pooling application, counsel for Mitchell received notification that Mr. Sealy Cavin was entering his appearance for Strata. Based upon Mr. Murphy's request, Mitchell then continued the case to January 21, 1993. (See OCD case file Case 10656 and TR-II, p. 70).

(20) By letter dated January 7, 1993, Smith of Mitchell wrote Murphy of Strata a detailed letter summarizing the negotiations. (Tr-I,Mitchell Exhibit 15).

(21) By letter dated January 12, 1993, Strata asserts that in a conversation on November 18, 1992, Murphy had told Smith of Mitchell that, "Strata would defend itself and its partners rights during any proceeding including a force pooling hearing." (TR-I, Mitchell Exhibit 16; TR-II, p. 44, 73).

(22) By letter dated January 13, 1993, Strata sent Mitchell a list of Strata's "undisclosed partners." (TR-I, Mitchell Exhibit 17).

(23) On January 21, 1993, the Division conducted a hearing of this case, at which:

(a) Strata appeared at the hearing in opposition to Mitchell's proposed W/2 orientation of the spacing unit, the well location and the overhead charges.

(b) In addition, Strata sought to have the case continued and contended that Mitchell should be required to provide additional notice because Mitchell had failed to provide notification to Strata's "undisclosed partners" as identified on Mitchell Exhibit 17.

(24) On February 15, 1993, The Division issued Order R-9845 which denied Strata's motion for continuance for lack of proper notice to its "undisclosed partners" and found that, "at all times during negotiations and at the time the application was filed and notice given, Strata was the record title owner of the mineral interest in question and that the Division has jurisdiction over the interest held in Strata's name". (See Order R-9845, attached as Exhibit "A").

(25) On February 17, 1993, Mitchell sent Strata an election letter requesting Strata to elect within thirty days to voluntary participate with its 25% working interest under the pooling order. (TR-II, Mitchell Exhibit 1).

(26) On March 11, 1993, Strata filed for a Commission DeNovo hearing which is set for April 29, 1993. (See OCD Case file Case 10656).

(27) On April 28, 1993, the day before the scheduled Commission DeNovo hearing, Strata withdrew its request for a DeNovo hearing. (See OCD Case file Case 10656).

(28) Strata failed to timely elect to participate and is now a non-consenting party under the terms of the compulsory pooling order subject to the 200% risk factor penalty. (TR-II, p. 48).

(29) Strata failed to notify its "partners" of the compulsory pooling order, on February 19, 24 and 25, 1993, continued to make Mitchell various proposals for Strata to transfer its 25% interest to Mitchell. (TR-II, Mitchell Exhibit 1; TR-II, p. 54).

(30) By letter dated February 24, 1993, Mr. Murphy advised Mitchell that " It is my [Mr. Murphy's] intention to discuss Mitchell's proposal with the other lease owners..." (TR-II, Mitchell Exhibit 1).

(31) On November 8, 1995, Strata assigned 81.5% of its operating rights in Federal oil and gas lease NM-82927 to its *undisclosed partners* by recording with the Lea County Clerk an unapproved "Transfer of Operating Rights form OMB No. 1004-0034". (TR-II, Branko Exhibit 17).

(32) On November 8, 1995, Strata advises its *undisclosed partners* of Compulsory Pooling Order R-9845 and tells them that Mitchell's well had now produced sufficient gas to have paid for its costs and that they may have a claim against Mitchell to avoid having to pay any of the 200% risk factor penalty set forth in the order. (TR-II, Branko Exhibit 27; TR-II, p. 59).

(33) On January 29, 1996, certain of the *undisclosed partners* filed a Motion with the Oil Conservation Commission to Reopen Case 10656. (See OCD Case file Case 11510).

THE DIVISION HAS PREVIOUSLY DECIDED THAT MITCHELL PROVIDED NOTICE TO THE PROPER PARTY

Division Order R-9845 discusses at length the issue of notice to Strata's "undisclosed partners". It describes and summarizes the evidence presented by Mitchell to rebut Strata's claim that, "Mitchell knew all along that Strata had '*undisclosed partners*' and therefore had a duty to provide notice to those partners." The Division found that Mitchell had demonstrated that:

(a) Abstracts and Title Opinions established that Strata held the record title and all operating rights to the S/2SW/4 of Section 28 as of the date the well was proposed to Strata (November 20, 1992), and as of the date Strata received notification of the compulsory pooling application (December 20, 1992), and as of the date of the hearing in this case.

(b) By letter dated November 20, 1992, Mitchell proposed to Strata the subject well and proposed spacing unit requesting voluntary participation in the well or in the alternative, proposed farmout terms to Strata.

(c) On November 20, 1992, Mitchell was the first working interest owner in Section 28 to propose a Morrow gas well to the working interest owners.

(d) Although Strata declined to participate in the well, during the next two months, Mitchell and Strata, through numerous telephone calls and correspondence between the parties, discussed other alternatives including Mitchell purchasing or farming in Strata's interest.

(e) Mitchell understood and believed that Strata was dealing for and on behalf of Strata and all of Strata's "undisclosed partners."

(f) By letter dated December 30, 1992 (Mitchell Hearing Exhibit 12), Strata submitted to Mitchell a farmout proposal which included representations that while Strata had "undisclosed partners" Strata had the right, power and authority to bind said undisclosed partners.

(g) By letter dated January 13, 1993, after negotiations between Mitchell and Strata failed, Strata for the first time provided Mitchell with the names and addresses of Strata's fifteen "*undisclosed partners*". (Mitchell Hearing Exhibit 17).

At the Examiner hearing and in support of its motion for continuance, Strata claimed that Mitchell knew all along that Strata had "undisclosed partners" and it was Mitchell's duty to request Strata to disclose the names and addresses and then to provide those parties with an opportunity to join and if not then pursue compulsory pooling. Correctly, the Division denied that request and found that, "At all times during negotiations and at the time the application was filed and notice was given, Strata was the record title owner of the mineral interest in question and the Division has jurisdiction over the interest held in Strata's name". (See Order R-9845).

STRATA'S UNDISCLOSED PARTNERS DID NOT HAVE A PROTECTED PROPERTY RIGHT IN THIS FEDERAL OIL & GAS LEASE UNTIL AFTER NOVEMBER 8, 1995

The issue for the Commission is: "When does a person acquire a property interest in a federal oil & gas lease which must be recognized by the NMOCD?"

On December 9, 1992, when Mitchell served Strata with a compulsory pooling application, Strata held 100% of the "record title" in Federal Oil & Gas Lease NM-82927 which had been issued to Strata on November 1, 1989. (TR-I, p 141, Mitchell Exhibits 7, 19).

Strata claims that at the time it was served with the compulsory pooling application, it had some 15 working interest and 3 overriding royalty interest owners. Now, with the exception of Warren, Inc. and Arrowhead Oil Corporation, these "*undisclosed partners*" (collectively "Branko"), pursuant to *Uhden v. New Mexico Oil*

Conservation Commission, etal, 112 N.M. 528 (1991), assert they are entitled to notice protection afforded parties whose property rights may be affected by NMOCD action because they claim to have a "property rights interest" in this federal oil and gas lease at the time this compulsory pooling application was filed.

Unfortunately for them, the property interest for which they seek protection was not created until November 6, 1995, some 32 months after the proceedings in this case were concluded. (TR-II, Branko Exhibit 17; TR-II, p. 59).

Under New Mexico law, an oil and gas lease is an interest in real property [*O'Kane v. Walker*, 561 F.2d 207 (N.M. 1977)], and an overriding royalty interest in a mineral lease is an interest in real property. *Team Bank v. Meridian Oil Inc.*, 118 N.M. 147, 879 P.2d 779 (1994).

Under New Mexico law, "all assignments and other instruments of transfer of royalties in the production of oil, gas or other minerals on any lands in this state, *including lands operated under lease or contract from the United States* (emphasis added)...shall be recorded in the office of the county clerk of the county where the lands are situated." NMSA 1978, Section 70-1-1. **and** "...**no** assignment or other instrument of transfer affecting the title to such royalties not recorded as herein provided shall affect title or rights to such royalties of any purchaser or transferee in good faith, without knowledge of the **existence of such unrecorded instrument**." (emphasis added). NMSA, 1978 Section 70-1-2 and *Bolack v. Underwood, 340 F.2d 816 (NM 1965).*

It is undisputed that these two written instruments by which Strata conveyed an interest in this lease to its various partners did not come into existence until November 7, 1995 when it was signed by Mr. Murphy. (TR-II, p. 59).

It is also undisputed that these written instruments were not recorded until November 7, 1995. Mitchell cannot be charged with constructive knowledge of instruments before they are recorded or with actual knowledge before they exist. (TR-II Branko Exhibit 17).

Neither the NMOCD nor Mitchell should be expected or required to recognize the *undisclosed partners* as having a property interest to be protected prior to the time Strata conveyed that interest to them.

Branko's reliance upon *Uhden*, supra, is misplaced. In the *Uhden* case, at the time Amoco filed an application before the New Mexico Oil Conservation Division seeking to increase well spacing form 160 acres to 320 acres in the Cedar Hills pool, Mrs. Uhden was a mineral owner whose interest was of record in San Juan County, New Mexico. She had signed a lease to Amoco and Amoco had a copy of that lease which had been recorded. "It is undisputed that Amoco had knowledge of Uhden's mailing address, for Amoco had been sending royalty checks to Uhden" *(Uhden* at page 531). Amoco did not dispute that Mrs. Uhden had a property interest, but claimed that Mrs. Uhden as its lessor had signed a lease which contained provisions which authorized Amoco to change the spacing and therefore, by authorizing Amoco to make the spacing change, it was not necessary to advise her of the hearing.

Unlike Mrs. Uhden, Branko et al, were not conveyed an interest in the lease until November 7, 1995, and therefore, at the time of these proceedings, were not owners of real property and not entitled to notice. At the time Strata was served with the compulsory pooling application, Strata was the only individual or entity with a property interest in this lease whose identity was known to Mitchell. (Tr-I p.23). At the time Strata was served with the compulsory pooling application, all that Mitchell knew was that a search of public records showed that Strata still held 100% of both record title and working interest title and that Strata claimed to have "partners" but did not know who these partners were, what if any property interest they might have or how to contact them. (TR-I, Mitchell Exhibits 11, 15, 16).

Mr. Smith of Mitchell had inquired of Mr. Murphy, "as to who these partners were" and Mr. Murphy described them, "as long term investors of Strata or people that we've been involved in." (TR-II, p 23). By its actions, Strata induced Mitchell into not making further inquiry about the identity of Strata's "*undisclosed partners*". (Tr-I p. 29, 40, 51-52, 57-59; Mitchell Exhibit 12; TR-II, p. 56, 61-62, 63, 67). Mitchell had no actual acknowledge nor constructive notice of any written instrument conveying any interest in this lease to these "*undisclosed partners*", nor did Mitchell know the identity of any of these "*undisclosed partners*" until after the pooling application was served on Strata. (TR-I p. 28-29, 47, 60; TR-II, p 23).

Here, all that Mr. Smith of Mitchell had been told by Mr. Murphy was that Strata had partners. That does not amount to a disclosure that an individual has an interest in the subject oil and gas lease for which he should be entitled to receive notice of a

proceeding before the Commission. Nor does it adequately alert Mitchell to make further inquiry.

Had Mitchell undertaken further inquiry to learn the identity of these individuals, Mitchell would have discovered that no assignment had been made to these individuals and therefore they had no interest. Mitchell would have learned what Mitchell already knew and what Mr. Murphy admitted during his sworn testimony on January 13, 1993:[6]

> Q: Mr. Murphy, was the Hinkle law firm attorney correct in his analysis of the abstracts and ownership when he concluded in his title opinion which is presented as Mitchell Exhibit 7, that as of the appropriate date of that title opinion [note: November 2, 1992], the working interest ownership or the operating rights, if you will, for that portion of the south half of the southwest quarter that was proposed to be included in the west half spacing unit was owned and controlled by Strata Production Company?
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> A: He lists here that we're -- I think the terms is record title hold or leasehold holder.
>
> Q: Yes. Is that correct?
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> A: That's correct.
>
> Q: And at that point had you as recorded title owners of that lease assigned out any of the working interest ownership in that lease?
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> A: No."

Then after January 13, 1993, Mitchell had knowledge of these individuals but they in fact did not acquire their interest until November 7, 1995. Despite all of this, the *"undisclosed partners"* claim to have a constitutionally protected property interest for

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[6] See TR-I at p. 140-141.(Questions by Mr. Kellahin, answers by Mr. Murphy)

which each should have received notice of the pooling application and a post order opportunity to make an election. There is no legal support for Branko's position.

STRATA'S "PARTNERS" ARE BOUND BY THE SERVICE OF THIS POOLING APPLICATION ON STRATA

Branko contends that because Mitchell had actual notice that Strata had "partners" at the time Mitchell filed the compulsory pooling application, it was Mitchell's duty to find out who those individuals were and what if any interest they had acquired.

However, if all Mitchell knew was that Strata had partners, then under New Mexico law, it was logical for Mitchell to presume that service on Strata would be service on all of Strata's partners and it would then be up to Strata to notify its partners of this action. (TR-II, p 23, 38.) Branko argues that Mitchell is supposed to have actual notice of an instrument before it existed.

When asked why he had let more than two and one-half years elapse before sending his partners notice that they might have some rights under the compulsory poling order, Mr. Murphy testified, "I can't give you a good answer,...." (TR-II, p. 50).

The answer is that he should have because he lead Mr. Smith to believe he was dealing with a partnership of investors and under New Mexico law, services of process of a partnership by delivery to any general partner is effective services on all partners. SRCA 1986, 1-004(F)(2); *United Nuclear Corp. v. General Atomic Co, 90 N.M. 97, 560 P.2d 161 (1976), Loucks v. Albuquerque Nat. Bank, 76 N.M. 735, 418 P.2d 191 (1966).*

It does not matter whether Strata Production Company is or is not a partnership. What does matter is that Mr. Murphy disclosed only that he had partners and not that there were other working interest owners who had been conveyed an interest in this oil and gas lease.

The failure to give notice has been excused where the offended party was found to have waived notice or acquiesced to the commission proceedings or order. Tara Oil Co. v. Kennedy & Mitchell, Inc. 622 P.2d. 1076 (Okla. 1981). In Thompson v. Johnson-Kemnitz Drilling Co., 145 P.2d 422 (Okla. 1943), the court sustained the trial court's determination that laches would apply to estop the plaintiff from claiming a royalty interest in a well where the plaintiff waited almost ten years, **until the well proved profitable** (emphasis added) to claim their royalty interest. In Brown v. Sutton, 356 So 2d 965 (La 1978), the court refused to invalidate an order for lack of formal notice where the complaining party had actual notice and had appeared at commission proceedings.

Failure to give notice has also been excused where the applicant in a commission proceeding acted with due diligence and was unaware of the existence of an affected owner whose interest was not reflected in the county records until one week after the hearing. Chancellor v,. Tenneco Oil Company 653 P.2d. 204 (Okla. 1982). The Supreme Court of Oklahoma held in Chancellor, that the notice requirements were not intended to compel the unit operator to check county records from the date of application until the commission's order to assure that all interest owners had been notified. Such a ruling, the court noted, would permit an adverse party to defeat an application by simply transferring ownership after the hearing.

THE DIVISION AUTHORIZED MITCHELL TO PROCEED ON JANUARY 21, 1993 WITH THE POOLING HEARING AND DID NOT REQUIRE ADDITIONAL NOTICE.

The critical time for determining notice is not the date of the hearing but rather the date the action was filed. The New Mexico Court of Appeals, in *Daniels Insurance, Inc. v. Daon Corp.,* 106 N.M. 328 (Ct. App. 1987) held that Rule 1-025(C) controls when an interest has been transferred **after** the commencement of an action. Strata's partners claim a property interest prior to the date of the instrument which transferred that interest to them. An order of substitution upon transfer of an interest is authorized **only in the case of an actual transfer of interest.** *59 AM Jur 2d, "Parties" Sec. 226.*

Under Rule 1-025 New Mexico Rules of Civil Procedure, in the case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party.

On January 21, 1993, the Division considered such a request for the joinder of these additional Undisclosed Partners and denied that request.

Daniels Insurance Corp. v. Daon Corp., 106 N.M. 328 (Ct. App. 1987) held that such substitutions of a successor in interest under this section is within the sound discretion of the trial court. The NMOCD already has conducted such a hearing and has exercised such sound discretion in denying joinder of these Undisclosed Partners.

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STRATA CHOSE TO IGNORE THE COMPULSORY POOLING ORDER

Division Order R-10672, issued October 3, 1996, notes "a number of peculiarities in this proceeding that are troubling to the Division."[7] Included among the troubling matters is the fact that Mr. Sealy Cavin, who was the attorney for Strata and Mr. Murphy at the original compulsory pooling proceedings, is now one of the attorney's representing Branko in this case.[8] Among the odd things Mr. Cavin did was to argue lack of notice to Strata's partners before the Division in 1993, file an application DeNovo in that case to continue to argue lack of proper notice to Strata's partners, then the afternoon before that hearing, abandon it and the notice issue, only to return after the well has paid out and represent the "*undisclosed partners*" to once again argue this notice issue.[9]

Also included among the peculiarities noted by the Division is the fact that Mr. Murphy says he had no duty to advise any of his partners about the issuance of the Division order in 1993, but then assumes that duty and does notify them in November 1996.

Mr. Murphy, with the aid of Mr. Cavin, has played a game with the compulsory pooling procedures in an attempt to allow his investors to wait until Mitchell's well has paid out, then take the assignment from Strata and now claim that 20.375% of Strata interest is not subject to the 200% risk penalty. Mitchell contends Mr. Murphy should

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[7] See Finding (14) Order R-10672

[8] See TR-II, p 5.

be held accountable for choosing to ignore the compulsory pooling of Strata's entire 25% interest. That can only be accomplished by denying Branko's motion.

STRATA AND NOT MITCHELL IS RESPONSIBLE FOR THE INTEREST OF THE UNDISCLOSED PARTNERS

The *undisclosed partners*' operating rights interest were derived from Strata who adequately represented all those interest owners. Under Rule 1-024 of the New Mexico Rules of Civil Procedure, a person has a right to intervene in a case to protect his property interest **unless** that person's interest is adequately represented by existing parties.

43 C.F. R. Section 3106.7-2 provides that:

> "the transferor (Strata) and its surety shall continue to be responsible for the performance of all obligations under the lease until a transfer of record title or operating rights (sublease) is approved by the authorized officer."

At the hearing on May 2, 1996, Mr. Carroll, attorney for the Division, inquired if Strata had defended itself and its partners at the January 23, 1996 hearing, and asked Mr. Murphy, "Did you do that?" to which Mr. Murphy replied, "..my view was that we ought to have.." (TR-II, p. 52-53).

Branko, et al, have failed to establish that Strata did not adequately represent their interests. To the contrary, Strata contested virtually every technical issue involved in this proceeding:

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THE AFE AND JOINT OPERATING AGREEMENT:

Mitchell's estimated cost for a completed well is $1,377,300. with monthly overhead rates of $6,470 while drilling and $647 while producing. Strata stipulated to Mitchell's proposed estimate of well costs ("AFE") identified on Mitchell Exhibit 19 as fair and reasonable, but requested the Ernst & Young tabulation of average overhead rates be applied in this case.

Strata objected to the Mitchell proposed Joint Operating Agreement in use in the area, but admitted if Mitchell accepted the Strata changes to that agreement that Strata still would not reach a voluntary agreement with Mitchell.

THE WELL LOCATION AND SPACING UNIT ORIENTATION DISPUTE:

Because of dispute over the orientation of the spacing unit and the location of the first Morrow gas well in the section, Mitchell and Strata have been unable to agree on a voluntary basis for the pooling of their respective interests in either the proposed well or its spacing unit.

To support its opposition to the Mitchell orientation and location, Strata presented the following information through its exhibits and the testimony of its witnesses:

(a) That Strata wanted a N/2 orientation which would exclude Strata from having to participate in the subject well.

(b) A Morrow structure map for an area south of Section 28 but failed to include Section 28 or any section adjacent to Section 28.

(c) Strata's geologist testified that Morrow gas wells could be successfully drilled without regard to structure.

(d) Strata's geologist had not prepared an isopach map but adopted without verification the Mitchell isopach and concluded therefrom that wells could be drilled in Section 28 with N/2-S/2 oriented spacing units because of reservoir thickness.

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(e) Strata's geologist further contended that by moving the proposed Mitchell well farther north and higher on the structure, the well would be at a standard gas well location if a N/2 oriented spacing unit was approved.

(f) On behalf of Strata, Mr. Mark Murphy testified that while it did not operate or have a working interest in any currently producing Morrow gas well in the area, it was proposing to Mitchell through its testimony at hearing that a S/2 spacing unit be formed so that Strata could drill a Morrow gas well in the SE/4SW/4 of Section.

THE DIVISION'S 1993 DECISION

The Division in 1993 previously decided that:

(1) At all times during negotiations and at the time the application was filed and notice was given, Strata was the record title owner of the mineral interest in question and the Division has jurisdiction over the interest held in Strata's name.

(2) Mitchell made a good faith effort to reach a voluntary agreement with the record owner of the interest and is entitled to compulsory pooling.

(3) It would circumvent the purposes of the New Mexico Oil & Gas Act to allow a party who is shown by a search of the public records to be the owner of a working interest in the spacing unit at the time said party was served with a compulsory pooling application to avoid or delay having its entire percentage interest pooled by assigning, conveying, selling or otherwise burdening or reducing its interest after it was served with the application and notice of hearing.

(4) Strata's motion to continue for lack of notice to its "undisclosed partners" should be denied.

(5) It was Strata's responsibility and obligation to notify its "undisclosed partners" of this compulsory pooling application and Strata cannot shift that responsibility to Mitchell in this case.

(6) Strata's motion to continue for lack of notice to its "undisclosed partners" should be denied and all said "undisclosed partner's" interest received or to be received from Strata, if any, should be subject to the terms and conditions of this order.

(7) There is substantial evidence to support approval of the Mitchell position and its application should be approved.

(8) Approval of this application as set forth in the above findings and in the following order will avoid the drilling of unnecessary wells, protect correlative rights, prevent waste and afford the owner of each interest in said unit the opportunity to recover or receive without unnecessary expense his just and fair share of the production in any pool resulting from this order.

THE DIVISION'S 1996 DECISION

The Division in 1996 decided:

(16) The Division is concerned with the equity of allowing parties, with knowledge of the facts and without risk to themselves, to stand by an unreasonable amount of time and see another *(Mitchell)* assume all the risks of drilling a well in which such parties might have shared, and after success of the well, seek to share in the benefits thereof. The injustice of such a situation is obvious: of permitting ones hold the right to asset ownership in such property to voluntarily await the event determining success or failure, and then decide, when the danger which is over has been at the risk of another, to come in and share the profit. If the Division is unable to fashion an equitable solution based upon the facts in this case, the Division is hopeful a court can do so.

CONCLUSION

Parties seeking compulsory pooling must be able to rely on representations made by opponents and upon the record title ownership for notice purposes. Accepting Branko et al's position regarding the notice issue would make future NMOCD pooling orders unreliable and potentially worthless. Parties being pooled could assign part of their interest late in the game in order to delay the process and thereby gain leverage in their negotiations with the operator seeking to pool their interests. The record is clear: Mark Murphy of Strata simply "laid behind the log" until it was convenient for him to raise the notice issue and attempt to use it as a bargaining chip in his negotiations with Mitchell.

In addition, the Commission needs to take action to prevent "owners" whose interests are not of record and are not evidenced by a valid and enforceable written instrument of conveyance (a copy of which is known to the applicant at the time the pooling application is filed), from coming out of the woodwork after the well is drilled to claim risk-free participation in the well.

Branko et al. are the "*undisclosed partners*" of Strata and are not entitled to reopen this case to re-argue an issue which was fully adjudicated before the Division at the hearing held on January 21, 1993, and which is extensively summarized in the findings of Order R-9845.

Contrary to the assertions of Branko, the Division has already decided this issue and has found that due public notice was properly given in this case as required by law, and the Division had jurisdiction over the proper parties.

It was Strata's responsibility and obligation to notify its "*undisclosed partners*" of this compulsory pooling application and Strata cannot shift that responsibility to Mitchell in this case.

It is impossible to reconcile the contradiction that Mark Murphy did not notify its *"undisclosed partners"* of the compulsory pooling order because he had no obligation to do so with the fact that he assumed that notice obligation on November 7, 1995 by sending those "*undisclosed partners*" notice of the compulsory pooling order after the well had paid out. Strata cannot have it both ways.

It is impossible to reconcile the contention of the "*undisclosed partners*" that they did not know of the compulsory pooling order and the Mitchell well until November 7, 1995, with the fact that their interest in this lease would have expired a year earlier unless it had been extended by production from the Mitchell well.

Order R-9845 is final, all of the interest underlying the S/2SW/4 of Section 28 including Strata and its "*undisclosed partners*" have been pooled. The election period has already been provided in accordance with the order and no election was timely made.

There is simply no opportunity for confusion about what was pooled. Order R-9845 is unambiguous. It details at great length the notice argument over the "*undisclosed partners*" issue and rejected Strata's arguments.

Further, after the entry of the Order and in accordance with the terms of that order, by letter dated February 17, 1993, Mitchell notified Strata of its right to commit its 25% interest and join in the well by prepaying its share of the estimated costs. Strata failed to either obtain a Stay of the Order pursuant to Division Memorandum 3-85 or to timely tender payment of its 25% share of the costs of the well.

The result is that Strata abandoned its appeal and failed to timely elect to participate and therefore by its own actions has committed the entire 25% working interest as a non-consenting party pursuant to the Order.

Strata is responsible to the Division and to Mitchell for this interest. See Finding (12) Order R-9845. If Strata in fact did not have "unfettered authority" to act on behalf of the "other interest owners" and honestly believed that these findings were wrong, then

it was Strata's obligation in April 1993 to pursue its DeNovo appeal. Instead, Strata abandoned its appeal. The responsibility lies with Strata to account to its Undisclosed Partners and not with either the Division or with Mitchell.

Mitchell has complied with the terms and conditions of the Order and the Branko et al interest are now "non-consenting" under the pooling order and are subject to the 200% risk factor penalty.

Mitchell requests that the Division deny this Motion and that certain paragraphs of Order R-10672 be set aside because this order, unless modified, allows Strata to do exactly what the Division sought to prevent.

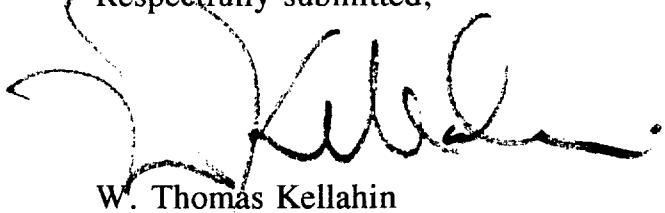
Mitchell appreciates the fact that the Division has adopted a method to identify affected interest owners who will be subject to a pooling order by establishing "a notice list of affected interest owners" based upon a "cutoff date" determined by when the application was filed and served on that party.

Mitchell urges the Commission to also establish:

> (1) that actual notice to "each known working interest owner" of an application for compulsory pooling shall be limited to those working interest owners whose interest is evidenced by a valid and enforceable written instrument of conveyance the existence of which is known to the applicant at the time the application for compulsory pooling was filed; **and**
>
> (2) that "each known working interest owner" to be furnished with an election opportunity pursuant to a compulsory pooling order shall be limited to: (a) those working interest owners whose interest is evidenced by a valid and enforceable written instrument the existence of which is known to the applicant at the time the application for compulsory pooling was filed; and (b) to those transferees of said working interest owners whose transfer is evidenced by a valid and enforceable written instrument of transfer which has been delivered to the applicant.

These changes are essential in order for the Commission to maintain the integrity of its pooling orders and to avoid being manipulated by parties who intend to avoid the affects of those pooling orders. To do otherwise allows Strata to scatter its interest in a scheme to avoid the consequences of the pooling order.

Respectfully submitted,

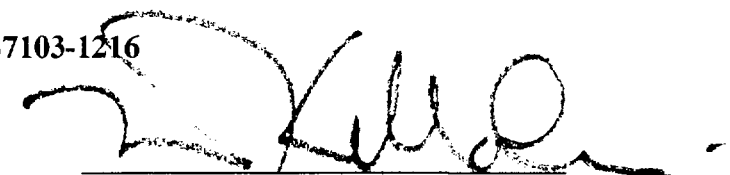


W. Thomas Kellahin
Kellahin & Kellahin
Attorneys for Mitchell Energy Corporation

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply was sent by Federal Express this 13 day of January, 1997 to:

Harold D. Stratten, Jr. Esq.
Sealy Cavin, Esq.
Stratten & Cavin
Attorneys at Law
P. O. Box 1216
Albuquerque, New Mexico 87103-1216



W. Thomas Kellahin

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

IN THE MATTER OF THE HEARING CALLED BY THE OIL CONSERVATION DIVISION FOR THE PURPOSE OF CONSIDERING:

CASE NO. 10656
ORDER NO. R-9845

APPLICATION OF MITCHELL ENERGY CORPORATION FOR COMPULSORY POOLING AND AN UNORTHODOX GAS WELL LOCATION, LEA COUNTY, NEW MEXICO.

ORDER OF THE DIVISION

BY THE DIVISION:

This cause came on for hearing at 8:15 a.m. on January 21, 1993, at Santa Fe, New Mexico, before Examiner Michael E. Stogner.

NOW, on this 15th day of February, 1993, the Division Director, having considered the testimony, the record and the recommendations of the Examiner, and being fully advised in the premises,

FINDS THAT:

(1) Due public notice having been given as required by law, the Division has jurisdiction of this cause and the subject matter thereof.

(2) The applicant, Mitchell Energy Corporation ("Mitchell"), seeks an order pooling all mineral interests from the top of the Wolfcamp formation to the base of the Pennsylvanian formation, underlying the W/2 of Section 28, Township 20 South, Range 33 East, NMPM, Lea County, New Mexico, forming a 320-acre gas spacing and proration unit for all formations and/or pools developed on 320-acre spacing within said vertical extent, which presently includes, but is not necessarily limited to, the Undesignated Halfway-Atoka Gas Pool and the Undesignated South Salt Lake-Morrow Gas Pool.

(3) The applicant has the right to drill and proposes to drill its Tomahawk "28" Federal Com Well No. 1 at an unorthodox gas well location 1650 feet from the North line and 1980 feet from the West line (Unit F) of said Section 28.

(4) Strata Production Company ("Strata") appeared at the hearing in opposition to the granting of Mitchell's application.

EXHIBIT
A

(5) The operating rights (working interests) for all of Section 28, except the S/2 S/2 and the SW/4 NE/4, are subject to Joint Operating Agreement No. 1130 between Mitchell Energy Corporation, Santa Fe Energy Operating Partners, L.P., and Maralo Inc. designating Mitchell Energy Corporation as the operator. The SW/4 NE/4 is an unleased federal oil and gas tract. The S/2 SW/4 and SW/4 SE/4 is a federal oil and gas lease with record title and operating rights (no overriding royalty) held by Strata Production Corporation. The SE/4 SE/4 is a federal oil and gas lease held by Pitche Energy.

(6) Mitchell has proposed to all working interest owners the formation of the subject spacing unit and drilling of the subject well and has obtained the voluntary agreement of 75% of the working interest ownership in the subject spacing unit for the proposed well.

(7) At all times relevant hereto, the S/2 SW/4 which constitutes the remaining 25% working interest in the subject spacing unit has been under the ownership and control of Strata.

(8) Despite good faith efforts undertaken over a reasonable period of time, Mitchell has been unable to reach a voluntary agreement with Strata concerning voluntary participation in the subject spacing unit and the proposed well.

(9) Strata appeared at the hearing in opposition to Mitchell's proposed W/2 orientation of the spacing unit, the well location, and the overhead charges. In addition, Strata contended that Mitchell had failed to provide notification to Strata's "undisclosed partners" as identified on Mitchell Exhibit No. 17 in this case.

(10) In support of its motion for continuance, Strata claimed that Mitchell knew all along that Strata had "undisclosed partners" and it was Mitchell's duty to request Strata to disclose the names and addresses and then to provide those parties with an opportunity to join or compulsory pool each party.

On the notice issue raised by Strata, Mitchell presented exhibits and testimony which demonstrated that:

(a) abstracts and Title Opinions established that Strata held the record title and all operating rights to the S/2 SW/4 of said Section 28 as of the date the well was proposed to Strata (November 20, 1992), and as

of the date Strata received notification of the compulsory pooling application (December 20, 1992), and as of the date of the hearing in this case;

(b) by letter dated November 20, 1992 Mitchell proposed to Strata the subject well and proposed spacing unit requesting voluntary participation in the well or in the alternative, proposed farmout terms to Strata;

(c) on November 20, 1992, Mitchell was the first working interest owner in Section 28 to propose a Morrow gas well to the working interest owners;

(d) although Strata declined to participate in the well, during the next two months, Mitchell and Strata through numerous telephone calls and correspondence between the parties discussed other alternatives including Mitchell purchasing or farming in Strata's interest;

(e) Mitchell understood and believed that Strata was dealing for and on behalf of Strata and all of Strata's "undisclosed partners;"

(f) by letter dated December 30, 1992 (Mitchell Hearing Exhibit No. 12), Strata offered to sell Mitchell 100% of its record title and operating rights and this offer included representations that while Strata had "undisclosed partners" Strata had the right, power and authority to bind said undisclosed partners; and

(g) after negotiations between Mitchell and Strata failed, by letter dated January 13, 1993, Strata for the first time provided Mitchell with the names and addresses of Strata's fifteen "undisclosed partners." (Mitchell Hearing Exhibit No. 17), but no evidence was provided that these "partners" owned an interest in the mineral estate.

FINDING: At all times during negotiations and at the time the application was filed and notice was given, Strata was the record title owner of the mineral interests in question and the Division has jurisdiction over the interest held in Strata's name.

(11) Mitchell has made a good faith effort to reach a voluntary agreement with the record owner of the interests and is entitled to compulsory pooling.

(12) It would circumvent the purposes of the New Mexico Oil and Gas Act to allow a party owning a working interest in the spacing unit at the time said party was served with a compulsory pooling application to avoid or delay having that entire percentage interest pooled by assigning, conveying, selling or otherwise burdening or reducing that interest after the application and notice of hearing are filed with the Division and served on the party.

(13) Strata's motion to continue for lack of notice to its "undisclosed partners" should be denied.

(14) Mitchell's estimated cost for a completed well is $1,377,300. with monthly overhead rates of $6,470 while drilling and $647 while producing.

(15) Strata stipulated to Mitchell's proposed estimate of well costs ("AFE") identified on Mitchell Exhibit No. 19 as fair and reasonable but requested the Ernst & Young tabulation of average overhead rates be applied in this case.

(16) Because a substantial majority of the working interest owners has agreed to overhead rates which have now escalated in accordance with COPAS procedures to be slightly in excess of the Ernst & Young average rates, the rates proposed by Mitchell are fair and should be adopted in this case.

(17) Based on the geologic evidence presented at the hearing, the orientation of the stand-up 320-acre spacing unit for the first well in said Section 28 serves to provide the best opportunity for full development of potential Pennsylvanian gas in the section with two wells.

(18) Because of a combination of archeological restrictions and surface use limitations, Mitchell has been unable to obtain approval from the United States Bureau of Land Management (BLM), which is the surface management agency for said section, for an acceptable standard gas well location in the W/2 spacing unit, and therefore seeks the proposed unorthodox location which it anticipates will satisfy all the requirements of the BLM.

(19) Approval of this application as set forth in the above findings and in the following order will serve to protect correlative rights, prevent waste and afford the owner of each interest in said unit the opportunity to recover or receive without unnecessary expense his just and fair share of the production in any pool resulting from this order.

(20) Mitchell Energy Corporation should be designated the operator of the subject well and unit.

(21) Any non-consenting working interest owner should be afforded the opportunity to pay his share of estimated well costs to the operator in lieu of paying his share of reasonable well costs out of production.

(22) Any non-consenting working interest owner who does not pay his share of estimated well costs should have withheld from production his share of reasonable well costs plus an additional 200 percent thereof as a reasonable charge for the risk involved in the drilling of the well.

(23) Any non-consenting interest owner should be afforded the opportunity to object to the actual well costs but actual well costs should be adopted as the reasonable well costs in the absence of such objection.

(24) Following determination of reasonable well costs, any non-consenting working interest owner who has paid his share of estimated costs should pay to the operator any amount that reasonable well costs exceed estimated well costs and should receive from the operator any amount that paid estimated well costs exceed reasonable well costs.

(25) $6470.00 per month while drilling and $647.00 per month while producing should be fixed as reasonable charges for supervision (combined fixed rates); the operator should be authorized to withhold from production the proportionate share of such supervision charges attributable to each non-consenting working interest, and in addition thereto, the operator should be authorized to withhold from production the proportionate share of actual expenditures required for operating the subject well, not in excess of what are reasonable, attributable to each non-consenting working interest.

(26) All proceeds from production from the subject well which are not disbursed for any reason should be placed in escrow to be paid to the true owner thereof upon demand and proof of ownership.

(27) Upon the failure of the operator of said pooled unit to commence drilling of the well to which said unit is dedicated on or before May 15, 1993, the order pooling said unit should become null and void and of no further effect whatsoever.

(28) Should all the parties to this force-pooling reach voluntary agreement subsequent to entry of this order, this order should thereafter be of no further effect.

(29) The operator of the well and unit should notify the Director of the Division in writing of the subsequent voluntary agreement of all parties subject to the force-pooling provisions of this order.

IT IS THEREFORE ORDERED THAT:

(1) The motion of Strata Production Company to continue this matter for lack of notice to its "undisclosed partners" as identified on Mitchell Energy Corporation's Exhibit No. 17 in this case is hereby **denied.**

(2) All mineral interests, whatever they may be, from the top of the Wolfcamp formation to the base of the Pennsylvanian formation, underlying the W/2 of Section 28, Township 20 South, Range 33 East, NMPM, Lea County, New Mexico, are hereby pooled to form a standard 320-acre gas spacing and proration unit for all formations and/or pools developed on 320-acre spacing within said vertical extent, which presently includes, but is not necessarily limited to the Undesignated Halfway-Atoka Gas Pool and the Undesiganted Salt Lake-Morrow Gas Pool, said unit to be dedicated to its Tomahawk "28" Federal Com Well No. 1 to be drilled at an unorthodox gas well location 1650 feet from the North line and 1980 feet from the West line (Unit F) of said Section 28.

PROVIDED HOWEVER THAT, the operator of said unit shall commence the drilling of said well on or before the 15th day of May, 1993, and shall thereafter continue the drilling of said well with due diligence to a depth sufficient to test the above-described area.

PROVIDED FURTHER THAT, in the event said operator does not commence the drilling of said well on or before the 15th day of May, 1993, Decretory Paragraph No. (2) of this order shall be null and void and of no effect whatsoever, unless said operator obtains a time extension from the Division for good cause shown.

PROVIDED FURTHER THAT, should said well not be drilled to completion, or abandonment, within 120 days after commencement thereof, said operator shall appear before the Division Director and show cause why Decretory Paragraph No. (2) of this order should not be rescinded.

(3) Mitchell Energy Corporation is hereby designated the operator of the subject well and unit.

(4) After the effective date of this order and within 90 days prior to commencing said well, the operator shall furnish the Division and each known working interest owner in the subject unit an itemized schedule of estimated well costs.

(5) Within 30 days from the date the schedule of estimated well costs is furnished to him, any non-consenting working interest owner shall have the right to pay his share of estimated well costs to the operator in lieu of paying his share of reasonable well costs out of production, and any such owner who pays his share of estimated well costs as provided above shall remain liable for operating costs but shall not be liable for risk charges.

(6) The operator shall furnish the Division and each known working interest owner an itemized schedule of actual well costs within 90 days following completion of the well; if no objection to the actual well costs is received by the Division and the Division has not objected within 45 days following receipt of said schedule, the actual well costs shall be the reasonable well costs; provided however, if there is an objection to actual well costs within said 45-day period the Division will determine reasonable well costs after public notice and hearing.

(7) Within 60 days following determination of reasonable well costs, any non-consenting working interest owner who has paid his share of estimated costs in advance as provided above shall pay to the operator his pro rata share of the amount that reasonable well costs exceed estimated well costs and shall receive from the operator his pro rata share of the amount that estimated well costs exceed reasonable well costs.

(8) The operator is hereby authorized to withhold the following costs and charges from production:

(A) The pro rata share of reasonable well costs attributable to each non-consenting working interest owner who has not paid his share of estimated well costs within 30 days from the date the schedule of estimated well costs is furnished to him; and

(B) As a charge for the risk involved in the drilling of the well, 200 percent of the pro rata share of reasonable well costs

attributable to each non-consenting working interest owner who has not paid his share of estimated well costs within 30 days from the date the schedule of estimated well costs is furnished to him.

(9) The operator shall distribute said costs and charges withheld from production to the parties who advanced the well costs.

(10) $6,470 per month while drilling and $647 per month while producing are hereby fixed as reasonable charges for supervision (combined fixed rates); the operator is hereby authorized to withhold from production the proportionate share of such supervision charges attributable to each non-consenting working interest, and in addition thereto, the operator is hereby authorized to withhold from production the proportionate share of actual expenditures required for operating such well, not in excess of what are reasonable, attributable to each non-consenting working interest. The operator is hereby authorized to make annual adjustments of said combined fixed rates as of the first day of April each year in accordance with the COPAS accounting schedule utilized by the industry.

(11) Any unleased mineral interest shall be considered a seven-eighths (7/8) working interest and a one-eighth (1/8) royalty interest for the purpose of allocating costs and charges under the terms of this order.

(12) Any well costs or charges which are to be paid out of production shall be withheld only from the working interest's share of production, and no costs or charges shall be withheld from production attributable to royalty interests.

(13) All proceeds from production from the subject well which are not disbursed for any reason shall be placed in escrow in Lea County, New Mexico, to be paid to the true owner thereof upon demand and proof of ownership; the operator shall notify the Division of the name and address of said escrow agent within 30 days from the date of first deposit with said escrow agent.

(14) Should all the parties to this force-pooling reach voluntary agreement subsequent to entry of this order, this order shall thereafter be of no further effect.

(15) The operator of the subject well and unit shall notify the Director of the Division in writing of the subsequent voluntary agreement of all parties subject to the force-pooling provisions of this order.

(16) Jurisdiction of this cause is retained for the entry of such further orders as the Division may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

WILLIAM J. LEMAY
Director

SEAL

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

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
DIVISION FOR THE PURPOSE OF CONSIDERING:

Case No. 11510
Order No. R-10672

APPLICATION OF BRANKO, INC. ET AL., TO REOPEN CASE NO. 10656 (ORDER NO. R-9845) CAPTIONED "APPLICATION OF MITCHELL ENERGY CORPORATION FOR COMPULSORY POOLING AND AN UNORTHODOX GAS WELL LOCATION, LEA COUNTY, NEW MEXICO."

ORDER OF THE DIVISION

BY THE DIVISION:

This cause came on for hearing at 8:15 a.m. on May 2, 1996, at Santa Fe, New Mexico, before Examiner Michael E. Stogner.

NOW, on this 2nd day of October, 1996, the Division Director, having considered the record and recommendations of the Examiner, and being fully advised in the premises,

FINDS THAT:

(1) Due public notice having been given as required by law, the Division has jurisdiction of this cause and the subject thereof.

(2) On December 7, 1992, Mitchell Energy Corporation (Mitchell) filed its application for compulsory pooling and an unorthodox gas well location. Case No. 10656 was heard on January 21, 1993, after which Order No. R-9845 was issued on February 15, 1993.

(3) Strata Production Company ("Strata") was served with the application on December 9, 1992, and appeared at that hearing in opposition to the granting of Mitchell Energy Corporation's (Mitchell) application, particularly Mitchell's proposed W/2 orientation of the 320-acre spacing unit, the well location, and the overhead charges. In addition, Strata contended that Mitchell failed to provide notification to Strata's "undisclosed partners" as identified on Mitchell Exhibit No. 17 in that case.

EXHIBIT
B

(4) Strata was the owner of record of a federal lease covering 80 acres (25%) of the 320 acres sought to be pooled by Mitchell (the "Strata lease").

(5) Evidence was introduced by applicants in this case, Branko, Inc. et al., (the "undisclosed partners" hereafter referred to just as "partners") purporting to show that they owned working interests in the acreage being force pooled by Mitchell (a total of 81.5% of the Strata lease with Strata owning the remaining 18.5%) at the times the application in Case No. 10656 was filed, the case was heard and the order was issued. Evidence was also introduced by applicants Branko et al. indicating they were not provided notice by Mitchell pursuant to Division Rule 1207.

(6) Up until a January 12, 1996, letter from Mark Murphy (Murphy), President of Strata, to Mitchell, Strata represented to Mitchell that Strata could act for and bind its "partners" in selling the Strata lease to Mitchell and that "Strata would defend itself and it's [sic] partners rights during any proceeding including a forced pooling hearing." The January 12, 1993, letter from Strata to Mitchell was the first written communication to Mitchell from Strata that the Strata "partners" should be notified directly.

(7) The nature of the interests owned by Strata's "partners" is not disclosed in writing until the January 13, 1993 letter from Strata to Mitchell. Whether in fact there was a formal limited or general partnership (with a written partnership agreement) or another type of business relationship whether formalized (e.g., stockholders in Strata) or informal (e.g., these "partners" were mere investors with the option to participate in Strata's activities) is unclear up to that point. The Division is aware in a general business sense of the term "silent partner" which term indicates that the principal does have a partner/investor but that partner/investor desires not to have its identity disclosed.

(8) The record shows that Mitchell provided only Strata, and not the previously "undisclosed" partners of Strata, with the election to participate in the subject well pursuant to the pooling order by letter dated February 17, 1993.

(9) The duty of Mitchell to inquire as to the nature of these "partners'" interests and to notify these "partners" of the force pooling case is unclear when Strata (I) is the only owner of public record, (ii) does not disclose the nature of these "partners'" interests and (iii) Strata represents that it can bind its "partners" in the sale of the lease and that it will "defend itself and it's [sic] partners rights during any proceeding including a forced pooling proceeding". Strata did in fact appear at the hearing and did defend its rights. Presumably, Strata's positions in the hearing regarding its 18.5% interest in the Strata lease would equally apply to those of its "partners'" 81.5% interest.

(10) It would circumvent the purposes of the New Mexico Oil and Gas Act to allow a record owner of a working interest in the spacing unit at the time said party was served with a compulsory pooling application to avoid or delay having that entire percentage interest pooled by (I) assigning, conveying, selling or otherwise burdening or reducing that interest; or (ii) disclosing previously undisclosed partners or other interest owners who obtained their ownership through the record owner and who are not of public record; after the application and notice of hearing are filed with the Division and served on the party. Taken to the extreme, Strata could have disclosed, one at a time, each of its "partners" each week before a hearing date to delay the hearing 15 times.

(11) A cutoff date for notification of affected interest owners is necessary. If not, an applicant seeking to pool interests in a drilling and spacing unit would be required to daily check county records and verify with record owners that no other owners exist from the day of application until the pooling order is issued. This was never the intent of the pooling statute. Absence of a cutoff date would also permit adverse parties to the pooling application to defeat it by transferring their property to another at or about the time the pooling hearing was held and/or to stand by and, if the well be a producer, elect to participate.

(12) A party seeking a compulsory pooling order from the Division is required to attempt to obtain voluntary joinder of all owners of interests in that unit prior to filing a compulsory pooling application. It is incumbent upon any record owner of interest in that unit to disclose to the party seeking commitment of that interest to that unit the nature and extent of interests not of public record which have been obtained through that record owner in order that a party may attempt to obtain voluntary commitment of those interests to the unit or to notify those owners of a compulsory pooling action. Otherwise, the party seeking compulsory pooling has no notice that these owners exist.

(13) To require the party seeking compulsory pooling to obtain an affidavit from each owner of record certifying that there are no other owners not of record who obtained their title through him or listing all such owners is unduly burdensome and the Division will not impose such a burden. Presumably, if any such owner was listed, then affidavits would need to be obtained from that owner and so on and so on. The record owner may also not be forthcoming with that information. Any such owner can readily protect his interest by filing it of record, which is the purpose of filing a record of ownership.

(14) There are a number of peculiarities in this proceeding that are troubling to the Division and are worth noting:

(A) The geology witness for Strata at the hearing in this case was a Mr. George L. Scott, Jr. who testified that he owned some of the stock of Strata and that Scott Exploration was his organization. He and Scott Exploration were thus on actual notice of the

pooling proceeding. Affidavits have been received from Scott Exploration, Inc., signed by Charles Warren Scott; George L. Scott III and Lori Scott Worrall, who both list the same address as Scott Exploration and which address is in the same building as Strata; and Susan Scott Murphy for Winn Investments, Inc. These affidavits state that until November 1995, they were unaware of the subject well and the compulsory pooling case. Stephen T. Mitchell, with the same address and owning the same overriding royalty interest as George L. Scott III and Scott Exploration, Inc., states in his affidavit that he became aware of the subject well in May, 1993 and of the pooling case in May, 1993, so he somehow had actual notice of the pooling proceeding also. The extent of the stock ownership in Strata and in Scott Exploration, Inc. of the above named persons as well as Mark Murphy and the other partners may need to be examined as well as the personal relationships among all these parties in determining whether actual notice was received.

(B) Two of the "partners", Arrowhead Oil Corporation of Artesia, NM and Warren, Inc. of Albuquerque, NM, failed to join the applicants in this action to reopen this case, although John M. Warren signed an affidavit on behalf of Warren, Inc. stating that he first became aware of the subject well and pooling case on November 6, 1995. Why two of the "partners" (owning 6.25% and 5.0% of the Strata lease and according to Strata's November 6, 1995 letter to the "partners" would be entitled to $45,500 and $37,500 risk free) would not join in an action to reopen a case and be allowed, after the risk has passed, to avoid a risk penalty on a successful well is bewildering. The Division is open to subpoenaing these witnesses to learn the extent of their knowledge of what transpired.

(C) The Division notes the possibility of a conflict of interest on the part of counsel for applicants in this case based upon counsel's representation of Strata during the years in issue here, 1992 and 1993, where Strata failed to advise its "partners" of the compulsory pooling proceeding even though Strata was acting as agent (the extent of such agency is undetermined) for these "partners" during negotiations with Mitchell regarding the acreage that was pooled, and then counsel's subsequent representation of applicants in this case where their claim is based upon not being notified of that same compulsory pooling proceeding.

(D) One of the partners, S.H. Cavin of Roswell, NM, is the father of counsel for the applicants.

(E) In his January 13, 1996, correspondence to Mitchell, Murphy of Strata stated that "Strata has or is in the process of making a direct assignment of each partners [sic] proportionate ownership". In fact, the transfers were not carried out until November, 1995 (which was after the well proved profitable), which occurred in conjunction with the notification to the "partners" by Strata that the "partners" may have a good claim against Mitchell for recoupment of their 200% risk penalty.

(F) Strata takes the position that it was under no duty to its "partners" to inform them of the compulsory pooling case which would allow Mitchell to pool their leasehold interests to drill the subject well. Yet Strata apparently felt it had a duty to them to provide their names to Mitchell in early 1993 so Mitchell could notify them of the hearing. The distinction drawn is very fine. Strata also felt it had a duty to keep them informed as to the sale of their leasehold interests to Mitchell so Mitchell could drill the well. Murphy had numerous discussions with Strata's "partners" during the time period from October 1992 and May 1993 regarding their leasehold interests and Mitchell's desire to drill a well which included their interests. With the apparently large discretion given Strata to negotiate and sell the Strata lease to Mitchell by the "partners", it seems unlikely to the Division that the agency granted to Strata by the "partners" would not encompass the duty to inform the principals ("partners") of any action taken by Mitchell regarding their acreage interests in attempting to drill its well. The Division is curious as to what reports or other communications were made to the "partners" by Strata both before and after the negotiations with Mitchell for sale of the Strata lease had failed.

(G) The duty to inform Strata's "partners" of the pooling case and the subject well, apparently sprang into being in November, 1995 when Strata wrote its partners informing them of the pooling order, the status of the well and that they "may have the right to join in the Mitchell well without application of the 200% risk penalty". Long before then, Strata had dismissed its De Novo appeal of the pooling order in which appeal it could have contested the "all or none" election option given Strata by Mitchell as to payment for well costs for the entire 25% interest represented by the Strata lease. Strata had also acknowledged that "Strata's 18.5% interest is subject to the Order" in a May 11, 1993 letter from its attorney to the attorney for Mitchell. By such actions, Strata apparently waived its rights to assert that it too could join in the Mitchell well without a risk penalty. Nevertheless, Strata apparently felt a "compulsion" in November 1995 to finally inform its "partners" of the pooling order, the Mitchell well, and their rights as to joining in the well risk free as well as aid the "partners" in this proceeding by providing testimony.

(H) No evidence, in the form of written instruments, canceled checks, or otherwise, has shown exactly how and when the "partners" acquired their interests, when they paid for such interests and what interests were actually acquired. The documentation for the transfers was not prepared until late 1995.

(15) The Division believes that the issue of actual notice is important under the circumstances of this case. If the applicants knew of the force pooling hearing and/or the drilling of the subject well and made no attempt to inquire as to their interest in such hearing or inquire as to their respective obligations to pay their proportionate shares of the well expenses until the well became profitable, then even if applicants had been entitled to participate in the well at their election, they may have waited too long to voice their decision.

(16) The Division is concerned with the equity of allowing parties, with knowledge of the facts, and without risk to themselves, to stand by an unreasonable amount of time and see another assume all the risks of drilling a well in which such parties might have shared, and, after success of the well, seek to share in the benefits thereof. The injustice of such a situation is obvious: of permitting ones holding the right to assert ownership in such property to voluntarily await the event determining success or failure, and then decide, when the danger which is over has been at the risk of another, to come in and share the profit. If the Division is unable to fashion an equitable solution based upon the facts in this case, the Division is hopeful a court can do so.

(17) Regardless of whether the "partners" should have been notified pursuant to Division Rule 1207 prior to the compulsory pooling hearing, the Division is reopening this case for the reason stated below.

(18) Ordering Paragraphs (4) and (5) of Order No. R-9845 provide that "each known working interest owner" shall be furnished an itemized schedule of estimated well costs and that such working interest owner shall have a right to participate in the well by paying his share of estimated well costs.

(19) Based on the absence of any notice sent by Mitchell to applicants in this case informing them of their election rights to participate in the subject well under Division Order No. R-9845 issued on February 15, 1993, in view of the fact that Mitchell prior to that time (on January 13, 1993) had been given a list of such working interest owners and had also been notified at that same time that those interest owners should be contacted directly regarding the compulsory pooling case, **Case No. 10656 should be reopened** to examine the share of costs that should be apportioned to each interest owner in the subject well as well as determine how future operations should be conducted for such well.

IT IS THEREFORE ORDERED THAT:

(1) **Case No. 10656 is hereby reopened** with the date for hearing to be set no later than the second Division hearing in December 1996. Mitchell shall provide notice to all known interest owners of the hearing.

(2) Jurisdiction of this cause is retained for the entry of such further orders as the Division may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

WILLIAM J. LEMAY
Director

SEAL

STRATTON & CAVIN, P.A.

ATTORNEYS & COUNSELORS AT LAW

320 GOLD AVENUE, S.W.
SUITE 1200
P. O. BOX 1216
ALBUQUERQUE, NEW MEXICO 87103-1216

TELEPHONE
(505) 243-5400
FACSIMILE
(505) 243-1700

HAROLD D. STRATTON, JR.*†**
SEALY H. CAVIN, JR.†**
STEPHEN D. INGRAM†

*ALSO ADMITTED IN OKLAHOMA
†ALSO ADMITTED IN TEXAS
**ALSO ADMITTED IN COLORADO
†NEW MEXICO BOARD OF LEGAL SPECIALIZATION RECOGNIZED SPECIALIST IN THE AREA OF NATURAL RESOURCES - OIL AND GAS LAW

To: Company: Oil Conservation Division -- NM Dept. of Energy, Minerals and Natural Resources

Attention: Mr. William J. LeMay, Director

Fax Number: 505/827-8177

Regarding: Case No. 11510

From: Harold D. Stratton, Jr.

Date: January 14, 1997

Number of Pages (Including Cover Sheet): 6 Pages

Message: Pre-Hearing Statement of Branko, Inc., et al.

IMPORTANT

Our File No.: 2.307.001

STRATTON & CAVIN, P.A.
ATTORNEYS & COUNSELORS AT LAW

HAROLD D. STRATTON, JR.*†**
SEALY H. CAVIN, JR.†**°
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°NEW MEXICO BOARD OF LEGAL SPECIALIZATION RECOGNIZED SPECIALIST IN THE AREA OF NATURAL RESOURCES - OIL AND GAS LAW

320 GOLD AVENUE, S.W.
SUITE 1200
P. O. BOX 1216
ALBUQUERQUE, NEW MEXICO 87103-1216

TELEPHONE
(505) 243-5400
FACSIMILE
(505) 243-1700

January 14, 1997

VIA FACSIMILE TRANSMISSION TO 505/827-8177
AND VIA FIRST CLASS MAIL
William J. LeMay, Director
Oil Conversation Division
New Mexico Department of Energy,
Minerals and Natural Resources
P.O. Box 6429
Santa Fe, New Mexico 87505

Re: Application of Branko, Inc. et al., to Reopen Case No. 10656 (Order No. R-9845) Captioned "Application of Mitchell Energy Corporation for Compulsory Pooling and an Unorthodox Gas Well Location, Lea County, New Mexico."
Case No. 11510 (*De Novo*)

Dear Mr. LeMay:

On behalf of Branko, Inc., et al., Movants in the above-described case, enclosed please find **triplicate originals** of our Amended Pre-Hearing Statement which is filed in connection with the above-referenced case scheduled for Thursday, January 16, 1997.

Sincerely,

STRATTON & CAVIN, P.A.

By: Harold D. Stratton, Jr.

HDS/skc
Enclosures
cc: W. Thomas Kellahin, Esq. (w/encl.) (Via Facsimile Transmission)
Mark B. Murphy (w/encl.) (Via Facsimile Transmission)

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

IN THE MATTER OF THE HEARING CALLED BY THE OIL CONVERSATION COMMISSION FOR THE PURPOSE OF CONSIDERING:

Case No. 11510 *(De Novo)*

APPLICATION OF BRANKO, INC. ET AL., TO REOPEN CASE NO. 10656 (ORDER NO. R-9845) CAPTIONED "APPLICATION OF MITCHELL ENERGY CORPORATION FOR COMPULSORY POOLING AND AN UNORTHODOX GAS WELL LOCATION, LEA COUNTY, NEW MEXICO."

PRE-HEARING STATEMENT

This pre-hearing statement is submitted by Harold D. Stratton, Jr., as required by the Oil Conservation Commission.

APPEARANCES OF PARTIES

APPLICANT	ATTORNEY
Mitchell Energy Corporation 1000 Independence Plaza 400 W. Illinois Midland, Texas 79701	W. Thomas Kellahin, Esq. Kellahin & Kellahin P.O. Box 2265 Santa Fe, New Mexico 87504-2265 Telephone: (505) 982-4285
OPPOSITION OR OTHER PARTY	ATTORNEY
Branko, Inc., a New Mexico Corporation Duane Brown S. H. Cavin Robert W. Eaton Terry and Barb Kramer Landwest, a Utah General Partnership Candace McClelland Stephen T. Mitchell Permian Hunter Corporation, a New Mexico Corporation George L. Scott, III Scott Exploration, Inc., a New Mexico Corporation	Harold D. Stratton, Jr. Stratton & Cavin, P.A. P.O. Box 1216 Albuquerque, New Mexico 87103-1216 Telephone: (505) 982-4285

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Charles I. Wellborn
Winn Investments, Inc., a New Mexico Corporation
Lori Scott Worrall
Xion Investments, a Utah General Partnership

See Attached Exhibit A for addresses.

STATEMENT OF CASE

MOVANTS

See Mitchell Energy Corporation's Pre-Hearing Statement

OPPOSITION OR OTHER PARTY

Branko, Inc., et al. did not receive notice regarding Mitchell's application for compulsory pooling with respect to the Tomahawk "28" Federal Com. Well No. 1 and seek to reopen Case No. 10656.

PROPOSED EVIDENCE

MOVANTS

WITNESS	EST. TIME	EXHIBITS
None		See "Procedural Matters" Below

OPPOSITION

WITNESS	EST. TIME	EXHIBITS
None		See "Procedural Matters" Below

PROCEDURAL MATTERS

The parties have stipulated that the following will be introduced and admitted into evidence and made part of the record for the Commission hearing:

(1) The transcript and exhibits in Case No. 10656;

(2) The transcript and exhibits in Case No. 11510, including specifically Branko Exhibits 29 through 36 transmitted by Stratton & Cavin correspondence dated May 23, 1996 and Branko Exhibits 37 through 44 transmitted by Stratton & Cavin correspondence dated June 19, 1996;

(3) The OCD well file for the Tomahawk "28" Federal Com No. 1 Well; and

(4) Correspondence dated March 16, 1993 from Strata Production Company to Mitchell Energy Corporation.

Branko, Inc., et al. may file a written memorandum in response to Mitchell's recent memorandum and/or submit its memoranda already submitted to the hearing officer.

STRATTON & CAVIN, P.A.

By: _____
Harold D. Stratton, Jr.
Attorneys for Movants as Listed
P.O. Box 1216
Albuquerque, New Mexico 87103-1216
Telephone: (505) 243-5400

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EXHIBIT A

Branko, Inc.
Branko Jankovic
13 Deslauriers Crescent
St. Albert, Alberta
Canada T8N5Y6

Duane Brown
1315 Marquette Place NE
Albuquerque, NM 87106

S. H. Cavin
P. O. Box 1125
Roswell, NM 88202

Robert W. Eaton
2505 Don Juan NW
Albuquerque, NM 87104

Terry & Barb Kramer
5108 Irving Blvd. NW
Albuquerque, NM 87114

Landwest, A Utah GP
Permian Hunter Corporation, a NM Corp.
Xion Investments, a Utah GP
c/o Larry Lunt
215 West 100 Street
Salt Lake City, UT 84101

Candace McClelland
4 Country Hill Road
Roswell, NM 88201

Stephen T. Mitchell
P.O. Box 2415
Midland, Texas 79702

George L. Scott, III
200 West 1st Street, Suite 648
Roswell, NM 88201

Scott Exploration, Inc.
200 West 1st Street, Suite 648
Roswell, NM 88201

Charles I. Wellborn
Science & Technology Corporation @ UNM
851 University Blvd. SE, Suite 200
Albuquerque, NM 87106

Winn Investments, Inc.
706 W. Brazos
Roswell, NM 88201

Lori Scott Worrall
100 West 1st Street, Suite 648
Roswell, NM 88201

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NEW MEXICO ENERGY, MINERALS
& NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION
2040 South Pacheco Street
Santa Fe, New Mexico 87505
(505) 827-7131

March 19, 1997

Kellahin and Kellahin
117 N. Guadalupe
P. O. Box 2265
Santa Fe, New Mexico 87504

RE: CASE NO. 11510
ORDER NO. R-10672-A

Dear Sir:

Enclosed are two copies of the above-referenced Division order recently entered in the subject case.

Sincerely,

Sally Martinez

Sally E. Martinez
Administrative Secretary

cc: T. Kellahin
BLM - Carlsbad
Hal Stratton

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

IN THE MATTER OF THE HEARING CALLED BY THE OIL CONSERVATION COMMISSION FOR THE PURPOSE OF CONSIDERING:

DE NOVO
CASE NO. 11510
Order No. R-10672-A

APPLICATION OF BRANKO, INC. ET AL. TO REOPEN CASE NO. 10656 (ORDER NO. R-9845) CAPTIONED "APPLICATION OF MITCHELL ENERGY CORPORATION FOR COMPULSORY POOLING AND AN UNORTHODOX GAS WELL LOCATION, LEA COUNTY, NEW MEXICO."

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9:00 a.m. on January 16, 1997, at Santa Fe, New Mexico, before the Oil Conservation Commission of the State of New Mexico, hereinafter referred to as the **"Commission"** on Mitchell Energy Corporation's **(Mitchell)** Request for a *De Novo* Hearing in Case No. 11510 (Division Order R-10672) filed with the Commission on October 30, 1996.

Mitchell was represented by W. Thomas Kellahin of Kellahin & Kellahin; Branko, Inc. et al. was represented by Harold D. Stratton, Jr. of Stratton & Cavin, P.A. The New Mexico Oil Conservation Division of the New Mexico Energy, Minerals and Natural Resources Department **(OCD)** was represented by Rand Carroll.

Now, on this 19th day of March, 1997, the Commission, a quorum being present, having considered the record and being fully advised in the premises,

FINDS THAT:

A. Summary of Proceedings

The procedural history of this case is long and complicated so that a summary of the proceedings to date is necessary:

1) On December 8, 1992, Mitchell filed an Application for Compulsory Pooling and an Unorthodox Gas Well Location **(1992 Application)** with the OCD pursuant to NMSA 1978, Section 70-2-17 and requested a hearing before a hearing examiner. The OCD assigned Case No. 10656 to this matter.

2) The 1992 Application was originally set for hearing by the OCD on January 7, 1993, and at Mitchell's request, the hearing was continued until January 21, 1993.

3) A hearing was held before Michael E. Stogner, an OCD hearing examiner, on January 21, 1993 **(1993 Hearing)**. Mitchell was represented by W. Thomas Kellahin of Kellahin & Kellahin; Strata Production Company, a New Mexico corporation **(Strata)**, appeared in opposition to the 1992 Application and was represented by Sealy H. Cavin, Jr. of Stratton & Cavin, P.A.

4) On February 15, 1993, the OCD Division Director entered Order No. R-9845 in Case No. 10656 which pooled all the mineral interests from the top of the Wolfcamp formation to the base of the Pennsylvanian formation, underlying the W/2 of Section 28, Township 20 South, Range 33 East, NMPM, Lea County to form a proration unit to be dedicated to its Tomahawk "28" Federal Com Well No. 1 (**Tomahawk 28 Well**).

5) By fax on March 11, 1993, Strata requested a *de novo* hearing before the Commission pursuant to NMSA 1978, Section 70-2-13.

6) By fax on April 28, 1993, Strata withdrew its request for a *de novo* hearing of Case No. 10656 before the Commission. The Commission entered its order on April 29, 1993, dismissing the requested *de novo* hearing of Case No. 10656.

7) On January 31, 1996, a Motion to Reopen Case or, in the Alternative, Application for Hearing *De Novo* **(Motion)** in Case No. 10656, Order No. R-9845 was filed with the OCD by Harold D. Stratton of Stratton and Cavin, P.A. on behalf of the following: Branko, Inc., a New Mexico corporation; Duane Brown; S.H. Cavin; Robert W. Eaton; Terry and Barb Kramer, husband and wife; Landwest, a Utah general partnership; Candace McClelland; Stephen T. Mitchell; Permian Hunter Corporation, a New Mexico corporation; George L. Scott, III; Scott Exploration, Inc., a New Mexico corporation; Charles I. Wellborn; Winn Investments, Inc., a New Mexico corporation; Lori Scott Worrall; and Xion Investments, a Utah general partnership **(Branko)**.

8) On February 12, 1996, Mitchell filed a Reply to the Motion to Reopen Case No. 10656 **(Reply)**.

9) On May 2, 1996, a hearing **(1996 Hearing)** on the Motion to Reopen Case No. 10656 was held before OCD Hearing Examiner Stogner. The case was assigned a number, Case No. 11510. Branko was represented by Harold D. Stratton of Stratton & Cavin, P.A.; Mitchell was represented by Kellahin.

10) On October 2, 1996, the OCD Division Director entered Order No. R-10672 in Case No. 11510 which reopened Case No. 10656.

11) On October 30, 1996, Mitchell filed a Request for a Hearing *De Novo* of Case No. 11510, Order No. R-10672 before the Commission.

B. Summary of the Parties' Claims

1) Branko's claims as alleged in its Motion:

a) Mitchell failed to give proper notice to Branko, as required by law, of Mitchell's 1992 Application in Case No. 10656.

b) Mitchell failed to give proper notice as required by law of the OCD 1993 Hearing on Mitchell's 1992 Application.

c) Mitchell failed to provide Branko with an opportunity to participate in Mitchell's Tomahawk 28 Well located in what Branko refers to as the Strata North Gavilon Lease, a federal oil and gas lease **(Lease)**.

d) All of the entities referred to as "Branko" acquired and owned interests in the Lease on or before April 1, 1990, prior to the date Mitchell filed its 1992 Application with the OCD.

e) Branko's interests were made known to Mitchell by a letter dated January 13, 1993, and Mitchell otherwise had actual knowledge of Branko's interests.

f) Mitchell failed to comply with NMSA 1978, Section 70-2-17 (1995 Repl.)

g) OCD Order No. R-9845 in Case No. 10656 is void as to Branko as the OCD did not have jurisdiction over Branko because of Mitchell's failure to provide notice of the 1992 Application and notice of the 1993 Hearing.

Branko requests that the Commission:

a) reopen Case No. 10656 or, in the alternative grant Branko a hearing *de novo*; and

b) enjoin Mitchell from any operation on the Tomahawk 28 Well, including any workover, plug back or recompletion attempt which may adversely affect the interests of Branko in the well.

2) Mitchell's claims as alleged in its Reply:

a) Branko is not a party of record to OCD Case No. 10656, and Branko is not entitled to file for a *de novo* hearing in this case.

b) Branko's Motion to reopen OCD Case No. 10656 is a collateral attack on Order R-9845 and must be denied.

c) All the interests in the Lease have been pooled by Order R-9845 entered on February 15, 1993, and the time to appeal that order has run.

d) Branko did not have a protected property right in the Lease.

e) Branko is bound through Strata by OCD Order No. R-9845.

f) Mitchell requests the Commission deny Branko's Motion.

C. Findings of Fact from the January 16, 1997 hearing

1) Due public notice of this hearing was provided as required by law.

2) A quorum of the Commission was present for the hearing and has reviewed the evidence presented at the hearing.

3) Mitchell and Branko stipulated to the introduction of the evidence from the 1993 Hearing and the 1996 Hearing as well as exhibits introduced at the January 16, 1997 Commission hearing.

4) The parties did not present any testimony at the January 16, 1997 Commission hearing, but through counsel the parties made oral argument.

5) Branko was not a party of record to Case No. 10656.

6) Mitchell obtained a title opinion that showed that Strata was the owner of 100% of the record title and operating rights for the Lease, and Mark Murphy, president of Strata, confirmed that at the 1993 Hearing.

7) At the 1993 Hearing there was conflicting testimony regarding the nature of the interests, if any, obtained by the entities through Strata. Fifteen of these entities became the party "Branko" that moved to reopen Case No. 10656 in 1996.

a) Stephen J. Smith, Mitchell's landman, testified that Mark Murphy, president of Strata, "...always described them as silent partners...." (1993 Hearing Tr. p. 56). Smith also testified: "I understood that he [Murphy] was acting as a go-between, as I was." (1993 Hearing Tr. p 58). Smith also testified that Mitchell relied on the fact that Strata was the record title owner to 100 percent interest [of the tract in question], "...and his [Murphy's] representation to us that he spoke for these silent partners and was capable of binding them in an agreement." (1993 Hearing Tr. p. 61).

b) Mark Murphy testified that he informed Smith during a conversation on October 26, 1992, that Strata had other partners, and "...that until a deal, specific deal was negotiated that we [Strata] could recommend, that I couldn't represent those partners; that, however, historically, normally when we reached an agreement that we could recommend to our partners, they would, in most cases, go along with that deal, but I could not guarantee that." (1993 Hearing Tr. p. 122). He also testified that he never represented that he could bind the other parties until they approved the terms of the deal. (1993 Hearing Tr. p. 126).

On direct examination, Murphy was asked: "Who are these parties, as a general rule?" Murphy responded: "As a general rule, they're long-term investors of Strata." (1993 Hearing Tr. p. 127). Murphy also testified that the entities identified in the January 13 letter, Mitchell Exhibit 17, were long-term partners of Strata. (1993 Hearing Tr. p. 129). Murphy also stated: "as a matter of fact, many times in leasehold situations like this, you don't immediately make assignments to all the parties until a well is drilled or some action taken. So if you do sell it, you only have to handle one assignment from Strata to whoever the purchaser is. If we [Strata] assign this out to all these parties, they would have

to gather up --we'd have to gather up 15 assignments into Mitchell or to whomever." (1993 Hearing Tr. p. 130). Murphy testified that as of the date of the title opinion, Strata had not assigned out any "working interest ownership" in the lease. (1993 Hearing Tr. p. 141).

Murphy also acknowledged on cross-examination that as of the date of the title opinion Strata was the record title or leasehold holder and continued to be the owner of the federal lease record title and operating rights on the date of the January 1993 hearing. (1993 Hearing Tr. pp. 141, 142). However, Murphy testified that he never used the term "silent partners" in conversation with Mitchell; instead he recalled telling Mitchell that Strata had "partners in this lease." (1993 Hearing Tr. p. 142)

c) George L. Scott, Jr. testified that he owned some of the stock in Strata. He also stated that his organization, Scott Exploration, was "...involved with Strata in the sense that we (Scott Exploration) try to originate prospects, and Strata operates them." (1993 Hearing Tr. p. 153). Scott Exploration Inc., a New Mexico corporation, is one of the Branko group. Testimony from the 1993 Hearing does not reveal whether Scott meant that he, as an individual, owned shares of stock in Strata or whether his organization, Scott Exploration, owned the shares of stock in Strata.

8) The testimony from the 1996 Hearing as to the ownership interests of Branko contained the following:

a) On direct examination Mark Murphy stated that he called Mitchell's landman, Smith, and "...informed him that Strata would recommend to its partners that we sell...to Mitchell." (1996 Hearing Tr. p. 19) In responding to the question of what he meant by the word "partner," Murphy said, "...they're a leasehold owner, they own operating rights." (1996 Hearing Tr. p. 20) However, when asked whether Smith ever inquired as to who the partners were, Murphy said: "I think generically he did during the course of conversations, and I've described them as long-term investors of Strata's or people that we've been involved in." (1996 Hearing Tr. p. 23). Murphy stated that Strata was a New Mexico corporation. (1996 Hearing Tr. p. 27) Murphy testified that the arrangement between Strata and the partners was not a formal agreement, and there was no partnership agreement. (1996 Hearing Tr. p. 29) Murphy on several occasions testified that he felt comfortable negotiating for some of the partners without their specific approval. (1996 Hearing Tr. pp. 37 & 38, 57 & 58)

9) The documentary evidence from the hearings revealed the following regarding the property interest held by Branko:

a) Branko Exhibits No. 1 through 16 are affidavits of the entities comprising Branko. These affidavits state: each entity's undivided interest in the leasehold operating rights or overriding royalty interest in the Lease; all but one of the interests were acquired in 1989, with one affiant stating that its interest was acquired in 1990; and each interest owner states the amount paid for the interest.

b) Branko Exhibit No. 17 is the affidavit of Mark B. Murphy, president of Strata, dated January 17, 1996. The affidavit states that Strata bought the Lease at a federal lease sale in late 1989. Also in late 1989 Strata sold interests in the leasehold operating rights of the Lease to Branko subject to a 1.5% geologic override.

In Paragraph 6 of the affidavit, Murphy states: "Following the sale by Strata of the interest in the Strata North Gavilon Lease as indicated hereinabove in Paragraph 5, **Strata retained all of the record title interest subject to the beneficial interest of the parties as described in Exhibit A hereto."** (Emphasis added.) Exhibit A is the January 13, 1993 letter from Strata to Mitchell that contains Strata's list of "leasehold partners and ownership" some of whom became Branko.

Exhibit B to the affidavit is the federal BLM form titled "Transfer of Operating Rights (Sublease) in a Lease for Oil and Gas or Geothermal Resources" executed by Murphy for Strata on November 7, 1995. It is the transfer of overriding royalty interests. On the first page of Exhibit B at the bottom of the form marked with an asterisk is the following statement: **"Strata owns 100% of the record title interest and leasehold operating rights.** Strata is conveying a 1.5% overriding royalty interest to the parties and in the percentages indicated at Exhibit A hereto. **Strata is retaining 100% of the record title interest and 100% of the leasehold operating rights, subject to the 1.5% overriding royalty interest which is hereby conveyed."** (Emphasis added.)

Exhibit C to the affidavit is the same federal BLM form also executed by Murphy for Strata on November 7, 1995, but this is the transfer of operating rights.

Both Exhibit B and Exhibit C state that the transfer "...shall be effective as of ...November 1, 1989." Neither Exhibit B nor Exhibit C is signed by the transferee.

c) Branko Exhibit No. 23 is a January 1993 letter from Strata to Mitchell. On page 3 of the letter is the statement: "Strata would defend itself and it's [sic] partners [sic] rights during any proceeding including a force pooling hearing."

10) No evidence was presented that Branko had a recordable interest in the Lease until the execution by Murphy for Strata of the BLM transfer forms on November 7, 1995.

D. Conclusions of Law

1) The Commission has jurisdiction over the parties and the subject matter.

2) NMSA 1978, Section 70-2-13 provides, in part, that "[t]he division [OCD] shall promulgate rules and regulations with regard to hearings to be conducted before examiners,...." This section also states that "[i]n the absence of any limiting order, an examiner appointed to hear any particular case shall have the power to regulate all proceedings before him and to perform all acts and take all measures necessary or proper for the efficient and orderly conduct of such hearing." The section concludes with the statement: "When any matter or proceeding is referred to an examiner and a decision is rendered thereon, **any party of record** adversely affected shall have the right to have the matter heard *de novo* before the commission **upon application filed with the division within thirty days from the time any such decision is rendered."** (Emphasis added.)

Rule 1220 of the OCD Rules and Regulations states: "When any order has been entered by the Division pursuant to any hearing held by an Examiner, **any party of record** adversely affected by such order shall have the right to have such matter or proceeding heard *de novo* before the Commission." (Emphasis added.)

NMSA 1978, Section 70-2-25 states, in part: "Within twenty days after entry of any order or decision of the commission, **any party of record** adversely affected thereby may file with the commission an application for rehearing...." (Emphasis added.)

Branko was not a party of record in Case No. 10656 and did not have standing to request the OCD reopen the case or to request the Commission grant Branko a *de novo* hearing pursuant to NMSA 1978, Section 70-2-13 or 70-2-25 or Rule 1220.

However, Rule 1203 of the OCD Rules and Regulations, provides, in part: **"The Division upon its own motion**, the Attorney General on behalf of the State, and any operator or producer, **or any other person having a property interest may institute proceedings for a hearing."** (Emphasis added.) The Commission concludes that the OCD provided Branko a hearing on May 2, 1996, pursuant to Rule 1203 to determine whether Branko had a property interest affected by Case No. 10656 and Order No. R-9845.

3) NMSA 1978, Section 70-1-1 states: "That all assignments and other instruments of transfer of royalties in the production of oil, gas or other minerals on any land in this state, including lands operated under lease or contract from the United States and from the state of New Mexico, shall be recorded in the office of the county clerk of the county where the lands are situated."

NMSA 1978, Section 70-1-2 states: "Such records shall be notice to all persons of the existence and contents of such assignments and other instruments so recorded from the time of filing the same for record, and no assignment or other instrument of transfer affecting the title to such royalties not recorded as herein provided shall affect the title or right of such royalties of any purchaser or transferee in good faith, without knowledge of the existence of such unrecorded instrument."

No evidence was presented that Branko's interests in the Lease were recorded prior to November 7, 1995; Strata was the record owner of the Lease at the time Mitchell filed the 1992 Application and at the time of the 1993 Hearing.

The Commission concludes that at the time the 1992 Application was filed with the OCD, Branko was not an interest owner entitled to notice pursuant to NMSA 1978, Section 70-2-17 and OCD Rule 1207.

IT IS THEREFORE ORDERED THAT:

(1) Branko's Motion be, and hereby is, denied.

(2) The OCD Order R-9845 issued February 15, 1993, is in full force and effect.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

JAMI BAILEY, Member

WILLIAM W. WEISS, Member

WILLIAM J. LEMAY, Chairman

S E A L

STRATTON & CAVIN, P.A.

ATTORNEYS & COUNSELORS AT LAW

HAROLD D. STRATTON, JR.*†**
SEALY H. CAVIN, JR.†**°
STEPHEN D. INGRAM†
BRIAN J. PEZZILLO

*ALSO ADMITTED IN OKLAHOMA
†ALSO ADMITTED IN TEXAS
**ALSO ADMITTED IN COLORADO
°NEW MEXICO BOARD OF LEGAL SPECIALIZATION RECOGNIZED SPECIALIST IN THE AREA OF NATURAL RESOURCES - OIL AND GAS LAW

320 GOLD AVENUE, S.W.
SUITE 1200
P. O. BOX 1216
ALBUQUERQUE, NEW MEXICO 87103-1216

TELEPHONE
(505) 243-5400
FACSIMILE
(505) 243-1700

April 7, 1997

VIA HAND DELIVERY
William J. LeMay, Director
Oil Conversation Division
New Mexico Department of Energy,
Minerals and Natural Resources
P.O. Box 6429
Santa Fe, New Mexico 87505

Re: Application for Rehearing -- Case No. 11510 -- Order No. R-10672-A

Dear Mr. LeMay:

On behalf of Branko, Inc., et al., Movants in the above-described case, enclosed please find an original and two copies of an Application for Rehearing which is filed in connection with the above-referenced case.

Sincerely,

STRATTON & CAVIN, P.A.

By: Harold D. Stratton, Jr.

HDS/skc
Enclosures
cc: W. Thomas Kellahin, Esq. (w/encl.)
Rand L. Carroll, Esq. (w/encl.)

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

IN THE MATTER OF THE HEARING CALLED BY THE OIL CONSERVATION COMMISSION FOR THE PURPOSE OF CONSIDERING:

CASE NO. 11510
Order No. R-10672-A

APPLICATION OF BRANKO, INC. ET AL. TO REOPEN CASE NO. 10656 (ORDER NO R-9845) CAPTIONED "APPLICATION OF MITCHELL ENERGY CORPORATION FOR COMPULSORY POOLING AND AN UNORTHODOX GAS WELL LOCATION, LEA COUNTY, NEW MEXICO.

APPLICATION FOR REHEARING

Movants, Branko, Inc. et al., pursuant to NMSA 1978, § 70-2-25 (1995 Repl.), hereby apply for rehearing of the above-order. Movants submit that the above-order is erroneous as follows:

1. The Oil Conservation Commission ("Commission") failed to find that all of the Movants' acquired and owned protected property interests in the S½ of the SW¼ of Section 28 as to all depths on or before April 1, 1990 and owned such interests on January 21, 1993, the date of the original Oil Conservation Division hearing in this matter.

2. The Commission erred in failing to find that Mitchell Energy Corporation ("Mitchell") was provided with and received actual notice of the Movants' interests in the S½ of the SW¼ of Section 28 a number of times prior to the January 13, 1993 hearing in this matter.

3. The Commission erred in failing to find that despite the property interests owned by the Movants and Mitchell's actual knowledge of such interests, the Movants were not given

proper and constitutional notice of the January 21, 1993 hearing as provided by law and *Uhden v. New Mexico Oil Conservation Commission, et al.,* 122 N.M. 528, 817 P.2d 721 (1995).

4. The Commission erred in failing to find and conclude that the Movants were not properly offered an opportunity to be heard at the January 21, 1993 hearing.

5. The Commission erred in its failure to find that Mitchell and the Commission has not complied with the statutory pooling provisions of NMSA 1978, § 70-2-17(C) (1995 Repl.).

6. The Commission erred in failing to find that the failure to provide notice of the January 21, 1993 hearing in this case deprived the Movants of their property without due process of law in contravention of Article 2, § 18 of the New Mexico Constitution and the 14th Amendment to the United States Constitution.

7. The Commission erred in finding that proper, adequate and constitutionally sufficient notice was given to the applicants of the cases resulting in Order R-9845.

8. The Commission's Finding of Fact No. 10 is not supported by the facts of the case.

9. The Commission's conclusion of law that the Movants were not interest owners in the subject property is not supported by the law or the facts of the case.

10. The Commission erred in failing to find that Commission Order No. R-9845 is void as to the Movants.

11. The Division erred in its failure to reopen the case and amend Order No. R-9845 to conform to the property rights of the Movants.

12. The Commission erred in finding that to be protected as a property interest, such interest must be recorded or recordable.

WHEREFORE, Movants request that Order No. R-10672-A be reversed and that Order No. R-9845 be vacated as to the Movants.

RESPECTFULLY SUBMITTED,

STRATTON & CAVIN, P.A.

By: _____
Harold D. Stratton, Jr.
Brian J. Pezzillo
Attorneys for Branko, Inc., et al.
Post Office Box 1216
Albuquerque, New Mexico 87103
Telephone: (505) 243-5400

I hereby certify that a true and correct copies of the foregoing Application for a Rehearing were mailed this 7th day of April, 1997 to all counsel of record at the following addresses:

W. Thomas Kellahin, Esq.
Kellahin & Kellahin
P. O. Box 2265
Santa Fe, New Mexico 87504-2265

Rand L. Carroll, Esq.
New Mexico Oil & Conservation Division
2040 S. Pacheco Street
Santa Fe, New Mexico 87505-5472

By: _____
Harold D. Stratton, Jr.

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POST OFFICE DRAWER 1030
ROSWELL, NM 88202-1030

STRATA PRODUCTION COMPANY

TELEPHONE (505) 622-1127
FACSIMILE (505) 623-3533

200 WEST FIRST STREET, ROSWELL PETROLEUM BUILDING, SUITE 700
ROSWELL, NEW MEXICO 88201

January 13, 1993

Via Telefax (915 682-6439)/Hard Copy by Certified Mail

Mitchell Energy Corporation
1000 Independence Plaza
400 West Illinois
Midland, Texas 79701
Attn: Steve Smith

Re: Leasehold Ownership Information
North Gavilon Prospect
NM #92957, S/2 SW/4, SW/4 SE/4
Section 28, T-20-S, R-33-E
Lea County, New Mexico

Dear Mr Smith:

During our telephone conversation this morning you expressed some concern that you had not been provided a list of leasehold partners and ownership in the above referenced lease. As Mitchell has set a compulsory pooling and unorthodox gas well location hearing (Case #10656) for Thursday January 21, 1993, I provide this information to facilitate your notification of said owners. Strata has or is in the process of making a direct assignment of each partners proportionate ownership. The names, addresses and ownership is as follows:

Name/Address	Leasehold Ownership
Arrowhead Oil Corporation P.O. Box 548 Artesia, New Mexico 88211-0548	6.25%
Branko, Inc. 45 Beaverbrook Crescent St. Albert, Alberta, Canada, T8N2L-4	1.56250%
Duane Brown 1315 Marquette PL, NE Albuquerque, New Mexico 87106	5.0%
S.H. Cavin P.O. Box 1125 Roswell, New Mexico 88202	2.0%

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EXHIBIT
A

Name/Address	Leasehold Ownership
Robert W. Eaton 2505 Don Juan NW Albuquerque, New Mexico 87104	1.56250%
Terry & Barb Kramer 5108 Irving BLVD., N.W. Albuquerque, New Mexico 87114	30.0%
Landwest 215 West 100 South Salt Lake City, UT 84101	1.0%
Candance McClelland 4 Country Hill Road Roswell, New Mexico 88201	2.1250%
Permian Hunter Corporation 215 West 100 South Salt Lake City, UT 84101	4.0%
Scott Exploration, Inc. 200 W. First Suite 648 Roswell, New Mexico 88201	9.0%
Strata Production Company 200 W. First, Suite 700 P.O. Box 1030 Roswell, New Mexico 88202	18.50%
Warren, Inc. P.O. Box 7250 Albuquerque, New Mexico 87194-7250	5.0%
Charles J. Wellborn P.O. Box 2168 Albuquerque, New Mexico 87103-2168	2.0%
Winn Investments, Inc. 706 W. Brazos Roswell, New Mexico 88201	1.0%
Lori Scott Worrall 200 W. First, Suite 648 Roswell, New Mexico 88201	1.0%
Xion Investments 215 West 100 South Salt Lake City, UT 84101	10.0%
	Total 100%

In addition the following own a overriding royalty interest (ORRI) as set forth below:

Name/Address	ORRI
Steve Mitchell 200 W. First, Suite 648 Roswell, New Mexico 88201	.5
George L. Scott III 200 W. First, Suite 648 Roswell, New Mexico 88201	.5
Scott Exploration Inc. 200 W. First, Suite 648 Roswell, New Mexico 88201	.5
	Total 1.5%

If I may be of further assistance please call.

Very truly yours,

STRATA PRODUCTION COMPANY

Mark B. Murphy
President

cc: Sealy H. Cavin, Jr., Esq.

MBM/mo

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

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
DIVISION FOR THE PURPOSE OF
CONSIDERING:

Case No. 10656
Order No. R-9845

APPLICATION OF MITCHELL ENERGY
CORPORATION FOR COMPULSORY POOLING
AND AN UNORTHODOX GAS WELL LOCATION,
LEA COUNTY, NEW MEXICO

AFFIDAVIT OF BRANKO JANKOVIC IN SUPPORT OF MOTION TO REOPEN CASE OR, IN THE ALTERNATIVE, APPLICATION FOR HEARING DE NOVO

PROVINCE OF ALBERTA)
) ss.
COUNTRY OF CANADA)

I, Branko Jankovic, of lawful age, being first duly sworn upon oath, depose and state as follows:

1. I am over the age of eighteen years and competent to give this Affidavit.

2. I am President of Branko, Inc., a New Mexico Corporation, and I am familiar with its affairs.

3. Branko, Inc. owns an undivided interest in the leasehold operating rights in, to and under United States Oil and Gas Lease NM57683 which covers the following lands in Lea County, New Mexico:

Township 20 South, Range 33 East, N.M.P.M.
Section 33: All
Containing 640.00 acres, more or less.

This Lease is known as and herein referred to as the "Strata Gavilon Lease."

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EXHIBIT
B

4. On or about November 1, 1989, Branko, Inc. paid for and acquired 1.5625% of the leasehold operating rights in, to and under United States Oil and Gas Lease NM82927 which covers the following lands in Lea County, New Mexico:

Township 20 South, Range 33 East, N.M.P.M.
Section 28: S/2SW/4, SW/4SE/4
Containing 120.00 acres, more or less.

This Lease is known as and herein referred to as the "Strata North Gavilon Lease." As of the date of this Affidavit, Branko, Inc. still owns the above-described interest.

5. As consideration for the interest which Branko, Inc. acquired in the Strata North Gavilon Lease, Branko, Inc. paid Strata Production Company ("Strata") $316.48.

6 To the best of my knowledge and belief, Branko, Inc. has paid 1.5625% of the rentals paid by Strata with respect to the Strata North Gavilon Lease.

7 Branko, Inc. did not receive notice of Mitchell Energy Corporation's Application in Oil Conservation Division Case No. 10656.

8. Branko, Inc. was not offered or afforded an opportunity to participate in Mitchell Energy Corporation's Tomahawk "28" Federal Com No. 1 Well, located 1980 FWL and 1650 FNL of Section 28, Township 20 South, Range 33 East, N.M.P.M., Lea County, New Mexico.

9. This Affidavit is given in support of the Motion to Reopen Case No. 10656 and for no other purpose.

FURTHER AFFIANT SAYETH NOT.

Branko Jankovic

Subscribed and sworn to before me this 23 day of January, 1996.

Notary Public
JOHN K.J. CAMPBELL
BARRISTER & SOLICITOR

My Commission Expires:

N/A

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

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
DIVISION FOR THE PURPOSE OF
CONSIDERING:

Case No. 10656
Order No. R-9845

APPLICATION OF MITCHELL ENERGY
CORPORATION FOR COMPULSORY POOLING
AND AN UNORTHODOX GAS WELL LOCATION,
LEA COUNTY, NEW MEXICO

AFFIDAVIT OF DUANE BROWN IN SUPPORT OF MOTION TO REOPEN CASE OR, IN THE ALTERNATIVE, APPLICATION FOR HEARING DE NOVO

STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

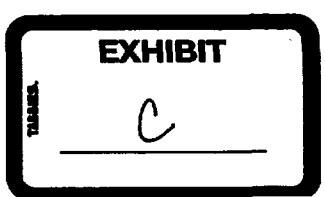
I, Duane Brown, of lawful age, being first duly sworn upon oath, depose and state as follows:

1. I am over the age of eighteen years and competent to give this Affidavit.

2. On or about September 22, 1989, I paid for and acquired 5% of the leasehold operating rights in, to and under United States Oil and Gas Lease NM82927 which covers the following lands in Lea County, New Mexico:

Township 20 South, Range 33 East, N.M.P.M.
Section 28: S/2SW/4, SW/4SE/4
Containing 120.00 acres, more or less.

This Lease is known as and herein referred to as the "Strata North Gavilon Lease." As of the date of this Affidavit, I still own the above-described interest.



3. As consideration for the interest which I acquired in the Strata North Gavilon Lease, I paid Strata Production Company ("Strata") $1,012.75.

4. To the best of my knowledge and belief, I have paid 5% of the rentals paid by Strata with respect to the Strata North Gavilon Lease.

5. I did not receive notice of Mitchell Energy Corporation's Application in Oil Conservation Division Case No. 10656.

6. I was not offered or afforded an opportunity to participate in Mitchell Energy Corporation's Tomahawk "28" Federal Com No. 1 Well, located 1980 FWL and 1650 FNL of Section 28, Township 20 South, Range 33 East, N.M.P.M., Lea County, New Mexico.

7. This Affidavit is given in support of the Motion to Reopen Case No. 10656 and for no other purpose.

FURTHER AFFIANT SAYETH NOT.

Duane E Brown

Duane Brown

Subscribed and sworn to before me this 22nd day of January, 1996.

Lou Ann Scouten

Notary Public

My Commission Expires:

August 23, 1999

OFFICIAL SEAL
Lou Ann Scouten
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires: 8/23/99

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

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
DIVISION FOR THE PURPOSE OF
CONSIDERING:

Case No. 10656
Order No. R-9845

APPLICATION OF MITCHELL ENERGY
CORPORATION FOR COMPULSORY POOLING
AND AN UNORTHODOX GAS WELL LOCATION,
LEA COUNTY, NEW MEXICO

AFFIDAVIT OF S. H. CAVIN IN SUPPORT OF MOTION TO REOPEN CASE OR, IN THE ALTERNATIVE, APPLICATION FOR HEARING DE NOVO

STATE OF NEW MEXICO)
) ss.
COUNTY OF CHAVES)

I, S. H. Cavin, of lawful age, being first duly sworn upon oath, depose and state as follows:

1. I am over the age of eighteen years and competent to give this Affidavit.

2. I own an undivided interest in the leasehold operating rights in, to and under United States Oil and Gas Lease NM57683 which covers the following lands in Lea County, New Mexico:

Township 20 South, Range 33 East, N.M.P.M.
Section 33: All
Containing 640.00 acres, more or less.

This Lease is known as and herein referred to as the "Strata Gavilon Lease."

EXHIBIT
D

3. On or about OCTOBER 5, 1989, I paid for and acquired 2% of the leasehold operating rights in, to and under United States Oil and Gas Lease NM82927 which covers the following lands in Lea County, New Mexico:

Township 20 South, Range 33 East, N.M.P.M.
Section 28: S/2SW/4, SW/4SE/4
Containing 120.00 acres, more or less.

This Lease is known as and herein referred to as the "Strata North Gavilon Lease." As of the date of this Affidavit, I still own the above-described interest.

4. As consideration for the interest which I acquired in the Strata North Gavilon Lease, I paid Strata Production Company ("Strata") $405.10.

5. To the best of my knowledge and belief, I have paid 2% of the rentals paid by Strata with respect to the Strata North Gavilon Lease.

6. I did not receive notice of Mitchell Energy Corporation's Application in Oil Conservation Division Case No. 10656.

7. I was not offered or afforded an opportunity to participate in Mitchell Energy Corporation's Tomahawk "28" Federal Com No. 1 Well, located 1980 FWL and 1650 FNL of Section 28, Township 20 South, Range 33 East, N.M.P.M., Lea County, New Mexico.

8. This Affidavit is given in support of the Motion to Reopen Case No. 10656 and for no other purpose.

FURTHER AFFIANT SAYETH NOT.

S. H. Cavin

S.H. Cavin

Subscribed and sworn to before me this 22nd day of January, 1996.

Anna Lou Wagner

Notary Public

OFFICIAL SEAL
ANNA LOU WAGNER
NOTARY PUBLIC - STATE OF NEW MEXICO
My Commission Expires 10/28/96

My Commission Expires:

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

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
DIVISION FOR THE PURPOSE OF
CONSIDERING:

Case No. 10656
Order No. R-9845

APPLICATION OF MITCHELL ENERGY
CORPORATION FOR COMPULSORY POOLING
AND AN UNORTHODOX GAS WELL LOCATION,
LEA COUNTY, NEW MEXICO

AFFIDAVIT OF ROBERT W. EATON IN SUPPORT OF MOTION TO REOPEN CASE OR, IN THE ALTERNATIVE, APPLICATION FOR HEARING DE NOVO

STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

I, Robert W. Eaton, of lawful age, being first duly sworn upon oath, depose and state as follows:

1. I am over the age of eighteen years and competent to give this Affidavit.

2. I own an undivided interest in the leasehold operating rights in, to and under United States Oil and Gas Lease NM57683 which covers the following lands in Lea County, New Mexico:

Township 20 South, Range 33 East, N.M.P.M.
Section 33: All
Containing 640.00 acres, more or less.

This Lease is known as and herein referred to as the "Strata Gavilon Lease."

EXHIBIT
E

13

3. On or about September 24, 1989, I paid for and acquired 1.5625% of the leasehold operating rights in, to and under United States Oil and Gas Lease NM82927 which covers the following lands in Lea County, New Mexico:

Township 20 South, Range 33 East, N.M.P.M.
Section 28: S/2SW/4, SW/4SE/4
Containing 120.00 acres, more or less.

This Lease is known as and herein referred to as the "Strata North Gavilon Lease." As of the date of this Affidavit, I still own the above-described interest.

4. As consideration for the interest which I acquired in the Strata North Gavilon Lease, I paid Strata Production Company ("Strata") $316.48.

5. To the best of my knowledge and belief, I have paid 1.5625% of the rentals paid by Strata with respect to the Strata North Gavilon Lease.

6. I did not receive notice of Mitchell Energy Corporation's Application in Oil Conservation Division Case No. 10656.

7. I was not offered or afforded an opportunity to participate in Mitchell Energy Corporation's Tomahawk "28" Federal Com No. 1 Well, located 1980 FWL and 1650 FNL of Section 28, Township 20 South, Range 33 East, N.M.P.M., Lea County, New Mexico.

8. This Affidavit is given in support of the Motion to Reopen Case No. 10656 and for no other purpose.

FURTHER AFFIANT SAYETH NOT.

Robert W. Eaton

Subscribed and sworn to before me this 24 day of JANUARY, 1996.

Notary Public

My Commission Expires:

1/06/95

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

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
DIVISION FOR THE PURPOSE OF
CONSIDERING:

Case No. 10656
Order No. R-9845

APPLICATION OF MITCHELL ENERGY
CORPORATION FOR COMPULSORY POOLING
AND AN UNORTHODOX GAS WELL LOCATION,
LEA COUNTY, NEW MEXICO

AFFIDAVIT OF TERRY S. KRAMER IN SUPPORT OF MOTION TO REOPEN CASE OR, IN THE ALTERNATIVE, APPLICATION FOR HEARING DE NOVO

STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

I, Terry S. Kramer, of lawful age, being first duly sworn upon oath, depose and state as follows:

1. I am over the age of eighteen years and competent to give this Affidavit.

2. I am currently married to Barb Kramer, and I have been married to Barb Kramer for all times relative to this Affidavit.

3. On or about March 7 1990, I paid for and acquired (with my wife, Barb Kramer) 30% of the leasehold operating rights in, to and under United States Oil and Gas Lease NM82927 which covers the following lands in Lea County, New Mexico:

Township 20 South, Range 33 East, N.M.P.M.
Section 28: S/2SW/4, SW/4SE/4
Containing 120.00 acres, more or less.

EXHIBIT
F

This Lease is known as and herein referred to as the "Strata North Gavilon Lease." As of the date of this Affidavit, I still own the above-described interest with my wife.

4. As consideration for the interest which we acquired in the Strata North Gavilon Lease, we paid Strata Production Company ("Strata") $6,076.50.

5. To the best of my knowledge and belief, we have paid 30% of the rentals paid by Strata with respect to the Strata North Gavilon Lease.

6. We did not receive notice of Mitchell Energy Corporation's Application in Oil Conservation Division Case No. 10656.

7. We were not offered or afforded an opportunity to participate in Mitchell Energy Corporation's Tomahawk "28" Federal Com No. 1 Well, located 1980 FWL and 1650 FNL of Section 28, Township 20 South, Range 33 East, N.M.P.M., Lea County, New Mexico.

8. This Affidavit is given in support of the Motion to Reopen Case No. 10656 and for no other purpose.

FURTHER AFFIANT SAYETH NOT.

Terry S. Kramer

Subscribed and sworn to before me this 12th day of January, 1996.

Notary Public

My Commission Expires:

5-12-98

OFFICIAL SEAL
Susan Bennett
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires: 5-12-98

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

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
DIVISION FOR THE PURPOSE OF
CONSIDERING:

Case No. 10656
Order No. R-9845

APPLICATION OF MITCHELL ENERGY
CORPORATION FOR COMPULSORY POOLING
AND AN UNORTHODOX GAS WELL LOCATION,
LEA COUNTY, NEW MEXICO

AFFIDAVIT OF LARRY V. LUNT IN SUPPORT OF MOTION TO REOPEN CASE OR, IN THE ALTERNATIVE, APPLICATION FOR HEARING DE NOVO

STATE OF UTAH)
) ss.
COUNTY OF Salt Lake)

I, Larry V. Lunt, of lawful age, being first duly sworn upon oath, depose and state as follows:

1. I am over the age of eighteen years and competent to give this Affidavit.

2. I am General Partner of Landwest, a Utah General Partnership ("Landwest"), and I am familiar with its affairs.

3. Landwest owns an undivided interest in the leasehold operating rights in, to and under United States Oil and Gas Lease NM57683 which covers the following lands in Lea County, New Mexico:

Township 20 South, Range 33 East, N.M.P.M.
Section 33: All
Containing 640.00 acres, more or less.

This Lease is known as and herein referred to as the "Strata Gavilon Lease."

23

EXHIBIT
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4. On or about September 1989, Landwest paid for and acquired 1% of the leasehold operating rights in, to and under United States Oil and Gas Lease NM82927 which covers the following lands in Lea County, New Mexico:

Township 20 South, Range 33 East, N.M.P.M.
Section 28: S/2SW/4, SW/4SE/4
Containing 120.00 acres, more or less.

This Lease is known as and herein referred to as the "Strata North Gavilon Lease." As of the date of this Affidavit, Landwest still owns the above-described interest.

5. As consideration for the interest which Landwest acquired in the Strata North Gavilon Lease, Landwest paid Strata Production Company ("Strata") $202.55.

6. To the best of my knowledge and belief, Landwest has paid 1% of the rentals paid by Strata with respect to the Strata North Gavilon Lease.

7. Landwest did not receive notice of Mitchell Energy Corporation's Application in Oil Conservation Division Case No. 10656.

8. Landwest was not offered or afforded an opportunity to participate in Mitchell Energy Corporation's Tomahawk "28" Federal Com No. 1 Well, located 1980 FWL and 1650 FNL of Section 28, Township 20 South, Range 33 East, N.M.P.M., Lea County, New Mexico.

9. This Affidavit is given in support of the Motion to Reopen Case No. 10656 and for no other purpose.

FURTHER AFFIANT SAYETH NOT.

Larry V. Lunt

Subscribed and sworn to before me this 22nd day of January, 1996.

Notary Public

NOTARY PUBLIC
LEE H. WOODALL
WEST 100 SOUTH
SALT LAKE CITY, UT 84101
My Commission Expires JUNE 7, 1997
State of Utah

My Commission Expires:

6/7/97

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

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
DIVISION FOR THE PURPOSE OF
CONSIDERING:

Case No. 10656
Order No. R-9845

APPLICATION OF MITCHELL ENERGY
CORPORATION FOR COMPULSORY POOLING
AND AN UNORTHODOX GAS WELL LOCATION,
LEA COUNTY, NEW MEXICO

AFFIDAVIT OF CANDACE MCCLELLAND
IN SUPPORT OF MOTION TO REOPEN CASE OR,
IN THE ALTERNATIVE, APPLICATION FOR HEARING DE NOVO

STATE OF NEW MEXICO)
) ss.
COUNTY OF CHAVES)

I, Candace McClelland, of lawful age, being first duly sworn upon oath, depose and state as follows:

1. I am over the age of eighteen years and competent to give this Affidavit.

2. On or about November 1, 1989, I paid for and acquired 2.125% of the leasehold operating rights in, to and under United States Oil and Gas Lease NM82927 which covers the following lands in Lea County, New Mexico:

Township 20 South, Range 33 East, N.M.P.M.
Section 28: S/2SW/4, SW/4SE/4
Containing 120.00 acres, more or less.

This Lease is known as and herein referred to as the "Strata North Gavilon Lease." As of the date of this Affidavit, I still own the above-described interest.

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EXHIBIT
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3. As consideration for the interest which I acquired in the Strata North Gavilon Lease, I paid Strata Production Company ("Strata") $430.42.

4. To the best of my knowledge and belief, I have paid 2.125% of the rentals paid by Strata with respect to the Strata North Gavilon Lease.

5. I did not receive notice of Mitchell Energy Corporation's Application in Oil Conservation Division Case No. 10656.

6. I was not offered or afforded an opportunity to participate in Mitchell Energy Corporation's Tomahawk "28" Federal Com No. 1 Well, located 1980 FWL and 1650 FNL of Section 28, Township 20 South, Range 33 East, N.M.P.M., Lea County, New Mexico.

7. This Affidavit is given in support of the Motion to Reopen Case No. 10656 and for no other purpose.

27

FURTHER AFFIANT SAYETH NOT.

Candace McClelland

Candace McClelland

Subscribed and sworn to before me this 25th day of January, 1996.

Notary Public

My Commission Expires:

4/6/96

THIS EXHIBIT A IS ATTACHED TO AND MADE A PART OF THE TRANSFER OPERATING RIGHTS BY AND BETWEEN STRATA PRODUCTION COMPANY AND VARIOUS TRANSFEREES.

EXHIBIT A

TRANSFEREES

Name/Address	Percentage Leasehold Ownership
Arrowhead Oil Corporation P.O. Box 548 Artesia, NM 88211-0548	6.25000%
Branko, Inc. 45 Beaverbrook Crescent St. Albert, Alberta, Canada, T8N2L-4	1.56250%
Duane Brown 1315 Marquette Place NE Albuquerque, NM 87106	5.00000%
S. H. Cavin P. O. Box 1125 Roswell, NM 88202	2.00000%
Robert W. Eaton 2505 Don Juan NW Albuquerque, NM 87104	1.56250%
Terry & Barb Kramer 5108 Irving Blvd. NW Albuquerque, NM 87114	30.00000%
Landwest, a Utah General Partnership 215 West 100 South Salt Lake City, UT 84101	1.00000%
Candace McClelland 4 Country Hill Road Roswell, NM 88201	2.12500%
Permian Hunter Corporation 215 West 100 South Salt Lake City, UT 84101	4.00000%
Scott Exploration, Inc. 200 West 1st Street, Suite 648 Roswell, NM 88201	9.00000%
Warren, Inc. P.O. Box 7250 Albuquerque, NM 87194-7250	5.00000%

23

Charles J. Wellborn P.O. Box 2168 Albuquerque, NM 87103-2168	2.00000%
Winn Investments, Inc. 706 W. Brazos Roswell, NM 88201	1.00000%
Lori Scott Worrall 200 West 1st Street, Suite 648 Roswell, NM 88201	1.00000%
Xion Investments 215 West 100 South Salt Lake City, Ut 84101	10.00000%
TOTAL	**81.50000%**

82391

STATE OF NEW MEXICO
COUNTY OF LEA
FILED

NOV 8 1995

at 11:07 o'clock A M
and recorded in Book 611
Page 656
Pat Chappelle, Lea County Clerk
By Keith Manis Deputy

30

STRATTON & CAVIN, P.A.
ATTORNEYS & COUNSELORS AT LAW

HAROLD D. STRATTON, JR.
SEALY H. CAVIN, JR.*
DEBORAH R. JENKIN

*NEW MEXICO BOARD OF LEGAL SPECIALIZATION RECOGNIZED SPECIALIST IN THE AREA OF NATURAL RESOURCES - OIL AND GAS LAW

320 GOLD AVENUE, S.W.
SUITE 1200
P. O. BOX 1216
ALBUQUERQUE, NEW MEXICO 87103-1216

TELEPHONE (505) 243-5400
FACSIMILE (505) 243-1700

April 28, 1993

W. Thomas Kellahin, Esq.
Kellahin and Kellahin
P.O. Box 2265
Santa Fe, New Mexico 87504-2265

Re: OCD Case 10656 -- In the Matter of the Application of Mitchell Energy Corporation for Compulsory Pooling and Unorthodox Gas Well Location, Lea County, New Mexico

Dear Tom:

As you know, Strata has withdrawn its application for a hearing **De Novo** and is prepared to accept the force pooling order as to its interest under the S½SW¼ of Section 28, Township 20 South, Range 33 East, N.M.P.M. As to the other interest owners under the S½SW¼ of Section 28 which were identified in the letter from Mark Murphy to Steve Smith dated January 13, 1993 (a copy of which is attached hereto), we believe that there is some question as to whether their interests have been effectively pooled. Moreover, we believe that these parties (and Strata for that matter) should each be offered the opportunity to participate in the proposed well as to their respective interest. We see no justification for the "all or none" approach taken by Mitchell and we are not entirely sure that this was contemplated by the Order. As we have maintained from the start, Strata does not have the unfettered authority to act on behalf of the other interest owners.

If you have any questions or if I can be of further assistance, please call.

Very truly yours,

Sealy H. Cavin, Jr.

SHC/jas

Enclosure

31

cc: Mark B. Murphy, President -- Strata Production Company, w/Enclosure
Robert G. Stovall, Esq., General Counsel -- Oil Conservation Division, w/Enclosure

EXHIBIT
S

POST OFFICE DRAWER 1030
ROSWELL, NM 88202-1030

STRATA PRODUCTION COMPANY

TELEPHONE (505) 622-1127
FACSIMILE (505) 623-3533

200 WEST FIRST STREET, ROSWELL PETROLEUM BUILDING, SUITE 700
ROSWELL, NEW MEXICO 88201

January 13, 1993

Via Telefax (915 682-6439)/Hard Copy by Certified Mail

Mitchell Energy Corporation
1000 Independence Plaza
400 West Illinois
Midland, Texas 79701
Attn: Steve Smith

Re: Leasehold Ownership Information
North Gavilon Prospect
NM #92957, S/2 SW/4, SW/4 SE/4
Section 28, T-20-S, R-33-E
Lea County, New Mexico

Dear Mr Smith:

During our telephone conversation this morning you expressed some concern that you had not been provided a list of leasehold partners and ownership in the above referenced lease. As Mitchell has set a compulsory pooling and unorthodox gas well location hearing (Case #10656) for Thursday January 21, 1993, I provide this information to facilitate your notification of said owners. Strata has or is in the process of making a direct assignment of each partners proportionate ownership. The names, addresses and ownership is as follows:

Name/Address	Leasehold Ownership
Arrowhead Oil Corporation P.O. Box 548 Artesia, New Mexico 88211-0548	6.25%
Branko, Inc. 45 Beaverbrook Crescent St. Albert, Alberta, Canada, T8N2L-4	1.56250%
Duane Brown 1315 Marquette PL, NE Albuquerque, New Mexico 87106	5.0%
S.H. Cavin P.O. Box 1125 Roswell, New Mexico 88202	2.0%

Name/Address	Leasehold Ownership
Robert W. Eaton 2505 Don Juan NW Albuquerque, New Mexico 87104	1.56250%
Terry & Barb Kramer 5108 Irving BLVD., N.W. Albuquerque, New Mexico 87114	30.0%
Landwest 215 West 100 South Salt Lake City, UT 84101	1.0%
Candance McClelland 4 Country Hill Road Roswell, New Mexico 88201	2.1250%
Permian Hunter Corporation 215 West 100 South Salt Lake City, UT 84101	4.0%
Scott Exploration, Inc. 200 W. First Suite 648 Roswell, New Mexico 88201	9.0%
Strata Production Company 200 W. First, Suite 700 P.O. Box 1030 Roswell, New Mexico 88202	18.50%
Warren, Inc. P.O. Box 7250 Albuquerque, New Mexico 87194-7250	5.0%
Charles J. Wellborn P.O. Box 2168 Albuquerque, New Mexico 87103-2168	2.0%
Winn Investments, Inc. 706 W. Brazos Roswell, New Mexico 88201	1.0%
Lori Scott Worrall 200 W. First, Suite 648 Roswell, New Mexico 88201	1.0%
Xion Investments 215 West 100 South Salt Lake City, UT 84101	10.0%
	Total 100%

In addition the following own a overriding royalty interest (ORRI) as set forth below:

Name/Address	ORRI
Steve Mitchell 200 W. First, Suite 648 Roswell, New Mexico 88201	.5
George L. Scott III 200 W. First, Suite 648 Roswell, New Mexico 88201	.5
Scott Exploration Inc. 200 W. First, Suite 648 Roswell, New Mexico 88201	.5
	Total 1.5%

If I may be of further assistance please call.

Very truly yours,

STRATA PRODUCTION COMPANY

Mark B. Murphy
President

cc: Sealy H. Cavin, Jr., Esq.

MBM/mo

STRATTON & CAVIN, P.A.
ATTORNEYS & COUNSELORS AT LAW

HAROLD D. STRATTON, JR.
SEALY H. CAVIN, JR.*
DEBORAH R. JENKIN

*NEW MEXICO BOARD OF LEGAL SPECIALIZATION RECOGNIZED SPECIALIST IN THE AREA OF NATURAL RESOURCES - OIL AND GAS LAW

320 GOLD AVENUE, S.W.
SUITE 1200
P. O. BOX 1216
ALBUQUERQUE, NEW MEXICO 87103-1216

TELEPHONE (505) 243-5400
FACSIMILE (505) 243-1700

May 11, 1993

W. Thomas Kellahin, Esq.
Kellahin and Kellahin
P.O. Box 2265
Santa Fe, New Mexico 87504-2265

Re: OCD Case 10656 -- In the Matter of the Application of Mitchell Energy Corporation for Compulsory Pooling and Unorthodox Gas Well Location, Lea County, New Mexico

Dear Tom:

The following is in response to your letter dated May 6, 1993:

1. We continue to believe that only the parties that have received proper notice are bound by the above-described OCD Order. This is, of course, a matter you will have to advise your client on. If you are comfortable with your position that all working interest owners under the S½SW¼ are bound by the Order, then that is certainly your decision. Of course, if you are wrong and Mitchell makes a good well, there may be a considerable amount of money to fight about (by my calculations, 25% x 81.5% x $1,400,000.00 x 200% = $570,000.00). We, of course, acknowledge that Strata's 18.5% interest is subject to the Order.

2. Section 70-2-18 NMSA 1978 clearly places the "obligation" to force pool on the operator. Based on this statutory provision, we fail to see how it is that Strata is "responsible to the Division and to Mitchell" for all interest under the S½SW¼. Indeed, we fail to understand what exactly Strata's responsibility is in this matter vis-a-vis Mitchell and the other working interest owners under the S½SW¼. In any case, in light of Mitchell's "all or none" approach, we cannot understand what, if anything, Strata can do.

EXHIBIT
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3. Finally, we believe that due process requires that Mitchell provide notice to all affected interest owners. This is particularly true where the operator has actual notice of such interest owners. In our view, when in doubt, notice and a chance to be heard should be provided by the operator. If Mitchell proceeds without providing such notice, then it does so at its peril. Strata certainly has no responsibility to provide such notice. In this case, Strata is merely a working interest owner owning an undivided 18.5% of the working interest.

Very truly yours,

Sealy H. Cavin, Jr.

SHC/jas

cc: Mark B. Murphy, President -- Strata Production Company
Robert G. Stovall, Esq., General Counsel -- Oil Conservation Division

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

IN THE MATTER OF THE HEARING CALLED
BY THE OIL CONSERVATION DIVISION
FOR THE PURPOSE OF CONSIDERING:

CASE NO. 10656

APPLICATION OF MITCHELL ENERGY
CORPORATION FOR COMPULSORY POOLING
AND AN UNORTHODOX GAS WELL LOCATION,
LEA COUNTY, NEW MEXICO

CERTIFICATE OF MAILING

AND

COMPLIANCE WITH ORDER R-8054

W. THOMAS KELLAHIN, attorney in fact and authorized representative of MITCHELL ENERGY CORPORATION, states that the notice provisions of Division Rule 1207 (Order R-8054) have been complied with, that Applicant has caused to be conducted a good faith diligent effort to find the correct addresses of all interested parties entitled to receive notice, that on DECEMBER 7, 1992, I caused to be mailed by certified mail return-receipt requested notice of this hearing and a copy of the application for the above referenced case along with the cover letter, at least twenty days prior to the hearing set for JANUARY 21, 1993 to the parties shown in the application as evidenced by the attached copies of return receipt cards, and that pursuant to Division Rule 1207, notice has been given at the correct addresses provided by such rule.

W. Thomas Kellahin

SUBSCRIBED AND SWORN to before me this 19TH day of JANUARY, 1993.

Notary Public

JAY C. LAUBSCHER

My Commission Expires:

10/7/95

cert118.031

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EXHIBIT
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BEFORE EXAMINER STOGNER
Oil Conservation Division
Mitchell Exhibit No. 19
Case No. 10656

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.

Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. ☐ Show to whom delivered, date, and addressee's address (*Extra charge*)
2. ☐ Restricted Delivery (*Extra charge*)

3. Article Addressed to:

Mark E. Murphy
Strata Production Company
648 Petroleum Building
Roswell, NM 88201

4. Article Number: P676 666 381

Type of Service:
- ☐ Registered
- ☐ Insured
- ☑ Certified
- ☐ COD
- ☐ Express Mail
- ☐ Return Receipt for Merchandise

Always obtain signature of addressee or agent and DATE DELIVERED

5. Signature — Addressee
X

6. Signature — Agent
X Jan Starnes

7. Date of Delivery: 12-9-92

8. Addressee's Address (*ONLY if requested and fee paid*)

PS Form 3811, Apr. 1989 * U.S.G.P.O. 1989-238-815 DOMESTIC RETURN RECEIPT

MWK FP Ton 28#1

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.

Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. ☐ Show to whom delivered, date, and addressee's address. (*Extra charge*)
2. ☐ Restricted Delivery (*Extra charge*)

3. Article Addressed to:

Southwestern Resources
111 W. Country Club Road
Roswell, NM 88201

MWK FP Ton 28#

4. Article Number: P676 666 382

Type of Service:
- ☐ Registered
- ☐ Insured
- ☑ Certified
- ☐ COD
- ☐ Express Mail
- ☐ Return Receipt for Merchandise

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature — Addressee
X Mary Beth Neaman

6. Signature — Agent
X

7. Date of Delivery: 12-9-92

8. Addressee's Address (*ONLY if requested and fee paid*)

PS Form 3811, Apr. 1989 * U.S.G.P.O. 1989-238-815 DOMESTIC RETURN RECEIPT

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, and 4a & b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt Fee will provide you the signature of the person delivered to and the date of delivery.

I also wish to receive the following services (for an extra fee):

1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

Enerlock Resources, Inc.
516 Mechem Drive
Ruidoso, NM 88345-9449

4a. Article Number: P676 666 383

4b. Service Type
- ☐ Registered
- ☐ Insured
- ☑ Certified
- ☐ COD
- ☐ Express Mail
- ☐ Return Receipt for Merchandise

7. Date of Delivery: 12.9.92

5. Signature (Addressee)

8. Addressee's Address (Only if requested and fee is paid)

6. Signature (Agent)

PS Form 3811, November 1990 * U.S.G.P.O. 1991—287-068 DOMESTIC RETURN RECEIPT

SENDER: Complete items 1 and 2 when additional services are desir 1 complete items 3 and 4.

Put your address in th URN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. ☐ Show to whom delivered, date, and addressee's address. *(Extra charge)*
2. ☐ Restricted Delivery *(Extra charge)*

3. Article Addressed to:

Santa Fe Energy Operating
Partners, L.P.
550 W. Texas, Suite 1330
Midland, TX 79701

Mit FP Tom 28

4. Article Number
P676 666 384

Type of Service:
☐ Registered ☐ Insured
☑ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature — Addressee
X

6. Signature — Agent
X Betty Parks

7. Date of Delivery
12-14-92

8. Addressee's Address *(ONLY if requested and fee paid)*

PS Form **3811**, Apr. 1989 *U.S.G.P.O. 1989-238-815 DOMESTIC RETURN RECEIPT

SENDER:
- Complete items 1 and/or 2 for additional services.
- Complete items 3, and 4a & b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):
1. ☐ Addressee's Address
2. ☐ Restricted Delivery
Consult postmaster for fee.

3. Article Addressed to:

Maralo, Inc.
P.O. Box 832
Midland, TX 79702

Mit FP Tom 28

4a. Article Number
P676 666 385

4b. Service Type
☐ Registered ☐ Insured
☑ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

7. Date of Delivery DEC 10 1992

5. Signature (Addressee)
D. Guzman

6. Signature (Agent)

8. Addressee's Address (Only if requested and fee is paid)

PS Form **3811**, December 1991 *U.S. GPO: 1992—323-402 DOMESTIC RETURN RECEIPT

Thank you for using Return Receipt Service.

SENDER:
- Complete items 1 and/or 2 for additional services.
- Complete items 3, and 4a & b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):
1. ☐ Addressee's Address
2. ☐ Restricted Delivery
Consult postmaster for fee.

3. Article Addressed to:

Phillips Petroleum Co.
4001 Penbrook, Ste 401
Odessa, TX 79762

Mit. FP Tom 28

4a. Article Number
P 676 666 386

4b. Service Type
☐ Registered ☐ Insured
☑ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

7. Date of Delivery
12-10-92

5. Signature (Addressee)

6. Signature (Agent)

8. Addressee's Address (Only if requested and fee is paid)

Thank you for using Return Receipt Service.

Is your RETURN ADDRESS completed on the reverse side?

SENDER:
- Complete items 1 and/or 2 for additional services.
- Complete items 3, and 4a & b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):
1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

Oryx Energy Corporation
(Formerly Sun Exploration)
P.O. Box 2880
Dallas, TX 75221-2880

4a. Article Number
P676 666 387

4b. Service Type
☐ Registered ☐ Insured
☑ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

7. Date of Delivery
DEC 09 1992

MIT FP Tom 28

5. Signature (Addressee)

8. Addressee's Address (Only if requested and fee is paid)

6. Signature (Agent)

PS Form **3811**, December 1991 ☆U.S. GPO: 1992—323-402 **DOMESTIC RETURN RECEIPT**

Thank you for using Return Receipt Service.

Is your RETURN ADDRESS completed on the reverse side?

SENDER:
- Complete items 1 and/or 2 for additional services.
- Complete items 3, and 4a & b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):
1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

Grace Petroleum Corp.
6501 North Broadway
Oklahoma City, OK 73116

4a. Article Number
P676 666 388

4b. Service Type
☐ Registered ☐ Insured
☑ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

7. Date of Delivery
12/11

MIT FP Tom 28

5. Signature (Addressee)

8. Addressee's Address (Only if requested and fee is paid)

6. Signature (Agent)

PS Form **3811**, December 1991 ☆U.S. GPO: 1992—323-402 **DOMESTIC RETURN RECEIPT**

Thank you for using Return Receipt Service.

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

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
DIVISION FOR THE PURPOSE OF
CONSIDERING:

Case No. 10656
Order No. R-9845

APPLICATION OF MITCHELL ENERGY
CORPORATION FOR COMPULSORY POOLING
AND AN UNORTHODOX GAS WELL LOCATION,
LEA COUNTY, NEW MEXICO

AFFIDAVIT OF STEPHEN T. MITCHELL IN SUPPORT OF MOTION TO REOPEN CASE OR, IN THE ALTERNATIVE, APPLICATION FOR HEARING DE NOVO

STATE OF NEW MEXICO)
) ss.
COUNTY OF CHAVES)

I, Stephen T. Mitchell, of lawful age, being first duly sworn upon oath, depose and state as follows:

1. I am over the age of eighteen years and competent to give this Affidavit.

2. I own a .5% overriding royalty interest in, to and under United States Oil and Gas Lease NM57683 which covers the following lands in Lea County, New Mexico:

Township 20 South, Range 33 East, N.M.P.M.
Section 33: All
Containing 640.00 acres, more or less.

This Lease is known as and herein referred to as the "Strata Gavilon Lease."

3. My overriding royalty interest in the Strata Gavilon Lease was acquired in consideration of geological services rendered in connection with the origination of the prospect with covers such Lease.

EXHIBIT
P

4. On or about November 1, 1989, I received a .5% overriding royalty interest in, to and under United States Oil and Gas Lease NM82927 which covers the following lands in Lea County, New Mexico:

Township 20 South, Range 33 East, N.M.P.M.
Section 28: S/2SW/4, SW/4SE/4
Containing 120.00 acres, more or less.

This Lease is known as and herein referred to as the "Strata North Gavilon Lease." As of the date of this Affidavit, I still own the above-described interest.

5. I received the .5% overriding royalty interest in the Strata North Gavilon Lease in consideration of geological services which I rendered in connection with the origination and acquisition of such Lease.

6. I did not receive notice of Mitchell Energy Corporation's Application in Oil Conservation Division Case No. 10656.

7. I was not offered or afforded an opportunity to share in production from the Mitchell Energy Corporation's Tomahawk "28" Federal Com No. 1 Well, located 1980 FWL and 1650 FNL of Section 28, Township 20 South, Range 33 East, N.M.P.M., Lea County, New Mexico.

8. This Affidavit is given in support of the Motion to Reopen Case No. 10656 and for no other purpose.

FURTHER AFFIANT SAYETH NOT.

Stephen T. Mitchell

Stephen T. Mitchell

Subscribed and sworn to before me this 19 day of January, 1996.

Karen K Herman

Notary Public

My Commission Expires:

4-16-98

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

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
DIVISION FOR THE PURPOSE OF
CONSIDERING:

Case No. 10656
Order No. R-9845

APPLICATION OF MITCHELL ENERGY
CORPORATION FOR COMPULSORY POOLING
AND AN UNORTHODOX GAS WELL LOCATION,
LEA COUNTY, NEW MEXICO

AFFIDAVIT OF CHARLES WARREN SCOTT
IN SUPPORT OF MOTION TO REOPEN CASE OR,
IN THE ALTERNATIVE, APPLICATION FOR HEARING DE NOVO

STATE OF NEW MEXICO)
) ss.
COUNTY OF CHAVES)

I, Charles Warren Scott, of lawful age, being first duly sworn upon oath, depose and state as follows:

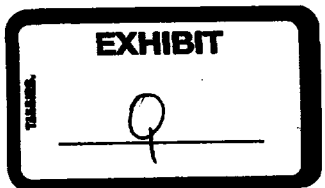
1. I am over the age of eighteen years and competent to give this Affidavit.

2. I am President of Scott Exploration, Inc., a New Mexico Corporation ("Scott"), and I am familiar with its affairs.

3. Scott owns a .5% overriding royalty interest in, to and under United States Oil and Gas Lease NM57683 which covers the following lands in Lea County, New Mexico:

Township 20 South, Range 33 East, N.M.P.M.
Section 33: All
Containing 640.00 acres, more or less.

This Lease is known as and herein referred to as the "Strata Gavilon Lease."



4. Scott's overriding royalty interest in the Strata Gavilon Lease was acquired in consideration of geological services rendered in connection with the origination of the prospect with covers such Lease.

5. On or about November 1, 1989, Scott received a .5% overriding royalty interest in, to and under United States Oil and Gas Lease NM82927 which covers the following lands in Lea County, New Mexico:

Township 20 South, Range 33 East, N.M.P.M.
Section 28: S/2SW/4, SW/4SE/4
Containing 120.00 acres, more or less.

This Lease is known as and herein referred to as the "Strata North Gavilon Lease." As of the date of this Affidavit, Scott still owns the above-described interest.

6. Scott received the .5% overriding royalty interest in the Strata North Gavilon Lease in consideration of geological services which Scott rendered in connection with the origination and acquisition of such Lease.

7. Scott did not receive notice of Mitchell Energy Corporation's Application in Oil Conservation Division Case No. 10656.

8. Scott was not offered or afforded an opportunity to share in production from the Mitchell Energy Corporation's Tomahawk "28" Federal Com No. 1 Well, located 1980 FWL and 1650 FNL of Section 28, Township 20 South, Range 33 East, N.M.P.M., Lea County, New Mexico.

9. This Affidavit is given in support of the Motion to Reopen Case No. 10656 and for no other purpose.

FURTHER AFFIANT SAYETH NOT.

Charles Warren Scott

Charles Warren Scott

Subscribed and sworn to before me this 19 day of January, 1996.

Notary Public

My Commission Expires:

6-16-98

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

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
DIVISION FOR THE PURPOSE OF
CONSIDERING:

Case No. 10656
Order No. R-9845

APPLICATION OF MITCHELL ENERGY
CORPORATION FOR COMPULSORY POOLING
AND AN UNORTHODOX GAS WELL LOCATION,
LEA COUNTY, NEW MEXICO

AFFIDAVIT OF MARK B. MURPHY IN SUPPORT OF MOTION TO REOPEN CASE OR, IN THE ALTERNATIVE, APPLICATION FOR HEARING DE NOVO

STATE OF NEW MEXICO)
) ss.
COUNTY OF CHAVES)

I, Mark B. Murphy, of lawful age, being first duly sworn upon oath, depose and state as follows:

1. I am over the age of eighteen years and competent to give this Affidavit.

2. Strata Production Company ("Strata") is a New Mexico Corporation with its principal place of business in Roswell, New Mexico. Strata's principal business is the exploration and production of oil and gas. I am the President of Strata and I am familiar with the matters covered by this Affidavit.

3. Strata is the Operator of the Gavilon Federal No. 1 Well which is located on United States Oil and Gas Lease NM57683 which covers the following lands in Lea County, New Mexico:

EXHIBIT
R

Township 20 South, Range 33 East, N.M.P.M.
Section 33: All
Containing 640.00 acres, more or less.

This Lease is known as and herein referred to as the "Strata Gavilon Lease."

4. In late 1989, Strata acquired United States Oil and Gas Lease NM82927 at a Federal lease sale. This lease covers the following lands in Lea County, New Mexico:

Township 20 South, Range 33 East, N.M.P.M.
Section 28: S/2SW/4, SW/4SE/4
Containing 120.00 acres, more or less.

This Lease is known as and herein referred to as the "Strata North Gavilon Lease."

5. In late 1989, Strata offered the Strata North Gavilon Lease to the working interest owners in the Strata Gavilon Lease. Some of the parties accepted the offer and purchased an interest in the leasehold operating rights in such lease, and others declined the offer. The remaining interest in the Strata North Gavilon Lease was sold to new parties or retained by Strata. The division of interest following the sale by Strata is set forth in the letter from Strata to Mitchell Energy Corporation dated January 13, 1993, a copy of which is attached hereto as Exhibit A. The interest sold by Strata was sold subject to a 1.5% geologic override divided as follows:

Steve Mitchell	.5%
George L. Scott, III	.5%
Scott Exploration, Inc.	.5%
Total	**1.5%**

This override is also reflected at Exhibit A.

6. Following the sale by Strata of the interest in the Strata North Gavilon Lease as indicated hereinabove at Paragraph 5, Strata retained all of the record title interest subject to the beneficial interest of the parties as described at Exhibit A hereto.

7. Consistent with the division of interest reflected at Exhibit A hereto, Strata recently made and recorded an Assignment of Overriding Royalty Interest and an Assignment of Leasehold Operating Rights. The Assignment of Overriding Royalty Interest is attached hereto as Exhibit B, and the Assignment of Leasehold Operating Rights is attached hereto as Exhibit C.

8. The owners of the leasehold operating rights as reflected at Exhibits A and C have paid their share of the rentals paid with respect to the Strata North Gavilon Lease.

9. This Affidavit is given in support of the Motion to Reopen Case No. 10656 and for no other purpose.

FURTHER AFFIANT SAYETH NOT.

Mark B. Murphy

Subscribed and sworn to before me this 17 day of January, 1996.

Notary Public

My Commission Expires:

February 10, 1999

THIS EXHIBIT A IS ATTACHED TO AND MADE A PART OF THE AFFIDAVIT OF MARK MURPHY IN SUPPORT OF MOTION TO RECONSIDER, OR, IN THE ALTERNATIVE, APPLICATION FOR HEARING DE NOVO IN CASE NO. 10656.

EXHIBIT A

POST OFFICE DRAWER 1030
ROSWELL, NM 88202-1030

STRATA PRODUCTION COMPANY

TELEPHONE (505) 622-1127
FACSIMILE (505) 623-3533

200 WEST FIRST STREET, ROSWELL PETROLEUM BUILDING, SUITE 700
ROSWELL, NEW MEXICO 88201

January 13, 1993

Via Telefax (915 682-6439)/Hard Copy by Certified Mail

Mitchell Energy Corporation
1000 Independence Plaza
400 West Illinois
Midland, Texas 79701
Attn: Steve Smith

Re: Leasehold Ownership Information
North Gavilon Prospect
NM #92957, S/2 SW/4, SW/4 SE/4
Section 28, T-20-S, R-33-E
Lea County, New Mexico

Dear Mr Smith:

During our telephone conversation this morning you expressed some concern that you had not been provided a list of leasehold partners and ownership in the above referenced lease. As Mitchell has set a compulsory pooling and unorthodox gas well location hearing (Case #10656) for Thursday January 21, 1993, I provide this information to facilitate your notification of said owners. Strata has or is in the process of making a direct assignment of each partners proportionate ownership. The names, addresses and ownership is as follows:

Name/Address	Leasehold Ownership
Arrowhead Oil Corporation P.O. Box 548 Artesia, New Mexico 88211-0548	6.25%
Branko, Inc. 45 Beaverbrook Crescent St. Albert, Alberta, Canada, T8N2L-4	1.56250%
Duane Brown 1315 Marquette PL, NE Albuquerque, New Mexico 87106	5.0%
S.H. Cavin P.O. Box 1125 Roswell, New Mexico 88202	2.0%

Name/Address	Leasehold Ownership
Robert W. Eaton 2505 Don Juan NW Albuquerque, New Mexico 87104	1.56250%
Terry & Barb Kramer 5108 Irving BLVD., N.W. Albuquerque, New Mexico 87114	30.0%
Landwest 215 West 100 South Salt Lake City, UT 84101	1.0%
Candance McClelland 4 Country Hill Road Roswell, New Mexico 88201	2.1250%
Permian Hunter Corporation 215 West 100 South Salt Lake City, UT 84101	4.0%
Scott Exploration, Inc. 200 W. First Suite 648 Roswell, New Mexico 88201	9.0%
Strata Production Company 200 W. First, Suite 700 P.O. Box 1030 Roswell, New Mexico 88202	18.50%
Warren, Inc. P.O. Box 7250 Albuquerque, New Mexico 87194-7250	5.0%
Charles J. Wellborn P.O. Box 2168 Albuquerque, New Mexico 87103-2168	2.0%
Winn Investments, Inc. 706 W. Brazos Roswell, New Mexico 88201	1.0%
Lori Scott Worrall 200 W. First, Suite 648 Roswell, New Mexico 88201	1.0%
Xion Investments 215 West 100 South Salt Lake City, UT 84101	10.0%
	Total 100%

In addition the following own a overriding royalty interest (ORRI) as set forth below:

Name/Address	ORRI
Steve Mitchell 200 W. First, Suite 648 Roswell, New Mexico 88201	.5
George L. Scott III 200 W. First, Suite 648 Roswell, New Mexico 88201	.5
Scott Exploration Inc. 200 W. First, Suite 648 Roswell, New Mexico 88201	.5
	Total 1.5%

If I may be of further assistance please call.

Very truly yours,

STRATA PRODUCTION COMPANY

Mark B. Murphy
President

cc: Sealy H. Cavin, Jr., Esq.

MBM/mo

THIS EXHIBIT B IS ATTACHED TO AND MADE A PART OF THE AFFIDAVIT MARY MURPHY IN SUPPORT OF MOTION TO RE N CA OR, IN THE ALTERNATIVE, APPLICATION FOR HEARING DE NOVO IN CASE NO. 10656.

EXHIBIT B

82390

MISC 611 PAGE 653

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

FORM APPROVED
OMB NO. 1004-0034
Expires: July 31, 1995

After filing return to:
Strata Production Company
200 West 1st Street, Suite 700
Roswell, NM 88201
Attn: Jo McInerney, Landman

TRANSFER OF OPERATING RIGHTS (SUBLEASE) IN A LEASE FOR OIL AND GAS OR GEOTHERMAL RESOURCES

Lease Serial No.

NM-82957

Mineral Leasing Act of 1920 (30 U.S.C. 181 et seq.)
Act for Acquired Lands of 1947 (30 U.S.C. 351-359)
Geothermal Steam Act of 1970 (30 U.S.C. 1001-1025)
Department of the Interior Appropriations Act, Fiscal Year 1981 (42 U.S.C. 6508)

Type or print plainly in ink and sign in ink.

PART A: TRANSFER

Transferee (Sublessee)*
Street
City, State, ZIP Code

See Exhibit A Which is Attached Hereto For a List of the Transferees and Their Percentage Interest.

more than one transferee, check here ☒ and list the name(s) and address(es) of all additional transferees on the reverse of this form or on a parate attached sheet of paper.

his transfer is for: *(Check one)* ☒ Oil and Gas Lease, or ☐ Geothermal Lease

terest conveyed: *(Check one or both, as appropriate)* ☐ Operating Rights (sublease) ☒ Overriding Royalty, payment out of production or other similar interests or payments

This transfer (sublease) conveys the following interest:

Land Description	Percent of Interest			Percent of Overriding Royalty or Similar Interests	
ditional space on reverse, if needed. Do not submit documents or agreements other than form; such documents or agreements shall only be referenced herein.	Owned	Conveyed	Retained	Reserved	Previously reserved or conveyed
a	b	c	d	e	f
The following lands in Lea County, New Mexico: Township 20 South, Range 33 East, N.M.P.M. Section 28: S/2SW/4, SW/4SE/4	100%*	1.5%*	100%*	0	0

This Transfer of Overriding Royalty Interest shall be effective as of the effective date of Lease NM-82957, November 1, 1989.

*Strata owns 100% of the record title interest and leasehold operating rights. Strata is conveying a 1.5% overriding royalty interest to the parties and in the percentages indicated at Exhibit A hereto. Strata is retaining 100% of the record title interest and 100% of the leasehold operating rights, subject to the 1.5% overriding royalty interest which is hereby conveyed.

53

FOR BLM USE ONLY—DO NOT WRITE BELOW THIS LINE

THE UNITED STATES OF AMERICA

is transfer is approved solely for administrative purposes. Approval does not warrant that either party to this transfer holds legal or equitable le to this lease.

Part A (Continued): ADDITIONAL SPACE fo mes ar dresses of additional transferees in Item No. neede for Land Description in Item No. 2 if needed

MISC 611 PAGE 654

STATE OF NEW MEXICO)
) ss.
COUNTY OF CHAVES)

The foregoing instrument was acknowledged before me this 7th day of November, 1995, by Mark B. Murphy, President of Strata Production Company.

Notary Public Jo McInerney

My Commission Expires:
May 22, 1998

PART B: CERTIFICATION AND REQUEST FOR APPROVAL

1. The transferor certifies as owner of an interest in the above designated lease that he/she hereby transfers to the above transferee(s) the rights specified above.

2. Transferee certifies as follows: (a) Transferee is a citizen of the United States; an association of such citizens; a municipality; or a corporation organized under the laws of the United States or of any State or territory thereof. For the transfer of NPR-A leases, transferee is a citizen, national, or resident alien of the United States or associations of such citizens, nationals, resident aliens or private, public or municipal corporations; (b) Transferee is not considered a minor under the laws of the State in which the lands covered by this transfer are located; (c) Transferee's chargeable interests, direct and indirect, in each public domain and acquired lands separately in the same State, do not exceed 246,080 acres in oil and gas leases (of which up to 200,000 acres may be in oil and gas options), or 300,000 acres in leases in each leasing District in Alaska of which up to 200,000 acres may be in options, if this is an oil and gas lease issued in accordance with the Mineral Leasing Act of 1920, or 51,200 acres in any one State if this is a geothermal lease; and (d) All parties holding an interest in the transfer are otherwise in compliance with the regulations (43 CFR Group 3100 or 3200) and the authorizing Acts; (e) Transferee is in compliance with reclamation requirements for all Federal oil and gas lease holdings as required by sec. 17(g) of the Mineral Leasing Act; and (f) Transferee is not in violation of sec. 41 of the Mineral Leasing Act.

3. Transferee's signature to this assignment constitutes acceptance of all applicable terms, conditions, stipulations and restrictions pertaining to the lease described herein. Applicable terms and conditions include, but are not limited to, an obligation to conduct all operations on the leasehold in accordance with the terms and conditions of the lease, to condition all wells for proper abandonment, to restore the leased lands upon completion of any operations as described in the lease, and to furnish and maintain such bond as may be required by the lessor pursuant to regulations 43 CFR 3104, 3134, or 3206.

For geothermal transfers, an overriding royalty may not be less than one-fourth (¼) of one percent of the value of output, nor greater than 50 percent of the rate of royalty due to the United States when this transfer is added to all previously created overriding royalties (43 CFR 3241).

I certify that the statements made herein by me are true, complete, and correct to the best of my knowledge and belief and are made in good faith.

Executed this 7th day of November, 19 95

Name of Transferor Strata Production Company
Please type or print

Transferor By: _____
or (Signature)
Attorney-in-fact Mark B. Murphy, President
(Signature)

200 West 1st Street, Suite 700
(Transferor's Address)

Roswell, New Mexico 88201
(City) (State) (Zip Code)

Executed this _____ day of _____, 19 _____

Transferee _____
or (Signature)
Attorney-in-fact _____
(Signature)

See Separate Transferee Signature Pages Attached Hereto

54

BURDEN HOURS STATEMENT

Public reporting burden for this form is estimated to average 30 minutes per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments regarding the burden estimate or any other aspect of this form to U.S. Department of the Interior, Bureau of Land Management, (Alternate) Bureau Clearance Officer, (WO-771), 18 and C Streets, N.W., Washington, D.C. 20240, and the Office of Management and Budget, Paperwork Reduction Project (1004-0034), Washington, D.C. 20503.

Title 18 U.S.C. Sec. 1001 makes it a crime for any person knowingly and willfully to make to any Department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

*U.S. GPO: 1992-774-017/67023

THIS EXHIBIT A IS ATTACHED TO AND MADE A PART OF THE TRANSFER (\VERP 'G ROYALTY INTEREST BY AND BETWEEN . .ATA ..ODUCTION COMPANY AND VARIOUS TRANSFEREES.

MISC 611 PAGE 655

EXHIBIT A

TRANSFEREES

Name/Address	Percentage Overriding Royalty Interest
Steve Mitchell 200 West First Street, Suite 648 Roswell, New Mexico 88201	.5%
George L. Scott, III 200 West First Street, Suite 648 Roswell, New Mexico 88201	.5%
Scott Exploration, Inc,. 200 West First Street, Suite 648 Roswell, New Mexico 88201	.5%
Total	**1.5%**

STATE OF NEW MEXICO
COUNTY OF LEA
FILED

NOV 8 1995

at 11:07 o'clock A M
and recorded in Book 611
Page 653
Pat Chappelle, Lea County Clerk
By Ruth Mones Deputy

82390

55

THIS EXHIBIT C IS ATTACHED TO AND MADE A PART OF THE AFFIDAVIT MARI MURPHY IN SUPPORT OF MOTION TO RE. N CAS JR, IN THE ALTERNATIVE, APPLICATION FOR HEARING DE NOVO IN CASE NO. 10656.

EXHIBIT C

orm 3000-3a
October 1992)

MISC 611 PAGE 656

86331

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

FORM APPROVED
OMB NO. 1004-0034
Expires: July 31, 1995

After filing return to:
Strata Production Company
200 West 1st Street, Suite 700
Roswell, NM 88201
Attn: Jo McInerney, Landman

TRANSFER OF OPERATING RIGHTS (SUBLEASE) IN A LEASE FOR OIL AND GAS OR GEOTHERMAL RESOURCES

Mineral Leasing Act of 1920 (30 U.S.C. 181 et seq.)
Act for Acquired Lands of 1947 (30 U.S.C. 351-359)
Geothermal Steam Act of 1970 (30 U.S.C. 1001-1025)
Department of the Interior Appropriations Act, Fiscal Year 1981 (42 U.S.C. 6508)

Lease Serial No.

NM-82957
2

Type or print plainly in ink and sign in ink.

PART A: TRANSFER

Transferee (Sublessee)*
Street
City, State, ZIP Code See Exhibit A Which is Attached Hereto For a List of the Transferees and Their Percentage Interest.

If more than one transferee, check here XX and list the name(s) and address(es) of all additional transferees on the reverse of this form or on a separate attached sheet of paper.

This transfer is for: *(Check one)* XX Oil and Gas Lease, or ☐ Geothermal Lease

Interest conveyed: *(Check one or both, as appropriate)* XX Operating Rights (sublease) ☐ Overriding Royalty, payment out of production or other similar interests or payments

This transfer (sublease) conveys the following interest:

Land Description	Percent of Interest			Percent of Overriding Royalty or Similar Interests	
Additional space on reverse, if needed. Do not submit documents or agreements other than this form; such documents or agreements shall only be referenced herein.	Owned	Conveyed	Retained	Reserved	Previously reserved or conveyed
a	b	c	d	e	f
The following lands in Lea County, New Mexico: Township 20 South, Range 33 East, N.M.P.M. Section 28: S/2SW/4, SW/4SE/4	100%	81.5%	18.5%	0	1.5%
This Transfer of Operating Rights shall be effective as of the effective date of Lease NM-82957, November 1, 1989.					

50

FOR BLM USE ONLY—DO NOT WRITE BELOW THIS LINE

THE UNITED STATES OF AMERICA

This transfer is approved solely for administrative purposes. Approval does not warrant that either party to this transfer holds legal or equitable title to this lease.

Part A (Continued). ADDITIONAL SPACE lames ddresses of additional transferees in Item Nc f need r for Land Description in Item No 2 if needed

STATE OF NEW MEXICO)
) ss.
COUNTY OF CHAVES)

The foregoing instrument was acknowledged before me this 7th day of November, 1995, by Mark B. Murphy, President of Strata Production Company.

Notary Public Jo McInerney

My Commission Expires:
May 22, 1999

PART B: CERTIFICATION AND REQUEST FOR APPROVAL

1 The transferor certifies as owner of an interest in the above designated lease that he/she hereby transfers to the above transferee(s) the rights specified above

2 Transferee certifies as follows: (a) Transferee is a citizen of the United States; an association of such citizens; a municipality; or a corporation organized under the laws of the United States or of any State or territory thereof. For the transfer of NPR-A leases, transferee is a citizen, national, or resident alien of the United States or associations of such citizens, nationals, resident aliens or private, public or municipal corporations; (b) Transferee is not considered a minor under the laws of the State in which the lands covered by this transfer are located; (c) Transferee's chargeable interests, direct and indirect, in each public domain and acquired lands separately in the same State, do not exceed 246,080 acres in oil and gas leases (of which up to 200,000 acres may be in oil and gas options), or 300,000 acres in leases in each leasing District in Alaska of which up to 200,000 acres may be in options, if this is an oil and gas lease issued in accordance with the Mineral Leasing Act of 1920, or 51,200 acres in any one State if this is a geothermal lease; and (d) All parties holding an interest in the transfer are otherwise in compliance with the regulations (43 CFR Group 3100 or 3200) and the authorizing Acts; (e) Transferee is in compliance with reclamation requirements for all Federal oil and gas lease holdings as required by sec. 17(g) of the Mineral Leasing Act; and (f) Transferee is not in violation of sec. 41 of the Mineral Leasing Act.

3 Transferee's signature to this assignment constitutes acceptance of all applicable terms, conditions, stipulations and restrictions pertaining to the lease described herein. Applicable terms and conditions include, but are not limited to, an obligation to conduct all operations on the leasehold in accordance with the terms and conditions of the lease, to condition all wells for proper abandonment, to restore the leased lands upon completion of any operations as described in the lease, and to furnish and maintain such bond as may be required by the lessor pursuant to regulations 43 CFR 3104, 3134, or 3206.

For geothermal transfers, an overriding royalty may not be less than one-fourth (¼) of one percent of the value of output, nor greater than 50 percent of the rate of royalty due to the United States when this transfer is added to all previously created overriding royalties (43 CFR 3241).

I certify that the statements made herein by me are true, complete, and correct to the best of my knowledge and belief and are made in good faith.

Executed this 7th day of November, 19 95

Name of Transferor Strata Production Company
Please type or print

Transferor By: _____
or (Signature)
Attorney-in-fact Mark B. Murphy, President
(Signature)

200 West 1st Street, Suite 700
(Transferor's Address)

Roswell, New Mexico 88201
(City) (State) (Zip Code)

Executed this _____ day of _____, 19 _____

Transferee _____
or (Signature)
Attorney-in-fact _____
(Signature)

See Separate Transferee Signature Pages Attached Hereto

57

BURDEN HOURS STATEMENT

Public reporting burden for this form is estimated to average 30 minutes per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments regarding the burden estimate or any other aspect of this form to U.S. Department of the Interior, Bureau of Land Management, (Alternate) Bureau Clearance Officer, (WO-771), 18 and C Streets, N.W., Washington, D.C. 20240, and the Office of Management and Budget, Paperwork Reduction Project (1004-0034), Washington, D.C. 20503.

Title 18 U.S.C. Sec. 1001 makes it a crime for any person knowingly and willfully to make to any Department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

*U.S. GPO: 1992-774-017/67023

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

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
DIVISION FOR THE PURPOSE OF
CONSIDERING:

Case No. 10656
Order No. R-9845

APPLICATION OF MITCHELL ENERGY
CORPORATION FOR COMPULSORY POOLING
AND AN UNORTHODOX GAS WELL LOCATION,
LEA COUNTY, NEW MEXICO

AFFIDAVIT OF LARRY V. LUNT IN SUPPORT OF MOTION TO REOPEN CASE OR, IN THE ALTERNATIVE, APPLICATION FOR HEARING DE NOVO

STATE OF UTAH)
) ss.
COUNTY OF Salt Lake)

I, Larry V. Lunt, of lawful age, being first duly sworn upon oath, depose and state as follows:

1. I am over the age of eighteen years and competent to give this Affidavit.

2. I am Vice President of Permian Hunter Corporation, a New Mexico Corporation ("Permian"), and I am familiar with its affairs.

3. Permian owns an undivided interest in the leasehold operating rights in, to and under United States Oil and Gas Lease NM57683 which covers the following lands in Lea County, New Mexico:

Township 20 South, Range 33 East, N.M.P.M.
Section 33: All
Containing 640.00 acres, more or less.

This Lease is known as and herein referred to as the "Strata Gavilon Lease."

EXHIBIT
I

53

4. On or about September 25, 1989, Permian paid for and acquired 4% of the leasehold operating rights in, to and under United States Oil and Gas Lease NM82927 which covers the following lands in Lea County, New Mexico:

Township 20 South, Range 33 East, N.M.P.M.
Section 28: S/2SW/4, SW/4SE/4
Containing 120.00 acres, more or less.

This Lease is known as and herein referred to as the "Strata North Gavilon Lease." As of the date of this Affidavit, Permian still owns the above-described interest.

5. As consideration for the interest which Permian acquired in the Strata North Gavilon Lease, Permian paid Strata Production Company ("Strata") $810.20.

6. To the best of my knowledge and belief, Permian has paid 4% of the rentals paid by Strata with respect to the Strata North Gavilon Lease.

7. Permian did not receive notice of Mitchell Energy Corporation's Application in Oil Conservation Division Case No. 10656.

8. Permian was not offered or afforded an opportunity to participate in Mitchell Energy Corporation's Tomahawk "28" Federal Com No. 1 Well, located 1980 FWL and 1650 FNL of Section 28, Township 20 South, Range 33 East, N.M.P.M., Lea County, New Mexico.

9. This Affidavit is given in support of the Motion to Reopen Case No. 10656 and for no other purpose.

FURTHER AFFIANT SAYETH NOT.

Larry V. Lunt

Subscribed and sworn to before me this 22nd day of January, 1996.

Notary Public

My Commission Expires:

6/7/97

NOTARY PUBLIC
SHELLEE M. WOODALL
215 WEST 100 SOUTH
SALT LAKE CITY, UT 84101
My Commission Expires JUNE 7, 1997
State of Utah

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

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
DIVISION FOR THE PURPOSE OF
CONSIDERING:

Case No. 10656
Order No. R-9845

APPLICATION OF MITCHELL ENERGY
CORPORATION FOR COMPULSORY POOLING
AND AN UNORTHODOX GAS WELL LOCATION,
LEA COUNTY, NEW MEXICO

AFFIDAVIT OF CHARLES WARREN SCOTT
IN SUPPORT OF MOTION TO REOPEN CASE OR,
IN THE ALTERNATIVE, APPLICATION FOR HEARING DE NOVO

STATE OF NEW MEXICO)
) ss.
COUNTY OF CHAVES)

I, Charles Warren Scott, of lawful age, being first duly sworn upon oath, depose and state as follows:

1. I am over the age of eighteen years and competent to give this Affidavit.

2. I am President of Scott Exploration, Inc., a New Mexico Corporation ("Scott"), and I am familiar with its affairs.

3. Scott owns an undivided interest in the leasehold operating rights in, to and under United States Oil and Gas Lease NM57683 which covers the following lands in Lea County, New Mexico:

Township 20 South, Range 33 East, N.M.P.M.
Section 33: All
Containing 640.00 acres, more or less.

61

EXHIBIT
J

This Lease is known as and herein referred to as the "Strata Gavilon Lease."

4. On or about November 1, 1989, Scott paid for and acquired 9% of the leasehold operating rights in, to and under United States Oil and Gas Lease NM82927 which covers the following lands in Lea County, New Mexico:

Township 20 South, Range 33 East, N.M.P.M.
Section 28: S/2SW/4, SW/4SE/4
Containing 120.00 acres, more or less.

This Lease is known as and herein referred to as the "Strata North Gavilon Lease." As of the date of this Affidavit, Scott still owns the above-described interest.

5. As consideration for the interest which Scott acquired in the Strata North Gavilon Lease, Scott paid Strata Production Company ("Strata") $1,822.95.

6. To the best of my knowledge and belief, Scott has paid 9% of the rentals paid by Strata with respect to the Strata North Gavilon Lease.

7. Scott did not receive notice of Mitchell Energy Corporation's Application in Oil Conservation Division Case No. 10656.

8. Scott was not offered or afforded an opportunity to participate in Mitchell Energy Corporation's Tomahawk "28" Federal Com No. 1 Well, located 1980 FWL and 1650 FNL of Section 28, Township 20 South, Range 33 East, N.M.P.M., Lea County, New Mexico.

9. This Affidavit is given in support of the Motion to Reopen Case No. 10656 and for no other purpose.

62

FURTHER AFFIANT SAYETH NOT.

Charles Warren Scott

Subscribed and sworn to before me this 24th day of January, 1996.

Notary Public

My Commission Expires:

4-16-98

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

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
DIVISION FOR THE PURPOSE OF
CONSIDERING:

Case No. 10656
Order No. R-9845

APPLICATION OF MITCHELL ENERGY
CORPORATION FOR COMPULSORY POOLING
AND AN UNORTHODOX GAS WELL LOCATION,
LEA COUNTY, NEW MEXICO

AFFIDAVIT OF CHARLES I. WELLBORN IN SUPPORT OF MOTION TO REOPEN CASE OR, IN THE ALTERNATIVE, APPLICATION FOR HEARING DE NOVO

STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

I, Charles I. Wellborn, of lawful age, being first duly sworn upon oath, depose and state as follows:

1. I am over the age of eighteen years and competent to give this Affidavit.

2. I own an undivided interest in the leasehold operating rights in, to and under United States Oil and Gas Lease NM57683 which covers the following lands in Lea County, New Mexico:

Township 20 South, Range 33 East, N.M.P.M.
Section 33: All
Containing 640.00 acres, more or less.

This Lease is known as and herein referred to as the "Strata Gavilon Lease."

EXHIBIT
K

63

3. On or about November 1, 1989, I paid for and acquired 2% of the leasehold operating rights in, to and under United States Oil and Gas Lease NM82927 which covers the following lands in Lea County, New Mexico:

Township 20 South, Range 33 East, N.M.P.M.
Section 28: S/2SW/4, SW/4SE/4
Containing 120.00 acres, more or less.

This Lease is known as and herein referred to as the "Strata North Gavilon Lease." As of the date of this Affidavit, I still own the above-described interest.

4. As consideration for the interest which I acquired in the Strata North Gavilon Lease, I paid Strata Production Company ("Strata") $405.10.

5. To the best of my knowledge and belief, I have paid 2% of the rentals paid by Strata with respect to the Strata North Gavilon Lease.

6. I did not receive notice of Mitchell Energy Corporation's Application in Oil Conservation Division Case No. 10656.

7. I was not offered or afforded an opportunity to participate in Mitchell Energy Corporation's Tomahawk "28" Federal Com No. 1 Well, located 1980 FWL and 1650 FNL of Section 28, Township 20 South, Range 33 East, N.M.P.M., Lea County, New Mexico.

8. This Affidavit is given in support of the Motion to Reopen Case No. 10656 and for no other purpose.

FURTHER AFFIANT SAYETH NOT.

Charles I. Wellborn

Subscribed and sworn to before me this 22nd day of January, 1996.

S. L. Marousek
Notary Public

My Commission Expires:

10-6-99

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

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
DIVISION FOR THE PURPOSE OF
CONSIDERING:

Case No. 10656
Order No. R-9845

APPLICATION OF MITCHELL ENERGY
CORPORATION FOR COMPULSORY POOLING
AND AN UNORTHODOX GAS WELL LOCATION,
LEA COUNTY, NEW MEXICO

AFFIDAVIT OF SUSAN SCOTT MURPHY
IN SUPPORT OF MOTION TO REOPEN CASE OR,
IN THE ALTERNATIVE, APPLICATION FOR HEARING DE NOVO

STATE OF NEW MEXICO)
) ss.
COUNTY OF CHAVES)

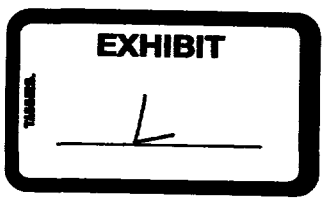
I, Susan Scott Murphy, of lawful age, being first duly sworn upon oath, depose and state as follows:

1. I am over the age of eighteen years and competent to give this Affidavit.

2. I am President of Winn Investments, Inc., a New Mexico Corporation ("Winn"), and I am familiar with its affairs.

3. Winn owns an undivided interest in the leasehold operating rights in, to and under United States Oil and Gas Lease NM57683 which covers the following lands in Lea County, New Mexico:

Township 20 South, Range 33 East, N.M.P.M.
Section 33: All
Containing 640.00 acres, more or less.



66

This Lease is known as and herein referred to as the "Strata Gavilon Lease."

4. On or about November 1, 1989, Winn paid for and acquired 1% of the leasehold operating rights in, to and under United States Oil and Gas Lease NM82927 which covers the following lands in Lea County, New Mexico:

Township 20 South, Range 33 East, N.M.P.M.
Section 28: S/2SW/4, SW/4SE/4
Containing 120.00 acres, more or less.

This Lease is known as and herein referred to as the "Strata North Gavilon Lease." As of the date of this Affidavit, Winn still owns the above-described interest.

5. As consideration for the interest which Winn acquired in the Strata North Gavilon Lease, Winn paid Strata Production Company ("Strata") $202.55.

6. To the best of my knowledge and belief, Winn has paid 1% of the rentals paid by Strata with respect to the Strata North Gavilon Lease.

7. Winn did not receive notice of Mitchell Energy Corporation's Application in Oil Conservation Division Case No. 10656.

8. Winn was not offered or afforded an opportunity to participate in Mitchell Energy Corporation's Tomahawk "28" Federal Com No. 1 Well, located 1980 FWL and 1650 FNL of Section 28, Township 20 South, Range 33 East, N.M.P.M., Lea County, New Mexico.

9. This Affidavit is given in support of the Motion to Reopen Case No. 10656 and for no other purpose.

FURTHER AFFIANT SAYETH NOT.

Susan Scott Murphy

Susan Scott Murphy

Subscribed and sworn to before me this 17 day of January, 1996.

Notary Public

My Commission Expires:

February 10, 1999

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

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
DIVISION FOR THE PURPOSE OF
CONSIDERING:

Case No. 10656
Order No. R-9845

APPLICATION OF MITCHELL ENERGY
CORPORATION FOR COMPULSORY POOLING
AND AN UNORTHODOX GAS WELL LOCATION,
LEA COUNTY, NEW MEXICO

AFFIDAVIT OF LORI SCOTT WORRALL
IN SUPPORT OF MOTION TO REOPEN CASE OR,
IN THE ALTERNATIVE, APPLICATION FOR HEARING DE NOVO

STATE OF NEW MEXICO)
) ss.
COUNTY OF CHAVES)

I, Lori Scott Worrall, of lawful age, being first duly sworn upon oath, depose and state as follows:

1. I am over the age of eighteen years and competent to give this Affidavit.

2. I own an undivided interest in the leasehold operating rights in, to and under United States Oil and Gas Lease NM57683 which covers the following lands in Lea County, New Mexico:

Township 20 South, Range 33 East, N.M.P.M.
Section 33: All
Containing 640.00 acres, more or less.

This Lease is known as and herein referred to as the "Strata Gavilon Lease."

EXHIBIT
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3. On or about November 1, 1989, I paid for and acquired 1% of the leasehold operating rights in, to and under United States Oil and Gas Lease NM82927 which covers the following lands in Lea County, New Mexico:

Township 20 South, Range 33 East, N.M.P.M.
Section 28: S/2SW/4, SW/4SE/4
Containing 120.00 acres, more or less.

This Lease is known as and herein referred to as the "Strata North Gavilon Lease." As of the date of this Affidavit, I still own the above-described interest.

4. As consideration for the interest which I acquired in the Strata North Gavilon Lease, I paid Strata Production Company ("Strata") $202.55.

5. To the best of my knowledge and belief, I have paid 1% of the rentals paid by Strata with respect to the Strata North Gavilon Lease.

6. I did not receive notice of Mitchell Energy Corporation's Application in Oil Conservation Division Case No. 10656.

7. I was not offered or afforded an opportunity to participate in Mitchell Energy Corporation's Tomahawk "28" Federal Com No. 1 Well, located 1980 FWL and 1650 FNL of Section 28, Township 20 South, Range 33 East, N.M.P.M., Lea County, New Mexico.

8. This Affidavit is given in support of the Motion to Reopen Case No. 10656 and for no other purpose.

FURTHER AFFIANT SAYETH NOT.

Lori Scott Worrall

Subscribed and sworn to before me this 24th day of January, 1996.

Notary Public

My Commission Expires:

4-16-98

63

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

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
DIVISION FOR THE PURPOSE OF
CONSIDERING:

Case No. 10656
Order No. R-9845

APPLICATION OF MITCHELL ENERGY
CORPORATION FOR COMPULSORY POOLING
AND AN UNORTHODOX GAS WELL LOCATION,
LEA COUNTY, NEW MEXICO

AFFIDAVIT OF LARRY V. LUNT IN SUPPORT OF MOTION TO REOPEN CASE OR, IN THE ALTERNATIVE, APPLICATION FOR HEARING DE NOVO

STATE OF UTAH)
) ss.
COUNTY OF Salt Lake)

I, Larry V. Lunt, of lawful age, being first duly sworn upon oath, depose and state as follows:

1. I am over the age of eighteen years and competent to give this Affidavit.

2. I am General Partner of Xion Investments, a Utah General Partnership ("Xion"), and I am familiar with its affairs.

3. Xion owns an undivided interest in the leasehold operating rights in, to and under United States Oil and Gas Lease NM57683 which covers the following lands in Lea County, New Mexico:

Township 20 South, Range 33 East, N.M.P.M.
Section 33: All
Containing 640.00 acres, more or less.

This Lease is known as and herein referred to as the "Strata Gavilon Lease."

EXHIBIT
n

4. On or about September 15, 1989, Xion paid for and acquired 10% of the leasehold operating rights in, to and under United States Oil and Gas Lease NM82927 which covers the following lands in Lea County, New Mexico:

Township 20 South, Range 33 East, N.M.P.M.
Section 28: S/2SW/4, SW/4SE/4
Containing 120.00 acres, more or less.

This Lease is known as and herein referred to as the "Strata North Gavilon Lease." As of the date of this Affidavit, Xion still owns the above-described interest.

5. As consideration for the interest which Xion acquired in the Strata North Gavilon Lease, Xion paid Strata Production Company ("Strata") $2025.50.

6. To the best of my knowledge and belief, Xion has paid 10% of the rentals paid by Strata with respect to the Strata North Gavilon Lease.

7. Xion did not receive notice of Mitchell Energy Corporation's Application in Oil Conservation Division Case No. 10656.

8. Xion was not offered or afforded an opportunity to participate in Mitchell Energy Corporation's Tomahawk "28" Federal Com No. 1 Well, located 1980 FWL and 1650 FNL of Section 28, Township 20 South, Range 33 East, N.M.P.M., Lea County, New Mexico.

9. This Affidavit is given in support of the Motion to Reopen Case No. 10656 and for no other purpose.

FURTHER AFFIANT SAYETH NOT.

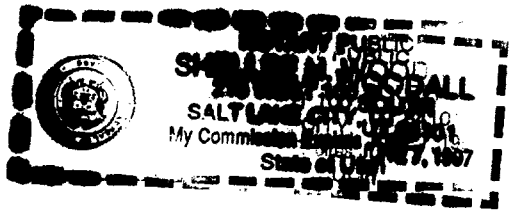
Larry V. Lunt

Subscribed and sworn to before me this 22nd day of January, 1996.

Notary Public

My Commission Expires:

6/2/97



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

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
DIVISION FOR THE PURPOSE OF
CONSIDERING:

Case No. 10656
Order No. R-9845

APPLICATION OF MITCHELL ENERGY
CORPORATION FOR COMPULSORY POOLING
AND AN UNORTHODOX GAS WELL LOCATION,
LEA COUNTY, NEW MEXICO

AFFIDAVIT OF GEORGE L. SCOTT, III IN SUPPORT OF MOTION TO REOPEN CASE OR, IN THE ALTERNATIVE, APPLICATION FOR HEARING DE NOVO

STATE OF NEW MEXICO)
) ss.
COUNTY OF CHAVES)

I, George L. Scott, III, of lawful age, being first duly sworn upon oath, depose and state as follows:

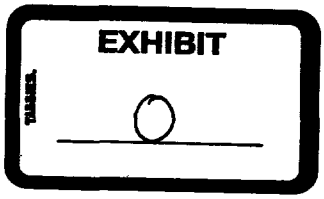
1. I am over the age of eighteen years and competent to give this Affidavit.

2. I own a .5% overriding royalty interest in, to and under United States Oil and Gas Lease NM57683 which covers the following lands in Lea County, New Mexico:

Township 20 South, Range 33 East, N.M.P.M.
Section 33: All
Containing 640.00 acres, more or less.

This Lease is known as and herein referred to as the "Strata Gavilon Lease."

3. My overriding royalty interest in the Strata Gavilon Lease was acquired in consideration of geological services rendered in connection with the origination of the prospect with covers such Lease.



4. On or about November 1, 1989, I received a .5% overriding royalty interest in, to and under United States Oil and Gas Lease NM82927 which covers the following lands in Lea County, New Mexico:

Township 20 South, Range 33 East, N.M.P.M.
Section 28: S/2SW/4, SW/4SE/4
Containing 120.00 acres, more or less.

This Lease is known as and herein referred to as the "Strata North Gavilon Lease." As of the date of this Affidavit, I still own the above-described interest.

5. I received the .5% overriding royalty interest in the Strata North Gavilon Lease in consideration of geological services which I rendered in connection with the origination and acquisition of such Lease.

6. I did not receive notice of Mitchell Energy Corporation's Application in Oil Conservation Division Case No. 10656.

7. I was not offered or afforded an opportunity to share in production from the Mitchell Energy Corporation's Tomahawk "28" Federal Com No. 1 Well, located 1980 FWL and 1650 FNL of Section 28, Township 20 South, Range 33 East, N.M.P.M., Lea County, New Mexico.

8. This Affidavit is given in support of the Motion to Reopen Case No. 10656 and for no other purpose.

FURTHER AFFIANT SAYETH NOT.

George L. Scott, III

Subscribed and sworn to before me this 23rd day of January, 1996.

Notary Public

My Commission Expires:

3-9-96

KELLAHIN AND KELLAHIN
ATTORNEYS AT LAW
EL PATIO BUILDING
117 NORTH GUADALUPE
POST OFFICE BOX 2265
SANTA FE, NEW MEXICO 87504-2265

W. THOMAS KELLAHIN*
*NEW MEXICO BOARD OF LEGAL SPECIALIZATION RECOGNIZED SPECIALIST IN THE AREA OF NATURAL RESOURCES-OIL AND GAS LAW

JASON KELLAHIN (RETIRED 1991)

TELEPHONE (505) 982-4285
TELEFAX (505) 982-2047

May 3, 1995

Michael E. Stogner, Chief Examiner
Oil Conservation Division
2040 South Pacheco
Santa Fe, New Mexico 87502

HAND DELIVERED

Rand Carroll, Esq.
Oil Conservation Division
2040 South Pacheco
Santa Fe, New Mexico 87502

HAND DELIVERED

11510

Re: Branko, Inc. et al. Motion to Reopen Case 10656
Application of Mitchell Energy Corporation
for compulsory pooling for the Tomahawk "28" Federal
Com Well No 1 pursuant to Order R-9845
entered in NMOCD Case 10656

Gentlemen:

On behalf of Mitchell Energy Corporation, please find enclosed our Reply to the Motion to Reopen Case 10656 or in the alternative to a DeNovo Hearing which was filed by Branko, Inc. et al. on January 29, 1996.

We request that this matter be decided by the Division upon the Motion and Reply without a hearing.

Very truly yours,

W. Thomas Kellahin

cc: Harold D. Stratton, Jr., Esq.
Attorney for Branko, Inc. et al.
cc: Mitchell Energy Corporation
Attn: Mark Stephenson

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

IN THE MATTER OF THE HEARING CALLED BY THE OIL CONSERVATION DIVISION FOR THE PURPOSE OF CONSIDERING:

CASE NO. 10656
Order No. R-9845

APPLICATION OF MITCHELL ENERGY CORPORATION FOR COMPULSORY POOLING AND AN UNORTHODOX GAS WELL LOCATION, LEA COUNTY, NEW MEXICO.

MITCHELL ENERGY CORPORATION'S REPLY TO MOTION TO REOPEN CASE OR IN THE ALTERNATIVE APPLICATION FOR HEARING DENOVO FILED BY BRANKO INC, ET AL.

Comes now MITCHELL ENERGY CORPORATION ("Mitchell") by its attorneys, Kellahin & Kellahin, and requests that the New Mexico Oil Conservation Division **deny both** the Motion to Reopen Case 10656 and the Application for DeNovo Hearing filed by Branko, Inc., et al., collectively referred to herein as "Branko" and in support states:

BRANKO IS NOT A PARTY OF RECORD AND THEREFORE IS NOT ENTITLED TO FILE FOR A DENOVO HEARING IN THIS CASE

Branko complains about a compulsory pooling order which was entered on February 15, 1993 and which granted Mitchell's application to compulsory pool Strata Production Company's ("Strata") 25% working interest in the S/2SW/4 of Section 28, T20S, R33E in order to form a 320-acre gas spacing and proration unit consisting of the W/2 of said Section 28 for all formation from the top of the Wolfcamp to the base of the Pennsylvanian formation. See Order R-9845, copy attached as Exhibit "A".

By letter dated March 11, 1993, Sealy H. Cavin, Jr. on behalf of Strata Production Company filed an Application for a DeNovo Hearing within the thirty day period following the date of Order R-9845 as required by Division Rule 1220. However, by letter dated April 28, 1993, Mr. Cavin again on behalf of Strata Production Company withdrew its request for a DeNovo hearing and on the order became final and non-appealable.

Rule 1220 limits the right to file an Application for a DeNovo hearing to a party of record adversely affected by such order.

Branko was not a party of record before the Division at the hearing held of January 21, 1993 and is not entitled to file for a DeNovo hearing.

BRANKO'S MOTION TO REOPEN CASE 10656 IS A COLLATERAL ATTACK ON ORDER R-9845 AND THEREFORE MUST BE DENIED.

Branko et al. are the "undisclosed partners" of Strata and are not entitled to Reopen this case to re-argue an issue which was fully adjudicated before the Division at the hearing held on January 21, 1993 and which is extensively summarized in the findings of Order R-9845.

Contrary to the assertions of Branko, the Division has already decided this issue and has found that due public notice was properly given in this case as required by law, and the Division had jurisdiction over the proper parties.

The Division found that:

> "(2) the operating rights (working interests) for all of Section 28, except the S/2S/2 and the SW/4NE/4, are subject to Joint Operating Agreement No. 1130 between Mitchell Energy Corporation, Santa Fe Energy Partners, and Maralo designating Mitchell Energy Corporation as the operator. The SW/4NE/4 is an unleased federal oil & gas tract. The S/2SW/4 and SW/4SE/4 is a federal oil & gas lease with record title and operating rights (no overriding royalty) held

by Strata Production Corporation. The SE/4SE/4 is a federal oil & gas lease held by Pitche Energy.

(7) at all time relevant hereto, the S/2SW/4 which constitutes the remaining 25% working interest in the subject spacing unit was under the ownership and control of Strata.

(8) despite good faith efforts undertaken over a reasonable period of time, Mitchell has been unable to reach a voluntary agreement with Strata concerning voluntary participation in the subject spacing unit and the proposed well.

(11) Mitchell has made a good faith effort to reach a voluntary agreement with the record owner of this interest and is entitled to compulsory pooling."

The Division denied Strata's contention that Mitchell had failed to provide notification to Strata's "undisclosed partners" as identified on Mitchell Exhibit 17.

The Division found that:

"(12) it would circumvent the purposes of the New Mexico Oil & Gas Act to allow a party owning a certain percentage of the working interest in the spacing unit at the time said party was served with a compulsory pooling application, to avoid or delay having that entire percentage interest pooled by assigning, conveying, selling or otherwise burdening or reducing that interest."

It was Strata's responsibility and obligation to notify its "undisclosed partners" of this compulsory pooling application and Strata cannot shift that responsibility to Mitchell in this case.

SUMMARY

Order R-9845 is final, all of the interest underlying the S/2SW/4 of Section 28 including Strata and its "undisclosed partners" have been pooled. The election period has already been provided in accordance with the order and no election was timely made.

There is simply no opportunity for confusion about what was pooled. Order R-9845 is unambiguous. It details at great length the notice argument over the "undisclosed partners" issue and rejected Strata's arguments.

The Division is specifically referred to Finding (7) of Order R-9845 which states: "At all times relevant hereto, the S/2SW/4 which constitutes the remaining 25% working interest in the subject spacing unit has been under the ownership and control of Strata", and the last paragraph of Finding (10) which states: "At all times during negotiations and at the time the application was filed and notice was given, Strata was the record title owner of the mineral interest in question and the Division has jurisdiction over the interest held in Strata's name. Then see Ordering Paragraph (2) which states in party "All mineral interests, wherever they may be from the top of the Wolfcamp formation to the base of the Pennsylvanian formation...are hereby pooled...."

Further after the entry of the Order, and in accordance with the terms of that order, by letter dated February 17, 1993 Mitchell notified Strata of its right to join in the well by prepaying its share of the estimated costs. Strata failed to either obtain a Stay of the Order pursuant to Division Memorandum 3-85 or to timely tender payment of its 25% share of the costs of the well.

The result is that Strata abandoned its appeal and failed to timely elect to participate and therefore by its own actions has committed the entire 25% working interest as a no-consenting party pursuant to the Order.

Strata is responsible to the Division and to Mitchell for this interest.

See Finding (12) Order R-9845. The "undisclosed partners" had actual notice of this proceeding and apparently chose to allow Strata to deal on their behalf. If Strata in fact did not have "unfettered authority" to act on behalf of the "other interest owners" then the responsibility lies with Strata and not with either the Division or with Mitchell.

Mitchell has complied with the terms and conditions of the Order and the Branko et al interest are now "non-consenting" under the pooling order and are subject to the 200% risk factor penalty.

Mitchell requests that the Division deny this Motion without further hearing.

Respectfully submitted,

W. Thomas Kellahin
Kellahin & Kellahin
P. O. Box 2265
Santa Fe, New Mexico 87501

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply was sent by first class mail this 12th day of February, 1996 to:

Harold D. Stratten, Jr. Esq.
Stratten & Cavin
Attorneys at Law
P. O. Box 1216
Albuquerque, New Mexico 87103-1216

W. Thomas Kellahin

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

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
DIVISION FOR THE PURPOSE OF
CONSIDERING:

CASE NO. 10656
ORDER NO. R-9845

APPLICATION OF MITCHELL ENERGY CORPORATION FOR COMPULSORY POOLING AND AN UNORTHODOX GAS WELL LOCATION, LEA COUNTY, NEW MEXICO.

ORDER OF THE DIVISION

BY THE DIVISION:

This cause came on for hearing at 8:15 a.m. on January 21, 1993, at Santa Fe, New Mexico, before Examiner Michael E. Stogner.

NOW, on this 15th day of February, 1993, the Division Director, having considered the testimony, the record and the recommendations of the Examiner, and being fully advised in the premises,

FINDS THAT:

(1) Due public notice having been given as required by law, the Division has jurisdiction of this cause and the subject matter thereof.

(2) The applicant, Mitchell Energy Corporation ("Mitchell"), seeks an order pooling all mineral interests from the top of the Wolfcamp formation to the base of the Pennsylvanian formation, underlying the W/2 of Section 28, Township 20 South, Range 33 East, NMPM, Lea County, New Mexico, forming a 320-acre gas spacing and proration unit for all formations and/or pools developed on 320-acre spacing within said vertical extent, which presently includes, but is not necessarily limited to, the Undesignated Halfway-Atoka Gas Pool and the Undesignated South Salt Lake-Morrow Gas Pool.

(3) The applicant has the right to drill and proposes to drill its Tomahawk "28" Federal Com Well No. 1 at an unorthodox gas well location 1650 feet from the North line and 1980 feet from the West line (Unit F) of said Section 28.

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(4) Strata Production Company ("Strata") appeared at the hearing in opposition to the granting of Mitchell's application.

EXHIBIT
A

(5) The operating rights (working interests) for all of Section 28, except the S/2 S/2 and the SW/4 NE/4, are subject to Joint Operating Agreement No. 1130 between Mitchell Energy Corporation, Santa Fe Energy Operating Partners, L.P., and Maralo Inc. designating Mitchell Energy Corporation as the operator. The SW/4 NE/4 is an unleased federal oil and gas tract. The S/2 SW/4 and SW/4 SE/4 is a federal oil and gas lease with record title and operating rights (no overriding royalty) held by Strata Production Corporation. The SE/4 SE/4 is a federal oil and gas lease held by Pitche Energy.

(6) Mitchell has proposed to all working interest owners the formation of the subject spacing unit and drilling of the subject well and has obtained the voluntary agreement of 75% of the working interest ownership in the subject spacing unit for the proposed well.

(7) At all times relevant hereto, the S/2 SW/4 which constitutes the remaining 25% working interest in the subject spacing unit has been under the ownership and control of Strata.

(8) Despite good faith efforts undertaken over a reasonable period of time, Mitchell has been unable to reach a voluntary agreement with Strata concerning voluntary participation in the subject spacing unit and the proposed well.

(9) Strata appeared at the hearing in opposition to Mitchell's proposed W/2 orientation of the spacing unit, the well location, and the overhead charges. In addition, Strata contended that Mitchell had failed to provide notification to Strata's "undisclosed partners" as identified on Mitchell Exhibit No. 17 in this case.

(10) In support of its motion for continuance, Strata claimed that Mitchell knew all along that Strata had "undisclosed partners" and it was Mitchell's duty to request Strata to disclose the names and addresses and then to provide those parties with an opportunity to join or compulsory pool each party.

On the notice issue raised by Strata, Mitchell presented exhibits and testimony which demonstrated that:

(a) abstracts and Title Opinions established that Strata held the record title and all operating rights to the S/2 SW/4 of said Section 28 as of the date the well was proposed to Strata (November 20, 1992), and as

of the date Strata received notification of the compulsory pooling application (December 20, 1992), and as of the date of the hearing in this case;

(b) *by letter dated November 20, 1992 Mitchell proposed to Strata the subject well and proposed spacing unit requesting voluntary participation in the well or in the alternative, proposed farmout terms to Strata;*

(c) *on November 20, 1992, Mitchell was the first working interest owner in Section 28 to propose a Morrow gas well to the working interest owners;*

(d) *although Strata declined to participate in the well, during the next two months, Mitchell and Strata through numerous telephone calls and correspondence between the parties discussed other alternatives including Mitchell purchasing or farming in Strata's interest;*

(e) *Mitchell understood and believed that Strata was dealing for and on behalf of Strata and all of Strata's "undisclosed partners;"*

(f) *by letter dated December 30, 1992 (Mitchell Hearing Exhibit No. 12), Strata offered to sell Mitchell 100% of its record title and operating rights and this offer included representations that while Strata had "undisclosed partners" Strata had the right, power and authority to bind said undisclosed partners; and*

(g) *after negotiations between Mitchell and Strata failed, by letter dated January 13, 1993, Strata for the first time provided Mitchell with the names and addresses of Strata's fifteen "undisclosed partners." (Mitchell Hearing Exhibit No. 17), but no evidence was provided that these "partners" owned an interest in the mineral estate.*

FINDING: At all times during negotiations and at the time the application was filed and notice was given, Strata was the record title owner of the mineral interests in question and the Division has jurisdiction over the interest held in Strata's name.

(11) Mitchell has made a good faith effort to reach a voluntary agreement with the record owner of the interests and is entitled to compulsory pooling.

(12) It would circumvent the purposes of the New Mexico Oil and Gas Act to allow a party owning a working interest in the spacing unit at the time said party was served with a compulsory pooling application to avoid or delay having that entire percentage interest pooled by assigning, conveying, selling or otherwise burdening or reducing that interest after the application and notice of hearing are filed with the Division and served on the party.

(13) Strata's motion to continue for lack of notice to its "undisclosed partners" should be denied.

(14) Mitchell's estimated cost for a completed well is $1,377,300. with monthly overhead rates of $6,470 while drilling and $647 while producing.

(15) Strata stipulated to Mitchell's proposed estimate of well costs ("AFE") identified on Mitchell Exhibit No. 19 as fair and reasonable but requested the Ernst & Young tabulation of average overhead rates be applied in this case.

(16) Because a substantial majority of the working interest owners has agreed to overhead rates which have now escalated in accordance with COPAS procedures to be slightly in excess of the Ernst & Young average rates, the rates proposed by Mitchell are fair and should be adopted in this case.

(17) Based on the geologic evidence presented at the hearing, the orientation of the stand-up 320-acre spacing unit for the first well in said Section 28 serves to provide the best opportunity for full development of potential Pennsylvanian gas in the section with two wells.

(18) Because of a combination of archeological restrictions and surface use limitations, Mitchell has been unable to obtain approval from the United States Bureau of Land Management (BLM), which is the surface management agency for said section, for an acceptable standard gas well location in the W/2 spacing unit, and therefore seeks the proposed unorthodox location which it anticipates will satisfy all the requirements of the BLM.

(19) Approval of this application as set forth in the above findings and in the following order will serve to protect correlative rights, prevent waste and afford the owner of each interest in said unit the opportunity to recover or receive without unnecessary expense his just and fair share of the production in any pool resulting from this order.

(20) Mitchell Energy Corporation should be designated the operator of the subject well and unit.

(21) Any non-consenting working interest owner should be afforded the opportunity to pay his share of estimated well costs to the operator in lieu of paying his share of reasonable well costs out of production.

(22) Any non-consenting working interest owner who does not pay his share of estimated well costs should have withheld from production his share of reasonable well costs plus an additional 200 percent thereof as a reasonable charge for the risk involved in the drilling of the well.

(23) Any non-consenting interest owner should be afforded the opportunity to object to the actual well costs but actual well costs should be adopted as the reasonable well costs in the absence of such objection.

(24) Following determination of reasonable well costs, any non-consenting working interest owner who has paid his share of estimated costs should pay to the operator any amount that reasonable well costs exceed estimated well costs and should receive from the operator any amount that paid estimated well costs exceed reasonable well costs.

(25) $6470.00 per month while drilling and $647.00 per month while producing should be fixed as reasonable charges for supervision (combined fixed rates); the operator should be authorized to withhold from production the proportionate share of such supervision charges attributable to each non-consenting working interest, and in addition thereto, the operator should be authorized to withhold from production the proportionate share of actual expenditures required for operating the subject well, not in excess of what are reasonable, attributable to each non-consenting working interest.

(26) All proceeds from production from the subject well which are not disbursed for any reason should be placed in escrow to be paid to the true owner thereof upon demand and proof of ownership.

(27) Upon the failure of the operator of said pooled unit to commence drilling of the well to which said unit is dedicated on or before May 15, 1993, the order pooling said unit should become null and void and of no further effect whatsoever.

(28) Should all the parties to this force-pooling reach voluntary agreement subsequent to entry of this order, this order should thereafter be of no further effect.

(29) The operator of the well and unit should notify the Director of the Division in writing of the subsequent voluntary agreement of all parties subject to the force-pooling provisions of this order.

IT IS THEREFORE ORDERED THAT:

(1) The motion of Strata Production Company to continue this matter for lack of notice to its "undisclosed partners" as identified on Mitchell Energy Corporation's Exhibit No. 17 in this case is hereby **denied.**

(2) All mineral interests, whatever they may be, from the top of the Wolfcamp formation to the base of the Pennsylvanian formation, underlying the W/2 of Section 28, Township 20 South, Range 33 East, NMPM, Lea County, New Mexico, are hereby pooled to form a standard 320-acre gas spacing and proration unit for all formations and/or pools developed on 320-acre spacing within said vertical extent, which presently includes, but is not necessarily limited to the Undesignated Halfway-Atoka Gas Pool and the Undesiganted Salt Lake-Morrow Gas Pool, said unit to be dedicated to its Tomahawk "28" Federal Com Well No. 1 to be drilled at an unorthodox gas well location 1650 feet from the North line and 1980 feet from the West line (Unit F) of said Section 28.

PROVIDED HOWEVER THAT, the operator of said unit shall commence the drilling of said well on or before the 15th day of May, 1993, and shall thereafter continue the drilling of said well with due diligence to a depth sufficient to test the above-described area.

PROVIDED FURTHER THAT, in the event said operator does not commence the drilling of said well on or before the 15th day of May, 1993, Decretory Paragraph No. (2) of this order shall be null and void and of no effect whatsoever, unless said operator obtains a time extension from the Division for good cause shown.

PROVIDED FURTHER THAT, should said well not be drilled to completion, or abandonment, within 120 days after commencement thereof, said operator shall appear before the Division Director and show cause why Decretory Paragraph No. (2) of this order should not be rescinded.

(3) Mitchell Energy Corporation is hereby designated the operator of the subject well and unit.

(4) After the effective date of this order and within 90 days prior to commencing said well, the operator shall furnish the Division and each known working interest owner in the subject unit an itemized schedule of estimated well costs.

(5) Within 30 days from the date the schedule of estimated well costs is furnished to him, any non-consenting working interest owner shall have the right to pay his share of estimated well costs to the operator in lieu of paying his share of reasonable well costs out of production, and any such owner who pays his share of estimated well costs as provided above shall remain liable for operating costs but shall not be liable for risk charges.

(6) The operator shall furnish the Division and each known working interest owner an itemized schedule of actual well costs within 90 days following completion of the well; if no objection to the actual well costs is received by the Division and the Division has not objected within 45 days following receipt of said schedule, the actual well costs shall be the reasonable well costs; provided however, if there is an objection to actual well costs within said 45-day period the Division will determine reasonable well costs after public notice and hearing.

(7) Within 60 days following determination of reasonable well costs, any non-consenting working interest owner who has paid his share of estimated costs in advance as provided above shall pay to the operator his pro rata share of the amount that reasonable well costs exceed estimated well costs and shall receive from the operator his pro rata share of the amount that estimated well costs exceed reasonable well costs.

(8) The operator is hereby authorized to withhold the following costs and charges from production:

(A) The pro rata share of reasonable well costs attributable to each non-consenting working interest owner who has not paid his share of estimated well costs within 30 days from the date the schedule of estimated well costs is furnished to him; and

(B) As a charge for the risk involved in the drilling of the well, 200 percent of the pro rata share of reasonable well costs

attributable to each non-consenting working interest owner who has not paid his share of estimated well costs within 30 days from the date the schedule of estimated well costs is furnished to him.

(9) The operator shall distribute said costs and charges withheld from production to the parties who advanced the well costs.

(10) $6,470 per month while drilling and $647 per month while producing are hereby fixed as reasonable charges for supervision (combined fixed rates); the operator is hereby authorized to withhold from production the proportionate share of such supervision charges attributable to each non-consenting working interest, and in addition thereto, the operator is hereby authorized to withhold from production the proportionate share of actual expenditures required for operating such well, not in excess of what are reasonable, attributable to each non-consenting working interest. The operator is hereby authorized to make annual adjustments of said combined fixed rates as of the first day of April each year in accordance with the COPAS accounting schedule utilized by the industry.

(11) Any unleased mineral interest shall be considered a seven-eighths (7/8) working interest and a one-eighth (1/8) royalty interest for the purpose of allocating costs and charges under the terms of this order.

(12) Any well costs or charges which are to be paid out of production shall be withheld only from the working interest's share of production, and no costs or charges shall be withheld from production attributable to royalty interests.

(13) All proceeds from production from the subject well which are not disbursed for any reason shall be placed in escrow in Lea County, New Mexico, to be paid to the true owner thereof upon demand and proof of ownership; the operator shall notify the Division of the name and address of said escrow agent within 30 days from the date of first deposit with said escrow agent.

(14) Should all the parties to this force-pooling reach voluntary agreement subsequent to entry of this order, this order shall thereafter be of no further effect.

(15) The operator of the subject well and unit shall notify the Director of the Division in writing of the subsequent voluntary agreement of all parties subject to the force-pooling provisions of this order.

(16) Jurisdiction of this cause is retained for the entry of such further orders as the Division may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

WILLIAM J. LEMAY
Director

S E A L

STRATTON & CAVIN, P.A.
ATTORNEYS & COUNSELORS AT LAW
320 GOLD AVENUE, S.W.
SUITE 1200
P. O. BOX 1216
ALBUQUERQUE, NEW MEXICO 87103-1216

HAROLD D. STRATTON, JR.*†**
SEALY H. CAVIN, JR.†**°
STEPHEN D. INGRAM†

*ALSO ADMITTED IN OKLAHOMA
†ALSO ADMITTED IN TEXAS
**ALSO ADMITTED IN COLORADO
°NEW MEXICO BOARD OF LEGAL SPECIALIZATION RECOGNIZED SPECIALIST IN THE AREA OF NATURAL RESOURCES - OIL AND GAS LAW

TELEPHONE
(505) 243-5400
FACSIMILE
(505) 243-1700

April 17, 1996

APR 19 1996

William J. LeMay, Director
Oil Conversation Division
New Mexico Department of Energy,
Minerals and Natural Resources
P.O. Box 6429
Santa Fe, New Mexico 87505

Re: Movants' Brief in Support of Its Motion to Reopen Case or, in the Alternative, Application for Hearing *De Novo* in Case No. 10656, Order No. R-9845 (Refer to Case No. 11510)

Dear Mr. LeMay:

Enclosed are the original and two copies of Movants' Brief in Support of its Motion to Reopen Case or, in the Alternative, Application for Hearing *De Novo*. It is my understanding that this matter has been placed on the docket for the May 2, 1996 Examiner hearings for the purpose of hearing whether the case should be reopened.

Sincerely,

STRATTON & CAVIN, P.A.

By: Harold D. Stratton, Jr.

HDS/skc
Enclosures
cc: Rand L. Carroll, Esq. (w/encl.)
W. Thomas Kellahin, Esq. (w/encl.)

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

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
DIVISION FOR THE PURPOSE OF
CONSIDERING:

Case No. 10656
(Refer to Case No. 11510)
Order No. R-9845

APPLICATION OF MITCHELL ENERGY
CORPORATION FOR COMPULSORY POOLING
AND AN UNORTHODOX GAS WELL LOCATION,
LEA COUNTY, NEW MEXICO

MOVANTS' BRIEF IN SUPPORT OF ITS MOTION TO REOPEN CASE OR, IN THE ALTERNATIVE, APPLICATION FOR HEARING *DE NOVO*

The Movants herein, hereby submit their brief of points and authorities in support of their Motion to Reopen the Case ("Motion"):

I. INTRODUCTION

All of the Movants herein are working interest or overriding royalty interest owners in the S/2 SW/4 of Section 28, Township 20 South, Range 33 East, NMPM in Lea County, New Mexico.[1] In this case, Mitchell Energy Corporation ("Mitchell") sought and was granted by the New Mexico Oil Conservation Division ("Division"), after a hearing, an order for compulsory pooling which included the above referenced property.[2] None of the Movants who bring this

[1] The identity of all Movants who bring this Motion are listed on page one of the Movants' Motion.

[2] Mitchell also requested approval of an unorthodox well location which was also granted by the Division.

Motion were afforded notice of the hearing, notwithstanding the knowledge by Mitchell of the Movants' interests, identity and whereabouts.

The failure of Mitchell to provide notice to the Movants, which deprived Movants of an opportunity to participate in the proposed well and otherwise be heard at the Division's hearing on the application, violates the statute providing for such notice, NMSA 1978, § 70-2-17(C) (1995 Repl.), the Division's regulation regarding notice, Division Rule 1207, and more importantly, the Due Process Clause of the United States and New Mexico Constitutions. Since the Movants were deprived of a protected property right without notice and a meaningful opportunity to be heard, the Division's Order is void as to the Movants. The Division must, therefore, reopen this proceeding and allow the Movants to participate in a way that affords them an opportunity to protect their property interests.

II. RELEVANT FACTS OF THE CASE

On December 8, 1992, in connection with its proposal to drill the Mitchell Tomahawk "28" Federal Com No. 1 Well ("Tomahawk Well"), Mitchell filed its application with the Division requesting an order pooling all mineral interests from the top of the Wolfcamp formation to the base of the Pennsylvanian formation underlying the W/2 of Section 28, Township 20 South, Range 33 East, NMPM. Prior to the filing of the application, Mitchell entered into negotiations with Strata Production Company ("Strata"), a working interest owner in the S/2SW/4 of Section 28. These negotiations were unsuccessful. A hearing was then held on January 21, 1993 and the Division entered Order No. R-9845 granting Mitchell's pooling request and approving the unorthodox well location on February 15, 1993. Mitchell then spudded the Tomahawk Well on May 18, 1993.

Prior to the hearing in this matter, Mitchell became aware of the Movants' property interests in the S/2SW/4 of Section 28. The Movants acquired their interests years before Mitchell's application and the hearing. In fact, all of the Movants' acquired their interests before April 1, 1990.[3] During the course of the negotiations prior to Mitchell's application and the hearing, Mitchell was made aware that there were other working interest and overriding royalty interest owners in the S/2SW/4 of Section 28. As early as October 26, 1992, during the course of negotiations, Mitchell learned of these interests from Mark Murphy, President of Strata. Most importantly, however, Mitchell received actual notice of the Movants' interests from Mr. Murphy, in detail, by way of Mr. Murphy's letter of January 13, 1993 to Mitchell which is attached hereto as Exhibit "A." This letter provided Mitchell with actual knowledge of the detailed ownership interests, identity and whereabouts of the Movants. Notwithstanding this knowledge, Mitchell chose not to provide the Movants with notice of the hearing. Order No. R-9845 clearly affects the property interests of the Movants by precluding them from sharing in the production of the Tomahawk Well--a well which was not spudded until four months after the hearing and three months after the Division entered Order No. R-9845.

III. ARGUMENT AND AUTHORITIES

At the time of the application and hearing, the Movants owned working interests and/or overriding royalty interests in a part of the property which was the subject of the pooling application of Mitchell. Movants' property interests are interests in real property and as such are

[3] The interests of the Movants are compiled in Mr. Murphy's letter of January 13, 1993 to Mitchell which is attached hereto as Exhibit "A". Mr. Murphy will be available at the hearing on the Motion to testify regarding the extent and nature of these interests. This information is confirmed by the affidavits of the Movants attached to the Motion as Exhibits "B" through "Q."

protected property rights for purposes of the Due Process Clause of the United States and New Mexico Constitutions. The granting of the pooling request by the Division is clearly a state action which affects the Movants' property interests. The Movants have, by reason of such state action, been deprived of their legal right as working interest and overriding royalty interest owners to participate in the production of the Tomahawk Well. The Movants, like other citizens, are entitled to due process of law before the government takes action which affects their property interests. Before the Division can take any action affecting the property interests of the Movants, the Movants must be provided with constitutionally sufficient notice and a fair opportunity to be heard. Here, no such notice was given and any action taken by the Division without such notice that affects the Movants' property interests is void as to the Movants.

A. The Lack of Notice of the Hearing in this Case Deprived the Movants of Their Property Without Due Process of Law in Contravention of Article II, Section 18 of the New Mexico Constitution and the Fourteenth Amendment to the United States Constitution.

The Division need look only to the recently decided case of *Uhden v. New Mexico Oil Conservation Commission, et al.*, 112 N.M. 528, 817 P.2d 721 (1995), to determine the merits of the Movants' Motion in this case. In *Uhden*, the movant, Ms. Uhden, was the owner in fee of an oil and gas estate in San Juan County. In 1978, Uhden executed an oil and gas lease in favor of Amoco Production Company ("Amoco"). The lease contained a pooling clause. Pursuant to its rights under the lease, Amoco drilled the Cahn Well which was originally spaced on 160-acres. Based on the size of the initial spacing unit, Uhden initially received a royalty interest equal to 6.25% of production from the Cahn Well. In 1983, Amoco filed an application with the Division seeking an increase in well spacing from 160-acres to 320-acres. The Cahn

Well and Uhden's royalty interest thereunder were both affected by the application. Even though Amoco had actual notice of Uhden's mailing address, Amoco provided notice of the application by publication only. On January 1984, the Oil Conservation Commission ("Commission") granted temporary approval of Amoco's application, and in February 1986, the Commission granted final and permanent approval, both without notice to Uhden. The net effect to Uhden was a reduced royalty interest equal to 3.125% of production from the Cahn Well.

Uhden unsuccessfully sought relief through the Commission, and then appealed to the district court which affirmed the orders of the Commission. She then appealed to the New Mexico Supreme Court. The New Mexico Supreme Court ruled that Uhden clearly had a property right in the oil and gas lease which was protected by due process of law. Further, in regard to the notice to which Uhden was entitled, the court held that

> if a party's identity and whereabouts are known or could be ascertained through due diligence, the due process clause of the New Mexico and United States Constitutions requires the party who filed a spacing application to provide notice of the pending proceeding by personal service to such parties whose property rights may be affected as a result.

Id., 112 N.M. at 531, 817 P.2d at 724. And, because Uhden was not provided with proper notice, the Division's orders were "void" as to her. *Id.*

In this case, as more fully explained below, the Movants have a protected property interest as a result of their interests in the affected property. Mitchell was aware of the names, addresses and even the nature and extent of each of the Movants' interests prior to the hearing. Notice was provided only by publication. Mitchell did not attempt to serve the Movants personally as required by *Uhden*. The hearing resulted in an order by the Division that affected the Movants'

interest by depriving them of the opportunity to participate in the Tomahawk Well. The order entered as a result of the hearing is therefore void as to the Movants.

1. The Movants, as working interest and/or overriding royalty interest owners under a federal oil and gas lease, clearly have protected property interests under the Due Process Clause.

Each of the Movants have an interest in a federal oil and gas lease which covers various lands including the S/2SW/4 of Section 28. *See* Motion and affidavits of Movants attached thereto as Exhibits "B" through "Q." These interests were acquired by the Movants well before the application was filed in this case by Mitchell and well before the hearing. In fact, all of the Movants acquired their respective interests before April 1, 1990.

In *Uhden, supra,* the court held that Uhden clearly had a property right in the oil and gas lease by virtue of her royalty interest. *Id.* 112 N.M. at 530, 817 P.2d at 723. Amoco argued that due to Uhden's lessor/lessee relationship with Amoco that her property right was somehow diminished. The court was not persuaded by this argument and held that

> [i]n this state a grant or reservation of the underlying oil and gas, or royalty rights provided for in a mineral lease as commonly used in this state, is a grant or reservation of real property. Mineral royalty retained or reserved in a conveyance of land is itself real property.

Id. (*citing Duvall v. Stone*, 54 N.M. 27, 32, 213 P.2d 212, 215 (1949) (citations omitted)).

The Movants in this case own working interests[4] and/or overriding royalty interests[5] in

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[4] A working interest is an operating interest under an oil and gas lease. H. Williams & C. Meyers, Manual of Oil and Gas Terms 1225 (9th ed. 1994). The working interest under a federal oil and gas lease is generally referred to as the operating rights. 43 C.F.R. §3100.0-5(d)(1988) defines operating rights as follows:

a federal oil and gas lease. Under New Mexico law, these interests clearly constitute an interest in real property. *See Bolack v. Underwood*, 540 F.2d 816, 820 (10th Cir. 1965), *citing Rock Island Oil and Refining Co., et al. v. Simmons, et ux.*, 73 N.M. 142, 386 P.2d 239 (1963). Therefore, the Movants' interests at issue in this case constitute constitutionally protected property rights. *See, Uhden, supra.*

Here, the Movants' property rights are entitled to the due process protection described in *Uhden.* This means that the Movants were entitled to personal service, since their whereabouts and identities were known to Mitchell, of the notice of the Division's hearing in this case. *Uhden*, 112 N.M. at 531, 817 P.2d at 724.

2. <u>Mitchell was aware of the Movants' interests and should have given them notice of the proceedings as required by due process of law and *Uhden*.</u>

Here, it is undisputed that Mitchell had actual knowledge of the Movants' interests in the property. Mitchell received, via facsimile and certified mail, a complete list of the Movants, their

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> (d) *Operating Rights* (working interest) means the interest created out of a lease authorizing the holder of that right to enter upon the leased lands to conduct drilling and related operations, including production of oil or gas from such lands in accordance with the terms of the lease.

[5] In *Meeker v. Ambassador Oil Co.*, 308 F.2d 875, 882 (10th Cir. 1962), *rev'd*, 375 U.S. 160 (1963), the Tenth Circuit of Appeals provided the following definition of overriding royalty:

> "An overriding royalty is a fractional interest in the gross production of oil and gas under a lease, in addition to the usual royalties paid to the lessor, free of any expense for exploration, drilling, development, operating, marketing and other costs incident to the production and sale of oil and gas produced from the lease. It is an interest carved out of the lessee's share of the oil and gas, ordinarily called the working interest, as distinguished from the owner's reserved royalty interest. It is generally held that an overriding royalty is an interest in real property."

addresses and a description of their interest in the affected lease. *See* Exhibit "A" attached hereto. This information was provided to Mitchell on January 13, 1993, before the hearing on January 21. Moreover, Mitchell could have easily ascertained the information regarding the Movants and their interests in the property by merely asking for it. It is clear, however, that Mitchell would rather deal with Strata alone rather than several small interest owners. Yet, Mitchell went on with the hearing without providing constitutional notice to the Movants. It is difficult to understand why Mitchell chose not to provide notice to the Movants or, at least, make some effort to ascertain whether the Movants actually owned an interest in the affected property. If necessary, the hearing could have been continued to allow for such notice without any inconvenience to Mitchell. The Tomahawk Well was not spudded until May 18, 1993. There was clearly plenty of time to provide notice and an opportunity to be heard to the Movants, but there was also clearly no desire on the part of Mitchell to provide such notice and deal with the Movants.[6] The lack of this notice makes the order that was issued pursuant to the hearing void as to the Movants.

It is expected that Mitchell will make at least two arguments as an excuse for the failure to provide the Movants with constitutionally sufficient notice. One such excuse is that the interests of the Movants were not recorded in the real estate records and that Mitchell is not, therefore, required to provide notice to Movants. There are at least two reasons why this

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[6] While the Tomahawk Well was spudded on May 18, 1993, there are apparently no compelling reasons why the well was spudded at this early date. Indeed, it appears that Mitchell could have waited until October 31, 1994 to spud the well without losing any of the affected leases, as provided by the leases involved. *See* Mitchell Energy Corporation's Exhibit No. 7 (Hinkle, Cox, Eaton, Coffield & Hensley Opinion of Title No. 31,439 dated December 29, 1992) presented to the Oil Conservation Division in Case No. 10656 on January 21, 1993.

argument is not valid. First, the pooling statute, NMSA 1978, § 70-2-17(C) (1995 Repl.), is concerned simply with interest owners, and not just interest owners who have recorded their interests in the county records.[7] Moreover, the related Division notice provision, Division Rule 1207(A)(1), provides that "[a]ctual notice shall be given to each known individual." The pooling statute and the related notice provision indicate that whether the interest has been recorded in the county records is not determinative as to who is entitled to notice. Second, the recordation of interests in the county records pursuant to NMSA 1978, § 14-9-1, *et seq.* (1995 Repl.), is only one method of providing notice of the ownership of a property interest. Although recordation under the statute does provide constructive notice, there are other methods by which one may become aware of a property interest including actual notice which Mitchell had in this case. Mitchell cannot avail itself of the fact that the Movants interests were not recorded and, therefore, did not have constructive notice. Mitchell had actual notice of the Movants interests which is the whole purpose of notice statutes and requirements.[8]

Mitchell may also argue that the Movants had "casual" or "extra-official" notice or knowledge of the Division proceedings in this case which should, therefore, be constitutionally sufficient to apprise them of the hearing. Casual or extra-official notice, for obvious reasons, is never sufficient notice in a case which affects a party's property right under state or federal law.

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[7] The pooling statute appears to recognize that many oil and gas interests are not reflected in the public records. Such interest owners are entitled to notice and an opportunity to be heard in a compulsory pooling case where their identity and whereabouts are known, or are easily ascertainable. *Uhden, supra.*

[8] The Movants are aware that Mitchell obtained at least one title opinion in this case but have not been provided with a copy of the title opinion(s) and therefore are unaware of whether the title opinion(s) may have noted the possibility or likelihood of unrecorded interests in the pooled property.

In *Coe v. Armour Fertilizer Works*, 237 U.S. 413, 35 S.Ct. 625, 59 L. Ed. 2d 1027 (1915) the U.S. Supreme Court held that "extra-official" or "casual" notice, or a hearing granted as a matter of favor or discretion in proceedings for the taking of one's property, is not a substantial substitute for the due process of law which the Fourteenth Amendment of the U.S. Constitution requires. The notice must be formal and provided within the context of the proceedings. In New Mexico, this notice in a case before this Division or the Commission must be by personal service as determined in *Uhden* if the parties whereabouts can be ascertained through due diligence.[9] With a notice standard this stringent it is fundamental that Mitchell cannot rely upon some third party to effect informal or casual notice upon those who are constitutionally entitled to it and who are required by statute to be notified by Mitchell. The New Mexico statute and Division Rules recognize this concept by placing the burden of notice directly upon the applicant, Mitchell in this case. *See*, NMSA 1978, § 70-2-18(A) (1995 Repl.), and Division Rule 1207(A)(1).

3. Order No. R-9845 is void as to the Movants.

The effect of Order No. R-9845 is that it precludes the Movants from participating in the Tomahawk Well without paying the 200 percent risk penalty. It, therefore, precludes the

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[9] In New Mexico it is clear that *Uhden* has set the minimum notice standard of personal service when the identity and whereabouts of the parties are known or can be ascertained. Under federal case law notice by mail has been held to be the absolute minimum when constitutional notice is required. *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 103 S. Ct. 2706, 77 L. Ed. 2d 180 (1983). Under any circumstances, the method of notice provided must be "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S. Ct. 652, 657, 94 L. Ed. 865 (1950). In light of the facts in *Uhden*, however, it is unlikely that notice by mail would be constitutionally sufficient under the New Mexico Constitution where the applicant is aware of or can discover a party's whereabouts. Of course, here, Mitchell provided neither notice by personal service or mail.

Movants from exercising their rights as working interest or overriding royalty interest owners to participate in the Tomahawk Well without penalty. Also, Movants were precluded from raising other important issues at the hearing such as the proper allocation of costs. This action taken by the Division, however, is void as to the Movants.

In *Uhden*, the court, after noting the violation of Uhden's due process rights, held that the Commission order was "void as to Uhden" due to the lack of notice and opportunity to be heard. *Uhden*, 112 N.M. at 531, 817 P.2d at 724. Such is also the holding under federal case law. *Coe v. Armour Fertilizer Works*, *supra*. And, under New Mexico law, a subsequent "ratification" of the action by the Commission is not effective to correct the error since an invalid act cannot be made valid by ratification. *See, Miller v. City of Albuquerque*, 89 N.M. 507, 511, 554 P.2d 665, 669 (1976).

Here, the Division's Order No. R-9845 affecting the Movants' property rights is void as to the Movants. Each Movant maintains their respective property rights as if the order had not been entered.

B. The Division Must Reopen the Case and Amend Order No. R-9845 to Conform to the Property Rights of the Movants.

Order No. R-9845 does not conform to the property rights of the Movants. The Movants only request that they be allowed to participate commensurate with their rights as working interest and overriding royalty interest owners. They do not ask for anything more and do not ask that any rights be taken from Mitchell.

IV. CONCLUSION

The Division should reopen the case and allow a hearing *de novo* as to the Movants.

RESPECTFULLY SUBMITTED,

STRATTON & CAVIN, P.A.

By: _____
Harold D. Stratton, Jr.
Attorneys for Movants
Post Office Box 1216
Albuquerque, New Mexico 87103-1216
(505) 243-5400

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Movants' Brief in Support of its Motion to Reopen Case or, in the Alternative, Application for Hearing *De Novo* was sent via facsimile transmission and via first class mail this 17th day of April, 1996, to:

W. Thomas Kellahin, Esq.
Kellahin & Kellahin
Post Office Box 2265
Santa Fe, New Mexico 87504-2265
Telephone: (505) 982-4285
Facsimile: (505) 982-2047

Rand L. Carroll, Esq.
New Mexico Oil & Conservation Division
2040 S. Pacheco Street
Santa Fe, New Mexico 87505-5472
Telephone: (505) 827-8156
Facsimile: (505) 827-7177

By: _____
Harold D. Stratton, Jr.

POST OFFICE DRAWER 1030
ROSWELL, NM 88202-1030

STRATA PRODUCTION COMPANY

TELEPHONE (505) 622-1127
FACSIMILE (505) 623-3533

200 WEST FIRST STREET, ROSWELL PETROLEUM BUILDING, SUITE 700
ROSWELL, NEW MEXICO 88201

January 13, 1993

Via Telefax (915 682-6439)/Hard Copy by Certified Mail

Mitchell Energy Corporation
1000 Independence Plaza
400 West Illinois
Midland, Texas 79701
Attn: Steve Smith

Re: Leasehold Ownership Information
North Gavilon Prospect
NM #92957, S/2 SW/4, SW/4 SE/4
Section 28, T-20-S, R-33-E
Lea County, New Mexico

Dear Mr Smith:

During our telephone conversation this morning you expressed some concern that you had not been provided a list of leasehold partners and ownership in the above referenced lease. As Mitchell has set a compulsory pooling and unorthodox gas well location hearing (Case #10656) for Thursday January 21, 1993, I provide this information to facilitate your notification of said owners. Strata has or is in the process of making a direct assignment of each partners proportionate ownership. The names, addresses and ownership is as follows:

Name/Address	Leasehold Ownership
Arrowhead Oil Corporation P.O. Box 548 Artesia, New Mexico 88211-0548	6.25%
Branko, Inc. 45 Beaverbrook Crescent St. Albert, Alberta, Canada, T8N2L-4	1.56250%
Duane Brown 1315 Marquette PL, NE Albuquerque, New Mexico 87106	5.0%
S.H. Cavin P.O. Box 1125 Roswell, New Mexico 88202	2.0%

EXHIBIT
A

Name/Address	Leasehold Ownership
Robert W. Eaton 2505 Don Juan NW Albuquerque, New Mexico 87104	1.56250%
Terry & Barb Kramer 5108 Irving BLVD., N.W. Albuquerque, New Mexico 87114	30.0%
Landwest 215 West 100 South Salt Lake City, UT 84101	1.0%
Candance McClelland 4 Country Hill Road Roswell, New Mexico 88201	2.1250%
Permian Hunter Corporation 215 West 100 South Salt Lake City, UT 84101	4.0%
Scott Exploration, Inc. 200 W. First Suite 648 Roswell, New Mexico 88201	9.0%
Strata Production Company 200 W. First, Suite 700 P.O. Box 1030 Roswell, New Mexico 88202	18.50%
Warren, Inc. P.O. Box 7250 Albuquerque, New Mexico 87194-7250	5.0%
Charles J. Wellborn P.O. Box 2168 Albuquerque, New Mexico 87103-2168	2.0%
Winn Investments, Inc. 706 W. Brazos Roswell, New Mexico 88201	1.0%
Lori Scott Worrall 200 W. First, Suite 648 Roswell, New Mexico 88201	1.0%
Xion Investments 215 West 100 South Salt Lake City, UT 84101	10.0%
	Total 100%

In addition the following own a overriding royalty interest (ORRI) as set forth below:

Name/Address	ORRI
Steve Mitchell 200 W. First, Suite 648 Roswell, New Mexico 88201	.5
George L. Scott III 200 W. First, Suite 648 Roswell, New Mexico 88201	.5
Scott Exploration Inc. 200 W. First, Suite 648 Roswell, New Mexico 88201	.5
	Total 1.5%

If I may be of further assistance please call.

Very truly yours,

STRATA PRODUCTION COMPANY

Mark B. Murphy
President

cc: Sealy H. Cavin, Jr., Esq.

MBM/mo

STRATTON & CAVIN, P.A.
ATTORNEYS & COUNSELORS AT LAW

HAROLD D. STRATTON, JR.*†**
SEALY H. CAVIN, JR.†**°
STEPHEN D. INGRAM†

*ALSO ADMITTED IN OKLAHOMA
†ALSO ADMITTED IN TEXAS
**ALSO ADMITTED IN COLORADO
°NEW MEXICO BOARD OF LEGAL SPECIALIZATION RECOGNIZED SPECIALIST IN THE AREA OF NATURAL RESOURCES - OIL AND GAS LAW

320 GOLD AVENUE, S.W.
SUITE 1200
P. O. BOX 1216
ALBUQUERQUE, NEW MEXICO 87103-1216

TELEPHONE
(505) 243-5400
FACSIMILE
(505) 243-1700

23 1996

April 22, 1996

Rand Carroll
Oil Conservation Division
2040 South Pacheco Street
Santa Fe, New Mexico 87505-5472

Re: MOTION TO REOPEN
NMOCD CASE 10656 ORDER R-9845
Tomahawk "28" Federal Com Well No. 1
NMOCD Case for Compulsory Pooling
W/2 Sec. 28, T20S, R33E, NMPM
Lea County, New Mexico

Dear Rand:

This letter is to confirm my understanding that the Examiner Hearing scheduled for Thursday, May 2, 1996 in regard to the above-entitled cause will not be heard prior to 1:00 p.m. on that date. I have communicated with Mr. Kellahin regarding this matter, and he is in agreement that we would not need to be at the hearing in this case until that time.

If this changes, I would ask that you please let us know. I am sending a copy of this letter to Mr. Kellahin for his information.

Sincerely,

STRATTON & CAVIN, P.A.

By:
Harold D. Stratton, Jr.

HDS/tis
xc/ W. Thomas Kellahin

STRATTON & CAVIN, P.A.
ATTORNEYS & COUNSELORS AT LAW

HAROLD D. STRATTON, JR.*†**
SEALY H. CAVIN, JR.†**°
STEPHEN D. INGRAM†

*ALSO ADMITTED IN OKLAHOMA
†ALSO ADMITTED IN TEXAS
**ALSO ADMITTED IN COLORADO
°NEW MEXICO BOARD OF LEGAL SPECIALIZATION RECOGNIZED SPECIALIST IN THE AREA OF NATURAL RESOURCES - OIL AND GAS LAW

320 GOLD AVENUE, S.W.
SUITE 1200
P. O. BOX 1216
ALBUQUERQUE, NEW MEXICO 87103-1216

TELEPHONE
(505) 243-5400
FACSIMILE
(505) 243-1700

April 30, 1996

RECEIVED
MAY 1 1996

VIA FACSIMILE TRANSMISSION TO 505/827-8177
AND VIA FIRST CLASS MAIL
William J. LeMay, Director
Oil Conversation Division
New Mexico Department of Energy,
Minerals and Natural Resources
P.O. Box 6429
Santa Fe, New Mexico 87505

Re: Motion to Reopen Case or, in the Alternative, Application for Hearing *De Novo* in Case No. 10656, Order No. R-9845

Dear Mr. LeMay:

On behalf of Branko, Inc., et al., Movants in the above-described case, enclosed please find **triplicate originals of the** Pre-Hearing Statement which is filed in connection with the above-referenced case scheduled for public hearing before a Division Examiner on the Docket for Thursday, May 2, 1996.

Sincerely,

STRATTON & CAVIN, P.A.

By:
Harold D. Stratton, Jr.

HDS/skc
Enclosures
cc: W. Thomas Kellahin, Esq. (w/encl.) (Via Facsimile Transmission)
Mark B. Murphy (w/encl.) (Via Facsimile Transmission)

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

IN THE MATTER OF THE HEARING CALLED BY THE OIL CONVERSATION DIVISION FOR THE PURPOSE OF CONSIDERING:

Case No. 10656
Order No. R-9845
(Refer to Case No. 11510)
(Motion to Reopen Case,
or in the Alternative, Application
for Hearing *De Novo*)

APPLICATION OF MITCHELL ENERGY CORPORATION FOR COMPULSORY POOLING AND AN UNORTHODOX GAS WELL LOCATION, LEA COUNTY, NEW MEXICO.

PRE-HEARING STATEMENT

This pre-hearing statement is submitted by Harold D. Stratton, Jr., as required by the Oil Conservation Division.

APPEARANCES OF PARTIES

APPLICANT

Mitchell Energy Corporation
1000 Independence Plaza
400 W. Illinois
Midland, Texas 79701

ATTORNEY

W. Thomas Kellahin, Esq.
Kellahin & Kellahin
P.O. Box 2265
Santa Fe, New Mexico 87504-2265
Telephone: (505) 982-4285

OPPOSITION OR OTHER PARTY

Branko, Inc., a New Mexico Corporation
Duane Brown
S. H. Cavin
Robert W. Eaton
Terry and Barb Kramer
Landwest, a Utah General Partnership
Candace McClelland

ATTORNEY

Harold D. Stratton, Jr.
Stratton & Cavin, P.A.
P.O. Box 1216
Albuquerque, New Mexico 87103-1216
Telephone: (505) 982-4285

Stephen T. Mitchell
Permian Hunter Corporation, a New Mexico Corporation
George L. Scott, III
Scott Exploration, Inc., a New Mexico Corporation
Charles I. Wellborn
Winn Investments, Inc., a New Mexico Corporation
Lori Scott Worrall
Xion Investments, a Utah General Partnership

See Attached Exhibit A for addresses.

STATEMENT OF CASE

MOVANTS

Movants did not receive notice regarding Mitchell's application for compulsory pooling with respect to the Tomahawk "28" Federal Com. Well No. 1. Movants seek to reopen Case No. 10656.

OPPOSITION OR OTHER PARTY

To be provided by Mitchell Energy Corporation.

PROPOSED EVIDENCE

MOVANTS

WITNESS	EST. TIME	EXHIBITS
Mark B. Murphy	30 Minutes	Approximately 5

OPPOSITION

WITNESS	EST. TIME	EXHIBITS

To be provided by Mitchell Energy Corporation.

PROCEDURAL MATTERS

None.

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STRATTON & CAVIN, P.A.

By: _____
Harold D. Stratton, Jr.
Attorneys for Movants as Listed
P.O. Box 1216
Albuquerque, New Mexico 87103-1216
Telephone: (505) 243-5400

THIS EXHIBIT A IS ATTACHED TO AND MADE A PART OF THE PRE-HEARING STATEMENT IN CASE NO. 10656, ORDER NO. R-9845 (MOTION TO REOPEN CASE OR, IN THE ALTERNATIVE, APPLICATION FOR HEARING *DE NOVO*.

EXHIBIT A

Branko, Inc.
Branko Jankovic
13 Deslauriers Crescent
St. Albert, Alberta
Canada T8N5Y6

Duane Brown
1315 Marquette Place NE
Albuquerque, NM 87106

S. H. Cavin
P. O. Box 1125
Roswell, NM 88202

Robert W. Eaton
2505 Don Juan NW
Albuquerque, NM 87104

Terry & Barb Kramer
5108 Irving Blvd. NW
Albuquerque, NM 87114

Landwest, A Utah GP
Permian Hunter Corporation, a NM Corp.
Xion Investments, a Utah GP
c/o Larry Lunt
215 West 100 Street
Salt Lake City, UT 84101

Candace McClelland
4 Country Hill Road
Roswell, NM 88201

Stephen T. Mitchell
200 West 1st Street, Suite 648
Roswell, NM 88201

George L. Scott, III
200 West 1st Street, Suite 648
Roswell, NM 88201

Scott Exploration, Inc.
200 West 1st Street, Suite 648
Roswell, NM 88201

Charles I. Wellborn
Science & Technology Corporation @ UNM
851 University Blvd. SE, Suite 200
Albuquerque, NM 87106

Winn Investments, Inc.
706 W. Brazos
Roswell, NM 88201

Lori Scott Worrall
100 West 1st Street, Suite 648
Roswell, NM 88201

-- DRAFT --

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

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
DIVISION FOR THE PURPOSE OF
CONSIDERING:

Case No. 10656
Order No. R-9845

APPLICATION OF MITCHELL ENERGY
CORPORATION FOR COMPULSORY POOLING
AND AN UNORTHODOX GAS WELL LOCATION,
LEA COUNTY, NEW MEXICO

AFFIDAVIT OF LARRY V. LUNT IN SUPPORT OF MOTION TO REOPEN CASE OR, IN THE ALTERNATIVE, APPLICATION FOR HEARING DE NOVO

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

I, Larry V. Lunt, of lawful age, being first duly sworn upon oath, depose and state as follows:

1. I am over the age of eighteen years and competent to give this Affidavit.

2. I am General Partner of Xion Investments, a Utah General Partnership ("Xion"), and I am familiar with its affairs.

3. I first became aware of Mitchell Energy Corporation's Tomahawk "28" Federal Com No. 1 Well located 1980 FWL and 1650 FNL of Section 28, Township 20 South, Range 33 East, NMPM, Lea County, New Mexico, on or about _____, 19__.

-- DRAFT --

4. I first became generally aware of Oil Conservation Division Case No. 10656 on or about _____, 19__. Prior to this time, I was not aware of the application, hearing or order in such case.

5. This Affidavit is given in support of the Motion to Reopen Case No. 10656 and for no other purpose; it is provided pursuant to the request of Mitchell Energy Corporation and the New Mexico Oil Conservation Division.

FURTHER AFFIANT SAYETH NOT.

_____
Larry V. Lunt

Subscribed and sworn to before me this ___ day of _____, 1996.

_____
Notary Public

My Commission Expires:

_____

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STRATTON & CAVIN, P.A.
ATTORNEYS & COUNSELORS AT LAW
320 GOLD AVENUE, S.W.
SUITE 1200
P. O. BOX 1216
ALBUQUERQUE, NEW MEXICO 87103-1216

TELEPHONE
(505) 243-5400
FACSIMILE
(505) 243-1700

HAROLD D. STRATTON, JR.*†**
SEALY H. CAVIN, JR.†***
STEPHEN D. INGRAM†

*ALSO ADMITTED IN OKLAHOMA
†ALSO ADMITTED IN TEXAS
**ALSO ADMITTED IN COLORADO
***NEW MEXICO BOARD OF LEGAL SPECIALIZATION RECOGNIZED SPECIALIST IN THE AREA OF NATURAL RESOURCES - OIL AND GAS LAW

To: Company: New Mexico Oil & Conservation Division
Attention: Mr. Rand L. Carroll, Esq.
Fax Number: 505/827-8177

To: Company: Kellahin & Kellahin
Attention: Mr. W. Thomas Kellahin, Esq.
Fax Number: 505/982-2047

Regarding: OCD Case No. 10656 Branko, Inc., et al. / Mitchell Energy Corp.

From: Sealy H. Cavin, Jr.

Date: May 7, 1996

Number of Pages (Including Cover Sheet): 4 Pages

Message:

IMPORTANT

Our File No.: 2.307.001

STRATTON & CAVIN, P.A.
ATTORNEYS & COUNSELORS AT LAW

HAROLD D. STRATTON, JR.*†**
SEALY H. CAVIN, JR.†***
STEPHEN D. INGRAM†

*ALSO ADMITTED IN OKLAHOMA
†ALSO ADMITTED IN TEXAS
**ALSO ADMITTED IN COLORADO
***NEW MEXICO BOARD OF LEGAL SPECIALIZATION RECOGNIZED SPECIALIST IN THE AREA OF NATURAL RESOURCES - OIL AND GAS LAW

320 GOLD AVENUE, S.W.
SUITE 1200
P. O. BOX 1216
ALBUQUERQUE, NEW MEXICO 87103-1216

TELEPHONE
(505) 243-5400
FACSIMILE
(505) 243-1700

May 7, 1996

VIA FACSIMILE TRANSMISSION TO 505/827-8177
Rand L. Carroll
New Mexico Oil Conservation Division
2040 S. Pacheco Street
Santa Fe, New Mexico 87505-5472

VIA FACSIMILE TRANSMISSION TO 505/982-2047
W. Thomas Kellahin
Kellahin & Kellahin
P.O. Box 2265
Santa Fe, New Mexico 87504-2265

Re: NMOCD Case No. 10656, Order No. R-9845

Dear Mr. Carroll and Mr. Kellahin:

At the hearing on May 2, 1996, you requested that we obtain additional factual information from the Movants in the above-referenced matter. We propose to have each of the Movants execute an Affidavit in the form attached hereto. Please let us know if this is what you had in mind. Thank you.

Very truly yours,

Sealy H. Cavin, Jr.

SHC/skc
Enclosure

KELLAHIN AND KELLAHIN
ATTORNEYS AT LAW
EL PATIO BUILDING
117 NORTH GUADALUPE
POST OFFICE BOX 2265
SANTA FE, NEW MEXICO 87504-2265

W. THOMAS KELLAHIN*
*NEW MEXICO BOARD OF LEGAL SPECIALIZATION RECOGNIZED SPECIALIST IN THE AREA OF NATURAL RESOURCES-OIL AND GAS LAW

JASON KELLAHIN (RETIRED 1991)

TELEPHONE (505) 982-4285
TELEFAX (505) 982-2047

May 8, 1996

VIA FACSIMILE TO 505-827-8177

Rand Carroll, Esq.
Division Attorney
Oil Conservation Division
2040 S. Pacheco
Santa Fe, New Mexico 87505

VIA FACSIMILE TO 505-243-1700

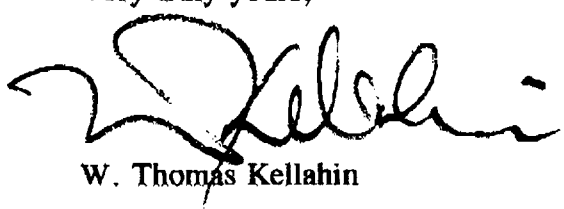
Sealy H. Cavin, Jr.
Stratton & Cavin
P. O. Box 1216
Albuquerque, New Mexico 87103-1216

Re: NMOCD Case 10656
Motion of Branko, Inc. et al to ReOpen Case 10656
Application of Mitchell Energy Corporation
for compulsory Pooling for the Tomahawk "28" Federal
Com Well No. 1 pursuant to Order R-9845 entered in
NMOCD Case 10656, Lea County, New Mexico

Gentlemen:

Enclosed for approval is my suggested affidavit to be submitted to the Undisclosed Partners.

Very truly yours,



W. Thomas Kellahin

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cc: Mitchell Energy Corporation
Attn: Mark Stephenson

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

IN THE MATTER OF THE MOTION OF
BRANKO, INC. ET AL TO REOPEN
NMOCD CASE 10656 CONCERNING THE
APPLICATION OF MITCHELL ENERGY
CORPORATION FOR COMPULSORY POOLING,
LEA COUNTY, NEW MEXICO

CASE NO. 11510

SUPPLEMENTAL AFFIDAVIT OF _____
IN SUPPORT OF MOTION TO REOPEN CASE OR,
IN THE ALTERNATIVE, APPLICATION FOR HEARING DENOVO

STATE OF)
) SS.
COUNTY OF)

I, _____, of lawful age, being first duly sworn upon oath, depose and state as follows:

1. This affidavit supplements my affidavit executed on January ___, 1996 and introduced as Exhibit ___, at the NMOCD hearing held on May 2, 1996.

2. I am one of the "Undisclosed Partners" listed in the January 13, 1993 letter from Strata to Mitchell and introduced as Branko Exhibit ___

3. I am related to the following Undisclosed Partners or have an interest in those Undisclosed Partners who are shown as other than individuals all as set forth in Exhibit "A" attached to this affidavit.

4. I acquired my interest in the operating rights of Federal Oil & Gas Lease No. NM-82927 based upon the following agreement with Strata which is attached hereto as Exhibit "B" or in the absence of any writing, attached as Exhibit "B" is a summary of the terms of that oral agreement.

5. Although I acquired an interest in the operating rights of this federal lease from Strata on or about November 1, 1989, I did not file any document evidencing that interest with the Bureau of Land Management, Santa Fe, New Mexico until _____.

6. Under the terms of my agreement with Strata, for the period from October, 1992 to December 31, 1995, Strata (was) (was not) [strike one or the other] authorized to negotiate with Mitchell for the participation of my interest in the Tomahawk "28" Federal Com Well No. 1.

7. From October 1, 1992 to December 31, 1995, I had conversations with or written communication from Mark Murphy concerning the commitment of my interest either by sale, farmout or participation in the Mitchell's Tomahawk "28" Federal Com. Well No. 1, all as set forth on Exhibit "C" attached to this affidavit.

8. From October 1, 1992 to December 31, 1995 I had conversations with or written communication from Mark Murphy concerning the compulsory pooling of the W/2 of Section 28, T20S, R33E to be dedicated to the Mitchell's Tomahawk "28" Federal Com. Well No. 1, all as set forth on Exhibit "D" attached to this affidavit.

9. On _____. 19___, I first became aware that Strata and Mitchell were negotiating for the voluntary commitment of 100% of the operating rights in the S/2SW/4 of Section 28 for a 320-acre gas spacing unit consisting of the W/2 of Section 28, T20S, R33E, NMPM, Lea County, New Mexico to be dedicated to Mitchell's Tomahawk "28" Federal Com Well No. 1.

10. On _____. 19___, I first became aware that on December 8, 1992, Mitchell filed its application for compulsory pooling with the New Mexico Oil Conservation Division which was docketed as Case 10656 which sought to pool the oil and gas interests (including the S/2SW/4 of Section 28) in a 320-acre gas spacing unit consisting of the W/2 of Section 28, T20S, R33E, NMPM, Lea County, New Mexico.

11. On _____. 19___, I first became aware of New Mexico Oil Conservation Division Order R-9845 which was issued on February 15, 1993 in Case 10656 which compulsorily pooled the W/2 of Section 28, T20S, R33E to form a 320-acre gas spacing unit for the Tomahawk "28" Federal Com Well No. 1.

FURTHER AFFIANT SAYETH NOT.

_____

Signature:
Type Name:

Subscribed and sworn to before me by the foregoing affiant this __day of _____, 1996.

_____

Notary Public

My Commission Expires:

_____ SEAL

120

STRATTON & CAVIN, P.A.
ATTORNEYS & COUNSELORS AT LAW

HAROLD D. STRATTON, JR.*†**
SEALY H. CAVIN, JR.†***
STEPHEN O. INGRAM†

*ALSO ADMITTED IN OKLAHOMA
†ALSO ADMITTED IN TEXAS
**ALSO ADMITTED IN COLORADO
***NEW MEXICO BOARD OF LEGAL SPECIALIZATION RECOGNIZED SPECIALIST IN THE AREA OF NATURAL RESOURCES - OIL AND GAS LAW

320 GOLD AVENUE, S.W.
SUITE 1200
P. O. BOX 1216
ALBUQUERQUE, NEW MEXICO 87103-1216

TELEPHONE
(505) 243-5600
FACSIMILE
(505) 243-1700

May 8, 1996

VIA FACSIMILE TRANSMISSION TO 505/982-2047
W. Thomas Kellahin
Kellahin & Kellahin
P.O. Box 2265
Santa Fe, New Mexico 87504-2265

Re: NMOCD Case No. 10656, Order No. R-9845

Dear Mr. Kellahin:

The affidavit which you propose is clearly well beyond what we agreed to. Accordingly, we intend to obtain and provide affidavits in the form which we provided to you by our May 7th correspondence.

Very truly yours,

Sealy H. Cavin, Jr.

SHC/skc
cc: Rand L. Carroll, Esq. (Via Facsimile Transmission to 505/827-8177)

121

STRATTON & CAVIN, P.A.

ATTORNEYS & COUNSELORS AT LAW

320 GOLD AVENUE, S.W.

SUITE 1200

P. O. BOX 1216

ALBUQUERQUE, NEW MEXICO 87103-1216

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(505) 243-5400

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HAROLD D. STRATTON, JR.*†**
SEALY H. CAVIN, JR.†***
STEPHEN D. INGRAM†

*ALSO ADMITTED IN OKLAHOMA
†ALSO ADMITTED IN TEXAS
**ALSO ADMITTED IN COLORADO
***NEW MEXICO BOARD OF LEGAL SPECIALIZATION RECOGNIZED SPECIALIST IN THE AREA OF NATURAL RESOURCES - OIL AND GAS LAW

To: Company: Kellahin & Kellahin
Attention: Mr. W. Thomas Kellahin, Esq.
Fax Number: 505/982-2047

To: Company: New Mexico Oil & Conservation Division
Attention: Mr. Rand L. Carroll, Esq.
Fax Number: 505/827-8177

Regarding: OCD Case No. 10656 - Mitchell / Branko, et al.

From: Sealy H. Cavin, Jr., Esq.

Date: May 1, 1996

Number of Pages (Including Cover Sheet): 2 Pages

Message:

IMPORTANT

Our File No.: 2.307.001

NEW MEXICO ENERGY, MINERALS
& NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION
2040 South Pacheco Street
Santa Fe, New Mexico 87505
(505) 827-7131

May 9, 1996

Sealy H. Cavin, Jr.
Harold D. Stratton, Jr.
Stratton & Cavin
P. O. Box 1216
Albuquerque, NM 87103-1216

W. Thomas Kellahin
Kellahin & Kellahin
P.O. Box 2265
Santa Fe, NM 87504-2265

RE: NMOCD Case No. 10656, Order No. R-9845
Affidavit submittal subsequent to hearing on May 2, 1996

Gentlemen:

After reviewing the forms of Affidavit proposed by the each of the parties, the Division believes Mr. Kellahin's version would provide the Division with the better information on which it can make a decision in this matter and hereby directs Branko et al to obtain such form of Affidavit from each of the Undisclosed Partners, including Warren and Arrowhead.

I will be out of the office until Monday, May 13, and Mr. Stogner will be out until May 22.

Sincerely,

Rand Carroll
OCD Legal Counsel

cc: Michael Stogner, OCD

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FAX

Oil Conservation Division
2040 S. Pacheco
Santa Fe, NM 87505
(505) 827-7131

****

To: Scady Cavin ; Tom Kellahin

From: Rand Carroll

Date: 5/9/96

Subject: _____

If you have any problems with this FAX, please call the above telephone number.

KELLAHIN AND KELLAHIN
ATTORNEYS AT LAW
EL PATIO BUILDING
117 NORTH GUADALUPE
POST OFFICE BOX 2265
SANTA FE, NEW MEXICO 87504-2265

W. THOMAS KELLAHIN*
*NEW MEXICO BOARD OF LEGAL SPECIALIZATION RECOGNIZED SPECIALIST IN THE AREA OF NATURAL RESOURCES-OIL AND GAS LAW

JASON KELLAHIN (RETIRED 1991)

TELEPHONE (505) 982-4285
TELEFAX (505) 982-2047

May 12, 1996

HAND DELIVERED

Michael E. Stogner
Hearing Examiner
Oil Conservation Division
2040 S. Pacheco
Santa Fe, New Mexico 87505

Rand Carroll, Esq.
Division Attorney
Oil Conservation Division
2040 S. Pacheco
Santa Fe, New Mexico 87505

Re: NMOCD Case 10656
Motion of Branko, Inc. et al to ReOpen Case 10656
Application of Mitchell Energy Corporation for compulsory Pooling for the Tomahawk "28" Federal Com Well No. 1 pursuant to Order R-9845 entered in NMOCD Case 10656, Lea County, New Mexico

Gentlemen:

Enclosed is Mitchell Energy Corporation's Memorandum in support of its opposition to Branko's Motion to Reopen Case 10656. Please call me if you have any questions.

Very truly yours,

W. Thomas Kellahin

cc: Mitchell Energy Corporation
Attn: Mark Stephenson

cc: Hal Stratton, Esq.
Attorney for Branko, Inc. et al.

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

IN THE MATTER OF THE HEARING CALLED BY THE OIL CONSERVATION DIVISION FOR THE PURPOSE OF CONSIDERING:

CASE NO. 11510

APPLICATION OF MITCHELL ENERGY CORPORATION FOR COMPULSORY POOLING AND AN UNORTHODOX GAS WELL LOCATION, LEA COUNTY, NEW MEXICO.

MITCHELL ENERGY CORPORATION'S MEMORANDUM OF LAW AND STATEMENT OF FACTS IN OPPOSITION TO BRANKO INC., ET AL, MOTION TO REOPEN NMOCD CASE 10656

Mitchell Energy Corporation ("Mitchell") provides the following factual summary and legal authority in support of its request that the New Mexico Oil Conservation Division deny the Motion of Branko, Inc. et al to Reopen Case 10656:

FACTUAL SUMMARY

(1) In Case 10656, Mitchell sought an order pooling all mineral interests from the top of the Wolfcamp formation to the base of the Pennsylvanian formation underlying the W/2 of Section 28, T20S, R33E, NMPM, Eddy County, New Mexico forming a standard 320-acre gas spacing and proration unit for any and all formations and/or pools developed on 320-acre spacing within said vertical extent, which presently includes but is not necessarily limited to the South Salt Lake Morrow Gas

Pool. Said unit to be dedicated to its Tomahawk "28" Federal Com Well No 1 to be drilled and completed at an unorthodox gas well location 1650 feet FNL and 1980 feet FWL (Unit F) of said Section 28.

(2) Strata Production Company ("Strata") appeared at the hearing held on January 21, 1993 in Case 10656 in opposition to the granting of Mitchell's application.

(3) The operating rights (working interests) for all of Section 28, except the S/2S/2 and the SW/4NE/4, are subject to Joint Operating Agreement No. 1130 between Mitchell Energy Corporation, Santa Fe Energy Partners, and Maralo designating Mitchell Energy Corporation as the operator. The SW/4NE/4 is an unleased federal oil & gas tract. The S/2SW/4 and SW/4SE/4 is a federal oil & gas lease with record title and operating rights (no overriding royalty) held by Strata Production Corporation. The SE/4SE/4 is a federal oil & gas lease held by Pitche Energy.

(4) Mitchell has proposed to all working interest owners the formation of the subject spacing unit and drilling of the subject well and has obtained the voluntary agreement of 75 % of the working interest ownership in the subject spacing unit for the proposed well.

(5) At all times relevant hereto, the S/2SW/4 which constitutes the remaining 25 % working interest in the subject spacing unit has been under the ownership and control of Strata.

(6) On October 28, 1992, Steve Smith of Mitchell and Mark Murphy of Strata discussed Mitchell's proposed well in the NW/4 of Section 28 with a W/2 spacing unit.

(7) On November 18, 1992, Murphy told Smith of Mitchell that" Strata would defend itself and its partners rights during any proceeding including a force pooling hearing."

(8) On November 20, 1992, Mitchell wrote to Strata formally proposing Tomahawk Well and its spacing unit.

(9) On December 7, 1992, Mitchell filed the compulsory pooling application which was set for hearing on January 7, 1993.

(10) On December 9, 1992, Strata was served with the pooling application.

(11) On December 9, 1992, Strata by letter offered for itself and its undisclosed partners to either sell or farmout its interest to Mitchell.

(12) By letter dated December 30, 1992, and signed by Mark Murphy, Strata advises Mitchell, among other things, that Strata:

> "7. Undisclosed Owners: There are certain undisclosed owners of undivided interest in the Subject Lease whose interest are not reflected in the county or Bureau of Land Management records. Strata hereby represents and warrants unto Mitchell that is has the right, power and authority to sell 100% of the Subject Lease for the benefit of such undisclosed owners."
>
> "8. Authority: The undersigned signatories hereby represent and warrant unto each other that they have actual, express authority to execute this Agreement and bind their respective companies to perform under the terms hereof."
>
> "11. Binding Effect: The terms, limitations and conditions of this Agreement shall be covenants running with the ownership of the Subject Lease and, as such, shall be binding upon and shall insure (sic) to the benefit of the parties hereto, their heirs, personal representatives, successors and assigns."

(13) By letter dated January 5, 1993, Mitchell accepts Strata proposal.

(14) On January 5, 1993, Mitchell and Strata have a disagreement concerning what each thought were the terms of the "deal".

(15) On January 6, 1993, the afternoon before the hearing, Sealy Cavin entered his appearance for Strata and the case was continued to January 21, 1993.

(16) By letter dated January 7, 1993, Smith of Mitchell wrote Murphy of Strata a detailed letter summarizing the negotiations.

(17) By letter dated January 12, 1993, Strata asserts that in a conversation on November 18, 1992, Murphy had told Smith of Mitchell that" Strata would defend itself and its partners rights during any proceeding including a force pooling hearing."

(18) By letter dated January 13, 1993, Strata sent Mitchell a list of Strata's "undisclosed partners."

(19) On January 21, 1993, the Division conducted a hearing of this case, at which:

(a) Strata appeared at the hearing in opposition to Mitchell's proposed W/2 orientation of the spacing unit, the well location, and the overhead charges.

(b) In addition, Strata sought to have the case continued and contended that Mitchell should be required to provide additional notice because Mitchell had failed to provide notification to Strata's "undisclosed partners" as identified on Mitchell Exhibit 17.

(c) The Division Examiner denied Strata's request and allowed Mitchell to present its evidence.

(20) On February 15, 1993, The Division issued Order R-9845.

(21) On February 17, 1993, Mitchell sent Strata an election letter requesting Strata to elect within thirty days to voluntary participate with its 25% working interest under the pooling order.

(22) On February 19, 24, 25, 1993, Strata makes Mitchell various proposals for Strata to transfer its 25% interest to Mitchell.

(23) On March 11, 1993, Strata filed for a DeNovo hearing which is set for April 29, 1993

(24) On or about April 28, 1993, Strata withdrew its request for a DeNovo hearing.

(25) On November 8, 1995, Strata assigned 81.5% of its operating rights in Federal oil and gas lease NM-82927 to its undisclosed partners by recording with the Lea County Clerk an unapproved "Transfer of Operating Rights form OMB No. 1004-0034.

(26) On November 8, 1995, Strata advises its Undisclosed Partners of Compulsory Pooling Order R-9845 and tells them that they may have a claim against Mitchell.

(27) On January 29, 1996, certain of the Undisclosed Partners filed a Motion with the Oil Conservation Commission to Reopen Case 10656.

THE DIVISION HAS PREVIOUSLY DECIDED THAT MITCHELL PROVIDED NOTICE TO THE PROPER PARTY

At the Examiner hearing, as to the notice issue raised by Strata, Mitchell presented exhibits and testimony which demonstrated that:

(a) Abstracts and Title Opinions established that Strata held the record title and all operating rights to the S/2SW/4 of Section 28 as of the date the well was proposed to Strata (November 20, 1992), and as of the date Strata received notification of the compulsory pooling application (December 20, 1992), and as of the date of the hearing in this case.

(b) By letter dated November 20, 1992 Mitchell proposed to Strata the subject well and proposed spacing unit requesting voluntary participation in the well or in the alternative, proposed farmout terms to Strata.

(c) On November 20, 1992, Mitchell was the first working interest owner in Section 28 to propose a Morrow gas well to the working interest owners,

(d) Although Strata declined to participate in the well, during the next two months, Mitchell and Strata through numerous telephone calls and correspondence between the parties discussed other alternatives including Mitchell purchasing or farming in Strata's interest.

(e) Mitchell understood and believed that Strata was dealing for and on behalf of Strata and all of Strata's "undisclosed partners."

(f) By letter dated December 30, 1992 (Mitchell Hearing Exhibit 12), Strata submitted to Mitchell a farmout proposal which included representations that while Strata had "undisclosed partners" Strata had the right, power and authority to bind said undisclosed partners.

(g) After negotiations between Mitchell and Strata failed, by letter dated January 13, 1993, Strata for the first time provided Mitchell with the names and addresses of Strata's fifteen "undisclosed partners." (Mitchell Hearing Exhibit 17).

At the Examiner hearing and in support of its motion for continuance, Strata claimed that Mitchell knew all along that Strata had "undisclosed partners" and it was Mitchell's duty to request Strata to

disclose the names and addresses and then to provide those parties with an opportunity to join and if not then pursue compulsory pooling. Correctly, the Division denied that request.

STRATA'S UNDISCLOSED PARTNERS DID NOT HAVE A PROTECTED PROPERTY RIGHT IN THIS FEDERAL OIL & GAS LEASE UNTIL AFTER NOVEMBER 8, 1995

Because Strata's Undisclosed Partners were participating in Strata's operations of the Gavilon Federal Well in Section 33, Strata offered those Undisclosed Partners the option of participating in Strata's interest in the S/2SW/4 of Section 28 which was pooled by OCD Order R-9845 into the Mitchell spacing unit in the W/2 of Section 28.

On December 9, 1992, when Mitchell served Strata with a compulsory pooling application, Strata held 100% of the "record title" in Federal Oil & Gas Lease NM-82927 which had been issued to Strata on November 1, 1989.

The Undisclosed Partners, pursuant to Uhden v. New Mexico Oil Conservation Commission, etal, 112 N.M. 528 (1991), assert they are entitled to notice protection afforded parties whose property rights may be

affected by NMOCD action because they claim to have a "property rights interest" in this federal oil and gas lease at the time this compulsory pooling application was filed.

However, their claim is based upon an agreement with Strata whereby Strata would carve out of its record title certain operating right percentages and assign those operating rights to the Undisclosed Partners.

Unfortunately for them, the assignment **WAS NOT** recorded with the Lea County Clerk until November 8, 1995 **and there is no evidence before the Division Examiner that Strata has ever filed this assignment with or obtained the approval of the Bureau of Land Management-Santa Fe ("BLM").**

Thus the issue for the Division is: "When does a person acquire a property interest in a federal oil & gas lease which must be recognized by the NMOCD?"

In this case, the Undisclosed Partners will acquire an interest in the operating rights for this federal lease when the BLM approves the assignment. 43 C.F.R. Section 3106.1(b) provides "The rights of a transferee to a lease or an interest therein shall not be recognized by the Department until the transfer has been approved by the authorized officer."

As of May 3, 1996 (date of Examiner evidentiary hearing) more than three years have passed since Strata was served with the compulsory pooling application and the transfer of these operating rights had not yet been filed with nor approved by the BLM.

Strata attempts to overcome this problem by improperly requesting retroactive approval on the face of the Transfer by stating that "This Transfer of Operating Rights shall be effective as of the effective date of Lease NM-82927, November 1, 1989." Such an attempt is contrary to 43 C.F.R. Section 3106.7-4 which requires that no cognizable lease rights are acquired by this transfer until the transfer is approved or until the date the assignment takes effect under the Mineral Leasing Act (which is the first day of the lease month **following** the date of filing the assignment) which ever is later.

Pending approval, the Undisclosed Partners will be regarded by the BLM as practically a non-entity, having neither rights nor obligations regarding the lease. For example, IBLA decisions refer to the unapproved assignee as "a stranger to the lease" or having no cognizable interest, or as one who "may not exercise any control or dominion over the lease". See

Rocky Mountain Mineral Law Foundation, Law of Federal Oil and Gas Leases, page 10-23.

Only Strata as the record title owner during the time in question is entitled to receive BLM notices concerning lease matters including lease terminations. Until this assignment is approved by the BLM, Strata remains fully responsible for all obligations under the lease and the BLM looks solely to Strata for performance of all lease terms.

Neither the NMOCD nor Mitchell should be expected or required to recognize the Undisclosed Partners as having a property interest to be protected prior to the time the BLM recognizes and protects that interest.

THE DIVISION AUTHORIZED MITCHELL TO PROCEED ON JANUARY 21, 1993 WITH THE POOLING HEARING AND DID NOT REQUIRE ADDITIONAL NOTICE.

The critical time for determining notice is not the date of the hearing but rather the date the action was filed. The New Mexico Court of Appeals, in Daniels Insurance, Inc. v. Daon Corp, 106 N.M. 328 (Ct. App. 1987) held that Rule 1-025(C) controls when an interest has been transferred **after** the commencement of an action.

Under Rule 1-025 New Mexico Rules of Civil Procedure, in the case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party.

On January 21, 1993, the Division considered such a request for the joinder of these additional Undisclosed Partners and denied that request.

Daniels Insurance, Inc. v. Daon Corp, 106 N.M. 328 (Ct. App. 1987) held that such substitutions of a successor in interest under this section is within the sound discretion of the trial court. The NMOCD already has conducted such a hearing and has exercised such sound discretion in denying joinder of these Undisclosed Partners.

STRATA AND NOT MITCHELL IS RESPONSIBLE FOR THE INTEREST OF THE UNDISCLOSED PARTNERS

The Undisclosed Partners' operating rights interest were derived from Strata who adequately represented all those interest owners. Under Rule 1-024 of the New Mexico of Rules of Civil Procedure, a person has a right to intervene in a case to protect his property interest **unless** that person's interest is adequately represented by existing parties.

43 C.F. R. Section 3106.7-2 provides that:

> "the transferor (Strata) and its surety shall continue to be responsible for the performance of all obligations under the lease until a transfer of record title or operating rights (sublease) is approved by the authorized officer."

The Undisclosed Partners have failed to establish that Strata did not adequately represent their interests. To the contrary, Strata contested virtually every technical issue involved in this proceeding:

THE AFE AND JOINT OPERATING AGREEMENT:

Mitchell's estimated cost for a completed well is $1,377,300. with monthly overhead rates of $6,470 while drilling and $647 while producing. Strata stipulated to Mitchell's proposed estimate of well costs ("AFE") identified on Mitchell Exhibit 19 as fair and reasonable but requested the Ernst & Young tabulation of average overhead rates be applied in this case.

Strata objected to the Mitchell proposed Joint Operating Agreement in use in the area but admitted if Mitchell accepted the Strata changes to that agreement that Strata still would not reach a voluntary agreement with Mitchell.

THE WELL LOCATION AND
SPACING UNIT ORIENTATION DISPUTE:

Because of dispute over the orientation of the spacing unit and the location of the first Morrow gas well in the section, Mitchell and Strata have been unable to agree on a voluntary basis for the pooling of their respective interests in either the proposed well or its spacing unit.

To support its opposition to the Mitchell orientation and location, Strata presented the following information through its exhibits and the testimony of its witnesses:

(a) That Strata wanted a N/2 orientation which would exclude Strata from having to participate in the subject well.

(b) A Morrow structure map for an area south of Section 28 but failed to include Section 28 or any section adjacent to Section 28.

(c) Strata's geologist testified that Morrow gas wells could be successfully drilled without regard to structure.

(d) Strata's geologist had not prepared an isopach map but adopted without verification the Mitchell isopach and concluded therefrom that wells could be drilled in Section 28 with N/2-S/2 oriented spacing units because of reservoir thickness.

(e) Strata's geologist further contended that by moving the proposed Mitchell well farther north and higher on the structure, the well would be at a standard gas well location if a N/2 oriented spacing unit was approved.

(f) On behalf of Strata, Mr. Mark Murphy testified that while it did not operate or have a working interest in any currently producing Morrow gas well in the area, it was proposing to Mitchell through its testimony at hearing that a S/2 spacing unit be formed so that Strata could drill a Morrow gas well in the SE/4SW/4 of Section.

THE DIVISION'S PRIOR DECISION

The Division previously decided that:

(1) At all times during negotiations and at the time the application was filed and notice was given, Strata was the record title owner of the

mineral interest in question and the Division has jurisdiction over the interest held in Strata's name.

(2) Mitchell made a good faith effort to reach a voluntary agreement with the record owner of the interest and is entitled to compulsory pooling.

(3) It would circumvent the purposes of the New Mexico Oil & Gas Act to allow a party who is shown by public record search to be the owner a working interest in the spacing unit at the time said party was served with a compulsory pooling application to avoid or delay having that entire percentage interest pooled by assigning, conveying, selling or otherwise burdening or reducing that interest after the application and notice of hearing are filed with the Division and served on the party.

(4) Strata's motion to continue for lack of notice to its "undisclosed partners' should be denied.

(5) It was Strata's responsibility and obligation to notify its "undisclosed partners" of this compulsory pooling application and Strata cannot shift that responsibility to Mitchell in this case.

(6) Strata's motion to continue for lack of notice to its "undisclosed partners" should be denied and all said "undisclosed partner's" interest received or to be received from Strata, if any, should be subject to the terms and conditions of this order.

(7) There is substantial evidence to support approval of the Mitchell position and its application should be approved.

(8) Approval of this application as set forth in the above findings and in the following order will avoid the drilling unnecessary wells, protect correlative rights, prevent waste and afford the owner of each interest in said unit the opportunity to recover or receive without unnecessary expense his just and fair share of the production in any pool resulting from this order.

SUMMARY

Parties seeking compulsory pooling must be able to rely on representations made by opponents and upon the record title ownership for notice purposes. Accepting Branko et al's position regarding the notice issue would make future NMOCD pooling orders unreliable and potentially worthless. Parties being pooled could assign part of their interest late in the game in order to delay the process and thereby gain leverage in their negotiations with the operator seeking to pool their interests. The record is clear that Mark Murphy of Strata simply "laid behind the log" until it was convenient for him to raise the notice issue and attempt to use it as a bargaining chip in his negotiations with Mitchell. In addition, interest owners not of record at the time the pooling application is filed could come out of the woodwork after the well is drilled and seek risk-free participation in the well.

Branko et al. are the "undisclosed partners" of Strata and are not entitled to Reopen this case to re-argue an issue which was fully adjudicated before the Division at the hearing held on January 21, 1993 and which is extensively summarized in the findings of Order R-9845.

Contrary to the assertions of Branko, the Division has already decided this issue and has found that due public notice was properly given in this case as required by law, and the Division had jurisdiction over the proper parties.

It was Strata's responsibility and obligation to notify its "undisclosed partners" of this compulsory pooling application and Strata cannot shift that responsibility to Mitchell in this case.

It is impossible to reconcile the contradiction that Mark Murphy on behalf of Strata did not notify its Undisclosed Partners of the compulsory pooling order because it had no obligation to do so with the fact that on November 8, 1995 he assumed the obligation to send those Undisclosed Partners notice of the compulsory pooling order after the well had paid out. Strata cannot have it both ways.

Order R-9845 is final, all of the interest underlying the S/2SW/4 of Section 28 including Strata and its "undisclosed partners" have been pooled. The election period has already been provided in accordance with the order and no election was timely made.

There is simply no opportunity for confusion about what was pooled. Order R-9845 is unambiguous. It details at great length the notice argument over the "undisclosed partners" issue and rejected Strata's arguments.

Further, after the entry of the Order and in accordance with the terms of that order, by letter dated February 17, 1993 Mitchell notified Strata of its right to commit is 25% interest and join in the well by prepaying its share of the estimated costs. Strata failed to either obtain a Stay of the Order pursuant to Division Memorandum 3-85 or to timely tender payment of its 25% share of the costs of the well.

The result is that Strata abandoned its appeal and failed to timely elect to participate and therefore by its own actions has committed the entire 25% working interest as a no-consenting party pursuant to the Order.

Strata is responsible to the Division and to Mitchell for this interest. See Finding (12) Order R-9845. If Strata in fact did not have "unfettered authority" to act on behalf of the "other interest owners" and honestly believed that these findings were wrong, then it was Strata's obligation in April 1993 to pursue its DeNovo appeal. Instead. Strata abandoned its

appeal. The responsibility lies with Strata to account to its Undisclosed Partners and not with either the Division or with Mitchell.

Mitchell has complied with the terms and conditions of the Order and the Branko et al interest are now "non-consenting" under the pooling order and are subject to the 200% risk factor penalty.

Mitchell requests that the Division deny this Motion.

Respectfully submitted,

W. Thomas Kellahin
Kellahin & Kellahin
P. O. Box 2265
Santa Fe, New Mexico 87501

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply was sent by first class mail this 13 day of May, 1996 to:

Harold D. Stratten, Jr. Esq.
Stratten & Cavin
Attorneys at Law
P. O. Box 1216
Albuquerque, New Mexico 87103-1216

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W. Thomas Kellahin

STRATTON & CAVIN, P.A.
ATTORNEYS & COUNSELORS AT LAW

HAROLD D. STRATTON, JR.*†**
SEALY H. CAVIN, JR.†**°
STEPHEN D. INGRAM†

*ALSO ADMITTED IN OKLAHOMA
†ALSO ADMITTED IN TEXAS
**ALSO ADMITTED IN COLORADO
°NEW MEXICO BOARD OF LEGAL SPECIALIZATION RECOGNIZED SPECIALIST IN THE AREA OF NATURAL RESOURCES - OIL AND GAS LAW

320 GOLD AVENUE, S.W.
SUITE 1200
P. O. BOX 1216
ALBUQUERQUE, NEW MEXICO 87103-1216

TELEPHONE
(505) 243-5400
FACSIMILE
(505) 243-1700

May 23, 1996

VIA HAND DELIVERY

William J. LeMay, Director
Oil Conversation Division
New Mexico Department of Energy,
Minerals and Natural Resources
2040 S. Pacheco Street
Santa Fe, New Mexico 87505-5472

Re: Movants' Reply Memorandum to Mitchell Energy Corporation's Memorandum of Law and Statement of Facts; Case No. 10656, Order No. R-9845 (Refer to Case No. 11510)

Dear Mr. LeMay:

Please find enclosed herein an original and three copies of Movants' Reply Memorandum to Mitchell Energy Corporation's Memorandum of Law and Statement of Facts. Please date stamp one copy and return to this office in the self-addressed, stamped envelope provided.

I have also included herein eight affidavits which we have agreed to submit. I have marked these affidavits as Branko Exhibits Nos. 29 through 36. Pursuant to our stipulation with Mr. Kellahin, I believe these exhibits should be included in the record. We have approximately eight additional affidavits to be submitted. They will be similar in content to the enclosed affidavits. As soon as they are received, I will forward the originals to you for inclusion in the record.

I have provided copies of these affidavits to Mr. Carroll and Mr. Kellahin for their information along with a copy of our reply memorandum.

Sincerely,

STRATTON & CAVIN, P.A.

By: Harold D. Stratton, Jr.

HDS/tis
Enclosures
cc/ Rand L. Carroll, Esq. (w/encl.)
W. Thomas Kellahin, Esq. (w/encl.)

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

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
DIVISION FOR THE PURPOSE OF
CONSIDERING:

Case No. 10656
(Refer to Case No. 11510)
Order No. R-9845

APPLICATION OF MITCHELL ENERGY
CORPORATION FOR COMPULSORY POOLING
AND AN UNORTHODOX GAS WELL LOCATION,
LEA COUNTY, NEW MEXICO

MOVANTS' REPLY MEMORANDUM TO MITCHELL ENERGY CORPORATION'S MEMORANDUM OF LAW AND STATEMENT OF FACTS

The Movants herein, hereby submit their Reply Memorandum to Mitchell Energy Corporation's ("Mitchell") Memorandum of Law and Statement of Facts:

I. INTRODUCTION

In its memorandum of law and statement of facts, Mitchell attempts to devise any argument possible as to why the Movants should not have been notified of the hearing that would pool their interests in the S/2 SW/4, of Section 28, Township 20 South, Range 33 East NMPM (sometimes, hereinafter, referred to as the "subject property") and why it wasn't Mitchell's duty to provide such notice to the Movants.

First, it is clear that all of the Movants had a protected property interest by virtue of their working interests and overriding royalty interests in the subject property which was acquired well before the application was filed by Mitchell. It is also clear, from the testimony and exhibits presented at the hearing, that Mitchell's senior landman and

representative, Steve Smith, knew that there were interests other than that of Strata Production Company ("Strata") in the subject property over a month before the pooling application was filed and knew of the exact nature of the Movants' interests as well as their addresses where they could be notified before the hearing. Finally, it is equally clear that the Movants were not notified of the hearing and did not have an opportunity to be heard at the hearing.

It is irrelevant, under the circumstances, who had the duty to notify the Movants of the hearing. They were not notified and the Oil Conservation Division ("Division") never obtained jurisdiction over them. Any order issued by the Division which would affect the rights of the Movants without such notice and an opportunity to be heard is void. The Division must reopen the proceedings and allow the Movants an opportunity to be heard regarding the pooling of their interests in the subject property.

II. FACTS RELEVANT TO THE ISSUE OF DUE PROCESS

The relevant facts in the case were set out in the Movants' Brief in Support of their Motion to Reopen. However, since the hearing these facts are now supported by the evidence as follows:

The Movants all acquired working interests or overriding royalty interests in the subject property. Branko Exs. Nos. 1 through 17. All of these interests were acquired well before Mitchell filed its application in this case. *Id.*[1] Mitchell, through their senior landman

[1] All of the interests of the Movants were acquired in late 1989 or early 1990.

who was working on the deal, Steve Smith, became aware through conversations with Mark Murphy, the President of Strata, that there were interests other than Strata's in the subject property as early as October 26, 1992. (Tr. 19, 61-62, 66).[2] Throughout the negotiations between Mr. Murphy and Mr. Smith, Mr. Murphy continued to emphasize the existence of the Movants' interests by informing Mr. Smith that any deal would have to be agreed to and approved by the Movants. (Tr. 19, 20, 22; Branko Exs. Nos. 19, 20, 21, 23 & 24). Finally, when negotiations broke down, Mr. Smith inquired as to the identities of the Movants in early January, 1993. (Tr. 24). Mr. Murphy then immediately sent a letter to Mr. Smith via facsimile listing the names, addresses and interests owned by the Movants in the subject property. (Branko Ex. No. 24). Mr. Smith, even after learning the names and whereabouts of the Movants, still did not cause the Movants to receive notice of the hearing on Mitchell's compulsory pooling application held on January 21, 1993. Although Mr. Smith testified at the hearing that it is the "applicant" in the proceeding who has the duty of giving notice to interested parties (Tr. 69), he said he assumed that Strata had given the Movants notice of the hearing. (Tr. 73). Mr. Smith stated that Mitchell did not give notice to the Movants of the hearing as he was concerned that the pooling application proceedings could be delayed. (Tr. 71-72). Mr. Smith further testified that he had nothing from the Movants that indicated that Strata could represent the Movants in the proceeding. (Tr. 63-64).

[2] Citations are to page numbers of the transcript of the Examiner Hearing held on May 2, 1996.

The Movants dispute several of the facts enumerated in Mitchell's brief.[3] Item No. (4) states that Mitchell proposed to "all working interest owners the formation of a spacing unit" when in fact, it is undisputed that Mitchell never communicated with the Movants who owned working interests. Item (5) states that Strata owned and controlled the entire 25% working interest in the subject property which is clearly not true and which Steve Smith knew to be untrue as early as October, 1992. (Branko Exs. Nos. 1-17; Tr. 19, 61-62, 66). In Item (25) Mitchell alleges that Strata assigned the operating rights in the subject property to the Movants on November 8, 1995 which is, in fact, not the date the interests were assigned, but, rather the date the interests were recorded. The dates such interests were acquired by the Movants are contained in their affidavits, Branko Exs. Nos. 1-17.

III. ARGUMENT AND AUTHORITIES

Mitchell has attempted to make three, main legal arguments. First, Mitchell asserts that "the Division has previously decided that Mitchell provided notice to the proper party." Second, Mitchell alleges that the Movants do not have a property right which would be protected by the constitution and due process of law. Finally, Mitchell alleges that it was the duty of Strata, and not Mitchell, to notify the Movants of the Division's hearing on Mitchell's compulsory pooling application.

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[3] Mitchell does not cite to the record or provide any authority supporting any of the facts in its brief.

A. The Division never obtained jurisdiction over the Movants and, therefore, any order issued by the Division in regard to the rights of the Movants is void.

Mitchell argues that "the Division has previously decided that Mitchell provided notice to the proper party" in this proceeding. Mitchell fails to note, however, that the Division made that determination in the absence of notice to and an opportunity to be heard by the Movants. It is uncontested that the Movants were never notified of the application, hearing or the entry of the order in this cause.

It is fundamental that a board, commission or a court does not obtain jurisdiction over a party until that party is served with notice and is given an opportunity to be heard. Any action taken by the Division that affects the Movants' rights is ineffective as to the Movants unless they have been provided with notice and a fair opportunity to be heard.

It is submitted that if this were a proceeding in a New Mexico court and the Movants were not served with notice of the proceeding, that there would be no serious argument about the court's ability to adjudicate the Movants' rights. For a district court to have jurisdiction over a party and comply with due process requirements a summons and complaint must be served on the party pursuant to SCRA 1986, 1-004 in a manner reasonably calculated to bring the proceeding to the defendant's attention. *Moya v. Catholic Archdiocese*, 107 N.M. 245, 755 P.2d 583 (1988). It is this same standard of due process and justice that is required in an administrative proceeding.

> Administrative proceedings must conform to fundamental principles of justice and the requirements of due process of law. A litigant must be given a full opportunity to be heard with all rights related thereto. The essence of justice

> is largely procedural. Procedural fairness and regularity are of the indispensable essence of liberty. [citations omitted]

Uhden v. New Mexico Oil Conservation Comm'n, 112 N.M. 528, 530-531, 817 P.2d 721, 723-724 (1991). The standards of justice and procedural due process are identical whether in a judicial or administrative setting.

As discussed in its initial Brief in Support of its Motion to Reopen by the Movants, the case of *Uhden v. Mew Mexico Oil Conservation Comm'n, et al., supra*, is dispositive as to the issues in this case. In *Uhden*, the New Mexico Supreme Court found that since Uhden was not served personally with notice of the Oil Conservation Commission's ("Commission") hearing, that the order entered by the Commission affecting Uhden's rights was void. The *Uhden* case does not stand alone for this proposition in New Mexico. In *AA Oilfield Service v. New Mexico State Corp. Comm'n*, 118 N.M. 273, 278, 881 P.2d 18, 23 (1994) the New Mexico Supreme Court held that "if the Corporation Commission enters an order without providing notice and hearing as required, such orders are void and subject to collateral attack," basing its decision on a previous New Mexico case, *Groendyke Transp., Inc. v. New Mexico State Corp. Comm'n*, 79 N.M. 60, 62, 439 P.2d 709, 711 (1968) reaching the same result.

In Oklahoma, a sister oil and gas state, the Oklahoma Supreme Court held that when parties did not receive the requisite notice of an increased well density application, and thus, a jurisdictional defect was apparent from the face of the record, the Oklahoma Corporation Commission did not have jurisdiction to adjudicate the rights of the parties and the Commission's order was void. *Anson Corp. v. Hill*, 841 P.2d 583 (Okla. 1992). In *Union*

Texas Petroleum v. Corp. Comm'n, 651 P.2d 652 (Okla. 1981) the Oklahoma Supreme Court similarly held that

> the record contains no notice of a mailing to this entity and thus the record demonstrates the Commission attempted to proceed against Union's interest in the absence of jurisdiction over the person of that entity. Accordingly, the order's attempt to adjudicate the rights of Union Oil of California is ineffective, and a nullity insofar as it purports to affect its interests.

651 P.2d at 659. *See also, Capitol Federal Savings Bank v. Bewley*, 795 P.2d 1051, 1053 (Okla. 1990).

Here, the Movants had a right to be notified of the Division's proceeding by personal service. *See Uhden, supra.*[4] The Movants were not notified of either the application or the hearing which purportedly resulted in the pooling of the Movants' interests in the subject property. Due to the lack of notice and personal service on the Movants, the Division never obtained jurisdiction over them. The action taken by the Division in the proceeding and the resultant order is, therefore, void and ineffective as to the Movants and their interests in the subject property.[5]

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[4] It should be noted that even in light of the direction given the Division by the New Mexico Supreme Court in *Uhden* regarding the form of notice required, the Division still has not amended its notice regulations to provide for personal service. *See* Division Rules 1204 and 1207.

[5] Mitchell has not made an argument regarding whether the Movants received "casual notice" of the hearing from some source outside of proper service under *Uhden*. The Movants have agreed to provide the Division and Mitchell with supplemental affidavits as to when each of the Movants became aware of the following facts: 1) Mitchell's proposal for the Tomahawk "28" Federal Com Well No 1; 2) Mitchell's compulsory pooling application; 3) the OCD hearing held on January 21, 1993; and 4) the Order issued February 15, 1993. Eight of those affidavits are submitted herewith as exhibits to the hearing. The remainder will be submitted soon. These affidavits indicate the Movants had no knowledge of these

B. All Movants possess interests that are protected property rights and subject to due process of law.

Mitchell argues, not that the Movants did not have an interest in the subject property,[6] but that since such interests were not recorded with the Lea County Clerk or with the Bureau of Land Management that they are not protected by due process clauses of the United States and New Mexico Constitutions. This argument has been previously addressed in the Movants' Brief in Support of their Motion. To briefly review, the New Mexico pooling statute, NMSA 1978, § 70-2-17(C) (1995 Repl.), is not concerned only with interest owners who have recorded their interests in county real estate records for the purpose of providing constructive notice to subsequent third-party purchasers. Nowhere in NMSA 1978, § 70-2-17 (1995 Repl.) does the statute refer to recorded interests. There are no provisions in the statute that provide that interests in property must be recorded to be subject to the provisions of the statute. Similarly, the Division rules do not require that notice be afforded only to those who have recorded their interests with county clerks. Division Rule 1207(A) provides that "[a]ctual notice shall be given to each known individual." The Division rule

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events until sometime in 1995, well after they occurred.

Notwithstanding these facts, it is clear that even if the Movants had received such casual notice, that it is not a substitute for proper notice under *Uhden*. *Coe v. Armour Fertilizer Works*, 237 U.S. 413, 35 S. Ct. 625, 59 L. Ed. 2d 1027 (1915); *Reliable Elec. Co., Inc. v. Olson Const. Co.*, 726 F.2d 620 (10th Cir. 1984); *Ortiz v. Regan*, 749 F. Supp. 1254 (S.D.N.Y. 1990); *In re Allbev, Inc.* 160 B.R. 61 (Bankr. W.D.N.C. 1993).

[6] It is uncontested that the Movants obtained working interests and overriding royalty interests in the subject property well before the pooling application was filed by Mitchell. The Movants' affidavits regarding these interests were admitted without objection detailing these interests and when they were acquired by the Movants. Branko Exs. Nos. 1 through 17.

does not provide that notice of the proceedings be restricted to each recorded interest owner but, rather, to each *known individual* who has an interest in the outcome of the proceedings.

The New Mexico Supreme Court also makes it clear in *Uhden* that recording a property interest is not a prerequisite to owning a protected property interest. To reiterate the rule:

> *if a party's identity and whereabouts are known or could be ascertained through due diligence*, the due process clause of the New Mexico and United States Constitutions requires the party who filed a spacing application to provide notice of the pending proceeding by personal service to such parties whose property rights may be affected as a result.

Uhden, 112 N.M. at 531, 817 P.2d at 724 (emphasis added). Once again, the test is not whether the interest is recorded with the county clerk, but whether the party's identity and whereabouts *are known or could be ascertained through due diligence.* The statutes allowing a party to record a real estate interest in the records of the county clerk are only one way of providing an applicant with notice of that party's interest. There are clearly other ways of obtaining actual knowledge of such an interest as is illustrated by this case.

This rule is in accordance with other New Mexico real property cases. The general rule is that "an unacknowledged [and unrecorded] deed is binding between the parties thereto, their heirs and representatives, *and persons having actual notice of the instrument.*" *Baker v. Baker*, 90 N.M. 38, 40, 559 P.2d 415, 417 (1977) (citations omitted) (emphasis added).

Here, even though the interests of the Movants were not recorded in the Lea County Clerk's office, Mitchell had actual knowledge of the interests no later than January 13, 1993,

when Mr. Smith received the letter from Strata. Branko Ex. No. 24. Mr. Smith, and thus Mitchell, had actual knowledge of the existence of the interests much earlier, in October of 1992, and had a duty at that time under *Uhden* to use due diligence to ascertain the identity and whereabouts of the Movants. (Tr. 20, 61 & 66). Had Mitchell merely inquired of Strata as to the interests owned by, identity and whereabouts of the Movants it would have obviously borne fruit. When this inquiry was eventually made by Mr. Smith in January of 1993, he immediately received all of the information regarding the Movants from Mr. Murphy of Strata. (Tr. 23 & Branko Ex. No. 24).

Mitchell also argues that the Movants will only acquire an interest in the federal lease when the BLM approves their assignment of interest in the subject property. In this regard, Mitchell quotes the following from 43 C.F.R. § 3106.1 (b): "The rights of a transferee to a lease or an interest therein shall not be recognized *by the Department* until the transfer has been approved by the authorized officer." (emphasis added). From this, Mitchell concludes that the Movants do not have a constitutionally protected property interest until the transfer has been approved by the BLM. There is no legal support for Mitchell's position. The BLM regulations cited by Mitchell only affect the Movants' interests for Department of Interior administrative purposes and all such regulations relate to the rights of private parties vis-à-vis the Department of Interior. As to disputes between private parties, however, it is clear that state law and not federal regulations governs. In this regard, the Tenth Circuit Court of Appeals in *Bolack v. Underwood*, 340 F.2d 816 (1965) held as follows:

> There is no federal statute governing disputes between private individuals regarding rights to federal oil and gas leases, and in

> such instance, where no right of the federal government is involved, state law governs. *See* also, *Wallis v. Pan American Petroleum Corporation, et al.*, 384 U.S. 63 (1966).

Thus, since there is clearly no right of the federal government involved in this proceeding, state law governs the rights and interests of the Movants in the subject property.

C. Mitchell was responsible for providing notice of the application and hearing to the Movants.

Mitchell has alleged in its memorandum that "Strata and not Mitchell is responsible for the interest of the undisclosed partners." Presumably, this statement purports to mean that Strata had the obligation to notify the Movants of Mitchell's pooling application and the hearing.

First, it makes no difference to the Movants, as to who was supposed to notify them of the Mitchell pooling application hearing. They were not notified and, therefore, did not have a fair opportunity to be heard at the hearing. This fact alone deprived the Division of jurisdiction as to Movants and their interests.

It is clear, however, that it is the "applicant" who is responsible for notifying other interest owners of a compulsory pooling application and the resultant hearing. The Division's regulation regarding such notice clearly states that it is the "applicant" who is responsible for providing notice to interest owners. The Division's regulation states as follows:

> Rule 1207. - ADDITIONAL NOTICE REQUIREMENTS
>
> A. Each *applicant* for hearing before the Division or Commission shall give additional notice as set forth below:

> (1) In cases of applications filed for compulsory pooling under Section 70-2-17 NMSA 1978, as amended, or statutory unitization under Section 70-7-1, et. seq. NMSA 1978, as amended: Actual notice shall be given to each known individual owning an uncommitted leasehold interest, an unleased and uncommitted mineral interest, or royalty interest not subject to a polling or unitization clause in the lands affected by such application which interest must be committed and has not been voluntarily committed to the area proposed to be polled or unitized. . . .

(emphasis added). Under the Division's regulations, it is the clearly the "applicant" and no one else who has the obligation to provide notice to interest owners in the subject property.

And, once again, the Division need only look to *Uhden* for the New Mexico Supreme Court's determination as to who is responsible for notice in regard to the application and the hearing:

> [W]e hold that if a party's identity and whereabouts are known or could be ascertained through due diligence, the due process clause of the New Mexico and United States Constitutions requires *the party who filed a spacing application to provide notice of the pending proceeding* by personal service to such parties whose property rights may be affected as a result.

112 N.M. at 531, 817 P.2d at 724 (emphasis added). It could not be more clear who has the duty to provide notice. It is only logical that the party asking the Division for the order and the relief must be responsible for notice. Should notice be defective, it is the applicant who is adversely affected and not the other parties properly noticed in the action such as is the case here with Strata. Here, it is Mitchell and the Commission that must answer to the Movants for taking action without providing due process and proper notice that adversely affected their rights.

The other argument made by Mitchell is that it, presumably in the person of it's landman, Steve Smith, believed that Strata had authority to accept service on behalf of the

Movants and represent them in the proceeding. The facts, as adduced at the hearing, do not indicate that Strata ever represented or intimated that they had authority to accept service for and represent the Movants in the compulsory pooling proceeding before the Division. In fact, Strata's actions in notifying Mitchell of other interests in the subject property early on and its continued admonition to Mitchell that there were other interests in the subject property belie this conclusion. Mr. Murphy, in the negotiations with Mr. Smith, repeatedly informed Mr. Smith that any deal would have to be approved by the Movants. (Tr. 19, 20, 22; Branko Exs. Nos. 19, 20, 21, 23, 24). And, Mr. Murphy provided Mr. Smith with a list of the Movants so they could be served. (Branko Ex. No. 24). How Mr. Smith could have believed that Strata would accept service on behalf of all the Movants is difficult to understand. In fact, the real reason Mr. Smith and Mitchell failed to properly notify the Movants of the hearing is because they did not want to delay the proceedings. (Tr. 71-72).

But, more importantly, under New Mexico law, for an agent to have authority on behalf of the principal, such authority must emanate from the principal and unauthorized statements of an agent to a third party concerning the existence of his authority cannot be relied upon to establish apparent authority. In *Romero v. Mervyn's*, 109 N.M. 249, 253, 784 P.2d 992, 996 (1989) the New Mexico Supreme Court stated

> while actual authority is determined in light of the principal's "manifestations of consent" to the agent, apparent authority arises from the principal's manifestations to third parties, *Restatement (Second) of Agency* § 8 (1958)....

Justice Ransom in a specially concurring opinion in *Comstock v. Mitchell*, 110 N.M. 131, 134, 793 P.2d 261, 264 (1990) (Ransom, J., specially concurring), more fully explained the apparent authority doctrine in New Mexico by stating

> I wish to emphasize that apparent authority must emanate from the conduct of the person to be charged as principal. *Restatement (Second) of Agency* § 8 comment e, § 27 comment a (1958). . . . For this reason, *the unauthorized statements of an agent to the third party concerning the existence or extent of his authority cannot be relied upon to establish apparent authority. See Restatement (Second) of Agency* § 27 comment a. . . .

(emphasis added). Clearly, any understanding that Mr. Smith may have relied upon regarding Strata's authority to represent the Movants, must come from the Movants and not Strata. In his testimony, Mr. Smith made it clear that he had "nothing" from the Movants that indicated that Strata could represent their interests in this proceeding. (Tr. 63-63). If Mr. Smith did rely upon Strata to represent the interests of the Movants, such reliance was unjustified under New Mexico law and certainly cannot be used to excuse Mitchell and the Division from the obligation under the due process provisions of the United States and New Mexico Constitutions to provide the Movants with notice of and opportunity to be heard at the hearing.

D. SCRA 1986, 1-025(C) is wholly inapplicable to this proceeding.

SRCA 1986, 1-025(C) controls the proceedings in New Mexico state district courts when a transfer of interest occurs during suit. It is not applicable to this proceeding and is not even analogous to the facts in the case. Here, the interest acquired by the Movants was acquired well before the Mitchell compulsory pooling application was filed. (Branko Exs.

Nos. 1-17). No interest has been transferred by Strata during the pendency of the proceedings and, therefore, Mitchell's argument regarding such transfer is not applicable.

IV. CONCLUSION

Because the Movants were not afforded notice and an opportunity to be heard at the Division's January 21, 1993 hearing, the Division must vacate the order entered pursuant to such hearing as it affects the Movants and reopen the case to allow the Movants to participate in the proceedings.

RESPECTFULLY SUBMITTED,

STRATTON & CAVIN, P.A.

By: _____
Harold D. Stratton, Jr.
Attorneys for Movants
Post Office Box 1216
Albuquerque, New Mexico 87103-1216
(505) 243-5400

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Movants' Reply Memorandum to Mitchell Energy Corporation's Memorandum of Law and Statement of Facts was sent via hand delivery this 23rd day of May, 1996, to:

W. Thomas Kellahin, Esq.
Kellahin & Kellahin
117 North Guadalupe
Santa Fe, New Mexico 87501

Rand L. Carroll, Esq.
New Mexico Oil & Conservation Division
2040 S. Pacheco Street
Santa Fe, New Mexico 87505-5472

By: _____
Harold D. Stratton, Jr.

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STRATTON & CAVIN, P.A.
ATTORNEYS & COUNSELORS AT LAW
320 GOLD AVENUE, S.W.
SUITE 1200
P. O. BOX 1216
ALBUQUERQUE, NEW MEXICO 87103-1216

TELEPHONE
(505) 243-5400
FACSIMILE
(505) 243-1700

HAROLD D. STRATTON, JR.*†**
SEALY H. CAVIN, JR.†***°
STEPHEN D. INGRAM†

*ALSO ADMITTED IN OKLAHOMA
†ALSO ADMITTED IN TEXAS
**ALSO ADMITTED IN COLORADO
°NEW MEXICO BOARD OF LEGAL SPECIALIZATION RECOGNIZED SPECIALIST IN THE AREA OF NATURAL RESOURCES - OIL AND GAS LAW

June 14, 1996

William J. LeMay, Director
Oil Conversation Division
New Mexico Department of Energy,
Minerals and Natural Resources
2040 S. Pacheco Street
Santa Fe, New Mexico 87505-5472

Re: Movants' Reply Memorandum to Mitchell Energy Corporation's Memorandum of Law and Statement of Facts; Case No. 10656, Order No. R-9845 (Refer to Case No. 11510)

Dear Mr. LeMay:

Pursuant to our previous agreement to attempt to obtain affidavits from all parties as well as non-parties such as Warren, Inc. and Arrowhead, this letter is to notify you that we have been unable to obtain an affidavit from Arrowhead as requested by Mr. Kellahin. We have no objection to Mr. Kellahin attempting to obtain this affidavit in light of the fact we do not represent Arrowhead.

Sincerely,

STRATTON & CAVIN, P.A.

By: Harold D. Stratton, Jr.

HDS/tis
xc/ Rand L. Carroll, Esq.
W. Thomas Kellahin, Esq.

STRATTON & CAVIN, P.A.
ATTORNEYS & COUNSELORS AT LAW
320 GOLD AVENUE, S.W.
SUITE 1200
P. O. BOX 1216
ALBUQUERQUE, NEW MEXICO 87103-1216

TELEPHONE
(505) 243-5400
FACSIMILE
(505) 243-1700

HAROLD D. STRATTON, JR.*†**
SEALY H. CAVIN, JR.†**°
STEPHEN D. INGRAM†

*ALSO ADMITTED IN OKLAHOMA
†ALSO ADMITTED IN TEXAS
**ALSO ADMITTED IN COLORADO
°NEW MEXICO BOARD OF LEGAL SPECIALIZATION RECOGNIZED SPECIALIST IN THE AREA OF NATURAL RESOURCES - OIL AND GAS LAW

June 19, 1996

William J. LeMay, Director
Oil Conversation Division
New Mexico Department of Energy,
Minerals and Natural Resources
P.O. Box 6429
Santa Fe, New Mexico 87505

Re: Case No. 10656, Order No. R-9845 (Refer to Case No. 11510)

Dear Mr. LeMay:

Enclosed herein are the final eight Affidavits which we agreed to submit in the above-referenced matter. I have marked these affidavits as Branko Exhibits Nos. 37 through 44. Pursuant to our stipulation with Mr. Kellahin, I believe these exhibits should be included in the record.

Thank you.

Sincerely,

STRATTON & CAVIN, P.A.

By: Harold D. Stratton, Jr.

HDS/skc
Enclosures
cc: W. Thomas Kellahin, Esq. (w/encl.)
Mark B. Murphy (w/encl.)

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NEW MEXICO ENERGY, MINERALS
& NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION
2040 South Pacheco Street
Santa Fe, New Mexico 87505
(505) 827-7131

October 3, 1996

STRATTON & CAVIN
Attorney At Law
P. O. Box 1216
Albuquerque, New Mexico 87103

RE: CASE NO. 11510
ORDER NO. R-10672

Dear Sir:

Enclosed herewith are two copies of the above-referenced Division order recently entered in the subject case.

Sincerely,

Sally Martinez

Sally E. Martinez
Administrative Secretary

cc: BLM - Carlsbad
Tom Kellahin
Taxation & Revenue Dept.

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

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
DIVISION FOR THE PURPOSE OF CONSIDERING:

Case No. 11510
Order No. R-10672

APPLICATION OF BRANKO, INC. ET AL., TO REOPEN CASE NO. 10656 (ORDER NO. R-9845) CAPTIONED "APPLICATION OF MITCHELL ENERGY CORPORATION FOR COMPULSORY POOLING AND AN UNORTHODOX GAS WELL LOCATION, LEA COUNTY, NEW MEXICO."

ORDER OF THE DIVISION

BY THE DIVISION:

This cause came on for hearing at 8:15 a.m. on May 2, 1996, at Santa Fe, New Mexico, before Examiner Michael E. Stogner.

NOW, on this 2nd day of October, 1996, the Division Director, having considered the record and recommendations of the Examiner, and being fully advised in the premises,

FINDS THAT:

(1) Due public notice having been given as required by law, the Division has jurisdiction of this cause and the subject thereof.

(2) On December 7, 1992, Mitchell Energy Corporation (Mitchell) filed its application for compulsory pooling and an unorthodox gas well location. Case No. 10656 was heard on January 21, 1993, after which Order No. R-9845 was issued on February 15, 1993.

(3) Strata Production Company ("Strata") was served with the application on December 9, 1992, and appeared at that hearing in opposition to the granting of Mitchell Energy Corporation's (Mitchell) application, particularly Mitchell's proposed W/2 orientation of the 320-acre spacing unit, the well location, and the overhead charges. In addition, Strata contended that Mitchell failed to provide notification to Strata's "undisclosed partners" as identified on Mitchell Exhibit No. 17 in that case.

(4) Strata was the owner of record of a federal lease covering 80 acres (25%) of the 320 acres sought to be pooled by Mitchell (the "Strata lease").

(5) Evidence was introduced by applicants in this case, Branko, Inc. et al., (the "undisclosed partners" hereafter referred to just as "partners") purporting to show that they owned working interests in the acreage being force pooled by Mitchell (a total of 81.5% of the Strata lease with Strata owning the remaining 18.5%) at the times the application in Case No. 10656 was filed, the case was heard and the order was issued. Evidence was also introduced by applicants Branko et al. indicating they were not provided notice by Mitchell pursuant to Division Rule 1207.

(6) Up until a January 12, 1996, letter from Mark Murphy (Murphy), President of Strata, to Mitchell, Strata represented to Mitchell that Strata could act for and bind its "partners" in selling the Strata lease to Mitchell and that "Strata would defend itself and it's [sic] partners rights during any proceeding including a forced pooling hearing." The January 12, 1993, letter from Strata to Mitchell was the first written communication to Mitchell from Strata that the Strata "partners" should be notified directly.

(7) The nature of the interests owned by Strata's "partners" is not disclosed in writing until the January 13, 1993 letter from Strata to Mitchell. Whether in fact there was a formal limited or general partnership (with a written partnership agreement) or another type of business relationship whether formalized (e.g., stockholders in Strata) or informal (e.g., these "partners" were mere investors with the option to participate in Strata's activities) is unclear up to that point. The Division is aware in a general business sense of the term "silent partner" which term indicates that the principal does have a partner/investor but that partner/investor desires not to have its identity disclosed.

(8) The record shows that Mitchell provided only Strata, and not the previously "undisclosed" partners of Strata, with the election to participate in the subject well pursuant to the pooling order by letter dated February 17, 1993.

(9) The duty of Mitchell to inquire as to the nature of these "partners"' interests and to notify these "partners" of the force pooling case is unclear when Strata (I) is the only owner of public record, (ii) does not disclose the nature of these "partners"' interests and (iii) Strata represents that it can bind its "partners" in the sale of the lease and that it will "defend itself and it's [sic] partners rights during any proceeding including a forced pooling proceeding". Strata did in fact appear at the hearing and did defend its rights. Presumably, Strata's positions in the hearing regarding its 18.5% interest in the Strata lease would equally apply to those of its "partners"' 81.5% interest.

(10) It would circumvent the purposes of the New Mexico Oil and Gas Act to allow a record owner of a working interest in the spacing unit at the time said party was served with a compulsory pooling application to avoid or delay having that entire percentage interest pooled by (I) assigning, conveying, selling or otherwise burdening or reducing that interest; or (ii) disclosing previously undisclosed partners or other interest owners who obtained their ownership through the record owner and who are not of public record; after the application and notice of hearing are filed with the Division and served on the party. Taken to the extreme, Strata could have disclosed, one at a time, each of its "partners" each week before a hearing date to delay the hearing 15 times.

(11) A cutoff date for notification of affected interest owners is necessary. If not an applicant seeking to pool interests in a drilling and spacing unit would be required to daily check county records and verify with record owners that no other owners exist from the day of application until the pooling order is issued. This was never the intent of the pooling statute. Absence of a cutoff date would also permit adverse parties to the pooling application to defeat it by transferring their property to another at or about the time the pooling hearing was held and/or to stand by and, if the well be a producer, elect to participate.

(12) A party seeking a compulsory pooling order from the Division is required to attempt to obtain voluntary joinder of all owners of interests in that unit prior to filing a compulsory pooling application. It is incumbent upon any record owner of interest in that unit to disclose to the party seeking commitment of that interest to that unit the nature and extent of interests not of public record which have been obtained through that record owner in order that a party may attempt to obtain voluntary commitment of those interests to the unit or to notify those owners of a compulsory pooling action. Otherwise, the party seeking compulsory pooling has no notice that these owners exist.

(13) To require the party seeking compulsory pooling to obtain an affidavit from each owner of record certifying that there are no other owners not of record who obtained their title through him or listing all such owners is unduly burdensome and the Division will not impose such a burden. Presumably, if any such owner was listed, then affidavits would need to be obtained from that owner and so on and so on. The record owner may also not be forthcoming with that information. Any such owner can readily protect his interest by filing it of record, which is the purpose of filing a record of ownership.

(14) There are a number of peculiarities in this proceeding that are troubling to the Division and are worth noting:

(A) The geology witness for Strata at the hearing in this case was a Mr. George L. Scott, Jr. who testified that he owned some of the stock of Strata and that Scott Exploration was his organization. He and Scott Exploration were thus on actual notice of the

pooling proceeding. Affidavits have been received from Scott Exploration, Inc., signed by Charles Warren Scott; George L. Scott III and Lori Scott Worrall, who both list the same address as Scott Exploration and which address is in the same building as Strata; and Susan Scott Murphy for Winn Investments, Inc. These affidavits state that until November 1995, they were unaware of the subject well and the compulsory pooling case. Stephen T. Mitchell, with the same address and owning the same overriding royalty interest as George L. Scott III and Scott Exploration, Inc., states in his affidavit that he became aware of the subject well in May, 1993 and of the pooling case in May, 1993, so he somehow had actual notice of the pooling proceeding also. The extent of the stock ownership in Strata and in Scott Exploration, Inc. of the above named persons as well as Mark Murphy and the other partners may need to be examined as well as the personal relationships among all these parties in determining whether actual notice was received.

(B) Two of the "partners", Arrowhead Oil Corporation of Artesia, NM and Warren, Inc. of Albuquerque, NM, failed to join the applicants in this action to reopen this case, although John M. Warren signed an affidavit on behalf of Warren, Inc. stating that he first became aware of the subject well and pooling case on November 6, 1995. Why two of the "partners" (owning 6.25% and 5.0% of the Strata lease and according to Strata's November 6, 1995 letter to the "partners" would be entitled to $45,500 and $37,500 risk free) would not join in an action to reopen a case and be allowed, after the risk has passed, to avoid a risk penalty on a successful well is bewildering. The Division is open to subpoenaing these witnesses to learn the extent of their knowledge of what transpired.

(C) The Division notes the possibility of a conflict of interest on the part of counsel for applicants in this case based upon counsel's representation of Strata during the years in issue here, 1992 and 1993, where Strata failed to advise its "partners" of the compulsory pooling proceeding even though Strata was acting as agent (the extent of such agency is undetermined) for these "partners" during negotiations with Mitchell regarding the acreage that was pooled, and then counsel's subsequent representation of applicants in this case where their claim is based upon not being notified of that same compulsory pooling proceeding.

(D) One of the partners, S.H. Cavin of Roswell, NM, is the father of counsel for the applicants.

(E) In his January 13, 1996, correspondence to Mitchell, Murphy of Strata stated that "Strata has or is in the process of making a direct assignment of each partners [sic] proportionate ownership". In fact, the transfers were not carried out until November, 1995 (which was after the well proved profitable), which occurred in conjunction with the notification to the "partners" by Strata that the "partners" may have a good claim against Mitchell for recoupment of their 200% risk penalty.

(F) Strata takes the position that it was under no duty to its "partners" to inform them of the compulsory pooling case which would allow Mitchell to pool their leasehold interests to drill the subject well. Yet Strata apparently felt it had a duty to them to provide their names to Mitchell in early 1993 so Mitchell could notify them of the hearing. The distinction drawn is very fine. Strata also felt it had a duty to keep them informed as to the sale of their leasehold interests to Mitchell so Mitchell could drill the well. Murphy had numerous discussions with Strata's "partners" during the time period from October 1992 and May 1993 regarding their leasehold interests and Mitchell's desire to drill a well which included their interests. With the apparently large discretion given Strata to negotiate and sell the Strata lease to Mitchell by the "partners", it seems unlikely to the Division that the agency granted to Strata by the "partners" would not encompass the duty to inform the principals ("partners") of any action taken by Mitchell regarding their acreage interests in attempting to drill its well. The Division is curious as to what reports or other communications were made to the "partners" by Strata both before and after the negotiations with Mitchell for sale of the Strata lease had failed.

(G) The duty to inform Strata's "partners" of the pooling case and the subject well, apparently sprang into being in November, 1995 when Strata wrote its partners informing them of the pooling order, the status of the well and that they "may have the right to join in the Mitchell well without application of the 200% risk penalty". Long before then, Strata had dismissed its De Novo appeal of the pooling order in which appeal it could have contested the "all or none" election option given Strata by Mitchell as to payment for well costs for the entire 25% interest represented by the Strata lease. Strata had also acknowledged that "Strata's 18.5% interest is subject to the Order" in a May 11, 1993 letter from its attorney to the attorney for Mitchell. By such actions, Strata apparently waived its rights to assert that it too could join in the Mitchell well without a risk penalty. Nevertheless, Strata apparently felt a "compulsion" in November 1995 to finally inform its "partners" of the pooling order, the Mitchell well, and their rights as to joining in the well risk free as well as aid the "partners" in this proceeding by providing testimony.

(H) No evidence, in the form of written instruments, canceled checks, or otherwise, has shown exactly how and when the "partners" acquired their interests, when they paid for such interests and what interests were actually acquired. The documentation for the transfers was not prepared until late 1995.

(15) The Division believes that the issue of actual notice is important under the circumstances of this case. If the applicants knew of the force pooling hearing and/or the drilling of the subject well and made no attempt to inquire as to their interest in such hearing or inquire as to their respective obligations to pay their proportionate shares of the well expenses until the well became profitable, then even if applicants had been entitled to participate in the well at their election, they may have waited too long to voice their decision.

(16) The Division is concerned with the equity of allowing parties, with knowledge of the facts, and without risk to themselves, to stand by an unreasonable amount of time and see another assume all the risks of drilling a well in which such parties might have shared, and, after success of the well, seek to share in the benefits thereof. The injustice of such a situation is obvious: of permitting ones holding the right to assert ownership in such property to voluntarily await the event determining success or failure, and then decide, when the danger which is over has been at the risk of another, to come in and share the profit. If the Division is unable to fashion an equitable solution based upon the facts in this case, the Division is hopeful a court can do so.

(17) Regardless of whether the "partners" should have been notified pursuant to Division Rule 1207 prior to the compulsory pooling hearing, the Division is reopening this case for the reason stated below.

(18) Ordering Paragraphs (4) and (5) of Order No. R-9845 provide that "each known working interest owner" shall be furnished an itemized schedule of estimated well costs and that such working interest owner shall have a right to participate in the well by paying his share of estimated well costs.

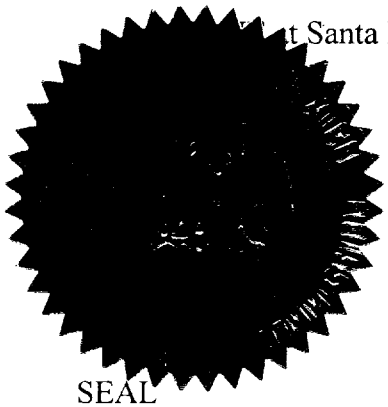
(19) Based on the absence of any notice sent by Mitchell to applicants in this case informing them of their election rights to participate in the subject well under Division Order No. R-9845 issued on February 15, 1993, in view of the fact that Mitchell prior to that time (on January 13, 1993) had been given a list of such working interest owners and had also been notified at that same time that those interest owners should be contacted directly regarding the compulsory pooling case, **Case No. 10656 should be reopened** to examine the share of costs that should be apportioned to each interest owner in the subject well as well as determine how future operations should be conducted for such well.

IT IS THEREFORE ORDERED THAT:

(1) **Case No. 10656 is hereby reopened** with the date for hearing to be set no later than the second Division hearing in December 1996. Mitchell shall provide notice to all known interest owners of the hearing.

(2) Jurisdiction of this cause is retained for the entry of such further orders as the Division may deem necessary.

t Santa Fe, New Mexico, on the day and year hereinabove designated.



SEAL

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

WILLIAM J. LEMAY
Director

STRATTON & CAVIN, P.A.
ATTORNEYS & COUNSELORS AT LAW
320 GOLD AVENUE, S.W.
SUITE 1200
P. O. BOX 1216
ALBUQUERQUE, NEW MEXICO 87103-1216

TELEPHONE
(505) 243-5400
FACSIMILE
(505) 243-1700

HAROLD D. STRATTON, JR.*†**
SEALY H. CAVIN, JR.†***°
STEPHEN D. INGRAM†

*ALSO ADMITTED IN OKLAHOMA
†ALSO ADMITTED IN TEXAS
**ALSO ADMITTED IN COLORADO
°NEW MEXICO BOARD OF LEGAL SPECIALIZATION
RECOGNIZED SPECIALIST IN THE AREA OF
NATURAL RESOURCES - OIL AND GAS LAW

October 28, 1996

VIA FACSIMILE - (505) 982-2047

W. Thomas Kellahin
Kellahin and Kellahin
P.O. Box 2265
Santa Fe, NM 87504-2265

Re: NMOCD Case 11510 Application to Reopen CASE 10656-ORDER R-9845
Tomahawk "28" Federal Com Well No. 1
NMOCD Case for Compulsory Pooling
W/2 Sec. 28, T20S, R33E, NMPM
Lea County, NM

Dear Tom:

This is in response to your letter dated October 28, 1996 and a follow up to our telephone conversation on today's date.

Regarding your letter of October 28, 1996, we note that we were not advised until September 13, 1996 that Mitchell was considering the possibility of re-completing the Tomahawk well. At that time, I told you we had serious concerns about any actions by Mitchell which could adversely affect our clients' lease. Also, I told you that we would need additional, detailed information before we could make a meaningful decision regarding the proposed operation.

Regarding the Sundry Notice, we note that it is dated September 25, 1996 and indicates that Mitchell plans to plug and abandon the currently producing interval and perforate a new interval in the Morrow formation. As we told you previously, we object to any action which could adversely affect our clients' lease, including specifically the plugging and abandonment of the currently producing interval. Instead, unless there are compelling circumstances, we believe that Mitchell should maintain the status quo until this matter is resolved.

Finally, we cannot understand the rush to do the additional work at this juncture. Instead, we believe that Mitchell should at least wait until the upcoming OCD hearing. Mitchell can at that time make its case for the additional work. Also, we believe that Mitchell should include our clients in the process. We have access to excellent technical personnel with considerable knowledge regarding the Permian Basin. In this regard, we would ask that Mitchell provide us with a complete set of all well information regarding the Tomahawk well, including all well logs, mud logs, coring data, drill stem tests and any and all other pertinent information regarding the well. Also, we would ask that Mitchell provide us with any and all information regarding completions, re-completions, re-works and all production information (including pricing information) with respect to the well. We would also ask that you provide us with information regarding the estimated cost of the re-completion proposed by Mitchell. By involving our clients in the process, we believe that Mitchell may be limiting future claims and controversies with respect to the well.

Thank you for your consideration.

Very truly yours,

Sealy H. Cavin, Jr.

SHC/aht
cc: William J. Lemay (w/encs.)

KELLAHIN AND KELLAHIN
ATTORNEYS AT LAW
EL PATIO BUILDING
117 NORTH GUADALUPE
POST OFFICE BOX 2265
SANTA FE, NEW MEXICO 87504-2265

TELEPHONE (505) 982-4285
TELEFAX (505) 982-2047

W. THOMAS KELLAHIN*
*NEW MEXICO BOARD OF LEGAL SPECIALIZATION RECOGNIZED SPECIALIST IN THE AREA OF NATURAL RESOURCES-OIL AND GAS LAW

JASON KELLAHIN (RETIRED 1991)

October 28, 1996

VIA FACSIMILE
(505) 243-1700

Harold D. Stratton, Jr.
Scaly Cavin, Esq.
P. O. Box 1216
Albuquerque, New Mexico 87103-1216

REF: NMOCD Case 11510 Application to
Reopen CASE 10656-ORDER R-9845
Tomahawk "28" Federal Com Well No. 1
NMOCD Case for Compulsory Pooling
W/2 Sec 28, T20S, R33E, NMPM
Lea County, N.M.

Gentlemen:

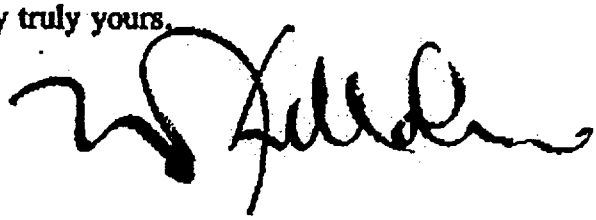
On September 1, 1996 I informed you that Mitchell Energy Corporation ("Mitchell") was considering the possibility of recompleting the referenced well and Mr. Cavin and I discussed this matter. On behalf of your clients in this matter, he expressed concern about operations which might result in termination of the current 320-acre spacing unit for this well.

Therefore, as a matter of accommodation to you and without admitting any obligation to do so, I am advising you that gas production is rapidly declining from the existing Morrow perforations in the referenced well and Mitchell, within the next week, intends to conduct operations on the subject well in an effort to perforate and produce other Morrow intervals.

Although Mitchell intends to exercise prudent operation on this well, it is possible that this operation may not result in continuing production from the Morrow formation. However, the alternative is to do nothing which is certain to cause the 320-acre spacing unit to terminate. Mitchell makes no warranties, expressed or implied, and no representations about the success of this operation.

The specific operation is summarized on the Sundry Notice dated September 25, 1996, a copy of which is enclosed.

Very truly yours,



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KELLAHIN AND KELLAHIN
ATTORNEYS AT LAW
EL PATIO BUILDING
117 NORTH GUADALUPE
POST OFFICE BOX 2265
SANTA FE, NEW MEXICO 87504-2265

W. THOMAS KELLAHIN*
*NEW MEXICO BOARD OF LEGAL SPECIALIZATION RECOGNIZED SPECIALIST IN THE AREA OF NATURAL RESOURCES-OIL AND GAS LAW

JASON KELLAHIN (RETIRED 1991)

TELEPHONE (505) 982-4285
TELEFAX (505) 982-2047

September 13, 1996

VIA FACSIMILE
(505) 243-1700

Harold D. Stratton, Jr.
Sealy Cavin, Esq.
P. O. Box 1216
Albuquerque, New Mexico 87103-1216

REF: NMOCD Case 11510 Application to
Reopen CASE 10656-ORDER R-9845
Tomahawk "28" Federal Com Well No. 1
NMOCD Case for Compulsory Pooling
W/2 Sec 28, T20S, R33E, NMPM
Lea County, N.M.

Gentlemen:

Mitchell Energy is considering the possibility of recompleting the referenced well and has expressed concern about your Application in this case which includes a request to:

> "2) Enjoin Mitchell from any operation on the Tomahawk 28 Well, including any workover, plug back or recompletion attempt, which may adversely affect the interest of Movant in the Tomahawk 28 Well;"

My recollection is that during one of the hearings before the Division, you advised me that the Movants were withdrawing this requested relief.

I would appreciate you transmitting me confirmation that this relief has been withdrawn. If this is not your position, please call me.

Very truly yours,

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TO: Sea, Quin FROM: Kellahin DATE: 10/28/96
FAX #: 243-1700 FAX #: PHONE #: PAGES INCLUDING THIS PAGE: 1

Form 3160-5
(June 1990)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

FORM APPROVED
Budget Bureau No. 1004-0135
Expires: March 31, 1993

SUNDRY NOTICES AND REPORTS ON WELLS

Do not use this form for proposals to drill or to deepen or reentry to a different reservoir.
Use "APPLICATION FOR PERMIT—" for such proposals

SUBMIT IN TRIPLICATE

5. Lease Designation and Serial No.: NM 89889
6. If Indian, Alottee or Tribe Name: N/A
7. If Unit or CA, Agreement Designation: N/A
1. Type of Well: [ ] Oil Well [X] Gas Well [ ] Other
8. Well Name and No.: Tomahawk "28" Fed Com. No. 1
2. Name of Operator: Mitchell Energy Corporation
9. API Well No.: 30-025-31895
3. Address and Telephone No.: P.O. Box 4000, The Woodlands, Texas 77387-4000 (713)377-5855
10. Field and Pool, or Exploratory Area: Salt Lake, S. (Morrow)
4. Location of Well (Footage, Sec., T., R., M., or Survey Description): 1980' FNL and 1650' FWL Unit F, Sec. 28, T20S, R33E
11. County or Parish, State: Lea County New Mexico

12. CHECK APPROPRIATE BOX(s) TO INDICATE NATURE OF NOTICE, REPORT, OR OTHER DATA

TYPE OF SUBMISSION	TYPE OF ACTION	
[X] Notice of Intent	[ ] Abandonment	[ ] Change of Plans
[ ] Subsequent Report	[ ] Recompletion	[ ] New Construction
[ ] Final Abandonment Notice	[ ] Plugging Back	[ ] Non-Routine Fracturing
	[ ] Casing Repair	[ ] Water Shut-Off
	[ ] Altering Casing	[ ] Conversion to Injection
	[X] Other Add Perforations	[ ] Dispose Water

(Note: Report results of multiple completion on Well Completion or Recompletion Report and Log form.)

13. Describe Proposed or Completed Operations (Clearly state all pertinent details, and give pertinent dates, including estimated date of starting any proposed work. If well is directionally drilled, give subsurface locations and measured and true vertical depths for all markers and zones pertinent to this work.)*

Abandon the Morrow interval (13,908'- 13,944') with a XX plug in the XN nipple at 13,845' then dump 20' of cement. Space out a permanent packer to perforate the Morrow interval at 13,710'- 13,744' by TCP and stimulate by Perf Stem. Hookup well and turn to sales.

14. I hereby certify that the foregoing is true and correct
Signed Rob Pawlik Title Staff Production Engineer Date 9-25-96

(This space for Federal or State office use)

Approved by _____ Title _____ Date _____
Conditions of approval, if any:

Title 18 U.S.C. Section 1001, makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

*See Instruction on Reverse Side

KELLAHIN AND KELLAHIN
ATTORNEYS AT LAW
EL PATIO BUILDING
117 NORTH GUADALUPE
POST OFFICE BOX 2265
SANTA FE, NEW MEXICO 87504-2265

W. THOMAS KELLAHIN*
*NEW MEXICO BOARD OF LEGAL SPECIALIZATION RECOGNIZED SPECIALIST IN THE AREA OF NATURAL RESOURCES-OIL AND GAS LAW

JASON KELLAHIN (RETIRED 1991)

TELEPHONE (505) 982-4285
TELEFAX (505) 982-2047

October 30, 1996

HAND DELIVERED

Mr. William J. LeMay, Chairman
Oil Conservation Commission
2040 South Pacheco
Santa Fe, New Mexico 87505

Re: REQUEST FOR HEARING DENOVO
NMOCD CASE 11510
Order No. R-10672
Application of Branko, Inc. et al.
to Reopen Case No. 10656 (Order R-9845),
Lea County New Mexico.

Dear Mr. LeMay:

On behalf of Mitchell Energy Corporation, a party of record adversely affected herein, please find enclosed our request for a Hearing DeNovo before the New Mexico Oil Conservation Commission of the referenced Division Order which granted Branko's request to Reopen Case 10656.

Very truly yours,

W. Thomas Kellahin

cc: Hal Stratton, Jr., Esq.
Attorney for Branko, Inc. et al.
cc: Mitchell Energy Corporation
Attn: Mark Stephenson

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

IN THE MATTER OF THE HEARING CALLED BY THE OIL CONSERVATION DIVISION FOR THE PURPOSE OF CONSIDERING:

CASE NO. 11510
Order No. R-10672

APPLICATION OF BRANKO, INC. ET AL TO REOPEN CASE NO. 10656 (ORDER NO. R-9845) LEA COUNTY, NEW MEXICO.

MITCHELL ENERGY CORPORATION'S REQUEST FOR A DE NOVO HEARING BEFORE THE NEW MEXICO OIL CONSERVATION COMMISSION

Comes now MITCHELL ENERGY CORPORATION, a party of record before the New Mexico Oil Conservation Division in Case 11510 and adversely affected by Division Order R-10622 entered October 2, 1996, by its attorneys Kellahin & Kellahin and pursuant to Section 70-2-13 NMSA-1978, hereby requests that the New Mexico Oil Conservation Commission hold a HEARING DENOVO in this matter.

Respectfully Submitted:

W. Thomas Kellahin
Kellahin & Kellahin
P. O. Box 2265
Santa Fe, New Mexico 87501
(505) 982-4285
ATTORNEYS FOR
MITCHELL ENERGY CORPORATION

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KELLAHIN AND KELLAHIN
ATTORNEYS AT LAW
EL PATIO BUILDING
117 NORTH GUADALUPE
POST OFFICE BOX 2265
SANTA FE, NEW MEXICO 87504-2265

W. THOMAS KELLAHIN*
*NEW MEXICO BOARD OF LEGAL SPECIALIZATION RECOGNIZED SPECIALIST IN THE AREA OF NATURAL RESOURCES-OIL AND GAS LAW

JASON KELLAHIN (RETIRED 1991)

TELEPHONE (505) 982-4285
TELEFAX (505) 982-2047

November 14, 1996

FEDERAL EXPRESS

Hal Stratton, Esq.
Sealy Cavin, Esq.
Suite 1200
320 Gold Avenue, SW
Albuquerque, New Mexico 87103-1216

Ref: ***NMOCD Case 11510: Application to Reopen Case 10656-Order R-9845 Tomahawk "28" Federal Com Well No. 1, Compulsory Pooling, W/2 Sec 28, T20S, R33E, NMPM, Lea County, NM***

Gentlemen:

In response to your letter of October 28, 1996, and as an accommodation to you and your clients without admitting any obligation to do so, I am providing the following information concerning the referenced well:

(1) estimated costs of workover at $84,000.
(2) monthly production plot for subject well
(3) decline curve for subject well
(4) Mud log dated 5/28/93 for subject well
(5) dual laterolog for subject well
(6) compensated neutron density log for subject well

It is Mitchell Energy Corporation's position that Strata and its partners are "non-consenting" working interest owners under the compulsory pooling order and until such time as Mitchell has recovered from production its original costs of drilling, completing and its additional workover costs, plus the 200% penalty, Strata and its partners are:

(1) not entitled to make any make any election concerning the proposed workover or any other subsequent operation,

(2) not entitled to notification of proposed subsequent operations,

(3) not entitled to data, and

(4) Mitchell need not obtain their consent or approval for these operations.

Mitchell will ask the Commission at the DeNovo hearing to:

(1) vacate Finding (19) of the Division Order R-10672 and to set aside Ordering Paragraph (1);

(2) affirm the balance of Division Order R-10672 which includes adopting a cutoff date for notification of affected interest owners as the date the compulsory pooling application was filed with the Division and/or served on Strata (December 7, 1992); and

(3) establish that the post order notification list of affected working interest owners discussed in Finding (18) of Order R-10672 must be the same list established as of the cut off date for notification of affected interest owners subject to the compulsory pooling order.

Please call me if you have any questions,

Very truly yours,

W. Thomas Kellahin

w/o enclosures:
cc: Mitchell Energy Corporation
Attn: Mark Stephenson
cc: Oil Conservation Division
Attn: Rand Carroll, Esq.

STRATTON & CAVIN, P.A.
ATTORNEYS & COUNSELORS AT LAW

HAROLD D. STRATTON, JR.*†**
SEALY H. CAVIN, JR.†***
STEPHEN D. INGRAM†

*ALSO ADMITTED IN OKLAHOMA
†ALSO ADMITTED IN TEXAS
**ALSO ADMITTED IN COLORADO
***NEW MEXICO BOARD OF LEGAL SPECIALIZATION RECOGNIZED SPECIALIST IN THE AREA OF NATURAL RESOURCES - OIL AND GAS LAW

320 GOLD AVENUE, S.W.
SUITE 1200
P. O. BOX 1216
ALBUQUERQUE, NEW MEXICO 87103-1216

TELEPHONE
(505) 243-5400
FACSIMILE
(505) 243-1700

November 15, 1996

VIA FACSIMILE TRANSMISSION TO 505/982-2047
AND FIRST CLASS MAIL
W. Thomas Kellahin
Kellahin and Kellahin
P.O. Box 2265
Santa Fe, New Mexico 87504-2265

Re: NMOCD Case 11510 Application to Reopen Case 10656-ORDER R-9845
Tomahawk "28" Federal Com Well No. 1
NMOCD Case for Compulsory Pooling
W/2 Sec. 28, T20S, R33E, NMPM
Lea County, New Mexico

Dear Tom:

I have called you several times and left messages on your answering machine. Since you have not yet returned my calls, I decided to write to you regarding the *de novo* hearing before the Commission and Mitchell's proposed operations regarding the Test Well.

Regarding the *de novo* hearing, please give us a call so we can see if we can identify and resolve as many issues as possible prior to the hearing.

Regarding the operations proposed by Mitchell as set forth on the Sundry Notice dated September 25, 1996, we want to expand on our letter to you dated October 28, 1996. First, we believe that the OCD Order R-10672 vests in Branko, et al. certain rights in the Tomahawk Well and the Joint Operating Agreement which governs the operation of such well. Accordingly, any future operations on the Tomahawk Well should be done with due regard to the rights of Branko, et al. as working interest owners under the terms of the Joint Operating Agreement. In this regard, we note that the Joint Operating Agreement requires unanimous consent prior to the plugging of a producing interval. In this case it is particularly important for Mitchell to refrain from further operations (other than routine maintenance and production operations) because the leasehold interest of Branko, et al. is held solely by the existing production from the Tomahawk Well. Furthermore, it may be that a rework of the currently producing interval is in order. Unfortunately, we simply do not have sufficient information to make any meaningful decision with respect to the Tomahawk Well. Regarding the well information, we are hereby demanding

that Mitchell provide us with all pertinent well information, including specifically all information described in our October 28, 1996 correspondence. If Mitchell has some legitimate justification for not providing such well information, we would like to know what it is. Also, we would ask that Mitchell provide this information at least 10 days prior to the date of the Commission hearing.

We would also note that the timing of the proposed operations raises a very serious issue regarding Mitchell's motives. Specifically, now that the OCD has recognized the rights of Branko, et al., it appears that Mitchell wants to rush ahead with the proposed operations to avoid dealing with Branko,.et al. While we understand that Mitchell does not want to deal with small working interest owners and while Mitchell's attitude toward Branko, et al. is thus far consistent, we believe it will result in further claims and controversies which could be avoided by simply waiting until the matter now before the Commission is resolved and respecting the property rights of Branko, et al. We have consistently warned Mitchell against ignoring the property rights of Branko, et al. and encouraged Mitchell to provide Branko, et al. with notice and an opportunity to participate in the Tomahawk Well (*See* the transcript in Examiner Hearing on January 21, 1993, and our letters to you dated April 28, 1993, and May 11, 1993). Now, in light of OCD Order R-10672, we think it is even more important that Mitchell recognize and respect the constitutionally protected property rights of Branko, et al. In this regard, we note that plugging off the currently producing interval without involving Branko, et al. constitutes a further and serious violation of their constitutionally protected property rights. It also violates the express terms of the Joint Operating Agreement.

We hope that you will discuss this matter with Mitchell and let us know Mitchell's plans regarding the proposed operations as soon as possible. Also, if Mitchell plans to proceed with the proposed operations, we would ask that you provide us with prior and adequate notice.

We look forward to hearing from you.

Very truly yours,

Sealy H. Cavin, Jr.

SHC/skc
Enclosures

STRATTON & CAVIN, P.A.
ATTORNEYS & COUNSELORS AT LAW

HAROLD D. STRATTON, JR.
SEALY H. CAVIN, JR.*
DEBORAH R. JENKIN

*NEW MEXICO BOARD OF LEGAL SPECIALIZATION RECOGNIZED SPECIALIST IN THE AREA OF NATURAL RESOURCES - OIL AND GAS LAW

320 GOLD AVENUE, S.W.
SUITE 1200
P. O. BOX 1216
ALBUQUERQUE, NEW MEXICO 87103-1216

TELEPHONE (505) 243-5400
FACSIMILE (505) 243-1700

April 28, 1993

W. Thomas Kellahin, Esq.
Kellahin and Kellahin
P.O. Box 2265
Santa Fe, New Mexico 87504-2265

Re: OCD Case 10656 -- In the Matter of the Application of Mitchell Energy Corporation for Compulsory Pooling and Unorthodox Gas Well Location, Lea County, New Mexico

Dear Tom:

As you know, Strata has withdrawn its application for a hearing De Novo and is prepared to accept the force pooling order as to its interest under the S½SW¼ of Section 28, Township 20 South, Range 33 East, N.M.P.M. As to the other interest owners under the S½SW¼ of Section 28 which were identified in the letter from Mark Murphy to Steve Smith dated January 13, 1993 (a copy of which is attached hereto), we believe that there is some question as to whether their interests have been effectively pooled. Moreover, we believe that these parties (and Strata for that matter) should each be offered the opportunity to participate in the proposed well as to their respective interest. We see no justification for the "all or none" approach taken by Mitchell and we are not entirely sure that this was contemplated by the Order. As we have maintained from the start, Strata does not have the unfettered authority to act on behalf of the other interest owners.

If you have any questions or if I can be of further assistance, please call.

Very truly yours,

Sealy H. Cavin, Jr.

SHC/jas

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Enclosure

cc: Mark B. Murphy, President -- Strata Production Company, w/Enclosure
Robert G. Stovall, Esq., General Counsel -- Oil Conservation Division, w/Enclosure

POST OFFICE DRAWER 1030
ROSWELL, NM 88202-1030

STRATA PRODUCTION COMPANY

200 WEST FIRST STREET, ROSWELL PETROLEUM BUILDING, SUITE 700
ROSWELL, NEW MEXICO 88201

TELEPHONE (505) 622-1127
FACSIMILE (505) 623-3533

January 13, 1993

Via Telefax (915 682-6439)/Hard Copy by Certified Mail

Mitchell Energy Corporation
1000 Independence Plaza
400 West Illinois
Midland, Texas 79701
Attn: Steve Smith

Re: Leasehold Ownership Information
North Gavilon Prospect
NM #92957, S/2 SW/4, SW/4 SE/4
Section 28, T-20-S, R-33-E
Lea County, New Mexico

Dear Mr Smith:

During our telephone conversation this morning you expressed some concern that you had not been provided a list of leasehold partners and ownership in the above referenced lease. As Mitchell has set a compulsory pooling and unorthodox gas well location hearing (Case #10656) for Thursday January 21, 1993, I provide this information to facilitate your notification of said owners. Strata has or is in the process of making a direct assignment of each partners proportionate ownership. The names, addresses and ownership is as follows:

Name/Address	Leasehold Ownership
Arrowhead Oil Corporation P.O. Box 548 Artesia, New Mexico 88211-0548	6.25%
Branko, Inc. 45 Beaverbrook Crescent St. Albert, Alberta, Canada, T8N2L-4	1.56250%
Duane Brown 1315 Marquette PL, NE Albuquerque, New Mexico 87106	5.0%
S.H. Cavin P.O. Box 1125 Roswell, New Mexico 88202	2.0%

Name/Address	Leasehold Ownership
Robert W. Eaton 2505 Don Juan NW Albuquerque, New Mexico 87104	1.56250%
Terry & Barb Kramer 5108 Irving BLVD., N.W. Albuquerque, New Mexico 87114	30.0%
Landwest 215 West 100 South Salt Lake City, UT 84101	1.0%
Candance McClelland 4 Country Hill Road Roswell, New Mexico 88201	2.1250%
Permian Hunter Corporation 215 West 100 South Salt Lake City, UT 84101	4.0%
Scott Exploration, Inc. 200 W. First Suite 648 Roswell, New Mexico 88201	9.0%
Strata Production Company 200 W. First, Suite 700 P.O. Box 1030 Roswell, New Mexico 88202	18.50%
Warren, Inc. P.O. Box 7250 Albuquerque, New Mexico 87194-7250	5.0%
Charles J. Wellborn P.O. Box 2168 Albuquerque, New Mexico 87103-2168	2.0%
Winn Investments, Inc. 706 W. Brazos Roswell, New Mexico 88201	1.0%
Lori Scott Worrall 200 W. First, Suite 648 Roswell, New Mexico 88201	1.0%
Xion Investments 215 West 100 South Salt Lake City, UT 84101	10.0%
	Total 100%

In addition the following own a overriding royalty interest (ORRI) as set forth below:

Name/Address	ORRI
Steve Mitchell 200 W. First, Suite 648 Roswell, New Mexico 88201	.5
George L. Scott III 200 W. First, Suite 648 Roswell, New Mexico 88201	.5
Scott Exploration Inc. 200 W. First, Suite 648 Roswell, New Mexico 88201	.5
	Total 1.5%

If I may be of further assistance please call.

Very truly yours,

STRATA PRODUCTION COMPANY

Mark B. Murphy
President

cc: Sealy H. Cavin, Jr., Esq.

MBM/mo

STRATTON & CAVIN, P.A.
ATTORNEYS & COUNSELORS AT LAW

HAROLD D. STRATTON, JR.
SEALY H. CAVIN, JR.*
DEBORAH R. JENKIN

*NEW MEXICO BOARD OF LEGAL SPECIALIZATION RECOGNIZED SPECIALIST IN THE AREA OF NATURAL RESOURCES - OIL AND GAS LAW

320 GOLD AVENUE, S.W.
SUITE 1200
P. O. BOX 1216
ALBUQUERQUE, NEW MEXICO 87103-1216

TELEPHONE (505) 243-5400
FACSIMILE (505) 243-1700

May 11, 1993

W. Thomas Kellahin, Esq.
Kellahin and Kellahin
P.O. Box 2265
Santa Fe, New Mexico 87504-2265

Re: OCD Case 10656 -- In the Matter of the Application of Mitchell Energy Corporation for Compulsory Pooling and Unorthodox Gas Well Location, Lea County, New Mexico

Dear Tom:

The following is in response to your letter dated May 6, 1993:

1. We continue to believe that only the parties that have received proper notice are bound by the above-described OCD Order. This is, of course, a matter you will have to advise your client on. If you are comfortable with your position that all working interest owners under the S½SW¼ are bound by the Order, then that is certainly your decision. Of course, if you are wrong and Mitchell makes a good well, there may be a considerable amount of money to fight about (by my calculations, 25% x 81.5% x $1,400,000.00 x 200% = $570,000.00). We, of course, acknowledge that Strata's 18.5% interest is subject to the Order.

2. Section 70-2-18 NMSA 1978 clearly places the "obligation" to force pool on the operator. Based on this statutory provision, we fail to see how it is that Strata is "responsible to the Division and to Mitchell" for all interest under the S½SW¼. Indeed, we fail to understand what exactly Strata's responsibility is in this matter vis-a-vis Mitchell and the other working interest owners under the S½SW¼. In any case, in light of Mitchell's "all or none" approach, we cannot understand what, if anything, Strata can do.

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3. Finally, we believe that due process requires that Mitchell provide notice to all affected interest owners. This is particularly true where the operator has actual notice of such interest owners. In our view, when in doubt, notice and a chance to be heard should be provided by the operator. If Mitchell proceeds without providing such notice, then it does so at its peril. Strata certainly has no responsibility to provide such notice. In this case, Strata is merely a working interest owner owning an undivided 18.5% of the working interest.

Very truly yours,

Sealy H. Cavin, Jr.

SHC/jas

cc: Mark B. Murphy, President -- Strata Production Company
Robert G. Stovall, Esq., General Counsel -- Oil Conservation Division

STRATTON & CAVIN, P.A.
ATTORNEYS & COUNSELORS AT LAW

HAROLD D. STRATTON, JR.*†**
SEALY H. CAVIN, JR.†**°
STEPHEN D. INGRAM†

*ALSO ADMITTED IN OKLAHOMA
†ALSO ADMITTED IN TEXAS
**ALSO ADMITTED IN COLORADO
°NEW MEXICO BOARD OF LEGAL SPECIALIZATION RECOGNIZED SPECIALIST IN THE AREA OF NATURAL RESOURCES - OIL AND GAS LAW

320 GOLD AVENUE, S.W.
SUITE 1200
P. O. BOX 1216
ALBUQUERQUE, NEW MEXICO 87103-1216

TELEPHONE
(505) 243-5400
FACSIMILE
(505) 243-1700

November 26, 1996

VIA FACSIMILE TRANSMISSION TO 505/982-2047
AND FIRST CLASS MAIL

W. Thomas Kellahin
Kellahin and Kellahin
P.O. Box 2265
Santa Fe, New Mexico 87504-2265

Re: NMOCD Case 11510 Application to Reopen Case 10656-ORDER R-9845
Tomahawk "28" Federal Com Well No. 1
NMOCD Case for Compulsory Pooling
W/2 Sec. 28, T20S, R33E, NMPM
Lea County, New Mexico

Dear Tom:

I have tried to call you several times (at least six times over the last three weeks) and left messages on your answering machine. As you have not yet returned any of my calls or responded to our letter to you dated November 15, 1996, I decided to write you another letter.

Regarding the *de novo* hearing, we are planning to proceed with our case on December 12th. While we would normally work with opposing counsel regarding the hearing schedule, we are accustomed to dealing with counsel which will return our calls. In any case, we are presently planning to proceed with our case on December 12th, the scheduled date of the hearing.

Regarding the operations proposed by Mitchell, we believe that our prior correspondence adequately addresses this issue. In addition, we note that we have consulted with our technical

experts and they are baffled by Mitchell's proposal to plug off a currently producing zone which is apparently still making a reasonable amount of gas.

Very truly yours,

Scaly H. Cavin, Jr.

SHC/skc
Enclosures (Via First Class Mail Only)
cc: William J. LeMay (w/o encl. -- Via Facsimile Transmission to 505/827-8177)
(w/encl. -- Via First Class Mail Only)

TO: RA. Carroll OCD
FAX #: 827-8177

FROM: KELLAHIN
FAX #: PHONE #:

DATE: 12/3/96
PAGES INCLUDING THIS PAGE: 5

KELLAHIN AND KELLAHIN
ATTORNEYS AT LAW
EL PATIO BUILDING
117 NORTH GUADALUPE
POST OFFICE BOX 2265
SANTA FE, NEW MEXICO 87504-2265

TELEPHONE (505) 982-4285
TELEFAX (505) 982-2047

W. THOMAS KELLAHIN*

*NEW MEXICO BOARD OF LEGAL SPECIALIZATION RECOGNIZED SPECIALIST IN THE AREA OF NATURAL RESOURCES-OIL AND GAS LAW

JASON KELLAHIN (RETIRED 1991)

December 4, 1996

VIA FACSIMILE
(505) 243-1700

Hal Stratton, Esq.
Sealy Cavin, Esq.
Suite 1200
320 Gold Avenue, SW
Albuquerque, New Mexico 87103-1216

COPY

Ref: ***NMOCD Case 11510: Application to Reopen Case 10656-Order R-9845 Tomahawk "28" Federal Com Well No. 1, Compulsory Pooling, W/2 Sec 28, T20S, R33E, NMPM, Lea County, NM***

Gentlemen:

On December 2, 1996, I advised Sealy that I would submit to you a proposed stipulation for proceeding with the presentation of this case to the Commission on December 12, 1996.

I have not yet been able to reach Rand Carroll, attorney for the Division, and therefore, subject to his concurrence, I propose:

(1) That the transcript and exhibits in Case 10656 be introduced before the Commission.

(2) One of the fundamental issues which is disputed in this case is the question of when the Strata partners acquired a property interest in the lease. The Commission will ultimately have to decide this fact and in doing so reach legal conclusions in order to determine when and how "known individuals owning an uncommitted leasehold interest" are to receive actual notice of compulsory pooling applications and orders. I contend that the Strata Partners did not obtain property interests until on or after November 7, 1995, while in each affidavit the affiant contends her/she "acquired"

and/or "owned" an interest either in the leasehold operating rights or in an overriding royalty on or about November 1, 1989. I am willing to have these affidavits introduced before the Commission and thereby save you the expense of presenting each of these witnesses **provided** you stipulate that this is still a disputed fact and I am not conceding that they "acquired" or "owned" an interest prior to November 7, 1995.

(3) Subject to the foregoing, the transcript and exhibits of both Mitchell and Branko introduced in Case 11510 shall be introduced before the Commission.

(4) That neither Mitchell nor Branko will call any witnesses before the Commission and instead will present through counsel their respective arguments.

Because the Commission hearing is only a week away, I would appreciate hearing from you today concerning my proposal.

In addition, for your information, I am enclosing a copy of the daily production from the well for September, October, November, 1996. You will note that the well on November 30, 1996 was able to produce only 77 MCFPD. Mitchell intends to add additional perforations in the Morrow interval at such time as it deems it appropriate to do so.

Very truly yours,

W. Thomas Kellahin

cfx: Rand Carroll, Esq.
Attorney for Division
cfx: Mitchell Energy Corporation
Attn: Mark Stephenson

MEC FIELD DATA GATHERING SYSTEM
PRIMARY WELL REPORT

TOMAHAWK 28- FED 1 - 06457011
for: SEP-96

Mon	Day	Static	Diff	Gas Prod	Oil Prod	Water Prod	Flow Press	Shut-In Press	Csng Press	Dwn Hrs 1	Dwn Cde	Dwn Hrs 2	Dwn Cde	Prod Hrs	Choke Size	Remarks
SEP	1	580	26	745	0	0	0	0	0	0.0	0	0.0	0	24.0	30	
	2	590	17	608	5.74	1.11	70	0	0	0.0	0	0.0	0	24.0	30	
	3	590	18	625	1.14	1.14	70	0	0	0.0	0	0.0	0	24.0	30	WELL TEST
	4	550	16	570	3.45	2.3	70	0	0	0.0	0	0.0	0	24.0	30	WELL TEST
	5	0	0	0	0	0	0	0	0	24.0	80	0.0	0	0.0	30	BUILDUP
	6	0	0	0	0	0	0	0	0	24.0	80	0.0	0	0.0	30	BUILDUP
	7	0	0	0	0	0	0	450	0	24.0	80	0.0	0	0.0	30	BUILDUP
	8	0	0	0	0	0	0	0	0	24.0	80	0.0	0	0.0	30	
	9	0	0	0	0	0	0	0	0	24.0	18	0.0	0	0.0	30	
	10	580	20	654	0	2.3	80	0	0	0.0	0	0.0	0	24.0	30	
	11	580	16	585	0	2.3	70	0	0	0.0	0	0.0	0	24.0	30	WELL TEST
	12	520	22	650	4.6	2.3	80	0	0	0.0	0	0.0	0	24.0	30	
	13	540	22	662	0	0	80	0	0	0.0	0	0.0	0	24.0	30	
	14	540	22	662	0	0	70	0	0	0.0	0	0.0	0	24.0	30	
	15	70	15	212	0	0	0	0	0	0.0	0	0.0	0	24.0	30	
	16	0	0	0	0	0	0	0	0	24.0	81	0.0	0	0.0	30	COMP. DOWN
	17	0	0	0	0	0	0	0	0	24.0	81	0.0	0	0.0	30	COMP. DOWN
	18	560	30	787	0	0	0	0	0	0.0	0	0.0	0	24.0	30	
	19	540	16	565	0	0	70	0	0	0.0	0	0.0	0	24.0	30	
	20	540	16	565	0	0	80	0	0	0.0	0	0.0	0	24.0	30	
	21	540	16	565	0	0	0	0	0	0.0	0	0.0	0	24.0	30	
	22	590	16	589	0	0	0	0	0	0.0	0	0.0	0	24.0	30	
	23	550	14	533	0	0	80	0	0	0.0	0	0.0	0	24.0	30	
	24	0	0	0	0	0	0	0	0	0.0	0	0.0	0	24.0	30	COMP. DOWN
	25	0	0	0	0	0	300	0	0	24.0	80	0.0	0	0.0	30	BUILDUP
	26	0	0	0	0	0	0	0	0	24.0	80	0.0	0	0.0	30	BUILDUP
	27	0	0	0	0	0	0	0	0	24.0	80	0.0	0	0.0	30	
	28	0	0	0	0	0	0	0	0	24.0	80	0.0	0	0.0	30	BUILDUP
	29	0	0	0	0	0	0	0	0	24.0	80	0.0	0	0.0	30	BUILDUP
	30	0	0	0	0	0	0	0	0	24.0	80	0.0	0	0.0	30	BUILDUP
***																
sum				9577	14.93	11.45								408.0		

MBC FIELD DATA GATHERING SYSTEM
PRIMARY WELL REPORT

TOMAHAWK -28- FED 1 - 06457011
For: OCT-96

Mon	Day	Static	Diff	Gas Prod	Oil Prod	Water Prod	Flow Press	Shut-In Press	Csng Press	Dwn Hrs 1	Dwn Cde	Dwn Hrs 2	Dwn Cde	Prod Hrs	Choke Size	Remarks
OCT	1	580	16	585	2.3	3.45	60	0	0	0.0	0	0.0	0	24.0	30	WRLL TEST
	2	590	16	589	1.15	2.3	60	0	0	0.0	0	0.0	0	24.0	30	
	3	520	16	554	-8.07	0	60	0	0	0.0	0	0.0	0	24.0	30	
	4	520	16	554	1.15	2.3	60	0	0	0.0	0	0.0	0	24.0	30	
	5	520	16	554	1.15	1.15	60	0	0	0.0	0	0.0	0	24.0	30	
	6	530	14	523	0	0	60	0	0	0.0	0	0.0	0	24.0	30	
	7	520	16	554	0	0	60	0	0	0.0	0	0.0	0	24.0	30	
	8	550	0	0	0	0	0	0	0	24.0	81	0.0	0	0.0	30	COMP. DOWN
	9	0	0	0	0	0	0	0	0	24.0	81	0.0	0	0.0	30	BUILDUP
	10	0	0	0	0	0	0	0	0	24.0	81	0.0	0	0.0	30	
	11	0	0	0	0	0	0	0	0	24.0	81	0.0	0	0.0	30	
	12	0	0	0	0	0	0	0	0	24.0	81	0.0	0	0.0	30	
	13	0	0	0	0	0	0	0	0	24.0	81	0.0	0	0.0	30	
	14	580	14	547	0	0	60	0	0	0.0	0	0.0	0	24.0	30	
	15	540	8	399	0	0	200	0	0	0.0	0	0.0	0	24.0	30	
	16	520	8	392	0	0	200	0	0	0.0	0	0.0	0	24.0	30	
	17	520	10	438	0	0	0	0	0	0.0	0	0.0	0	24.0	30	
	18	520	10	438	2.3	0	200	0	0	0.0	0	0.0	0	24.0	30	
	19	520	10	438	3.45	0	200	0	0	0.0	0	0.0	0	24.0	30	
	20	540	8	399	0	0	200	0	0	0.0	0	0.0	0	24.0	30	
	21	540	8	166	0	0	100	0	0	14.0	14	0.0	0	10.0	30	LINE FREEZE
	22	0	0	0	0	0	0	0	0	24.0	14	0.0	0	0.0	30	SHUT-IN
	23	0	0	0	0	0	0	0	0	24.0	14	0.0	0	0.0	30	
	24	0	0	0	0	0	0	0	0	24.0	80	0.0	0	0.0	30	BUILDUP
	25	560	8	406	0	0	0	0	0	0.0	0	0.0	0	24.0	30	
	26	560	8	406	0	0	0	0	0	0.0	0	0.0	0	24.0	30	
	27	590	10	466	0	0	0	0	0	0.0	0	0.0	0	24.0	30	
	28	540	6	346	0	0	70	0	0	0.0	0	0.0	0	24.0	30	
	29	540	6	346	0	0	80	0	0	0.0	0	0.0	0	24.0	30	
	30	530	2	198	0	0	0	0	0	0.0	0	0.0	0	24.0	30	
	31	560	3	249	0	0	60	0	0	0.0	0	0.0	0	24.0	30	
***																
sum				9547	3.43	9.2								514.0		

MEC FIELD DATA GATHERING SYSTEM
PRIMARY WELL REPORT

TOMAHAWK -28- FED 1 - 06457011
for: NOV-96

Mon	Day	Static	Diff	Gas Prod	Oil Prod	Water Prod	Flow Press	Shut-In Press	Casg Press	Dwn Hrs 1	Dwn Cde	Dwn Hrs 2	Dwn Cde	Prod Hrs	Choke Size	Remarks
NOV	1	550	3	247	0	0	60	0	0	0.0	0	0.0	0	24.0	30	
	2	560	3	249	0	0	0	0	0	0.0	0	0.0	0	24.0	30	
	3	580	3	42	0	0	20	0	0	20.0	81	0.0	0	4.0	30	
	4	590	9	442	2.3	2.3	120	0	0	0.0	0	0.0	0	24.0	30	
	5	600	8	420	0	0	120	0	0	0.0	0	0.0	0	24.0	30	
	6	590	8	417	0	0	60	0	0	0.0	0	0.0	0	24.0	30	
	7	0	0	0	0	0	50	0	0	0.0	0	0.0	0	24.0	30	LOADED UP
	8	0	0	0	0	0	0	250	0	24.0	80	0.0	0	0.0	30	BUILDUP
	9	0	0	0	0	0	480	0	0	24.0	80	0.0	0	0.0	30	
	10	600	9	446	0	0	120	0	0	0.0	0	0.0	0	24.0	30	
	11	590	10	466	0	0	80	0	0	0.0	0	0.0	0	24.0	30	
	12	600	8	420	0	0	80	0	0	0.0	0	0.0	0	24.0	30	WELL TEST
	13	590	4	295	0	0	80	0	0	0.0	0	0.0	0	24.0	30	
	14	590	4	295	0	0	60	0	0	0.0	0	0.0	0	24.0	30	
	15	560	2	203	0	0	60	0	0	0.0	0	0.0	0	24.0	30	
	16	560	2	203	0	0	60	0	0	0.0	0	0.0	0	24.0	30	
	17	590	2	208	0	0	100	0	0	0.0	0	0.0	0	24.0	30	
	18	600	3	257	0	0	60	0	0	0.0	0	0.0	0	24.0	30	
	19	600	3	257	0	0	60	0	0	0.0	0	0.0	0	24.0	30	
	20	600	2	210	0	0	70	0	0	0.0	0	0.0	0	24.0	30	
	21	580	2	207	0	0	60	0	0	0.0	0	0.0	0	24.0	30	
	22	60	2	73	0	0	0	0	0	0.0	0	0.0	0	24.0	30	
	23	60	2	73	0	0	60	0	0	0.0	0	0.0	0	24.0	30	
	24	590	1	147	0	0	60	0	0	0.0	0	0.0	0	24.0	30	
	25	590	3	142	0	0	60	0	0	0.0	0	0.0	0	24.0	30	
	26	520	3	133	0	0	60	0	0	0.0	0	0.0	0	24.0	30	
	27	520	2	109	0	0	60	0	0	0.0	0	0.0	0	24.0	30	
	28	590	2	116	0	0	60	0	0	0.0	0	0.0	0	24.0	30	
	29	580	2	115	0	0	60	0	0	0.0	0	0.0	0	24.0	30	
	30	520	1	77	0	0	80	0	0	0.0	0	0.0	0	24.0	30	
***																
sum				6269	2.3	2.3								652.0		

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

IN THE MATTER OF THE HEARING CALLED BY THE OIL CONSERVATION DIVISION FOR THE PURPOSE OF CONSIDERING:

CASE NO. 11510 (DeNovo)

APPLICATION OF BRANKO, INC. ET AL TO REOPEN CASE 10656 (ORDER R-9845) CONCERNING MITCHELL ENERGY CORPORATION'S APPLICATION FOR COMPULSORY POOLING, LEA COUNTY, NEW MEXICO.

PRE-HEARING STATEMENT

This pre-hearing statement is submitted by MITCHELL ENERGY CORPORATION, as required by the Oil Conservation Division.

APPEARANCE OF PARTIES

APPLICANT	ATTORNEY
Branko et al.	Hal Stratton Esq Sealy Cavin, Esq. Suite 1200-320 Gold Ave, SW Albuquerque, NM 87103

OPPONENT	ATTORNEY
Mitchell Energy Corp. P. O. Box 4000 The Woodlands, Texas 77387 (713) 377-5500 attn: Mark Stephenson	W. Thomas Kellahin KELLAHIN AND KELLAHIN P.O. Box 2265 Santa Fe, New Mexico 87504 (505) 982-4285

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STATEMENT OF MITCHELL ENERGY CORPORATION

One of the fundamental issues which is disputed in this case is the question of when the Strata partners acquired a property interest in the lease. The Commission will ultimately have to decide this fact and in doing so reach legal conclusions in order to determine when and how "known individuals owning an uncommitted leasehold interest" are to receive actual notice of compulsory pooling applications and orders.

Mitchell contends that the Strata Partners did not obtain protected property interests until on or after November 7, 1995, which is the date Strata actually recorded its assignment to these partners.

It is Mitchell Energy Corporation's position that Strata and its partners are "non-consenting" working interest owners under the compulsory pooling order and until such time as Mitchell has recovered from production its original costs of drilling, completing and its additional workover costs, plus the 200% penalty, Strata and its partners are:

(1) not entitled to make any make any election concerning the proposed workover or any other subsequent operation,

(2) not entitled to notification of proposed subsequent operations,

(3) not entitled to data, and

(4) Mitchell need not obtain their consent or approval for these operations.

Such a result is essential in order for the Commission to maintain the integrity of its pooling orders and to avoid being manipulated by parties who intend to avoid the affects of those pooling orders.

Mitchell will ask the Commission at the DeNovo hearing to set aside Findings (18) and (19), vacate Ordering Paragraph (1) of Order R-10672 and decide:

(1) that actual notice to "each known working interest owner" of an application for compulsory pooling shall be limited to those working interest owners whose interest is evidenced by a valid and enforceable written instrument of conveyance the existence of which is know to the applicant at the time the application for compulsory pooling was filed **and**

(2) that "each known working interest owner" to be furnished with an election opportunity pursuant to a compulsory pooling order shall be limited to (a) those working interest owners whose interest is evidenced by a valid and enforceable written instrument the existence of which is known to the applicant at the time the application for compulsory pooling was filed; and (b) to those transferees of said working interest owners whose transfer is evidenced by a valid and enforceable written instrument of transfer which has been delivered to the applicant.

In this case, Mitchell requests that the Commission:

(a) adopt December 7, 1992 as the cutoff date for notification of affected interest owners which is the date the compulsory pooling application was served on Strata,

(b) establish that the post order notification list of affected working interest owners discussed in Finding (18) of Order R-10672 must be the same list established as of the cut off date for notification of affected interest owners subject to the compulsory pooling order.

(c) find that from December 7, 1992 until November 7, 1995, Mitchell was entitled to rely upon Strata as the responsible party for the disputed 25% working interest; and

(d) that despite the recording of the Strata assignments to its "undisclosed partners" on November 7, 1995, this entire 25% interest is subject to the 200% risk factor penalty until that sum has been recovered by Mitchell.

Although Division was highly critical of Mr. Murphy's attempt upon behalf of Strata to circumvent and avoid having his entire 25% pooled, certain paragraphs of Order R-10672 should be set aside because the order ultimately allows Mr. Murphy to do exactly what the Division sought to prevent.

Mitchell supports the fact that the Division has adopted a method to identify affected interest owners who will be subject to a pooling order by establishing "a notice list of affected interest owners" based upon a "cutoff date" determined by when the application was filed and served on that party.

But the Division also should have established that this same list of affected interest owners constitutes the only interest owners who need to be served after the entry of the order with an opportunity to elect to participate under the pooling order. To do otherwise, allows Strata to scatter its interest in a scheme to avoid the consequences of the pooling order.

PROPOSED EVIDENCE

APPLICANT:

WITNESSES	EST. TIME	EXHIBITS
None		(see below)

PROCEDURAL MATTERS

Mitchell will file a written memorandum in support of its position in this case. However, neither Mitchell nor Branko will call any witnesses before the Commission and instead, will present through counsel their respective arguments.

Mitchell asks the Commission to incorporate the record in Case 10656 including transcript of testimony and exhibits for hearing held on January 21, 1993 which resulted in the issuance of Order R-9845 dated February 15, 1993, and the transcript of testimony and exhibits for the hearing held on May 2, 1996 which resulted in the issuance of Order-10672 dated October 2, 1996.

Branko desires the Commission to consider Branko's affidavits previously submitted to the Division in which each affidavit contends her/she "acquired" and/or "owned" an interest either in the leasehold operating rights or in an overriding royalty on or about November 1, 1989. Mitchell is willing to have these affidavits introduced before the Commission and thereby save Branko the expense of presenting each of these witnesses **provided** Branko stipulates that this is still a disputed fact and Mitchell is not conceding that Strata's partners "acquired" or "owned" an interest prior to November 7, 1995.

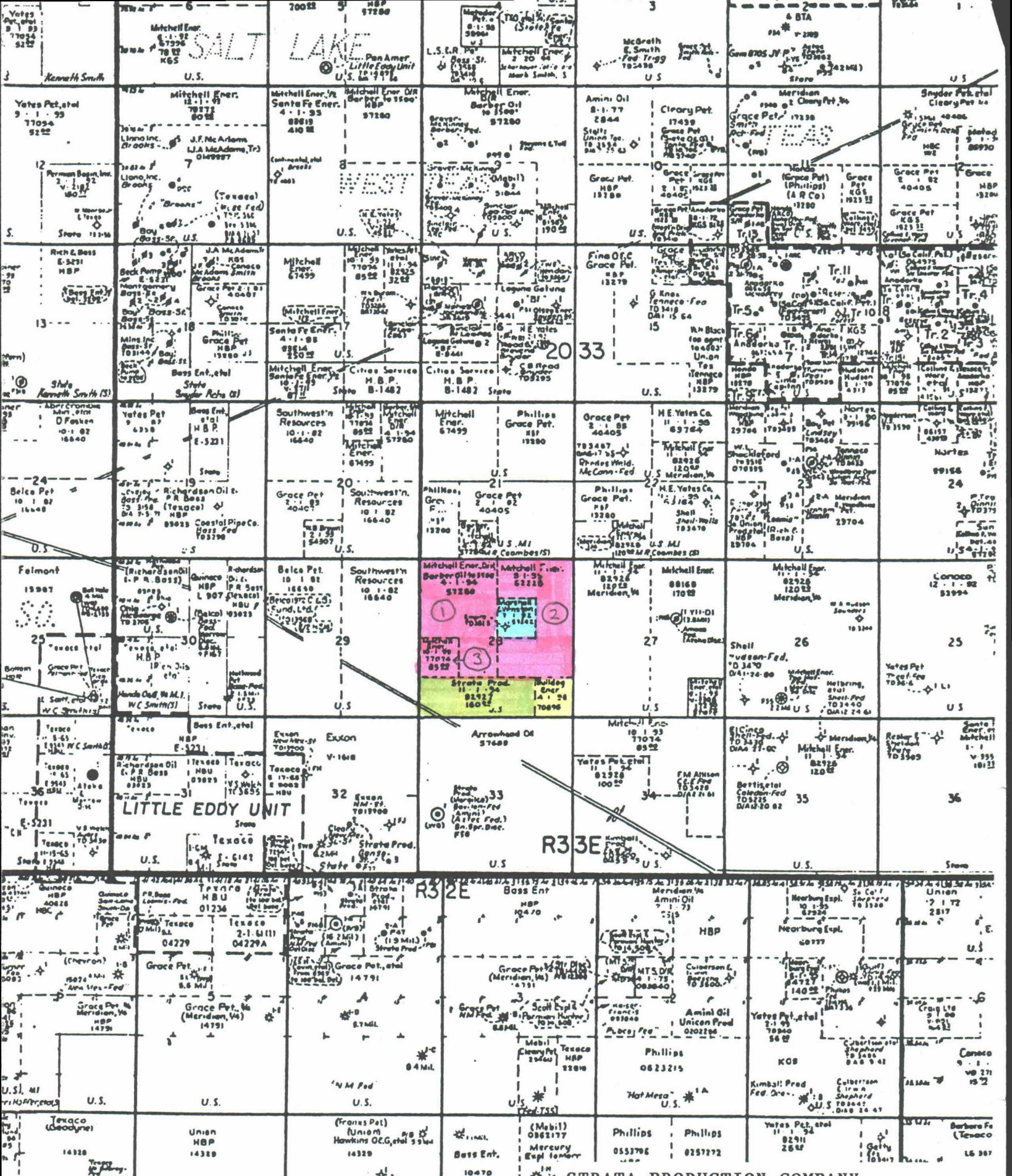
KELLAHIN AND KELLAHIN

By: _____

W. Thomas Kellahin
P.O. Box 2265
Santa Fe, New Mexico 87504

Strata Exhibits 1 through 9

Not complete


SALT LAKE
WEST
LITTLE EDDY UNIT
R33E
R32E
EXHIBIT A
STRATA PRODUCTION COMPANY
NEW MEXICO OIL CONSERVATION DIVISION
CASE #10656
MITCHELL ENERGY CORPORATION
TOMAHAWK "28" FED. COM #1 WELL

POST OFFICE DRAWER 1030
ROSWELL, NM 88202-1030

STRATA PRODUCTION COMPANY

TELEPHONE (505) 622-1127
FACSIMILE (505) 623-3533

200 WEST FIRST STREET, ROSWELL PETROLEUM BUILDING, SUITE 700
ROSWELL, NEW MEXICO 88201

Ex B

January 12, 1993

Via Telefax (915) 682-6439/Hard Copy by Cer

Mitchell Energy Corporation
1000 Independence Plaza
400 West Illinois
Midland, Texas 79701

Attn: Steve Smith

RE: Response to Mitchell correspondence dated January 7, 1993.

Dear Mr Smith:

I appreciate you clarifying that it is Mitchell's intent to drill the above referenced well at the following location: 1980' FWL & 1650' FNL Section 28 T-20-S, R-33-E NMPM. We continue to be in opposition to a West Half spacing unit and would note that Mitchell's proposed location is orthodoxed for a North Half spacing unit. While we understand that you wish to hold the NW/4 SW/4 of Section 28, as previously discussed, we do not believe that this justifies an unorthodoxed location.

I have not had the opportunity to review your proposed Joint Operating Agreement ("JOA"). However, I do have the following question in regards to item numbered 4) concerning the COPAS overhead rates. What are the COPAS overhead rates in the JOA between Mitchell and "the parties who have already agreed to participate"? If you propose to charge Strata higher overhead rates than you do the other parties, what is your justification for doing so? I note that the Ernest and Young 1991 overhead rate is $513.00 for producing wells and $5000.00 for drilling wells.

In addition, I have found numerous omissions, mischaracterizations and misstatements in your "summary of the discussions and correspondence between Strata and Mitchell". It is my practice to keep detailed and accurate notes of my discussions and the following reflects my review of said notes, correspondence and other materials.

1). October 26, 1992 0755-0802 hrs. - Telephone conversation
I returned your telephone call and you informed me that Mitchell intended to drill a Morrow well in the W/2 of Section 28, T-20-S, R-33-E. You stated that said well would probably be located somewhere in the NW/4 of Section 28. You stated that public records indicated that Strata owns Lease #NM-82927 and that the S/2 SW/4 of Section 28 would be included in Mitchell's proposed proration unit. You stated that currently your partners are Santa Fe and Maralo and that you intended to commence operations in early 1993. I advised you that Strata and it's partners would probably not wish to participate but would prefer to either sell or farmout. You requested proposed terms. I told you that I would need to discuss your proposal with my geologic staff and partners and then get back to you.

2). October 29, 1992 approximately 0900 hrs.- Telephone conversation.
I called you and informed you that Strata would recommend to it's partners that we sell the S/2 SW/4 of Section 28 for $300 per acre delivering a 78% Net Revenue Interest ("NRI") and rights from the base of the Bone Springs (top of the Wolfcamp) to basement. You informed me that you "will consider our proposal and call back when closer to doing something".

3). November 18, 1992 0850-0900 hrs. - Telephone conversation.
I returned your telephone call and you informed me that Mitchell would not accept Strata's proposal as discussed during our 10-29-92 telephone conversation. You said that you believed our proposal to be excessive with regards to the acreage price of $300 per acre. I responded that the acreage price was consistent with acreage prices being paid in the area during recent state & federal lease sales. You informed me that Mitchell would make a formal farmout request which would include all rights from the surface to basement. I responded that Strata would prefer to keep its rights down through and including the Delaware and Bone Springs formations. I stated the reason we bought the lease was because of the existence of Strata operated wells producing from these intervals located one to one-half miles south. I informed you that we could not see any technical basis for a West Half proration unit. I requested that you reconsider the West Half proration unit and in the alternative form a North Half proration unit thereby eliminating the need to include Strata's lease.

Did he ever ask for a list of PS + Penn addresses.

You stated that the reason Mitchell intended to form a West Half proration unit was based upon "lease

expiration considerations" specifically the expiration of the NW/4 SW/4 in October, 1993. You went on to say that it was your intent to make a formal farmout request in writing based upon what you considered to be "reasonable terms" and if Strata did not accept then you would "force pool" us. I informed you that due to the lack of technical basis, a point you admitted, Strata would defend itself and it's partners rights during any proceeding including a force pooling hearing.

I recall this conversation vividly because it escalated into a rather contentious conversation as a result of your arrogant attitude.

4). Mitchell correspondence dated November 20, 1992
Correspondence speaks for itself.

5). Kellahin and Kellahin correspondence dated December 7, 1992
Notice of Compulsory Pooling and Unorthodox Gas well Location.

6). Strata correspondence dated December 9, 1992.
Correspondence speaks for itself however please note that Strata's proposal was an effort to accommodate Mitchell and was subject to Strata's partners approval. I also note that in paragraph numbered 4) of your correspondence dated January 7, 1993 you characterize Strata's farmout terms as being "substantially the same terms proposed in Mitchell's letter of November 20, 1992". You may wish to review said correspondence again as one of the most glaring differences is that you proposed that Strata deliver a 78% NRI, Strata proposed a 75% NRI, not a meager difference to a small family owned independent company like Strata.

7). December 16, 1992 1206-1216 hrs. - Telephone conversation
You called my office and I returned your call from my home. I informed you that my wife recently had surgery and I would be working from my home through her recovery and the holidays. You informed me that Mitchell would accept Strata's proposed Farmout terms as contained in Strata's correspondence dated December 9, 1992, with the condition (insisted upon by Mitchell's legal dept) that at payout assuming Strata elected to convert its retained ORRI to the working interest then all of the ORRI must be converted. I reminded you that Strata had numerous partners and that this condition would be difficult because some parties may wish to convert and others may not. You responded that Mitchell's legal department would probably accept a provision which requires each individual to convert

all of their ORRI to WI. I suggested that in order for Mitchell to avoid the administrative burden of approximately fifteen (15) individuals with options to convert to very small working interest, (in some cases less than .5% WI) that Mitchell considering making it's best cash offer. I asked what your experience was in the area and you said that you had recently purchased an interest from Mobil for $100 per acre and a 75% NRI% You said you would discuss it with management and call me back.

During our previous conversations of November 18, 1992 you took issue with Strata's proposal of $300.00 per acre. The retained ORRI, the ORRI pooling provision and the depth limitation were not terms to which you stated any objection.

8). December 18, 1992 approximately 1400 hrs. - Telephone conversation.

I returned your call from my home and you informed me that Mitchell would pay Strata $150 per acre with Strata retaining a 7.5% ORRI proportionately reduced. You said that Mitchell considered the $150 per acre to be reasonable but with the condition that Strata agree to the retention of a lesser ORRI. I responded that I would recommend your terms to Strata's partners.

9). December 23, 1992 - approximately 1115 hrs - Telephone conversation.

I returned your call from my home and informed you that due to the holidays, I had been unable to contact all of Strata's partners. However,I had contacted the majority of them and they were agreeable to the terms proposed by Mitchell and Strata. You requested that I provide a Letter Agreement and I agreed to provide Strata's form.

10). January 4, 1993 1405-1415 hrs - Telephone conversation.

I called and informed you that I had completed the Letter Agreement and requested your fax number (915-682-6439). I specifically reviewed with you the ORRI pooling provision and you responded that you had failed to remind Mitchell's management of this provision when you presented your recommendation to purchase the Lease. I stated that this was a very important part of the consideration and that absent this condition we did not have a deal. You stated that I should finalize the Letter Agreement and forward same to you. In addition, you requested that you intended for the interval to be delivered to be from the surface to basement. You stated that you believed that you had previously said that you wanted from the surface to the base of the Morrow formation. I responded that I did not recall

your request for surface to the base of the Morrow and had assumed that Strata would deliver all rights. I informed you that the Letter Agreement had been drafted accordingly, thereby delivering all rights. You responded that you appreciated this and would await receipt of Strata's Letter Agreement.

11). Strata correspondence dated December 30, 1992 faxed to Mitchell Energy 1650 hrs 1-4-93.
Correspondence speaks for itself.
Note that the terms were identical to those proposed in Strata's correspondence dated December 9, 1992 and discussed by telephone as set forth in 8) and 10) above. The additional terms are consistent with industry practice and primarily address title, rental payment responsibility, reassignment and other reasonable requests including the sharing of geologic data.

12). Mitchell correspondence dated January 5, 1993.
Correspondence speaks for itself.

13). January 5, 1993 approximately 0900 hrs - Telephone conversations.
I called you and asked why you had sent a Letter Agreement when I had already forwarded one per your request. You said that when you went back to management they informed you that they would not accept the ORRI pooling provision. You went on to say that they felt "blindsided". I responded that it was not my intent to blindside anybody and reminded you that we had discussed the ORRI pooling provision prior to me sending the Letter Agreement. You also stated that Mitchell did not intend to share the geologic information due to the lease expiration of the SW/4 NE/4 of Section 28. I responded that we would be most willing to sign a Confidentiality/Non Compete Agreement in order to alleviate any concern. However, the geologic data was important to us because of our lease position in the area specifically Section 33, T-20-S, R-33-E. You stated that you were instructed to draft the letter as presented and forward same to Strata. I responded that it did not contain the provisions we had previously agreed to. You said that it was Mitchell's position that it accurately reflected our agreement. I advised that I disagreed. You further stated that all previous terms and proposals including those in my 12-9-92 were now null and void. I said I did not know what Strata's partners would want to do. You advised that absent an agreement by the next day (Wednesday January 6, 1993) you would instruct your counsel to reschedule the force pooling hearing until the next

hearing date which you believed would be on or about January 21, 1993.

14). Strata correspondence dated January 6, 1993. Correspondence speaks for itself, but note that due to the failure of Mitchell to honor our verbal agreement Strata must reconsider all of it's options including participation in the well.

15). Mitchell correspondence dated January 7, 1993. Correspondence speaks for itself.

In order to clarify Strata's position and in an effort to accommodate Mitchell's desire to drill the Tomahawk "28" Fed Com Well #1 Strata offers, and subject to our partners approval the following:

1). Mitchell agrees to purchase all of Strata's right, title, and interest in Federal lease NM-82927 pursuant to the terms and conditions as set forth in Strata's Letter Agreement dated December 30, 1992. In addition, Strata will agree to execute either by amendment or separate agreement a mutually acceptable Confidentiality/Non Compete agreement as it pertains to the SW/4 NE/4 of Section 28.

I am unable to give any indication as to our desire to farmout or participate until I have the opportunity to review the JOA, evaluate your response to my questions concerning the COPAS overhead rates and receive a response from Mitchell to alternative 1. above.

Our proposal to sell expires at 5:00 p.m. Friday January 15, 1993 and is subject to partner approval. If we are unable to resolve this then I will provide you with a list of the leasehold partners and overriding royalty owners so that you can contact those individuals direct. Since you have had notice that these undisclosed owners exist we would ask that you grant another two (2) week continuance and notify these parties of your application. I look forward to receiving your reply.

Yours very truly,

STRATA PRODUCTION COMPANY

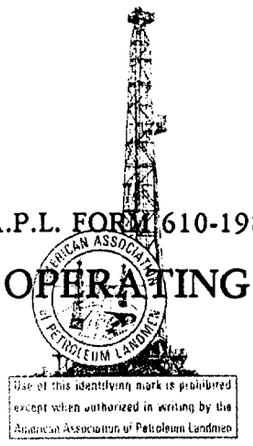
Mark B. Murphy
President

cc: Sealy H. Cavin Jr., Esq.
MBM/mo

Ex C

A.A.P.L. FORM 610-1982

MODEL FORM OPERATING AGREEMENT



OPERATING AGREEMENT

DATED

January 1, 19 93,

OPERATOR MITCHELL ENERGY CORPORATION

CONTRACT AREA W/2 of Section 28, T-20-S, R-33-E

COUNTY ~~OR PARISH~~ OF Lea STATE OF New Mexico

TABLE OF CONTENTS

OPERATING AGREEMENT

THIS AGREEMENT, entered into by and between MITCHELL ENERGY CORPORATION _____, hereinafter designated and referred to as "Operator", and the signatory party or parties other than Operator, sometimes hereinafter referred to individually herein as "Non-Operator", and collectively as "Non-Operators".

WITNESSETH:

WHEREAS, the parties to this agreement are owners of oil and gas leases and/or oil and gas interests in the land identified in Exhibit "A", and the parties hereto have reached an agreement to explore and develop these leases and/or oil and gas interests for the production of oil and gas to the extent and as hereinafter provided,

NOW, THEREFORE, it is agreed as follows:

ARTICLE I.
DEFINITIONS

As used in this agreement, the following words and terms shall have the meanings here ascribed to them:

A. The term "oil and gas" shall mean oil, gas, casinghead gas, gas condensate, and all other liquid or gaseous hydrocarbons and other marketable substances produced therewith, unless an intent to limit the inclusiveness of this term is specifically stated.

B. The terms "oil and gas lease", "lease" and "leasehold" shall mean the oil and gas leases covering tracts of land lying within the Contract Area which are owned by the parties to this agreement.

C. The term "oil and gas interests" shall mean unleased fee and mineral interests in tracts of land lying within the Contract Area which are owned by parties to this agreement.

D. The term "Contract Area" shall mean all of the lands, oil and gas leasehold interests and oil and gas interests intended to be developed and operated for oil and gas purposes under this agreement. Such lands, oil and gas leasehold interests and oil and gas interests are described in Exhibit "A".

E. The term "drilling unit" shall mean the area fixed for the drilling of one well by order or rule of any state or federal body having authority. If a drilling unit is not fixed by any such rule or order, a drilling unit shall be the drilling unit as established by the pattern of drilling in the Contract Area or as fixed by express agreement of the Drilling Parties.

F. The term "drillsite" shall mean the oil and gas lease or interest on which a proposed well is to be located.

G. The terms "Drilling Party" and "Consenting Party" shall mean a party who agrees to join in and pay its share of the cost of any operation conducted under the provisions of this agreement.

H. The terms "Non-Drilling Party" and "Non-Consenting Party" shall mean a party who elects not to participate in a proposed operation.

Unless the context otherwise clearly indicates, words used in the singular include the plural, the plural includes the singular, and the neuter gender includes the masculine and the feminine.

ARTICLE II.
EXHIBITS

The following exhibits, as indicated below and attached hereto, are incorporated in and made a part hereof:

☒ A. Exhibit "A", shall include the following information:
- (1) Identification of lands subject to this agreement,
- (2) Restrictions, if any, as to depths, formations, or substances,
- (3) Percentages or fractional interests of parties to this agreement,
- (4) Oil and gas leases and/or oil and gas interests subject to this agreement,
- (5) Addresses of parties for notice purposes.

☐ B. Exhibit "B", Form of Lease.

☒ C. Exhibit "C", Accounting Procedure.

☒ D. Exhibit "D", Insurance.

☒ E. Exhibit "E", Gas Balancing Agreement.

☒ F. Exhibit "F", Non-Discrimination and Certification of Non-Segregated Facilities.

*[illegible]

If any provision of any exhibit, except Exhibit "E" [illegible], is inconsistent with any provision contained in the body of this agreement, the provisions in the body of this agreement shall prevail.

☒ H. Exhibit "H", Notice of Joint Operating Agreement and Liens and Other Security Interests.

ARTICLE III.
INTERESTS OF PARTIES

A. Oil and Gas Interests:

If any party owns an oil and gas interest in the Contract Area, that interest shall be treated for all purposes of this agreement and during the term hereof as if it were covered by the form of oil and gas lease attached hereto as Exhibit "B", and the owner thereof shall be deemed to own both the royalty interest reserved in such lease and the interest of the lessee thereunder.

B. Interests of Parties in Costs and Production:

Unless changed by other provisions, all costs and liabilities incurred in operations under this agreement shall be borne and paid, and all equipment and materials acquired in operations on the Contract Area shall be owned, by the parties as their interests are set forth in Exhibit "A". In the same manner, the parties shall also own all production of oil and gas from the Contract Area subject to the payment of royalties to the extent of the royalties for each lease* which shall be borne as hereinafter set forth.

*as provided on Exhibit "A"

Regardless of which party has contributed the lease(s) and/or oil and gas interest(s) hereto on which royalty is due and payable, each party entitled to receive a share of production of oil and gas from the Contract Area shall bear and shall pay or deliver, or cause to be paid or delivered, to the extent of its interest in such production, the royalty amount stipulated hereinabove and shall hold the other parties free from any liability therefor. No party shall ever be responsible, however, on a price basis higher than the price received by such party, to any other party's lessor or royalty owner, and if any such other party's lessor or royalty owner should demand and receive settlement on a higher price basis, the party contributing the affected lease shall bear the additional royalty burden attributable to such higher price.

Nothing contained in this Article III.B. shall be deemed an assignment or cross-assignment of interests covered hereby.

C. Excess Royalties, Overriding Royalties and Other Payments:

Unless changed by other provisions, if the interest of any party in any lease covered hereby is subject to any royalty, overriding royalty, production payment or other burden on production in excess of the amount stipulated in Article III.B., such party so burdened shall assume and alone bear all such excess obligations and shall indemnify and hold the other parties hereto harmless from any and all claims and demands for payment asserted by owners of such excess burden.

D. Subsequently Created Interests:

If any party should hereafter create an overriding royalty, production payment or other burden payable out of production attributable to its working interest hereunder, or if such burden existed prior to this agreement and is not set forth in Exhibit "A", or any of record or ~~was not disclosed in writing by all other parties prior to the execution of this agreement by all parties or is not otherwise agreed to or accepted by all parties~~ (any such interest being hereinafter referred to as "subsequently created interest" irrespective of the timing of its creation and the party out of whose working interest the subsequently created interest is derived being hereinafter referred to as "burdened party"), and:

1. If the burdened party is required under this agreement to assign or relinquish to any other party, or parties, all or a portion of its working interest and/or the production attributable thereto, said other party, or parties, shall receive said assignment and/or production free and clear of said subsequently created interest and the burdened party shall indemnify and save said other party, or parties, harmless from any and all claims and demands for payment asserted by owners of the subsequently created interest; and,

2. If the burdened party fails to pay, when due, its share of expenses chargeable hereunder, all provisions of Article VII.B. shall be enforceable against the subsequently created interest in the same manner as they are enforceable against the working interest of the burdened party.

ARTICLE IV.
TITLES

A. Title Examination:

Title examination shall be made on the drillsite of any proposed well prior to commencement of drilling operations or, if the Drilling Parties so request, title examination shall be made on the leases and/or oil and gas interests included, or planned to be included, in the drilling unit around such well. The opinion will include the ownership of the working interest, minerals, royalty, overriding royalty and production payments under the applicable leases. At the time a well is proposed, each party contributing leases and/or oil and gas interests to the drillsite, or to be included in such drilling unit, shall furnish to Operator all abstracts (including federal lease status reports), title opinions, title papers and curative material in its possession free of charge. All such information not in the possession of or made available to Operator by the parties, but necessary for the examination of the title, shall be obtained by Operator. Operator shall cause title to be examined by attorneys on its staff or by outside attorneys. Copies of all title opinions shall be furnished to each party hereto. The cost incurred by Operator in this title program shall be borne as follows:

☐ Option No. 1: Costs incurred by Operator in procuring abstracts and title examination (including preliminary, supplemental, shut-in gas royalty opinions and division order title opinions) shall be a part of the administrative overhead as provided in Exhibit "C" and shall not be a direct charge, whether performed by Operator's staff attorneys or by outside attorneys.

ARTICLE IV
continued

☒ Option No. 2: Costs incurred by Operator in procuring abstracts and fees paid outside attorneys for title examination (including preliminary, supplemental, shut-in gas royalty opinions and division order title opinions) shall be borne by the Drilling Parties in the proportion that the interest of each Drilling Party bears to the total interest of all Drilling Parties as such interests appear in Exhibit "A". Operator shall make no charge for services rendered by its staff attorneys or other personnel in the performance of the above functions.

Each party shall be responsible for securing curative matter and pooling amendments or agreements required in connection with leases or oil and gas interests contributed by such party. Operator shall be responsible for the preparation and recording of pooling designations or declarations as well as the conduct of hearings before governmental agencies for the securing of spacing or pooling orders. This shall not prevent any party from appearing on its own behalf at any such hearing.

No well shall be drilled on the Contract Area until after (1) the title to the drillsite or drilling unit has been examined as above provided, and (2) the title has been approved by the examining attorney or title has been accepted by all of the parties who are to participate in the drilling of the well.

B. Loss of Title:

~~1. Failure of Title: Should any oil and gas interest or lease, or interest therein, be lost through failure of title, which loss results in a~~ reduction of interest from that shown on Exhibit "A", the party contributing the affected lease or interest shall have ninety (90) days from final determination of title failure to acquire a new lease or other instrument curing the entirety of the title failure, which acquisition will not be subject to Article VIII.B., and failing to do so, this agreement, nevertheless, shall continue in force as to all remaining oil and gas leases and interests; and,

(a) The party whose oil and gas lease or interest is affected by the title failure shall bear alone the entire loss and it shall not be entitled to recover from Operator or the other parties any development or operating costs which it may have theretofore paid or incurred, but there shall be no additional liability on its part to the other parties hereto by reason of such title failure;

(b) There shall be no retroactive adjustment of expenses incurred or revenues received from the operation of the interest which has been lost, but the interests of the parties shall be revised on an acreage basis, as of the time it is determined finally that title failure has occurred, so that the interest of the party whose lease or interest is affected by the title failure will thereafter be reduced in the Contract Area by the amount of the interest lost;

(c) If the proportionate interest of the other parties hereto in any producing well theretofore drilled on the Contract Area is increased by reason of the title failure, the party whose title has failed shall receive the proceeds attributable to the increase in such interest (less costs and burdens attributable thereto) until it has been reimbursed for unrecovered costs paid by it in connection with such well;

(d) Should any person not a party to this agreement, who is determined to be the owner of any interest in the title which has failed, pay in any manner any part of the cost of operation, development, or equipment, such amount shall be paid to the party or parties who bore the costs which are so refunded;

(e) Any liability to account to a third party for prior production of oil and gas which arises by reason of title failure shall be borne by the party or parties whose title failed in the same proportions in which they shared in such prior production; and,

(f) No charge shall be made to the joint account for legal expenses, fees or salaries, in connection with the defense of the interest ~~claimed by any party hereto, it being the intention of the parties hereto that each shall defend title to its interest and bear all expenses in connection therewith.~~

~~2. Loss by Non-Payment or Erroneous Payment of Amount Due: If, through mistake or oversight, any rental, shut-in well~~ payment, minimum royalty or royalty payment, is not paid or is erroneously paid, and as a result a lease or interest therein terminates, there shall be no monetary liability against the party who failed to make such payment. Unless the party who failed to make the required payment secures a new lease covering the same interest within ninety (90) days from the discovery of the failure to make proper payment, which acquisition will not be subject to Article VIII.B., the interests of the parties shall be revised on an acreage basis, effective as of the date of termination of the lease involved, and the party who failed to make proper payment will no longer be credited with an interest in the Contract Area on account of ownership of the lease or interest which has terminated. In the event the party who failed to make the required payment shall not have been fully reimbursed, at the time of the loss, from the proceeds of the sale of oil and gas attributable to the lost interest, calculated on an acreage basis, for the development and operating costs theretofore paid on account of such interest, it shall be reimbursed for unrecovered actual costs theretofore paid by it (but not for its share of the cost of any dry hole previously drilled or wells previously abandoned) from so much of the following as is necessary to effect reimbursement:

(a) Proceeds of oil and gas, less operating expenses, theretofore accrued to the credit of the lost interest, on an acreage basis, up to the amount of unrecovered costs;

(b) Proceeds, less operating expenses, thereafter accrued attributable to the lost interest on an acreage basis, of that portion of oil and gas thereafter produced and marketed (excluding production from any wells thereafter drilled) which, in the absence of such lease termination, would be attributable to the lost interest on an acreage basis, up to the amount of unrecovered costs, the proceeds of said portion of the oil and gas to be contributed by the other parties in proportion to their respective interests; and,

(c) Any monies, up to the amount of unrecovered costs, that may be paid by any party who is, or becomes, the owner of the interest ~~lost, for the privilege of participating in the Contract Area or becoming a party to this agreement.~~

3. Other Losses: All losses incurred, ~~other than those set forth in Articles VI.B.1. and VI.B.2. above,~~ shall be joint losses and shall be borne by all parties in proportion to their interests. There shall be no readjustment of interests in the remaining portion of the Contract Area.

ARTICLE V.
OPERATOR

A. **Designation and Responsibilities of Operator:**

Mitchell Energy Corporation shall be the Operator of the Contract Area, and shall conduct and direct and have full control of all operations on the Contract Area as permitted and required by, and within the limits of this agreement. It shall conduct all such operations in a good and workmanlike manner, but it shall have no liability as Operator to the other parties* for losses sustained or liabilities incurred,** except such as may result from gross negligence or willful misconduct.

*, their officers, employees, and/or agents
**whether or not due to negligence of Operator

B. **Resignation or Removal of Operator and Selection of Successor:**

1. Resignation or Removal of Operator: Operator may resign at any time by giving written notice thereof to Non-Operators. If Operator terminates its legal existence, no longer owns an interest hereunder in the Contract Area, or is no longer capable of serving as Operator, Operator shall be deemed to have resigned without any action by Non-Operators, except the selection of a successor. Operator may be removed if there is a finding by a court of competent jurisdiction that it has failed or refused ~~[illegible]~~ to carry out its duties hereunder, or becomes insolvent, bankrupt or is placed in receivership, by the affirmative vote of the party or parties if it ~~[illegible]~~ owning a majority interest based on ownership as shown on Exhibit "A" remaining after excluding the voting interest of Operator. Such resignation or removal shall not become effective until 7:00 o'clock A.M. on the first day of the calendar month following the expiration of ninety (90) days after the giving of notice of resignation by Operator or action by the Non-Operators to remove Operator, unless a successor Operator has been selected and assumes the duties of Operator at an earlier date. Operator, after effective date of resignation or removal, shall be bound by the terms hereof as a Non-Operator. A change of a corporate name or structure of Operator or transfer of Operator's interest to any single subsidiary, parent or successor corporation shall not be the basis for removal of Operator.

2. Selection of Successor Operator: Upon the resignation or removal of Operator, a successor Operator shall be selected by the parties. The successor Operator shall be selected from the parties owning an interest in the Contract Area at the time such successor Operator is selected. The successor Operator shall be selected by the affirmative vote of the party or parties ~~[illegible]~~ owning a majority interest based on ownership as shown on Exhibit "A"; provided, however, if an Operator which has been removed fails to vote or votes only to succeed itself, the successor Operator shall be selected by the affirmative vote of the party or parties ~~[illegible]~~ owning a majority interest based on ownership as shown on Exhibit "A" remaining after excluding the voting interest of the Operator that was removed.

C. **Employees:**

The number of employees used by Operator in conducting operations hereunder, their selection, and the hours of labor and the compensation for services performed shall be determined by Operator, and all such employees shall be the employees of Operator.

D. **Drilling Contracts:**

All wells drilled on the Contract Area shall be drilled on a competitive contract basis at the usual rates prevailing in the area. If it so desires, Operator may employ its own tools and equipment in the drilling of wells, but its charges therefor shall not exceed the prevailing rates in the area ~~[illegible]~~ and such work shall be performed by Operator under the same terms and conditions as are customary and usual in the area in contracts of independent contractors who are doing work of a similar nature.

ARTICLE VI.
DRILLING AND DEVELOPMENT

A. **Initial Well:**

On or before the_____day of_____, 19____, Operator shall commence the drilling of a well for oil and gas at the following location:

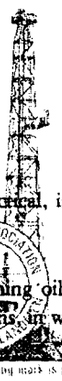
1,980 feet FWL and 1,650 feet FNL of Section 28,
T-20-S, R-33-E, Lea County, New Mexico

and shall thereafter continue the drilling of the well with due diligence to

approximately 14,300 feet or a depth sufficent to test and evaluate the Morrow formation, whichever is the lesser depth

unless granite or other practically impenetrable substance or condition in the hole, which renders further drilling impractical, is encountered at a lesser depth, or unless all parties agree to complete or abandon the well at a lesser depth.

Operator shall make reasonable tests of all formations encountered during drilling which give indication of containing oil and gas in quantities sufficient to test, unless this agreement shall be limited in its application to a specific formation or formations, in which event Operator shall be required to test only the formation or formations to which this agreement may apply.



ARTICLE VI
continued

If, in Operator's judgment, the well will not produce oil or gas in paying quantities, and it wishes to plug and abandon the well as a dry hole, the provisions of Article VI.E.1. shall thereafter apply.

B. Subsequent Operations:

1. Proposed Operations: Should any party hereto desire to drill any well on the Contract Area other than the well provided for in Article VI.A., or to rework, deepen or plug back a dry hole drilled at the joint expense of all parties or a well jointly owned by all the parties and not then producing in paying quantities, the party desiring to drill, rework, deepen or plug back such a well shall give the other parties written notice of the proposed operation, specifying the work to be performed, the location, proposed depth, objective formation and the estimated cost of the operation. The parties receiving such a notice shall have thirty (30) days after receipt of the notice within which to notify the party wishing to do the work whether they elect to participate in the cost of the proposed operation. If a drilling rig is on location, notice of a proposal to rework, plug back or drill deeper may be given by telephone and the response shall reach within forty-eight (48) hours, ~~exclusive of Saturday, Sunday and legal holidays~~. Failure of a party receiving such notice to reply within Opera the period above fixed shall constitute an election by that party not to participate in the cost of the proposed operation. Any notice or response given by telephone shall be promptly confirmed in writing. Operator shall use its best efforts to provide Non-Operators 24 hours advance notice of any work to be conducted on Saturday, Sunday & Legal Holidays.

If all parties elect to participate in such a proposed operation, Operator shall, within ninety (90) days after expiration of the notice period of thirty (30) days (or as promptly as possible after the expiration of the forty-eight (48) hour period when a drilling rig is on location, as the case may be), actually commence the proposed operation and complete it with due diligence at the risk and expense of all parties hereto; provided, however, said commencement date may be extended upon written notice of same by Operator to the other parties, for a period of up to thirty (30) additional days if, in the sole opinion of Operator, such additional time is reasonably necessary to obtain permits from governmental authorities, surface rights (including rights-of-way) or appropriate drilling equipment, or to complete title examination or curative matter required for title approval or acceptance. Notwithstanding the force majeure provisions of Article XI, if the actual operation has not been commenced within the time provided (including any extension thereof as specifically permitted herein) and if any party hereto still desires to conduct said operation, written notice proposing same must be resubmitted to the other parties in accordance with the provisions hereof as if no prior proposal had been made.

2. Operations by Less than All Parties: If any party receiving such notice as provided in Article VI.B.1. or VII.D.1. (Option No. 2) elects not to participate in the proposed operation, then, in order to be entitled to the benefits of this Article, the party or parties giving the notice and such other parties as shall elect to participate in the operation shall, within ninety (90) days after the expiration of the notice period of thirty (30) days (or as promptly as possible after the expiration of the forty-eight (48) hour period when a drilling rig is on location, as the case may be) actually commence the proposed operation and complete it with due diligence. Operator shall perform all work for the account of the Consenting Parties; provided, however, if no drilling rig or other equipment is on location, and if Operator is a Non-Consenting Party, the Consenting Parties shall either: (a) request Operator to perform the work required by such proposed operation for the account of the Consenting Parties, or (b) designate one (1) of the Consenting Parties as Operator to perform such work. Consenting Parties, when conducting operations on the Contract Area pursuant to this Article VI.B.2., shall comply with all terms and conditions of this agreement. See Article XV-A for modification to this Article VI.B.2.

If less than all parties approve any proposed operation, the proposing party, immediately after the expiration of the applicable notice period, shall advise the Consenting Parties of the total interest of the parties approving such operation and its recommendation as to whether the Consenting Parties should proceed with the operation as proposed. Each Consenting Party, within forty-eight (48) hours ~~(exclusive of Saturday, Sunday and legal holidays)~~ after receipt of such notice, shall advise the proposing party of its desire to (a) limit participation to such party's interest as shown on Exhibit "A" or (b) carry its proportionate part of Non-Consenting Parties' interests, and failure to advise the proposing party shall be deemed an election under (a). In the event a drilling rig is on location, the time permitted for such a response shall not exceed a total of forty-eight (48) hours (inclusive of Saturday, Sunday and legal holidays). The proposing party, at its election, may withdraw such proposal if there is insufficient participation and shall promptly notify all parties of such decision.

The entire cost and risk of conducting such operations shall be borne by the Consenting Parties in the proportions they have elected to bear same under the terms of the preceding paragraph. Consenting Parties shall keep the leasehold estates involved in such operations free and clear of all liens and encumbrances of every kind created by or arising from the operations of the Consenting Parties. If such an operation results in a dry hole, the Consenting Parties shall plug and abandon the well and restore the surface location at their sole cost, risk and expense. If any well drilled, reworked, deepened or plugged back under the provisions of this Article results in a producer of oil and/or gas in paying quantities, the Consenting Parties shall complete and equip the well to produce at their sole cost and risk,

ARTICLE VI
continued

and the well shall then be turned over to Operator and shall be operated by it at the expense and for the account of the Consenting Parties. Upon commencement of operations for the drilling, reworking, deepening or plugging back of any such well by Consenting Parties in accordance with the provisions of this Article, each Non-Consenting Party shall be deemed to have relinquished to Consenting Parties, and the Consenting Parties shall own and be entitled to receive, in proportion to their respective interests, all of such Non-Consenting Party's interest in the well and share of production therefrom until the proceeds of the sale of such share, calculated at the well, or market value thereof if such share is not sold, (after deducting production taxes, excise taxes, royalty, overriding royalty and other interests not excepted by Article III.D. payable out of or measured by the production from such well accruing with respect to such interest until it reverts) shall equal the total of the following:

(a) 100% of each such Non-Consenting Party's share of the cost of any newly acquired surface equipment beyond the wellhead connections (including, but not limited to, stock tanks, separators, treaters, pumping equipment and piping), plus 100% of each such Non-Consenting Party's share of the cost of operation of the well commencing with first production and continuing until each such Non-Consenting Party's relinquished interest shall revert to it under other provisions of this Article, it being agreed that each Non-Consenting Party's share of such costs and equipment will be that interest which would have been chargeable to such Non-Consenting Party had it participated in the well from the beginning of the operations; and

(b) 300 % of that portion of the costs and expenses of drilling, reworking, deepening, plugging back, testing and completing, after deducting any cash contributions received under Article VIII.C., and 300 % of that portion of the cost of newly acquired equipment in the well (to and including the wellhead connections), which would have been chargeable to such Non-Consenting Party if it had participated therein.

An election not to participate in the drilling or the deepening of a well shall be deemed an election not to participate in any reworking or plugging back operation proposed in such a well, or portion thereof, to which the initial Non-Consent election applied that is conducted at any time prior to full recovery by the Consenting Parties of the Non-Consenting Party's recoupment account. Any such reworking or plugging back operation conducted during the recoupment period shall be deemed part of the cost of operation of said well and there shall be added to the sums to be recouped by the Consenting Parties one hundred percent (100%) of that portion of the costs of the reworking or plugging back operation which would have been chargeable to such Non-Consenting Party had it participated therein. If such a reworking or plugging back operation is proposed during such recoupment period, the provisions of this Article VI.B. shall be applicable as between said Consenting Parties in said well.

During the period of time Consenting Parties are entitled to receive Non-Consenting Party's share of production, or the proceeds therefrom, Consenting Parties shall be responsible for the payment of all production, severance, excise, gathering and other taxes, and all royalty, overriding royalty and other burdens applicable to Non-Consenting Party's share of production not excepted by Article III.D.

In the case of any reworking, plugging back or deeper drilling operation, the Consenting Parties shall be permitted to use, free of cost, all casing, tubing and other equipment in the well, but the ownership of all such equipment shall remain unchanged; and upon abandonment of a well after such reworking, plugging back or deeper drilling, the Consenting Parties shall account for all such equipment to the owners thereof, with each party receiving its proportionate part in kind or in value, less cost of salvage.

Within sixty (60) days after the completion of any operation under this Article, the party conducting the operations for the Consenting Parties shall furnish each Non-Consenting Party with an inventory of the equipment in and connected to the well, and an itemized statement of the cost of drilling, deepening, plugging back, testing, completing, and equipping the well for production; or, at its option, the operating party, in lieu of an itemized statement of such costs of operation, may submit a detailed statement of monthly billings. Each month thereafter, during the time the Consenting Parties are being reimbursed as provided above, the party conducting the operations for the Consenting Parties shall furnish the Non-Consenting Parties with an itemized statement of all costs and liabilities incurred in the operation of the well, together with a statement of the quantity of oil and gas produced from it and the amount of proceeds realized from the sale of the well's working interest production during the preceding month. In determining the quantity of oil and gas produced during any month, Consenting Parties shall use industry accepted methods such as, but not limited to, metering or periodic well tests. Any amount realized from the sale or other disposition of equipment newly acquired in connection with any such operation which would have been owned by a Non-Consenting Party had it participated therein shall be credited against the total unreturned costs of the work done and of the equipment purchased in determining when the interest of such Non-Consenting Party shall revert to it as above provided; and if there is a credit balance, it shall be paid to such Non-Consenting Party.

ARTICLE VI
continued

If and when the Consenting Parties recover from a Non-Consenting Party's relinquished interest the amounts provided for above, the relinquished interests of such Non-Consenting Party shall automatically revert to it, and, from and after such reversion, such Non-Consenting Party shall own the same interest in such well, the material and equipment in or pertaining thereto, and the production therefrom as such Non-Consenting Party would have been entitled to had it participated in the drilling, reworking, deepening or plugging back of said well. Thereafter, such Non-Consenting Party shall be charged with and shall pay its proportionate part of the further costs of the operation of said well in accordance with the terms of this agreement and the Accounting Procedure attached hereto.

Notwithstanding the provisions of this Article VI.B.2., it is agreed that without the mutual consent of all parties, no wells shall be completed in or produced from a source of supply from which a well located elsewhere on the Contract Area is producing, unless such well conforms to the then-existing well spacing pattern for such source of supply.

The provisions of this Article shall have no application whatsoever to the drilling of the initial well described in Article VI.A. except (a) as to Article VII.D.1. (Option No. 2), if selected, or (b) as to the reworking, deepening and plugging back of such initial well after it has been drilled to the depth specified in Article VI.A. if it shall thereafter prove to be a dry hole or, if initially completed for production, ceases to produce in paying quantities.

3. Stand-By Time: When a well which has been drilled or deepened has reached its authorized depth and all tests have been completed, and the results thereof furnished to the parties, stand-by costs incurred pending response to a party's notice proposing a reworking, deepening, plugging back or completing operation in such a well shall be charged and borne as part of the drilling or deepening operation just completed. Stand-by costs subsequent to all parties responding, or expiration of the response time permitted, whichever first occurs, and prior to agreement as to the participating interests of all Consenting Parties pursuant to the terms of the second grammatical paragraph of Article VI.B.2, shall be charged to and borne as part of the proposed operation, but if the proposal is subsequently withdrawn because of insufficient participation, such stand-by costs shall be allocated between the Consenting Parties in the proportion each Consenting Party's interest as shown on Exhibit "A" bears to the total interest as shown on Exhibit "A" of all Consenting Parties.

4. Sidetracking: Except as hereinafter provided, those provisions of this agreement applicable to a "deepening" operation shall also be applicable to any proposal to directionally control and intentionally deviate a well from vertical so as to change the bottom hole location (herein called "sidetracking"), unless done to straighten the hole or to drill around junk in the hole or because of other mechanical difficulties. Any party having the right to participate in a proposed sidetracking operation that does not own an interest in the affected well bore at the time of the notice shall, upon electing to participate, tender to the well bore owners its proportionate share (equal to its interest in the sidetracking operation) of the value of that portion of the existing well bore to be utilized as follows:

(a) If the proposal is for sidetracking an existing dry hole, reimbursement shall be on the basis of the actual costs incurred in the initial drilling of the well down to the depth at which the sidetracking operation is initiated.

(b) If the proposal is for sidetracking a well which has previously produced, reimbursement shall be on the basis of the well's salvable materials and equipment down to the depth at which the sidetracking operation is initiated, determined in accordance with the provisions of Exhibit "C", less the estimated cost of salvaging and the estimated cost of plugging and abandoning.

In the event that notice for a sidetracking operation is given while the drilling rig to be utilized is on location, the response period shall be limited to forty-eight (48) hours, exclusive of Saturday, Sunday and legal holidays; provided, however, any party may request and receive up to eight (8) additional days after expiration of the forty-eight (48) hours within which to respond by paying for all stand-by time incurred during such extended response period. If more than one party elects to take such additional time to respond to the notice, stand-by costs shall be allocated between the parties taking additional time to respond on a day-to-day basis in the proportion each electing party's interest as shown on Exhibit "A" bears to the total interest as shown on Exhibit "A" of all the electing parties. In all other instances the response period to a proposal for sidetracking shall be limited to thirty (30) days. See Article XV; Item (L).

C. TAKING PRODUCTION IN KIND:

Each party shall have the right to take in kind or separately dispose of its proportionate share of all oil and gas produced from the Contract Area, exclusive of production which may be used in development and producing operations and in preparing and treating oil and gas for marketing purposes and production unavoidably lost. Any extra expenditure incurred in the taking in kind or separate disposition by any party of its proportionate share of the production shall be borne by such party. Any party taking its share of production in kind shall be

ARTICLE VI
continued

required to pay for only its proportionate share of such part of Operator's surface facilities which it uses.

Each party shall execute such division orders and contracts as may be necessary for the sale of its interest in production from the Contract Area, and, except as provided in Article VII.B., shall be entitled to receive payment directly from the purchaser thereof for its share of all production.

In the event any party shall fail to make the arrangements necessary to take in kind or separately dispose of its proportionate share of the oil produced from the Contract Area, Operator shall have the right, subject to the revocation at will by the party owning it, but not the obligation, to purchase such oil or sell it to others at any time and from time to time, for the account of the non-taking party at the best price ~~obtainable~~ reasonably obtainable under the circumstances in the area for such production. Any such purchase or sale by Operator shall be subject always to the right of the owner of the production to exercise at any time its right to take in kind, or separately dispose of, its share of all oil not previously delivered to a purchaser. Any purchase or sale by Operator of any other party's share of oil shall be only for such reasonable periods of time as are consistent with the minimum needs of the industry under the particular circumstances, but in no event for a period in excess of one (1) year.

In the event one or more parties' separate disposition of its share of the gas causes split-stream deliveries to separate pipelines and/or deliveries which on a day-to-day basis for any reason are not exactly equal to a party's respective proportionate share of total gas sales to be allocated to it, the balancing or accounting between the respective accounts of the parties shall be in accordance with any gas balancing agreement between the parties hereto, whether such an agreement is attached as Exhibit "E", or is a separate agreement. See Article XV, Item (M).

D. Access to Contract Area and Information:

Each party shall have access to the Contract Area at all reasonable times, at its sole cost and risk to inspect or observe operations, and shall have access at reasonable times to information pertaining to the development or operation thereof, including Operator's books and records relating thereto. Operator, upon request, shall furnish each of the other parties with copies of all forms or reports filed with governmental agencies, daily drilling reports, well logs, tank tables, daily gauge and run tickets and reports of stock on hand at the first of each month, and shall make available samples of any cores or cuttings taken from any well drilled on the Contract Area. The cost of gathering and furnishing information to Non-Operator, other than that specified above, shall be charged to the Non-Operator that requests the information. See Article XV, Item (N).

E. Abandonment of Wells:

1. Abandonment of Dry Holes: Except for any well drilled or deepened pursuant to Article VI.B.2., any well which has been drilled or deepened under the terms of this agreement and is proposed to be completed as a dry hole shall not be plugged and abandoned without the consent of ~~all~~ such participating in the drilling of such well parties. Should Operator, after diligent effort, be unable to contact any party, or should any party fail to reply within forty-eight (48) hours ~~(exclusive of Saturday, Sunday and legal holidays)~~ after receipt of notice of the proposal to plug and abandon such well, such party shall be deemed to have consented to the proposed abandonment. All such wells shall be plugged and abandoned in accordance with applicable regulations and at the cost, risk and expense of the parties who participated in the cost of drilling or deepening such well. Any party who objects to plugging and abandoning such well shall ~~have the right to~~ take over the well and conduct further operations in search of oil and/or gas subject to the provisions of Article VI.B.

2. Abandonment of Wells that have Produced: Except for any well in which a Non-Consent operation has been conducted hereunder for which the Consenting Parties have not been fully reimbursed as herein provided, any well which has been completed as a producer shall not be plugged and abandoned without the consent of ~~all~~ such owning a current interest in such well parties. If such parties consent to such abandonment, the well shall be plugged and abandoned in accordance with applicable regulations and at the cost, risk and expense of ~~all~~ such the parties hereto. If, within thirty (30) days after receipt of notice of the proposed abandonment of any well, all parties do not agree to the abandonment of such well, those wishing to continue its operation from the interval(s) of the formation(s) then open to production shall tender to each of the other parties owning an interest in such well its proportionate share of the value of the well's salvable material and equipment, determined in accordance with the provisions of Exhibit "C", less the estimated cost of salvaging and the estimated cost of plugging and abandoning. *See Line 58 Each abandoning party shall assign the non-abandoning parties, without warranty, express or implied, as to title or as to quantity, or fitness for use of the equipment and material, all of its interest in the well and related equipment, together with its interest in the leasehold estate as to, but only as to, the interval or intervals of the formation or formations then open to production. If the interest of the abandoning party is or includes an oil and gas interest, such party shall execute and deliver to the non-abandoning party or parties an oil and gas lease, limited to the interval or intervals of the formation or formations then open to production, for a term of one (1) year and so long thereafter as oil and/or gas is produced from the interval or intervals of the formation or formations covered thereby, such lease to be on the form attached as Exhibit

*Failure of a party to respond within the 30 day period provided for the proposed abandonment shall be deemed to be an election by that party to participate in the abandonment of such well.

ARTICLE VI
continued

"B". The assignments or leases so limited shall encompass the "drilling unit" upon which the well is located. The payments by, and the assignments or leases to, the assignees shall be in a ratio based upon the relationship of their respective percentage of participation in the Contract Area to the aggregate of the percentages of participation in the Contract Area of all assignees. There shall be no readjustment of interests in the remaining portion of the Contract Area.

Thereafter, abandoning parties shall have no further responsibility, liability, or interest in the operation of or production from the well in the interval or intervals then open other than the royalties retained in any lease made under the terms of this Article. Upon request, Operator shall continue to operate the assigned well for the account of the non-abandoning parties at the rates and charges contemplated by this agreement, plus any additional cost and charges which may arise as the result of the separate ownership of the assigned well. Upon proposed abandonment of the producing interval(s) assigned or leased, the assignor or lessor shall then have the option to repurchase its prior interest in the well (using the same valuation formula) and participate in further operations therein subject to the provisions hereof.

3. Abandonment of Non-Consent Operations: The provisions of Article VI.E.1. or VI.E.2. above shall be applicable as between Consenting Parties in the event of the proposed abandonment of any well excepted from said Articles; provided, however, no well shall be permanently plugged and abandoned unless and until all parties having the right to conduct further operations therein have been notified of the proposed abandonment and afforded the opportunity to elect to take over the well in accordance with the provisions of this Article VI.E.

ARTICLE VII.
EXPENDITURES AND LIABILITY OF PARTIES

A. Liability of Parties:

The liability of the parties shall be several, not joint or collective. Each party shall be responsible only for its obligations, and shall be liable only for its proportionate share of the costs of developing and operating the Contract Area. Accordingly, the liens granted among the parties in Article VII.B. are given to secure only the debts of each severally. It is not the intention of the parties to create, nor shall this agreement be construed as creating, a mining or other partnership or association, or to render the parties liable as partners.

B. Liens and Payment Defaults: (Also See Exhibit "H")

Each Non-Operator grants to Operator a lien upon its oil and gas rights in the Contract Area, and a security interest in its share of oil and/or gas when extracted and its interest in all equipment, to secure payment of its share of expense, together with interest thereon at the rate provided in Exhibit "C". To the extent that Operator has a security interest under the Uniform Commercial Code of the state, Operator shall be entitled to exercise the rights and remedies of a secured party under the Code. The bringing of a suit and the obtaining of judgment by Operator for the secured indebtedness shall not be deemed an election of remedies or otherwise affect the lien rights or security interest as security for the payment thereof. In addition, upon default by any Non-Operator in the payment of its share of expense, Operator shall have the right, without prejudice to other rights or remedies, to collect from the purchaser the proceeds from the sale of such Non-Operator's share of oil and/or gas until the amount owed by such Non-Operator, plus interest, has been paid. Each purchaser shall be entitled to rely upon Operator's written statement concerning the amount of any default. Operator grants a like lien and security interest to the Non-Operators to secure payment of Operator's proportionate share of expense. See Article XV, Item (O).

~~If any party fails or is unable to pay its share of expense within sixty (60) days after rendition of a statement therefor by Operator, the non-defaulting parties, including Operator, shall, upon request by Operator, pay the unpaid amount in the proportion that the interest of each such party bears to the interest of all such parties. Each party so paying its share of the unpaid amount shall, to obtain reimbursement thereof, be subrogated to the security rights described in the foregoing paragraph.~~ See Article XV, Item (P).

C. Payments and Accounting:

Except as herein otherwise specifically provided, Operator shall promptly pay and discharge expenses incurred in the development and operation of the Contract Area pursuant to this agreement and shall charge each of the parties hereto with their respective proportionate shares upon the expense basis provided in Exhibit "C". Operator shall keep an accurate record of the joint account hereunder, showing expenses incurred and charges and credits made and received.

Operator, at its election, shall have the right from time to time to demand and receive from the other parties payment in advance of their respective shares of the estimated amount of the expense to be incurred in operations hereunder during the next succeeding month, which right may be exercised only by submission to each such party of an itemized statement of such estimated expense, together with an invoice for its share thereof. Each such statement and invoice for the payment in advance of estimated expense shall be submitted on or before the 20th day of the next preceding month. Each party shall pay to Operator its proportionate share of such estimate within fifteen (15) days after such estimate and invoice is received. If any party fails to pay its share of said estimate within said time, the amount due shall bear interest as provided in Exhibit "C" until paid. Proper adjustment shall be made monthly between advances and actual expense to the end that each party shall bear and pay its proportionate share of actual expenses incurred, and no more.

D. Limitation of Expenditures:

1. Drill or Deepen: Without the consent of all parties, no well shall be drilled or deepened, except any well drilled or deepened pursuant to the provisions of Article VI.B.2. of this agreement. Consent to the drilling or deepening shall include:

ARTICLE VII
continued

~~☐ Option No. 1: All necessary expenditures for the drilling or deepening, testing, completing and equipping of the well, including necessary tankage and/or surface facilities.~~

☒ Option No. 2: All necessary expenditures for the drilling or deepening and testing of the well. When such well has reached its authorized depth, and all tests have been completed, and the results thereof furnished to the parties, Operator shall give immediate notice to the Non-Operators who have the right to participate in the completion costs. The parties receiving such notice shall have forty-eight (48) hours after receipt of such notice and all logs ~~(exclusive of Saturday, Sunday and legal holidays)~~ in which to elect to participate in the setting of casing and the completion attempt. Such election, when made, shall include consent to all necessary expenditures for the completing and equipping of such well, including necessary tankage and/or surface facilities. Failure of any party receiving such notice to reply within the period above fixed shall constitute an election by that party not to participate in the cost of the completion attempt. If one or more, but less than all of the parties, elect to set pipe and to attempt a completion, the provisions of Article VI.B.2. hereof (the phrase "reworking, deepening or plugging back" as contained in Article VI.B.2. shall be deemed to include "completing") shall apply to the operations thereafter conducted by less than all parties.

2. Rework or Plug Back: Without the consent of all parties, no well shall be reworked or plugged back except a well reworked or plugged back pursuant to the provisions of Article VI.B.2. of this agreement. Consent to the reworking or plugging back of a well shall include all necessary expenditures in conducting such operations and completing and equipping of said well, including necessary tankage and/or surface facilities.

3. Other Operations: Without the consent of all parties, Operator shall not undertake any single project reasonably estimated to require an expenditure in excess of Twenty Thousand and no/100---------- Dollars ($ 20,000.00) except in connection with a well, the drilling, reworking, deepening, completing, recompleting, or plugging back of which has been previously authorized by or pursuant to this agreement; provided, however, that, in case of explosion, fire, flood or other sudden emergency, whether of the same or different nature, Operator may take such steps and incur such expenses as in its opinion are required to deal with the emergency to safeguard life and property but Operator, as promptly as possible, shall report the emergency to the other parties. If Operator prepares an authority for expenditure (AFE) for its own use, Operator shall furnish any Non-Operator so requesting an information copy thereof for any single project costing in excess of Twenty Thousand and no/100---------- Dollars ($ 20,000.00) but less than the amount first set forth above in this paragraph.

E. Rentals, Shut-in Well Payments and Minimum Royalties:

Rentals, shut-in well payments and minimum royalties which may be required under the terms of any lease shall be paid by the party or parties who subjected such lease to this agreement at its or their expense. In the event two or more parties own and have contributed interests in the same lease to this agreement, such parties may designate one of such parties to make said payments for and on behalf of all such parties. Any party may request, and shall be entitled to receive, proper evidence of all such payments. In the event of failure to make proper payment of any rental, shut-in well payment or minimum royalty through mistake or oversight where such payment is required to continue the lease in force, any loss which results from such non-payment shall be borne in accordance with the provisions of Article ~~IV.B.3.~~ IV.B.3.

Operator shall notify Non-Operator of the anticipated completion of a shut-in gas well, or the shutting in or return to production of a producing gas well, at least five (5) days (excluding Saturday, Sunday and legal holidays), or at the earliest opportunity permitted by circumstances, prior to taking such action, but assumes no liability for failure to do so. In the event of failure by Operator to so notify Non-Operator, the loss of any lease contributed hereto by Non-Operator for failure to make timely payments of any shut-in well payment shall be borne jointly by the parties hereto under the provisions of Article IV.B.3.

F. Taxes:

Beginning with the first calendar year after the effective date hereof, Operator shall render for ad valorem taxation all property subject to this agreement which by law should be rendered for such taxes, and it shall pay all such taxes assessed thereon before they become delinquent. Prior to the rendition date, each Non-Operator shall furnish Operator information as to burdens (to include, but not be limited to, royalties, overriding royalties and production payments) on leases and oil and gas interests contributed by such Non-Operator. If the assessed valuation of any leasehold estate is reduced by reason of its being subject to outstanding excess royalties, overriding royalties or production payments, the reduction in ad valorem taxes resulting therefrom shall inure to the benefit of the owner or owners of such leasehold estate, and Operator shall adjust the charge to such owner or owners so as to reflect the benefit of such reduction. If the ad valorem taxes are based in whole or in part upon separate valuations of each party's working interest, then notwithstanding anything to the contrary herein, charges to the joint account shall be made and paid by the parties hereto in accordance with the tax value generated by each party's working interest. Operator shall bill the other parties for their proportionate shares of all tax payments in the manner provided in Exhibit "C".

If Operator considers any tax assessment improper, Operator may, at its discretion, protest within the time and manner prescribed by law, and prosecute the protest to a final determination, unless all parties agree to abandon the protest prior to final determination. During the pendency of administrative or judicial proceedings, Operator may elect to pay, under protest, all such taxes and any interest and penalty. When any such protested assessment shall have been finally determined, Operator shall pay the tax for the joint account, together with any interest and penalty accrued, and the total cost shall then be assessed against the parties, and be paid by them, as provided in Exhibit "C".

Each party shall pay or cause to be paid all production, severance, excise, gathering and other taxes imposed upon or with respect to the production or handling of such party's share of oil and/or gas produced under the terms of this agreement.
*including excise and crude oil Windfall Profit taxes
See Article XV, Item (Q).

ARTICLE VII
continued

G. Insurance:

At all times while operations are conducted hereunder, Operator shall comply with the workmen's compensation law of the state where the operations are being conducted; provided, however, that Operator may be a self-insurer for liability under said compensation laws in which event the only charge that shall be made to the joint account shall be as provided in Exhibit "C". Operator shall also carry or provide insurance for the benefit of the joint account of the parties as outlined in Exhibit "D", attached to and made a part hereof. Operator shall require all contractors engaged in work on or for the Contract Area to comply with the workmen's compensation law of the state where the operations are being conducted and to maintain such other insurance as Operator may require.

In the event automobile public liability insurance is specified in said Exhibit "D", or subsequently receives the approval of the parties, no direct charge shall be made by Operator for premiums paid for such insurance for Operator's automotive equipment.

ARTICLE VIII.
ACQUISITION, MAINTENANCE OR TRANSFER OF INTEREST

A. Surrender of Leases:

The leases covered by this agreement, insofar as they embrace acreage in the Contract Area, shall not be surrendered in whole or in part unless all parties consent thereto.

However, should any party desire to surrender its interest in any lease or in any portion thereof, and the other parties do not agree or consent thereto, the party desiring to surrender shall assign, without express or implied warranty of title, all of its interest in such lease, or portion thereof, and any well, material and equipment which may be located thereon and any rights in production thereafter secured, to the parties not consenting to such surrender. If the interest of the assigning party is or includes an oil and gas interest, the assigning party shall execute and deliver to the party or parties not consenting to such surrender an oil and gas lease covering such oil and gas interest for a term of one (1) year and so long thereafter as oil and/or gas is produced from the land covered thereby, such lease to be on the form attached hereto as Exhibit "B". Upon such assignment or lease, the assigning party shall be relieved from all obligations thereafter accruing, but not theretofore accrued, with respect to the interest assigned or leased and the operation of any well attributable thereto, and the assigning party shall have no further interest in the assigned or leased premises and its equipment and production other than the royalties retained in any lease made under the terms of this Article. The party assignee or lessee shall pay to the party assignor or lessor the reasonable salvage value of the latter's interest in any wells and equipment attributable to the assigned or leased acreage. The value of all material shall be determined in accordance with the provisions of Exhibit "C", less the estimated cost of salvaging and the estimated cost of plugging and abandoning. If the assignment or lease is in favor of more than one party, the interest shall be shared by such parties in the proportions that the interest of each bears to the total interest of all such parties.

Any assignment, lease or surrender made under this provision shall not reduce or change the assignor's, lessor's or surrendering party's interest as it was immediately before the assignment, lease or surrender in the balance of the Contract Area; and the acreage assigned, leased or surrendered, and subsequent operations thereon, shall not thereafter be subject to the terms and provisions of this agreement.

B. Renewal or Extension of Leases:

If any party secures a renewal of any oil and gas lease subject to this agreement, all other parties shall be notified promptly, and shall have the right for a period of thirty (30) days following receipt of such notice in which to elect to participate in the ownership of the renewal lease, insofar as such lease affects lands within the Contract Area, by paying to the party who acquired it their several proper proportionate shares of the acquisition cost allocated to that part of such lease within the Contract Area, which shall be in proportion to the interests held at that time by the parties in the Contract Area.

If some, but less than all, of the parties elect to participate in the purchase of a renewal lease, it shall be owned by the parties who elect to participate therein, in a ratio based upon the relationship of their respective percentage of participation in the Contract Area to the aggregate of the percentages of participation in the Contract Area of all parties participating in the purchase of such renewal lease. Any renewal lease in which less than all parties elect to participate shall not be subject to this agreement.

Each party who participates in the purchase of a renewal lease shall be given an assignment of its proportionate interest therein by the acquiring party.

The provisions of this Article shall apply to renewal leases whether they are for the entire interest covered by the expiring lease or cover only a portion of its area or an interest therein. Any renewal lease taken before the expiration of its predecessor lease, or taken or contracted for within six (6) months after the expiration of the existing lease shall be subject to this provision; but any lease taken or contracted for more than six (6) months after the expiration of an existing lease shall not be deemed a renewal lease and shall not be subject to the provisions of this agreement.

The provisions in this Article shall also be applicable to extensions of oil and gas leases.

C. Acreage or Cash Contributions:

While this agreement is in force, if any party contracts for a contribution of cash towards the drilling of a well or any other operation on the Contract Area, such contribution shall be paid to the party who conducted the drilling or other operation and shall be applied by it against the cost of such drilling or other operation. If the contribution be in the form of acreage, the party to whom the contribution is made shall promptly tender an assignment of the acreage, without warranty of title, to the Drilling Parties in the proportions

ARTICLE VIII
continued

said Drilling Parties shared the cost of drilling the well. Such acreage shall become a separate Contract Area and, to the extent possible, be governed by provisions identical to this agreement. Each party shall promptly notify all other parties of any acreage or cash contributions it may obtain in support of any well or any other operation on the Contract Area. The above provisions shall also be applicable to optional rights to earn acreage outside the Contract Area which are in support of a well drilled inside the Contract Area.

If any party contracts for any consideration relating to disposition of such party's share of substances produced hereunder, such consideration shall not be deemed a contribution as contemplated in this Article VIII.C.

D. Maintenance of Uniform Interest:

For the purpose of maintaining uniformity of ownership in the oil and gas leasehold interests covered by this agreement, no party shall sell, encumber, transfer or make other disposition of its interest in the leases embraced within the Contract Area and in wells, equipment and production unless such disposition covers either:

1. the entire interest of the party in all leases and equipment and production; or

2. an equal undivided interest in all leases and equipment and production in the Contract Area.

Every such sale, encumbrance, transfer or other disposition made by any party shall be made expressly subject to this agreement and shall be made without prejudice to the right of the other parties.

If, at any time the interest of any party is divided among and owned by four or more co-owners, Operator, at its discretion, may require such co-owners to appoint a single trustee or agent with full authority to receive notices, approve expenditures, receive billings for and approve and pay such party's share of the joint expenses, and to deal generally with, and with power to bind, the co-owners of such party's interest within the scope of the operations embraced in this agreement; however, all such co-owners shall have the right to enter into and execute all contracts or agreements for the disposition of their respective shares of the oil and gas produced from the Contract Area and they shall have the right to receive, separately, payment of the sale proceeds thereof.

E. Waiver of Rights to Partition:

If permitted by the laws of the state or states in which the property covered hereby is located, each party hereto owning an undivided interest in the Contract Area waives any and all rights it may have to partition and have set aside to it in severalty its undivided interest therein.

~~F. Preferential Right to Purchase:~~

~~Should any party desire to sell all or any part of its interests under this agreement, or its rights and interests in the Contract~~ Area, it shall promptly give written notice to the other parties, with full information concerning its proposed sale, ~~which shall~~ include the name and address of the prospective purchaser (who must be ready, willing and able to purchase), ~~the purchase~~ price, and all other terms of the offer. The other parties shall then have an optional prior right, for a period of ~~ten~~ (10) days after receipt of the notice, to purchase on the same terms and conditions the interest which the other party proposes to sell; and, if this optional right is exercised, the purchasing parties shall share the purchased interest in ~~the~~ proportions that the interest of each bears to the total interest of all purchasing parties. However, there shall be ~~no preferential~~ right to purchase in those cases where any party wishes to mortgage its interests, or to dispose of its ~~interests~~ by merger, reorganization, consolidation, or sale of all or substantially all of its assets to a subsidiary or parent company ~~or to a subsidiary of a parent company, or to any company in which any one party owns a majority of the stock.~~

ARTICLE IX.
INTERNAL REVENUE CODE ELECTION

This agreement is not intended to create, and shall not be construed to create, a relationship of partnership or an association for profit between or among the parties hereto. Notwithstanding any provision herein that the rights and liabilities hereunder are several and not joint or collective, or that this agreement and operations hereunder shall not constitute a partnership, if, for federal income tax purposes, this agreement and the operations hereunder are regarded as a partnership, each party hereby affected elects to be excluded from the application of all of the provisions of Subchapter "K", Chapter 1, Subtitle "A", of the Internal Revenue Code of 1954, as permitted and authorized by Section 761 of the Code and the regulations promulgated thereunder. Operator is authorized and directed to execute on behalf of each party hereby affected such evidence of this election as may be required by the Secretary of the Treasury of the United States or the Federal Internal Revenue Service, including specifically, but not by way of limitation, all of the returns, statements, and the data required by Federal Regulations 1.761. Should there be any requirement that each party hereby affected give further evidence of this election, each such party shall execute such documents and furnish such other evidence as may be required by the Federal Internal Revenue Service or as may be necessary to evidence this election. No such party shall give any notices or take any other action inconsistent with the election made hereby. If any present or future income tax laws of the state or states in which the Contract Area is located or any future income tax laws of the United States contain provisions similar to those in Subchapter "K", Chapter 1, Subtitle "A", of the Internal Revenue Code of 1954, under which an election similar to that provided by Section 761 of the Code is permitted, each party hereby affected shall make such election as may be permitted or required by such laws. In making the foregoing election, each such party states that the income derived by such party from operations hereunder can be adequately determined without the computation of partnership taxable income.

ARTICLE X.
CLAIMS AND LAWSUITS

Operator may settle any single uninsured third party damage claim or suit arising from operations hereunder if the expenditure does not exceed Fifteen Thousand and no/100---------- Dollars ($15,000.00) and if the payment is in complete settlement of such claim or suit. If the amount required for settlement exceeds the above amount, the parties hereto shall assume and take over the further handling of the claim or suit, unless such authority is delegated to Operator. All costs and expenses of handling, settling, or otherwise discharging such claim or suit shall be at the joint expense of the parties participating in the operation from which the claim or suit arises. If a claim is made against any party or if any party is sued on account of any matter arising from operations hereunder over which such individual has no control because of the rights given Operator by this agreement, such party shall immediately notify all other parties, and the claim or suit shall be treated as any other claim or suit involving operations hereunder. All claims or suits involving title to any interest subject to this Agreement shall be treated as a claim or a suit against all parties hereto.

ARTICLE XI.
FORCE MAJEURE

If any party is rendered unable, wholly or in part, by force majeure to carry out its obligations under this agreement, other than the obligation to make money payments, that party shall give to all other parties prompt written notice of the force majeure with reasonably full particulars concerning it; thereupon, the obligations of the party giving the notice, so far as they are affected by the force majeure, shall be suspended during, but no longer than, the continuance of the force majeure. The affected party shall use all reasonable diligence to remove the force majeure situation as quickly as practicable.

The requirement that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes, lockouts, or other labor difficulty by the party involved, contrary to its wishes; how all such difficulties shall be handled shall be entirely within the discretion of the party concerned.

The term "force majeure", as here employed, shall mean an act of God, strike, lockout, or other industrial disturbance, act of the public enemy, war, blockade, public riot, lightning, fire, storm, flood, explosion, governmental action, governmental delay, restraint or inaction, unavailability of equipment, and any other cause, whether of the kind specifically enumerated above or otherwise, which is not reasonably within the control of the party claiming suspension.

ARTICLE XII.
NOTICES

All notices authorized or required between the parties and required by any of the provisions of this agreement, unless otherwise specifically provided, shall be given in writing by mail or telegram, postage or charges prepaid, or by telex or telecopier and addressed to the parties to whom the notice is given at the addresses listed on Exhibit "A". The originating notice given under any provision hereof shall be deemed given only when received by the party to whom such notice is directed, and the time for such party to give any notice in response thereto shall run from the date the originating notice is received. The second or any responsive notice shall be deemed given when deposited in the mail or with the telegraph company, with postage or charges prepaid, or sent by telex or telecopier. Each party shall have the right to change its address at any time, and from time to time, by giving written notice thereof to all other parties.

ARTICLE XIII.
TERM OF AGREEMENT

This agreement shall remain in full force and effect as to the oil and gas leases and/or oil and gas interests subject hereto for the period of time selected below; provided, however, no party hereto shall ever be construed as having any right, title or interest in or to any lease or oil and gas interest contributed by any other party beyond the term of this agreement.

☒ Option No. 1: So long as any of the oil and gas leases subject to this agreement remain or are continued in force as to any part of the Contract Area, whether by production, extension, renewal or otherwise.

☐ ~~Option No. 2: In the event the well described in Article VI.A., or any subsequent well drilled under any provision of this agreement, results in production of oil and/or gas in paying quantities, this agreement shall continue in force so long as any such well or wells produce, or are capable of production, and for an additional period of _____ days from cessation of all production; provided, however, if, prior to the expiration of such additional period, one or more of the parties hereto are engaged in drilling, reworking, deepening, plugging back, testing or attempting to complete a well or wells hereunder, this agreement shall continue in force until such operations have been completed and if production results therefrom, this agreement shall continue in force as provided herein. In the event the well described in Article VI.A., or any subsequent well drilled hereunder, results in a dry hole, and no other well is producing, or capable of producing oil and/or gas from the Contract Area, this agreement shall terminate unless drilling, deepening, plugging back or reworking operations are commenced within _____ days from the date of abandonment of said well.~~

It is agreed, however, that the termination of this agreement shall not relieve any party hereto from any liability which has accrued or attached prior to the date of such termination.

ARTICLE XIV.
COMPLIANCE WITH LAWS AND REGULATIONS

A. Laws, Regulations and Orders:

This agreement shall be subject to the conservation laws of the state in which the Contract Area is located, to the valid rules, regulations, and orders of any duly constituted regulatory body of said state; and to all other applicable federal, state, and local laws, ordinances, rules, regulations, and orders.

B. Governing Law:

This agreement and all matters pertaining hereto, including, but not limited to, matters of performance, non-performance, breach, remedies, procedures, rights, duties and interpretation or construction, shall be governed and determined by the law of the state in which the Contract Area is located. If the Contract Area is in two or more states, the law of the state of New Mexico shall govern.

C. Regulatory Agencies:

Nothing herein contained shall grant, or be construed to grant, Operator the right or authority to waive or release any rights, privileges, or obligations which Non-Operators may have under federal or state laws or under rules, regulations or orders promulgated under such laws in reference to oil, gas and mineral operations, including the location, operation, or production of wells, on tracts offsetting or adjacent to the Contract Area.

With respect to operations hereunder, Non-Operators agree to release Operator from any and all losses, damages, injuries, claims and causes of action arising out of, incident to or resulting directly or indirectly from Operator's interpretation or application of rules, rulings, regulations or orders of the Department of Energy or predecessor or successor agencies to the extent such interpretation or application was made in good faith. Each Non-Operator further agrees to reimburse Operator for any amounts applicable to such Non-Operator's share of production that Operator may be required to refund, rebate or pay as a result of such an incorrect interpretation or application, together with interest and penalties thereon owing by Operator as a result of such incorrect interpretation or application.

Non-Operators authorize Operator to prepare and submit such documents as may be required to be submitted to the purchaser of any crude oil sold hereunder or to any other person or entity pursuant to the requirements of the "Crude Oil Windfall Profit Tax Act of 1980", as same may be amended from time to time ("Act"), and any valid regulations or rules which may be issued by the Treasury Department from time to time pursuant to said Act. Each party hereto agrees to furnish any and all certifications or other information which is required to be furnished by said Act in a timely manner and in sufficient detail to permit compliance with said Act.

ARTICLE XV.
OTHER PROVISIONS

See Article XV. attached hereto and made a part hereof.

ARTICLE XV

OTHER PROVISIONS

A. REWORKING OPERATIONS

Notwithstanding any language set out in Article VI(B) to the contrary, each non-consenting party to a reworking operation on a well conducted pursuant to Article VI(B) shall, upon commencement of such operations, be deemed to have relinquished to consenting parties, and the consenting parties shall own and be entitled to receive, in proportion to their respective interests, all of such non-consenting party's interest in the well, its leasehold operating rights and share of production therefrom, only insofar as the interval or intervals of the formation or formations which are being reworked and to which such non-consenting party does not desire to join in the reworking thereof, until the proceeds or market value thereof (after deducting production taxes, windfall profits taxes, royalty, overriding royalty and other interests payable out of, or measured by the production from such well, only insofar as the production secured from the interval or intervals of the formation or formations which are subject to said reworking operations accruing with respect to such interest until it reverts) shall equal the total of those certain costs as further described in subparagraphs (a) and (b) of the third grammatical paragraph under Article VI(B) 2, hereof.

B. NONDISCRIMINATION

In connection with the performance of work under this agreement, the Operator agrees to comply with all of the provisions of Section 202 (1) to (7) inclusive, of Executive Order 11246 (30 F. R. 12319), which are hereby incorporated by reference in this agreement, and of all provisions of said Executive Order 11246 and all rules, regulations and relevant orders of the Secretary of Labor.

C. COVENANTS RUN WITH THE LAND

The terms, provisions, covenants and conditions of this agreement shall be deemed to be covenants running with the lands, the lease or leases and leasehold estates covered hereby, and all of the terms, provisions, covenants and conditions of this agreement shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, executors, administrators, personal representatives and assigns.

D. LAWS AND REGULATIONS

All of the provisions of this agreement are expressly subject to all applicable laws, orders, rules and regulations of any governmental body or agency having jurisdiction in the premises, and all operations contemplated hereby shall be conducted in conformity therewith. Any provision of this agreement which is inconsistent with any such laws, orders, rules or regulations is hereby modified so as to conform therewith, and this agreement, as so modified, shall continue in full force and effect.

E. PRIORITY OF OPERATIONS

If at any time there is more than one operation proposed in connection with any well subject to this agreement, then unless all participating parties agree on the sequence of such operations, such proposals shall be considered and disposed of in the following order of priority:

1. Proposals to do additional testing, coring or logging.
2. Proposals to attempt a completion in the objective zone.
3. Proposals to plug back and attempt completions in shallower zones, in ascending order.
4. Proposals to side-track the well to reach any zone not below the original authorized objective.
5. Proposals to deepen the well, in descending order.

F. REGULATORY PROVISIONS

1. Gaseous Hydrocarbons:

Non-Operators hereby authorize Operator to file and prosecute all applications for determination for well pricing qualification under the Natural Gas Policy Act of 1978 and to make interim collection filings on behalf of Non-Operators. Operator may employ counsel and technical experts to the extend Operator in its sole discretion considers appropriate for such filings and seeking favorable resolutions thereof. Costs incurred by Operator for such counsel and experts together with all other costs incurred by Operator in preparing the application for determination and interim collection documents as well as the cost of prosecuting the application shall be charged to the Joint Account.

2. Liquid Hydrocarbons:

Non-Operators hereby authorize Operator to file with the purchaser of crude oil or other liquid hydrocarbons or with any other person required by law, any statement or certification required by the Crude Oil Windfall Profit Tax Act, the Emergency Petroleum Allocation Act of 1973, the Energy Policy and Conservation Act or by any rule, regulation or order issued thereunder or by any other law, rule, or regulation relating to the pricing of crude oil and other liquid hydrocarbons or the taxation thereof. To the extent that Operator may by law be authorized to do so, Non-Operators hereby authorize Operator to agree with any purchaser to relieve Operator (in whole or in part as Operator may determine) of any filing or certification requirements. In making any filing or certification with any purchaser or crude oil or other liquid hydrocarbons, each Non-Operator shall be solely responsible for furnishing to Operator or such purchaser or any other person required by law any exemption certificate, independent producer certificate or any other evidence required by law to entitle Non-Operator to a higher price for the sale of his production or for a lower rate of windfall profit or other excise tax thereon, and upon a Non-Operator's failure to furnish the same, Operator shall certify to such purchaser for such Non-Operator's interest the lower price and/or higher rate of tax. Operator shall have no duty to seek any refunds on behalf of any Non-Operator of any overpayment of any windfall profit or excise tax to which any Non-Operator may be entitled by law.

3. Refunds:

In the event any Non-Operator receives a greater sum for the sale of its share of production than that to which such Non-Operator is entitled, such Non-Operator shall promptly refund any excess sums so collected to the person entitled thereto together with any interest thereon required by law. In the event Operator is required for any reason to make any such refund on any Non-Operator's behalf and such Non-Operator refuses upon Operator's request to reimburse Operator for the amount so paid, then Operator, in addition to any other rights or remedies which it may have as a result of making such refund, (i) shall have the lien provided by Article VII.B. to secure such reimbursement and (ii) shall be authorized to collect from Non-Operator's purchaser of production all revenues attributable to Non-Operator's share of production until the full amount required to be paid or refunded by Non-Operator has been recovered.

4. Operator's Liability:

Operator shall use its best judgment in making any of the filings and certifications referred to under Paragraph 1 and 2 above in prosecuting any filings and applications. However, in no event shall Operator have any liability to any Non-Operator in making and prosecuting any such filing or in rendering any statement or certification, absent bad faith, gross negligence or willful misconduct. Any penalties incurred as a result of any incorrect certification, statement or filing shall, in absence of bad faith, gross negligence or willful misconduct, be charged to the parties owning the production to which the penalty pertains. In no event shall any error by Operator relieve any Non-Operator of the liability for any refund under Paragraph 3 above.

5. FERC Orders 451 and 500:

To the extent any Property, Asset or Interest covered by this Assignment is subject to a commitment to sell any production to a purchaser under a gas purchase agreement which includes gas categorized as Section 104 or Section 106 gas under the Natural Gas Policy Act, the following shall apply:

(a) If either party desires to conduct the Good Faith Negotiation Procedure ("GFN") set forth in Section 270.201 of the Federal Energy Regulatory Commission's regulations as to any property assigned to it hereunder, or which it retains after this Assignment, and cannot do so without the cooperation of the other party, the other party agrees to enter into good faith discussions concerning measures necessary to enable the first party to conduct the GFN.

(b) If offers of credit under Sections 284.8(f) of 284.9(f) of the regulations of the Federal Energy Regulatory Commission, as promulgated in Orders No. 500, 500-B, 500-C, or successor regulations, are needed for Assignee to transport gas from any of the Properties, Assignor agrees to negotiate with Assignee in good faith concerning the provisions of such offers of credit.

G. OPERATOR PROTECTION

1. Assignment

No assignment or other transfer or disposition of an interest subject to this Agreement shall be effective as to Operator or the other parties hereto until the first day of the month following the month in which (i) Operator receives an authenticated copy of the instrument evidencing such assignment, transfer or disposition and (ii) the person receiving such assignment, transfer or disposition has become obligated by instrument satisfactory to Operator to observe, perform and be bound by all of the covenants, terms and conditions of this Agreement. Prior to such date, neither Operator nor any other party shall be required to recognize such assignment, transfer or disposition for any purpose but may continue to deal exclusively with the party making such assignment, transfer, or disposition in all matters under this Agreement including billings. No assignment or other transfer or disposition of an interest subject to this Agreement shall relieve a party of its obligations accrued prior to the effective date aforesaid. Further, no assignment, transfer or other disposition shall relieve any party of its liability for its share of costs and expenses which may be incurred in any operation to which such party has previously agreed or consented prior to the effective date aforesaid for the drilling, testing, completing and equipping, reworking, recompleting, side-tracking, deepening, plugging-back, or plugging and abandoning of a well even though such operation is performed after said effective date, subject however to such party's right to elect not to participate in completion operations under Article VI.B. and Article VII.D., Option No. 2., not previously consented to.

2. Attorneys Fees:

In the event any party hereto shall ever be required to bring legal proceedings in order to collect any sums due from any party under this Agreement, then party or parties shall also be entitled to recover all court costs, costs of collection and a reasonable attorney's fee, which the lien provided for herein shall also secure.

H. PERPETUITIES

It is not the intent of the parties that any provision herein violate any applicable law regarding the rule against perpetuities, the suspension of the absolute power of alienation or other rule regarding the vesting or duration of estates, and this agreement shall be construed as not violating such rule to the extent the same can be so construed consistent with the intent of the parties. In the event, however, any provision hereof is determined to violate such rule, then such provision shall nevertheless be effective for the maximum period (but not longer than the maximum period)

permitted by such rule which will result in no violation.

I. NO THIRD-PARTY BENEFICIARY CONTRACT

This Agreement is made solely for the benefit of those persons who are parties hereto (including those persons succeeding to all or part of the interest of an original party if such succession is recognized under the other provisions hereof), and no other person shall have or claim or be entitled to enforce any rights benefits or obligations under this Agreement.

J. OPERATOR'S REORGANIZATION AND STATUS CHANGE

1. Notwithstanding, the second sentence of Article V.B.1., in the event of a transfer of all Operator's interest to a corporation which controls, is controlled by or is under common control with Operator or in the event of a transfer of all Operator's interest to any person as a part of the transfer to such person of all or substantially all of Operator's oil and gas properties, such transferee shall automatically become the successor Operator without the approval of Non-Operators.

2. For the purposes of Article V.B., Operator shall be considered to own an interest in the Contract Area if it is a general partner of a limited partnership which owns an interest in the Contract Area or if it owns a carried or reversionary working interest in the Contract Area.

K. BANKRUPTCY

If, following the granting of relief under the Bankruptcy Code to any party hereto as debtor thereunder, this Agreement should be held to be an executory contract within the meaning of 11 U.S.C. S 365, then the Operator, or (if the Operator is the debtor in bankruptcy) any other party, shall be entitled to a determination by debtor or any trustee for debtor within thirty (30) days from the date an order for relief is entered under the Bankruptcy Code as to the rejection or assumption of this Operating Agreement. In the event of an assumption, Operator or said other party shall be entitled to adequate assurances as to future performance of debtor's obligation hereunder and the protection of the interest of all other parties.

L. ARTICLE VI., PARAGRAPH B.

If any party hereto does not consent to join in the drilling of any Obligation Well (as hereinafter defined), such "Non-Drilling Party" shall assign to the "Drilling Party or Parties" that portion of its interest in any lease or farmout acreage, covering the proration unit assigned by the appropriate governmental regulatory body and limited to the deepest producing formation. The term "Obligation Well", as used in this provision, shall mean any well which must be drilled in order to prevent the termination of any lease, farmout acreage, or any portion thereof, including any well proposed to be drilled during the last six (6) months of the primary term of any lease not otherwise held by production, and any well (hereinafter an "Offset Well") which would be necessary to be drilled within the Contract Area to prevent drainage of the Contract Area by a well located outside of, but within the greater of either the offset distance specified in the applicable lease(s) being drained or 660 feet of the Contract Area. In the event acreage is lost as aforesaid by a party's non-participation in an Obligation Well, the parties hereto agree that such assigned acreage, and the parties' interests therein, shall no longer be subject to the terms of this agreement, but in lieu thereof shall be deemed to be subject to a separate Operating Agreement in form identical hereto, changed only with respect to Exhibit "A" in order to reflect the Drilling Parties' percentages of interest in such acreage.

M. ARTICLE VI. PARAGRAPH C.

Notwithstanding the provisions of Article VI.C and the provisions of Exhibit "E", in the event any party shall fail to make the arrangements necessary to take-in-kind or separately dispose of its proportionate share of the oil and gas produced from the Contract Area, Operator shall have the right, subject to the revocation at will by the party owning it, but not

the obligation, to purchase such oil and gas or sell it to others at any time and from time to time, for the account of the non-taking party at the best price obtainable in the area for such production. Any such purchase or sale by Operator shall be subject always to the right of the owner of the production to exercise at any time its right to take in kind, or separately dispose of, its share of all oil and gas not previously delivered to a purchaser, or to elect to be an underproduced party under Exhibit "E". Any purchase or sale by Operator of any other party's share of oil and gas shall be only for such reasonable periods of time as are consistent with the minimum needs of the industry under the particular circumstances, but in no event for a period in excess of one (1) year.

N. ARTICLE VI., PARAGRAPH D.

Each Non-Operator shall indemnify and hold Operator harmless against any and all liability in excess of insurance covering carried for the joint account for injury to each such Non-Operator's officers, employees and/or agents, resulting from or in any way relating to such officers, employees and/or agents presence on a drilling rig on the Contract Area or from such person traveling by air or water between any point and such drilling rig. Such indemnity to Operator shall also apply to any other person whose presence on the rig or transportation to or from such rig is at the instance of a party other than Operator.

O. ARTICLE VII., PARAGRAPH B.

Subject to the provisions of Article VII.B of this Operating Agreement, each Non-Operator grants to Operator a lien upon all of the rights, titles, and interests of each Non-Operator, whether now existing or hereafter acquired, in and to (i) the oil, gas and other minerals in, on, and under the Contract Area and (ii) any oil, gas and mineral leases covering the Contract Area or any portion thereof. In addition, each Non-Operator grants to Operator a security interest in and to all of such Non-Operator's rights, titles, interests, claims, general intangibles, proceeds, and products thereof, whether now existing or hereafter acquired, in and to (i) all oil, gas and other minerals produced from the Contract Area when produced and all rights thereto, including, but not limited to, an underproduced party's right, if any, pursuant to any gas balancing agreement between the parties hereto against an overproduced party to make-up gas; (ii) all accounts receivable accruing or arising as a result of the sale of such oil, gas and other minerals; (iii) all cash or other proceeds from the sale of such oil, gas and other minerals once produced; and (iv) all oil and gas wells and other surface and subsurface equipment and facilities of any kind or character located on the Contract Area and the cash or other proceeds realized from the sale thereof. Operator grants a like lien and security interest to Non-Operators to secure payment of Operator's proportionate share of expenses.

P. ARTICLE VII., PARAGRAPH B.

Notwithstanding anything herein to the contrary, if any Non-Operator neglects or fails to pay sums due and owing Operator hereunder for a period of 90 days after receipt of invoice therefor, Operator, at its sole election and in lieu of the provisions of the second grammatical paragraph of Article VII.B., may notify Non-Operator of its election to regard such Non-Operating Party as a Non-Consenting Party hereunder subject to the percentage penalties set out in Article VI.2 of the printed Model Form as to said costs, whereupon Operator shall be liable therefor. If Non-Operator fails to pay such amount within 20 days after receipt of such notice, then Operator's election shall be effective and Non-Operator will no longer owe said sum to Operator. Non-Operator shall then be subject to the non-consent percentage penalty provisions of Article VI.2. (a) (b) the same as if such party had elected to be a Non-Consenting Party at the inception of the operation, but only with respect to the sums remaining unpaid by such Non-Operator. Provided, however, this provision shall not be applicable to any sums owed Operator, but which such Non-Operator contests in good faith, or any sums less than $1,000.00.

Q. ARTICLE VII., PARAGRAPH F

Operator shall pay or be responsible for payment of all applicable severance (unless paid by purchaser), production, and similar taxes due on all production for which Operator is disbursing 100% of the proceeds. Any Non-Operator separately producing or taking delivery of oil or gas in kind shall be responsible for the payment of all applicable severance, production, and similar taxes due on production that Operator is not disbursing in accordance with Article VII.E.

Where any party is separately producing or taking delivery of oil and gas in kind, Operator shall have the right to render to the taxing authority the ad valorem taxes on wells within the Contract Area in the name of each party and to provide in such rendition for direct payment by each party of its share of such ad valorem tax. In rendering the property for ad valorem tax purposes, Operator shall base its values for such purpose upon the price received for the sale of oil and gas by each party taking or separately disposing of its share of oil and gas.

The above is subject to any applicable laws or regulations imposing different obligations on Operator or Non-Operator with respect to the responsibility for reporting and payment of severance taxes.

ARTICLE XVI.
MISCELLANEOUS

This agreement shall be binding upon and shall inure to the benefit of the parties hereto and to their respective heirs, devisees, legal representatives, successors and assigns.

This instrument may be executed in any number of counterparts, each of which shall be considered an original for all purposes.

IN WITNESS WHEREOF, this agreement shall be effective as of _____ day of _____, 19_____.

OPERATOR

MITCHELL ENERGY CORPORATION

_____ **BY:** _____

NON-OPERATORS

SANTA FE ENERGY OPERATING PARTNERS, L.P.

_____ **BY:** _____

MARALO, INC.

_____ **BY:** _____

STRATA PRODUCTION COMPANY

BY: _____

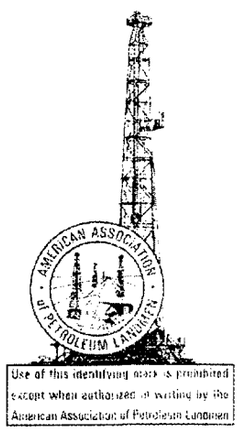


EXHIBIT "A"

Attached to and made a part of that certain Operating Agreement dated January 1, 1993, by and between MITCHELL ENERGY CORPORATION, as Operator, and SANTA FE ENERGY OPERATING PARTNERS, L.P., as Non-Operator, covering lands in Lea County, New Mexico.

DESCRIPTION OF LANDS

W/2 of Section 28, T-20-S, R-33-E, Lea County, New Mexico.

INTERESTS OF THE PARTIES TO THIS AGREEMENT

Mitchell Energy Corporation	0.3750000
Santa Fe Energy Operating Partners, L. P.	0.1875000
Maralo, Inc.	0.1875000
Strata Production Company	0.2500000

ADDRESSES OF THE PARTIES TO THIS AGREEMENT

Mitchell Energy Corporation
400 West Illinois
Suite 1000
Midland, Texas 79701

Maralo, Inc.
223 West Wall
Suite 900
Midland, Texas 79701

Santa Fe Energy Operating Partners, LP
550 West Texas
Suite 1330
Midland, Texas 79701

Strata Production Company
200 West First Street
Suite 700
Roswell, New Mexico 88202

OIL AND GAS LEASES SUBJECT TO THIS AGREEMENT

Item 1: Federal Oil and Gas Lease NM-57280 dated April 1, 1984, only insofar as it covers the NW/4 and NE/4 SW/4 of Section 28, T-20-S, R-33-E, Lea County, New Mexico, below 3,500 feet beneath the surface. This lease is burdened by a one-eighth (1/8) royalty and a 7.5% of 8/8 overriding royalty.

Item 2: Federal Oil and Gas Lease NM-77074 dated October 1, 1988, only insofar as it covers the NW/4 SW/4 of Section 28, T-20-S, R-33-E, Lea County, New Mexico. This lease is burdened by a one-eighth (1/8) royalty.

Item 3: Federal Oil and Gas Lease NM-82927 dated November 1, 1989, only insofar as it covers the S/2 SW/4 of Section 28, T-20-S, R-33-E, Lea County, New Mexico. This lease is burdened by a one-eighth (1/8th) royalty.

EXHIBIT "C"

Attached to and made a part of that certain Operating Agreement dated January 1, 1993, by and between MITCHELL ENERGY CORPORATION, as Operator, and SANTA FE ENERGY OPERATING PARTNERS, L. P., ET AL, as Non-Operators.

ACCOUNTING PROCEDURE
JOINT OPERATIONS

I. GENERAL PROVISIONS

1. Definitions

"Joint Property" shall mean the real and personal property subject to the agreement to which this Accounting Procedure is attached.
"Joint Operations" shall mean all operations necessary or proper for the development, operation, protection and maintenance of the Joint Property.
"Joint Account" shall mean the account showing the charges paid and credits received in the conduct of the Joint Operations and which are to be shared by the Parties.
"Operator" shall mean the party designated to conduct the Joint Operations.
"Non-Operators" shall mean the Parties to this agreement other than the Operator.
"Parties" shall mean Operator and Non-Operators.
"First Level Supervisors" shall mean those employees whose primary function in Joint Operations is the direct supervision of other employees and/or contract labor directly employed on the Joint Property in a field operating capacity.
"Technical Employees" shall mean those employees having special and specific engineering, geological or other professional skills, and whose primary function in Joint Operations is the handling of specific operating conditions and problems for the benefit of the Joint Property.
"Personal Expenses" shall mean travel and other reasonable reimbursable expenses of Operator's employees.
"Material" shall mean personal property, equipment or supplies acquired or held for use on the Joint Property.
"Controllable Material" shall mean Material which at the time is so classified in the Material Classification Manual as most recently recommended by the Council of Petroleum Accountants Societies.

2. Statement and Billings

Operator shall bill Non-Operators on or before the last day of each month for their proportionate share of the Joint Account for the preceding month. Such bills will be accompanied by statements which identify the authority for expenditure, lease or facility, and all charges and credits summarized by appropriate classifications of investment and expense except that items of Controllable Material and unusual charges and credits shall be separately identified and fully described in detail.

3. Advances and Payments by Non-Operators

A. Unless otherwise provided for in the agreement, the Operator may require the Non-Operators to advance their share of estimated cash outlay for the succeeding month's operation within thirty (30) days after receipt of the billing or by the first day of the month for which the advance is required, whichever is later. Operator shall adjust each monthly billing to reflect advances received from the Non-Operators.

B. Each Non-Operator shall pay its proportion of all bills within thirty (30) days after receipt. If payment is not made within such time, the unpaid balance shall bear interest monthly at the prime rate in effect at Manufacturer's Hanover Trust Co., NY, NY on the first day of the month in which delinquency occurs plus 1% or the maximum contract rate permitted by the applicable usury laws in the state in which the Joint Property is located, whichever is the lesser, plus attorney's fees, court costs, and other costs in connection with the collection of unpaid amounts.

4. Adjustments

Payment of any such bills shall not prejudice the right of any Non-Operator to protest or question the correctness thereof; provided, however, all bills and statements rendered to Non-Operators by Operator during any calendar year shall conclusively be presumed to be true and correct after twenty-four (24) months following the end of any such calendar year, unless within the said twenty-four (24) month period a Non-Operator takes written exception thereto and makes claim on Operator for adjustment. No adjustment favorable to Operator shall be made unless it is made within the same prescribed period. The provisions of this paragraph shall not prevent adjustments resulting from a physical inventory of Controllable Material as provided for in Section V.

5. Audits

A. A Non-Operator, upon notice in writing to Operator and all other Non-Operators, shall have the right to audit Operator's accounts and records relating to the Joint Account for any calendar year within the twenty-four (24) month period following the end of such calendar year; provided, however, the making of an audit shall not extend the time for the taking of written exception to and the adjustments of accounts as provided for in Paragraph 4 of this Section I. Where there are two or more Non-Operators, the Non-Operators shall make every reasonable effort to conduct a joint audit in a manner which will result in a minimum of inconvenience to the Operator. Operator shall bear no portion of the Non-Operators' audit cost incurred under this paragraph unless agreed to by the Operator. The audits shall not be conducted more than once each year without prior approval of Operator, except upon the resignation or removal of the Operator, and shall be made at the expense of those Non-Operators approving such audit.

B. The Operator shall reply in writing to an audit report within 180 days after receipt of such report.

6. Approval By Non-Operators

Where an approval or other agreement of the Parties or Non-Operators is expressly required under other sections of this Accounting Procedure and if the agreement to which this Accounting Procedure is attached contains no contrary provisions in regard thereto, Operator shall notify all Non-Operators of the Operator's proposal, and the agreement or approval of a majority in interest of the Non-Operators shall be controlling on all Non-Operators.

II. DIRECT CHARGES

Operator shall charge the Joint Account with the following items:

1. Ecological and Environmental

Costs incurred for the benefit of the Joint Property as a result of governmental or regulatory requirements to satisfy environmental considerations applicable to the Joint Operations. Such costs may include surveys of an ecological or archaeological nature and pollution control procedures as required by applicable laws and regulations.

2. Rentals and Royalties

Lease rentals and royalties paid by Operator for the Joint Operations.

3. Labor

A. (1) Salaries and wages of Operator's field employees directly employed on the Joint Property in the conduct of Joint Operations.

(2) Salaries of First Level Supervisors in the field.

(3) Salaries and wages of Technical Employees directly employed on the Joint Property if such charges are excluded from the overhead rates.

(4) Salaries and wages of Technical Employees either temporarily or permanently assigned to and directly employed in the operation of the Joint Property if such charges are excluded from the overhead rates.

B. Operator's cost of holiday, vacation, sickness and disability benefits and other customary allowances paid to employees whose salaries and wages are chargeable to the Joint Account under Paragraph 3A of this Section II. Such costs under this Paragraph 3B may be charged on a "when and as paid basis" or by "percentage assessment" on the amount of salaries and wages chargeable to the Joint Account under Paragraph 3A of this Section II. If percentage assessment is used, the rate shall be based on the Operator's cost experience.

C. Expenditures or contributions made pursuant to assessments imposed by governmental authority which are applicable to Operator's costs chargeable to the Joint Account under Paragraphs 3A and 3B of this Section II.

D. Personal Expenses of those employees whose salaries and wages are chargeable to the Joint Account under Paragraph 3A of this Section II.

4. Employee Benefits

Operator's current costs of established plans for employees' group life insurance, hospitalization, pension, retirement, stock purchase, thrift, bonus, and other benefit plans of a like nature, applicable to Operator's labor cost chargeable to the Joint Account under Paragraphs 3A and 3B of this Section II shall be Operator's actual cost not to exceed the percent most recently recommended by the Council of Petroleum Accountants Societies.

5. Material

Material purchased or furnished by Operator for use on the Joint Property as provided under Section IV. Only such Material shall be purchased for or transferred to the Joint Property as may be required for immediate use and is reasonably practical and consistent with efficient and economical operations. The accumulation of surplus stocks shall be avoided.

6. Transportation

Transportation of employees and Material necessary for the Joint Operations but subject to the following limitations:

A. If Material is moved to the Joint Property from the Operator's warehouse or other properties, no charge shall be made to the Joint Account for a distance greater than the distance from the nearest reliable supply store where like material is normally available or railway receiving point nearest the Joint Property unless agreed to by the Parties.

B. If surplus Material is moved to Operator's warehouse or other storage point, no charge shall be made to the Joint Account for a distance greater than the distance to the nearest reliable supply store where like material is normally available, or railway receiving point nearest the Joint Property unless agreed to by the Parties. No charge shall be made to the Joint Account for moving Material to other properties belonging to Operator, unless agreed to by the Parties.

C. In the application of subparagraphs A and B above, the option to equalize or charge actual trucking cost is available when the actual charge is $400 or less excluding accessorial charges. The $400 will be adjusted to the amount most recently recommended by the Council of Petroleum Accountants Societies.

7. Services

The cost of contract services, equipment and utilities provided by outside sources, except services excluded by Paragraph 10 of Section II and Paragraph i, ii, and iii, of Section III. The cost of professional consultant services and contract services of technical personnel directly engaged on the Joint Property if such charges are excluded from the overhead rates. The cost of professional consultant services or contract services of technical personnel not directly engaged on the Joint Property shall not be charged to the Joint Account unless previously agreed to by the Parties.

8. Equipment and Facilities Furnished By Operator

A. Operator shall charge the Joint Account for use of Operator owned equipment and facilities at rates commensurate with costs of ownership and operation. Such rates shall include costs of maintenance, repairs, other operating expense, insurance, taxes, depreciation, and interest on gross investment less accumulated depreciation not to exceed ten percent (10%) per annum. Such rates shall not exceed average commercial rates currently prevailing in the immediate area of the Joint Property.

B. In lieu of charges in paragraph 8A above, Operator may elect to use average commercial rates prevailing in the immediate area of the Joint Property less 20%. For automotive equipment, Operator may elect to use rates published by the Petroleum Motor Transport Association.

9. Damages and Losses to Joint Property

All costs or expenses necessary for the repair or replacement of Joint Property made necessary because of damages or losses incurred by fire, flood, storm, theft, accident, or other cause, except those resulting from Operator's gross negligence or willful misconduct. Operator shall furnish Non-Operator written notice of damages or losses incurred as soon as practicable after a report thereof has been received by Operator.

10. Legal Expense

Expense of handling, investigating and settling litigation or claims, discharging of liens, payment of judgements and amounts paid for settlement of claims incurred in or resulting from operations under the agreement or necessary to protect or recover the Joint Property, except that no charge for services of Operator's legal staff,or fees or expense of outside attorneys shall be made unless previously agreed to by the Parties. All other legal expense is considered to be covered by the overhead provisions of Section III unless otherwise agreed to by the Parties, except as provided in Section I, Paragraph 3.

11. Taxes

All taxes of every kind and nature assessed or levied upon or in connection with the Joint Property, the operation thereof or the production therefrom, and which taxes have been paid by the Operator for the benefit of the Parties. If the ad valorem taxes are based in whole or in part upon separate valuations of each party's working interest, then notwithstanding anything to the contrary herein, charges to the Joint Account shall be made and paid by the Parties hereto in accordance with the tax value generated by each party's working interest.

12. Insurance

Net premiums paid for insurance required to be carried for the Joint Operations for the protection of the Parties. In the event Joint Operations are conducted in a state in which Operator may act as self-insurer for Worker's Compensation and/or Employers Liability under the respective state's laws, Operator may, at its election, include the risk under its self-insurance program and in that event, Operator shall include a charge at Operator's cost not to exceed manual rates.

13. Abandonment and Reclamation

Costs incurred for abandonment of the Joint Property, including costs required by governmental or other regulatory authority.

14. Communications

Cost of acquiring, leasing, installing, operating, repairing and maintaining communication systems, including radio and microwave facilities directly serving the Joint Property. In the event communication facilities/systems serving the Joint Property are Operator owned, charges to the Joint Account shall be made as provided in Paragraph 8 of this Section II.

15. Other Expenditures

Any other expenditure not covered or dealt with in the foregoing provisions of this Section II, or in Section III and which is of direct benefit to the Joint Property and is incurred by the Operator in the necessary and proper conduct of the Joint Operations.

III. OVERHEAD

1. **Overhead - Drilling and Producing Operations**

i. As compensation for administrative, supervision, office services and warehousing costs, Operator shall charge drilling and producing operations on either:

(X) Fixed Rate Basis, Paragraph 1A, or
( ) Percentage Basis, Paragraph 1B

Unless otherwise agreed to by the Parties, such charge shall be in lieu of costs and expenses of all offices and salaries or wages plus applicable burdens and expenses of all personnel, except those directly chargeable under Paragraph 3A, Section II. The cost and expense of services from outside sources in connection with matters of taxation, traffic, accounting or matters before or involving governmental agencies shall be considered as included in the overhead rates provided for in the above selected Paragraph of this Section III unless such cost and expense are agreed to by the Parties as a direct charge to the Joint Account.

ii. The salaries, wages and Personal Expenses of Technical Employees and/or the cost of professional consultant services and contract services of technical personnel directly employed on the Joint Property:

( ) shall be covered by the overhead rates, or
(X) shall not be covered by the overhead rates.

iii. The salaries, wages and Personal Expenses of Technical Employees and/or costs of professional consultant services and contract services of technical personnel either temporarily or permanently assigned to and directly employed in the operation of the Joint Property:

( ) shall be covered by the overhead rates, or
(X) shall not be covered by the overhead rates.

Accounting

A. Overhead - Fixed Rate Basis

(1) Operator shall charge the Joint Account at the following rates per well per month:

Drilling Well Rate $ 6,500.00
(Prorated for less than a full month)

Producing Well Rate $ 650.00

(2) Application of Overhead - Fixed Rate Basis shall be as follows:

(a) Drilling Well Rate

(1) Charges for drilling wells shall begin on the date the well is spudded and terminate on the date the drilling rig, completion rig, or other units used in completion of the well is released, whichever is later, except that no charge shall be made during suspension of drilling or completion operations for fifteen (15) or more consecutive calendar days.

(2) Charges for wells undergoing any type of workover or recompletion for a period of five (5) consecutive work days or more shall be made at the drilling well rate. Such charges shall be applied for the period from date workover operations, with rig or other units used in workover, commence through date of rig or other unit release, except that no charge shall be made during suspension of operations for fifteen (15) or more consecutive calendar days.

(b) Producing Well Rates

(1) An active well either produced or injected into for any portion of the month shall be considered as a one-well charge for the entire month.

(2) Each active completion in a multi-completed well in which production is not commingled down hole shall be considered as a one-well charge providing each completion is considered a separate well by the governing regulatory authority.

(3) An inactive gas well shut in because of overproduction or failure of purchaser to take the production shall be considered as a one-well charge providing the gas well is directly connected to a permanent sales outlet.

(4) A one-well charge shall be made for the month in which plugging and abandonment operations are completed on any well. This one-well charge shall be made whether or not the well has produced except when drilling well rate applies.

(5) All other inactive wells (including but not limited to inactive wells covered by unit allowable, lease allowable, transferred allowable, etc.) shall not qualify for an overhead charge.

(3) The well rates shall be adjusted as of the first day of April each year following the effective date of the agreement to which this Accounting Procedure is attached. The adjustment shall be computed by multiplying the rate currently in use by the percentage increase or decrease in the average weekly earnings of Crude Petroleum and Gas Production Workers for the last calendar year compared to the calendar year preceding as shown by the index of average weekly earnings of Crude Petroleum and Gas Production Workers as published by the United States Department of Labor, Bureau of Labor Statistics, or the equivalent Canadian index as published by Statistics Canada, as applicable. The adjusted rates shall be the rates currently in use, plus or minus the computed adjustment.

B. Overhead - Percentage Basis

(1) Operator shall charge the Joint Account at the following rates:

(a) Development

_____ Percent (____ %) of the cost of development of the Joint Property exclusive of costs provid under Paragraph 10 of Section II and all salvage credits.

(b) Operating

_____ Percent (____ %) of the cost of operating the Joint Property exclusive of costs provided unc Paragraphs 2 and 10 of Section II, all salvage credits, the value of injected substances purchased for seconda recovery and all taxes and assessments which are levied, assessed and paid upon the mineral interest in a to the Joint Property.

(2) Application of Overhead - Percentage Basis shall be as follows:

For the purpose of determining charges on a percentage basis under Paragraph 1B of this Section III, developme shall include all costs in connection with drilling, redrilling, deepening, or any remedial operations on any or wells involving the use of drilling rig and crew capable of drilling to the producing interval on the Joint Pro erty; also, preliminary expenditures necessary in preparation for drilling and expenditures incurred in abandoni when the well is not completed as a producer, and original cost of construction or installation of fixed assets, t expansion of fixed assets and any other project clearly discernible as a fixed asset, except Major Construction defined in Paragraph 2 of this Section III. All other costs shall be considered as operating.

2. Overhead - Major Construction

To compensate Operator for overhead costs incurred in the construction and installation of fixed assets, the expansion fixed assets, and any other project clearly discernible as a fixed asset required for the development and operation of t Joint Property, Operator shall either negotiate a rate prior to the beginning of construction, or shall charge the Joi Account for overhead based on the following rates for any Major Construction project in excess of $ 25,000.00 :

A. 5 % of first $100,000 or total cost if less, plus

B. 3 % of costs in excess of $100,000 but less than $1,000,000, plus

C. 2 % of costs in excess of $1,000,000.

Total cost shall mean the gross cost of any one project. For the purpose of this paragraph, the component parts of a sing project shall not be treated separately and the cost of drilling and workover wells and artificial lift equipment shall excluded.

3. Catastrophe Overhead

To compensate Operator for overhead costs incurred in the event of expenditures resulting from a single occurrence d to oil spill, blowout, explosion, fire, storm, hurricane, or other catastrophes as agreed to by the Parties, which are necessa to restore the Joint Property to the equivalent condition that existed prior to the event causing the expenditures, Operat shall either negotiate a rate prior to charging the Joint Account or shall charge the Joint Account for overhead based the following rates:

A. 5 % of total costs through $100,000; plus

B. 3 % of total costs in excess of $100,000 but less than $1,000,000; plus

C. 2 % of total costs in excess of $1,000,000.

Expenditures subject to the overheads above will not be reduced by insurance recoveries, and no other overhead prov sions of this Section III shall apply.

4. Amendment of Rates

The overhead rates provided for in this Section III may be amended from time to time only by mutual agreement betwee the Parties hereto if, in practice, the rates are found to be insufficient or excessive.

IV. PRICING OF JOINT ACCOUNT MATERIAL PURCHASES, TRANSFERS AND DISPOSITIONS

Operator is responsible for Joint Account Material and shall make proper and timely charges and credits for all Material mov ments affecting the Joint Property. Operator shall provide all Material for use on the Joint Property; however, at Operator option, such Material may be supplied by the Non-Operator. Operator shall make timely disposition of idle and/or surplu Material, such disposal being made either through sale to Operator or Non-Operator, division in kind, or sale to outsider Operator may purchase, but shall be under no obligation to purchase, interest of Non-Operators in surplus condition A or Material. The disposal of surplus Controllable Material not purchased by the Operator shall be agreed to by the Parties.

1. Purchases

Material purchased shall be charged at the price paid by Operator after deduction of all discounts received. In case c Material found to be defective or returned to vendor for any other reasons, credit shall be passed to the Joint Accoun when adjustment has been received by the Operator.

2. Transfers and Dispositions

Material furnished to the Joint Property and Material transferred from the Joint Property or disposed of by the Operator unless otherwise agreed to by the Parties, shall be priced on the following basis exclusive of cash discounts:

A. New Material (Condition A)

(1) Tubular Goods Other than Line Pipe

(a) Tubular goods, sized 2⅜ inches OD and larger, except line pipe, shall be priced at Eastern mill published carload base prices effective as of date of movement plus transportation cost using the 80,000 pound carload weight basis to the railway receiving point nearest the Joint Property for which published rail rates for tubular goods exist. If the 80,000 pound rail rate is not offered, the 70,000 pound or 90,000 pound rail rate may be used. Freight charges for tubing will be calculated from Lorain, Ohio and casing from Youngstown, Ohio.

(b) For grades which are special to one mill only, prices shall be computed at the mill base of that mill plus transportation cost from that mill to the railway receiving point nearest the Joint Property as provided above in Paragraph 2.A.(1)(a). For transportation cost from points other than Eastern mills, the 30,000 pound Oil Field Haulers Association interstate truck rate shall be used.

(c) Special end finish tubular goods shall be priced at the lowest published out-of-stock price* f.o.b. Houston, Texas, plus transportation cost, using Oil Field Haulers Association interstate 30,000 pound truck rate, to the railway receiving point nearest the Joint Property.

(d) Macaroni tubing (size less than 2⅜ inch OD) shall be priced at the lowest published out-of-stock prices* f.o.b. the supplier plus transportation costs, using the Oil Field Haulers Association interstate truck rate per weight of tubing transferred, to the railway receiving point nearest the Joint Property.

*of a manufacturer-authorized, major stocking distributor

(2) Line Pipe

(a) Line pipe movements (except size 24 inch OD and larger with walls ¾ inch and over) 30,000 pounds or more shall be priced under provisions of tubular goods pricing in Paragraph A.(1)(a) as provided above. Freight charges shall be calculated from Lorain, Ohio.

(b) Line pipe movements (except size 24 inch OD and larger with walls ¾ inch and over) less than 30,000 pounds shall be priced at Eastern mill published carload base prices effective as of date of shipment, plus 20 percent, plus transportation costs based on freight rates as set forth under provisions of tubular goods pricing in Paragraph A.(1)(a) as provided above. Freight charges shall be calculated from Lorain, Ohio.

(c) Line pipe 24 inch OD and over and ¾ inch wall and larger shall be priced f.o.b. the point of manufacture at current new published prices plus transportation cost to the railway receiving point nearest the Joint Property.

(d) Line pipe, including fabricated line pipe, drive pipe and conduit not listed on published price lists shall be priced at quoted prices plus freight to the railway receiving point nearest the Joint Property or at prices agreed to by the Parties.

(3) Other Material shall be priced at the current new price, in effect at date of movement, as listed by a reliable supply store nearest the Joint Property, or point of manufacture, plus transportation costs, if applicable, to the railway receiving point nearest the Joint Property.

(4) Unused new Material, except tubular goods, moved from the Joint Property shall be priced at the current new price, in effect on date of movement, as listed by a reliable supply store nearest the Joint Property, or point of manufacture, plus transportation costs, if applicable, to the railway receiving point nearest the Joint Property. Unused new tubulars will be priced as provided above in Paragraph 2.A.(1) and (2).

B. Good Used Material (Condition B)

Material in sound and serviceable condition and suitable for reuse without reconditioning:

(1) Material moved to the Joint Property

At seventy-five percent (75%) of current new price, as determined by Paragraph A..

(2) Material used on and moved from the Joint Property

(a) At seventy-five percent (75%) of current new price, as determined by Paragraph A, if Material was originally charged to the Joint Account as new Material or

(b) At sixty-five percent (65%) of current new price, as determined by Paragraph A, if Material was originally charged to the Joint Account as used Material.

(3) Material not used on and moved from the Joint Property

At seventy-five percent (75%) of current new price as determined by Paragraph A.

The cost of reconditioning, if any, shall be absorbed by the transferring property.

C. Other Used Material

(1) Condition C

Material which is not in sound and serviceable condition and not suitable for its original function until after reconditioning shall be priced at fifty percent (50%) of current new price as determined by Paragraph A. The cost of reconditioning shall be charged to the receiving property, provided Condition C value plus cost of reconditioning does not exceed Condition B value.

(2) Condition D

Material, excluding junk, no longer suitable for its original purpose, but usable for some other purpose shall b priced on a basis commensurate with its use. Operator may dispose of Condition D Material under procedure normally used by Operator without prior approval of Non-Operators.

(a) Casing, tubing, or drill pipe used as line pipe shall be priced as Grade A and B seamless line pipe of com parable size and weight. Used casing, tubing or drill pipe utilized as line pipe shall be priced at used lin pipe prices.

(b) Casing, tubing or drill pipe used as higher pressure service lines than standard line pipe, e.g. power oil lines shall be priced under normal pricing procedures for casing, tubing, or drill pipe. Upset tubular goods sha be priced on a non upset basis.

(3) Condition E

Junk shall be priced at prevailing prices. Operator may dispose of Condition E Material under procedures nor mally utilized by Operator without prior approval of Non-Operators.

D. Obsolete Material

Material which is serviceable and usable for its original function but condition and/or value of such Material is nc equivalent to that which would justify a price as provided above may be specially priced as agreed to by the Parties Such price should result in the Joint Account being charged with the value of the service rendered by such Materia

E. Pricing Conditions

(1) Loading or unloading costs may be charged to the Joint Account at the rate of twenty-five cents (25¢) per hundre weight on all tubular goods movements, in lieu of actual loading or unloading costs sustained at the stockin point. The above rate shall be adjusted as of the first day of April each year following January 1, 1985 by the sam percentage increase or decrease used to adjust overhead rates in Section III, Paragraph 1.A(3). Each year, th rate calculated shall be rounded to the nearest cent and shall be the rate in effect until the first day of April nex year. Such rate shall be published each year by the Council of Petroleum Accountants Societies.

(2) Material involving erection costs shall be charged at applicable percentage of the current knocked-down price c new Material.

3. Premium Prices

Whenever Material is not readily obtainable at published or listed prices because of national emergencies, strikes or othe unusual causes over which the Operator has no control, the Operator may charge the Joint Account for the require Material at the Operator's actual cost incurred in providing such Material, in making it suitable for use, and in movin it to the Joint Property; provided notice in writing is furnished to Non-Operators of the proposed charge prior to billin Non-Operators for such Material. Each Non-Operator shall have the right, by so electing and notifying Operator withi ten days after receiving notice from Operator, to furnish in kind all or part of his share of such Material suitable for us and acceptable to Operator.

4. Warranty of Material Furnished By Operator

Operator does not warrant the Material furnished. In case of defective Material, credit shall not be passed to the Join Account until adjustment has been received by Operator from the manufacturers or their agents.

V. INVENTORIES

The Operator shall maintain detailed records of Controllable Material.

1. Periodic Inventories, Notice and Representation

At reasonable intervals, inventories shall be taken by Operator of the Joint Account Controllable Material. Written notic of intention to take inventory shall be given by Operator at least thirty (30) days before any inventory is to begin so tha Non-Operators may be represented when any inventory is taken. Failure of Non-Operators to be represented at an inver tory shall bind Non-Operators to accept the inventory taken by Operator.

2. Reconciliation and Adjustment of Inventories

Adjustments to the Joint Account resulting from the reconciliation of a physical inventory shall be made within si months following the taking of the inventory. Inventory adjustments shall be made by Operator to the Joint Account fo overages and shortages, but, Operator shall be held accountable only for shortages due to lack of reasonable diligence.

3. Special Inventories

Special inventories may be taken whenever there is any sale, change of interest, or change of Operator in the Joint Property It shall be the duty of the party selling to notify all other Parties as quickly as possible after the transfer of interest take place. In such cases, both the seller and the purchaser shall be governed by such inventory. In cases involving a chang of Operator, all Parties shall be governed by such inventory.

4. Expense of Conducting Inventories

A. The expense of conducting periodic inventories shall not be charged to the Joint Account unless agreed to by th Parties.

B. The expense of conducting special inventories shall be charged to the Parties requesting such inventories, except in ventories required due to change of Operator shall be charged to the Joint Account.

EXHIBIT "D"

Attached to and made a part of Operating Agreement
Dated January 1, 1993, by and between
MITCHELL ENERGY CORPORATION, as Operator, and
SANTA FE ENERGY OPERATING PARTNERS, L. P. ET AL, as Non-Operators

INSURANCE COVERAGE

Operator agrees to carry or will cause to be carried with an insurance company or companies satisfactory to Mitchell Energy Corporation ("MEC") and authorized to do business in all areas of operation of this Agreement, insurance coverage with limits of not less than those hereinafter set, such coverage to include, but not be limited to all claims for damages, risks of loss, and contractual indemnities covered by this Agreement.

Operator shall furnish to MEC, in duplicate, certificates on a form acceptable to MEC, signed by authorized agents or representatives of the insurance companies providing the required coverage, evidencing all coverages, extensions and limits required to be carried by Operator under the provisions of this Agreement.

Failure by MEC to request certificates of insurance or failure of Operator to provide certificates or to maintain proper coverage required by this Agreement shall not constitute a waiver of the insurance provisions or any other contractual obligations under this Agreement.

(a) Each Insurance policy maintained by Operator for work performed under this contract must be endorsed as follows:

(1) MEC's parent, its subsidiaries, affiliated companies and interrelated companies, and the owners, co-owners, co-lessees, and joint venturers, if any, and their respective employees, officers and agents shall be named as Additional Insureds. Note: This provision is not applicable to the Worker's Compensation Policy.

(2) Underwriters shall waive their rights of subrogation (whether by loan receipts, equitable assignment, or otherwise) against all Insureds.

(3) The coverage afforded herein shall be primary in relation to any policies carried by MEC itself.

(4) To provide thirty (30) days written notice of cancellation or material modification of the policy.

(b) The following insurance coverages are required for all work performed under this Agreement:

(1) Workers' Compensation and Employers' Liability Insurance: Insurance in accordance with all applicable State and Federal Laws with limits of liability of not less than $ 100,000 covering all of MEC's employees, and all employees of any subcontractor engaged in the work to be performed hereunder.

(2) Comprehensive General Liability: Insurance in an amount of not less than $ 1,000,000 combined single limit bodily injury and damage per each occurrence. Such insurance coverage shall include the following:

a. Owner's Protective Liability covering for work sub-let.

b. Contractual Liability, insuring the indemnity agreements contained in the Agreement of which this exhibit is a part.

c. Coverage for property damage due to blasting and explosion (x), structural property damage (c), underground property damage (u), and surface damage from blowout and cratering (e).

d. Completed Operations and/or Products Liability coverage.

e. Endorsement to policies stating that a suit "in rem" will be treated and covered as a suit "in personam".

(3) Comprehensive Automobile Liability Insurance: Insurance in an amount of not less than $ 1,000,000 combined single limit bodily injury and damage per each occurrence. Such coverage shall include owned, hired, and non-owned vehicles.

(4) Operator shall maintain or cause to be maintained Extra Expense and Well Control Insurance. The policy will provide for the following coverages:

a. Costs of well control following blowout.

b. Third party bodily injury and property damage claims caused by seepage pollution or contamination resulting from a blowout.

c. Costs of clean-up or containment of seeping, polluting and contaminating substances emanating from the well.

d. Redrilling expenses following blowout.

Such Insurance will have limits of liability of not less than $ 5,000,000 with rates determined on the basis of the area and depth of the well or wells to be drilled.

Each policy of insurance issued pursuant to the provisions of (a), (b) or (c) above shall provide by endorsement or otherwise that the provisions of the policy are extended to cover the interest of the Non-Operator for whom the assured is acting as Operator, agent or contractor under contract, but only with respect to operations conducted by the named assured.

Liability for damages to property of or injury to or death of third persons, which liability arose from operations on the Joint Lease, shall, to the extent not covered by insurance as provided for in this Agreement, shall be borne by all parties to this Operating Agreement in proportion to their respective Percentage Interests.

Operator shall upon written request furnish to Non-Operator a certificate covering each policy of insurance issued pursuant to this Agreement.

\JLC\GASBAL.FRM

EXHIBIT "E"

**Attached to and made a part of the Operating Agreement
Dated January 1, 1993, by and between
MITCHELL ENERGY CORPORATION, as Operator, and
SANTA FE ENERGY OPERATING PARTNERS, L. P., ET AL, as Non-Operators**

GAS BALANCING AGREEMENT FOR GAS PRODUCTION

---

1. Each party shall have the right to take in kind and separately dispose of its proportionate share of the gas produced from the Unit Area and shall be entitled to an opportunity to produce its fair share of the allowable production from a well, including lawful tolerances, established by appropriate regulatory authority. "Gas", as used herein, will be deemed to mean gas well gas and gas produced in association with oil.

2. It is the intent that each party be entitled to gas produced in the proportion that its ownership interest bears to the sum of the ownership interests. It is the intent that the Operator have the duty of controlling the gas production and the responsibility of administering the provisions of this agreement. Operator shall cause deliveries to be made to the gas purchasers at such rates as may be required to give effect to the intent that the gas production accounts of all parties are to be brought into balance under the provisions contained herein. The parties hereto shall share in and own the lease condensate, that is, liquid hydrocarbons recovered from such gas by lease equipment, in accordance with their respective interests, as set forth hereinabove, and upon and subject to the terms of the above described Operating Agreement.

3. To give effect to the intent of this agreement, the Operator shall be governed by the rights of each party:

(a) When the well's current production is less than the well allowable due to either the capacity of the well to produce or the Unit Operator causing the well to produce below allowable in order to properly balance well allowable overproduction:

(1) Each underproduced party, that is, a party who has taken a lesser volume of gas than the quantity such party is herein entitled, shall have the right to take a greater amount of gas than such party's proportionate share of the well's current production, provided that the right to take such greater amount shall be in proportion that its interest bears to the total interest of all underproduced parties desiring to take more than their proportionate share of the well's current production. Provided, however, this provision will only be allowed when such underproduced parties' purchaser is willing and able to take such greater amount.

(2) Each overproduced party, that is, a party who has taken a greater volume of gas than the quantity such party is herein entitled, shall reduce its respective take in the proportion that such party's interest bears to the total interest of all overproduced parties, but in no event shall any overproduced party be required to reduce its take to less than fifty percent (50%) of such overproduced party's proportionate share of the well's current production.

(b) When the well's current production is less than the well allowable due to combined pipeline takes or for reasons other than in subparagraph (a) above:

(1) Each underproduced party shall have the same rights set forth in subparagraph (a) (1) above.

(2) Each overproduced party shall reduce its respective take in the proportion that such party's interest bears to the total interest of all overproduced parties, but in no event shall any overproduced party be required to reduce its take to less than fifty percent (50%) of such overproduced party's proportionate share of the well allowable.

(c) When the well's current production is equal to or greater than the well allowable:

(1) Each underproduced party shall have the right to take a greater amount of gas than its proportionate share of the well allowable, provided that the right to take such greater amount shall be in proportion that its interest bears to the total interest of all underproduced parties desiring to take more than their proportionate share of the well allowable.

(2) Each overproduced party shall have the same rights set forth in subparagraph (a) (2) above.

(d) Operator, at the request of any party, may produce the entire well stream, if necessary, for a deliverability test not to exceed seventy-two (72) hours duration required under such requesting party's gas sales contract and may overproduce in any other situation provided that such overproducing would be consistent with prudent operations.

4. Each party taking gas shall furnish Operator a monthly statement of gas taken. After commencement of production, Operator shall furnish a current account monthly of the gas balance between parties hereto including the total quantity of gas produced, the portion thereof used in Unit Area operations, vented or lost, and the total quantity of gas delivered to market.

5. Each party producing, taking or delivering gas to its purchaser shall pay severance taxes, excise taxes, royalties, overriding royalties, production payments and other such payments and taxes on production for which it is obligated by law or by lease or by contract (including the Operating Agreement), and nothing in this Gas Balancing Agreement shall be construed as affecting such obligations. Each party hereto agrees to indemnify and hold harmless the other parties hereto against all claims, losses or liabilities arising out of its failure to fulfill such obligations.

6. The provisions of this agreement shall be separately applicable to each well and each reservoir to the end that production from one reservoir in a well shall not be utilized for the purpose of balancing underproduction from other reservoirs. This shall constitute a separate agreement as to each well and as to each reservoir.

7. When the gas sales from a reservoir in a well permanently cease, Operator shall be responsible to determine the final accounting of underproduction and overproduction and each overproduced party shall account to and compensate each underproduced party with a sum of money equal to the amount actually received, less applicable taxes, by an overproduced party from the sale of that part of the total cumulative volume of gas produced which the underproduced party was entitled to take and payment for such overproduction shall be in the order of accrual, provided, that if such overproduced party has paid the royalties attributable to such overproduction to which the underproduced party's interest is subject, the amount of such royalties shall be deducted from such payment. As to any gas which any party hereto may take for its own use or sell to a third party purchaser affiliated with such selling party, such amount of money payable for the amount of such gas which such party has taken or sold over its proportionate share thereof shall be

based upon the rate which would have been received by the underproduced party as if such gas had been taken during the period or periods of underproduction under its contract with a nonaffiliated third party purchaser; provided, however, if the underproduced party has no such contract, such amount of money shall be based on the average rate received by other parties hereto for their share of gas during the affected period. Overproduced party(ies) shall make payment and Operator shall provide supporting accounting documentation to the underproduced party(ies) within ninety (90) days following cessation of production. It is agreed and understood that Operator has no liability to collect or distribute any monies for overproduction of gas other than those monies that have been remitted to Operator by an overproduced party, i.e., Operator merely acts as a "conduit" for the purposes of cash settlements made pursuant to the terms and conditions of this Agreement.

8. Nothing herein shall change or affect each party's obligations to pay its proportionate share of all costs and liabilities incurred in lease operations, as its share thereof is set forth in the aforementioned Operating Agreement.

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\JLC\NONDISCR.FRM

EXHIBIT "F"

Attached to and made a part of Operating Agreement
Dated January 1, 1993, by and between
MITCHELL ENERGY CORPORATION, as Operator, and
SANTA FE ENERGY OPERATING PARTNERS, L. P., ET AL, as Non-Operators

NON-DISCRIMINATION AND CERTIFICATION OF NON-SEGREGATED FACILITIES

In order to assure compliance with Federal Equal Employment provisions, Operator agrees and certifies as follows:

Operator is aware of and is fully informed of Operator's responsibilities under Executive Orders No. 11246 and 11375, and shall file compliance reports as required by Section 201 of Executive Order No. 11246, and otherwise comply with the requirements of such orders and with all rules and regulations promulgated thereunder, including but not limited to, 41 CFR Part 60-1, 41 CFR Part 60-2, 41 CFR Part 60-3, 41 CFR Part 60-20 and 41 CFR Part 60-50, and all amendments or additions thereto. The affirmative action clause set forth in Section 202 of Executive Order No. 11246 and 41 CFR 60-1.4 is included herein by reference.

(1) The Operator will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Operator will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Operator agrees to post in conspicuous places, available to employees and applicants for employment notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Operator will, in all solicitations or advertisements for employees placed by or on behalf of the Operator, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

(3) The Operator will send to each labor union or representative or workers with which Operator has a collective bargaining agreement or other contract or understanding, a notice to be provided, advising the said labor union or workers' representatives of the Operator's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Operator will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

(5) The Operator will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to Operator's books, records and accounts by the administering agency and the Secretary of Labor for purpose of investigation to ascertain compliance with such rules, regulations and orders.

(6) In the event of the Operator's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be cancelled, terminated or suspended in whole or in part and the Operator may be declared ineligible for further Government contracts or federally assisted constructions contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulations or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Operator will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Operator will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions including sanctions for noncompliance: PROVIDED, HOWEVER, that in the event the Operator becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Operator may request the United States to enter into such litigation to protect the interests of the United Sates.

(8) Operator further agrees and certifies that, if the value of any contract or purchase order is $ 50,000 or more and Operator has 50 or more employees, Operator will:

(a) File a complete and accurate report on Standard Form 100 (EEO-1) with the Joint Reporting Committee, Federal Depot, Jeffersonville, Indiana, within thirty (30) days of the date of contract aware, unless such report has been filed within the twelve (12) month period preceding the date of the contract and otherwise comply with and file such other compliance reports as may be required under Executive Order No. 11246, as amended, and Rules and Regulations adopted thereunder.

(b) Develop a written affirmative action compliance program for each of its establishments as required by Title 41, Code of Federal Regulation, Section 60-1.40 and 6, Title 41, Code of Federal Regulations, Part 60-2, as amended.

(c) LISTING OF EMPLOYMENT OPENINGS. If the value of any contract or purchase order is $ 10,000 or more, Operator shall be bound by the terms and provisions of the Vietnam Era Veterans' Readjustment Act of 1972, Public Law 92-540, as amended by the Vietnam Era Veterans' Readjustment Assistance Act of 1974, Public Law 93-508, and all rules and regulations promulgated thereunder. The affirmative action clause set forth in 41 CFR 60-250.4 is included herein by reference.

(d) EMPLOYMENT OF THE HANDICAPPED. If the value of any contract or purchase order is $ 2,500 or more, Operator shall be bound by the terms and provisions of the Rehabilitation Act of 1973, Public Law 93-112, as amended by Public Law 93-516, and all rules and regulations promulgated thereunder. The affirmative action clause set forth in 41 CFR 60-741.4 is included herein by reference.

(e) Operator further understands and agrees that a breach of the assurance herein contained subjects it to the provision of the Order at 41 CFR Chapter 60 of the Secretary of Labor dated May 21, 1968, and the provisions of the equal opportunity clause enumerated in contracts between the United States of American and Non-Operators.

(9) Operator certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, at any location under his control where segregated facilities are maintained. He certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. Operator agrees that a breach of his certification is a violation of the Equal Opportunity Clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work area, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, age, or national origin, because of habit, local custom or otherwise; Operator's policies and practices must assure appropriate physical facilities to both sexes. He further agrees that (except where he has obtained identical certifications from proposed subcontractors for specific time periods) he will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $ 10,000 which are not exempt from the provisions of Equal Opportunity Clause that he will retain such certifications in his files; and that he will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time period); NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES. A Certification of Nonsegregated Facilities as required by the May 9, 1967 order on Elimination of Segregated Facilities, by the Secretary of Labor (32 Fed. Reg. 7439, May 19, 1967), must be submitted prior to the award to a subcontract exceeding $ 10,000 which is not exempt from the provisions of the Equal Opportunity Clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually or annually). (1968 MAR.) (Note: The penalty for making false statements in offers is prescribed in 18 U.S.C. § 1001).

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THIS INSTRUMENT PROVIDES NOTICE OF LIENS AND OTHER SECURITY INTERESTS IN REAL PROPERTIES, FIXTURES, AND OTHER PERSONAL PROPERTY

EXHIBIT "H"

NOTICE OF JOINT OPERATING AGREEMENT
AND LIENS AND OTHER SECURITY INTERESTS

STATE OF _____ §
§ KNOW ALL PERSONS THAT:
COUNTY OF _____ §

WHEREAS, on the _____ day of _____, 19__, the hereinbelow-identified parties, whose addresses are shown on Exhibit "A" attached hereto, did agree to and make an agreement for developing and operating certain lands, oil and gas leasehold interests, and/or other oil and gas interests (such agreement, which is incorporated herein by this reference, being hereinafter referred to as the "Agreement"). The lands and interests identified in the Agreement included within a "Contract Area", as that term is therein defined, those described on Exhibit "A" attached hereto (such land and interests described on said Exhibit "A" being hereinafter referred to as the "Lands and Interests"); and

WHEREAS, the Agreement, among other terms and provisions, granted to the parties identified as "Operator" and "Non-Operators" therein certain liens and other security interests in the Lands and Interests and in fixtures and other personal property as follows:

"ARTICLE VII.

B. LIENS AND PAYMENT DEFAULTS:

Each Non-Operator grants to Operator a lien upon its oil and gas rights in the Contract Area, and a security interest in its share of oil and/or gas when extracted and its interest in all equipment, to secure payment of its share of expense, together with interest thereon at the rate provided in Exhibit "C" (the Accounting Procedure attached thereto). To the extent that Operator has a security interest under the Uniform Commercial Code of the state, Operator shall be entitled to exercise the rights and remedies of a secured party under the Code. The bringing of a suit and the obtaining of judgment of Operator for the secured indebtedness shall not be deemed an election of remedies or otherwise affect the lien rights or security interest as security for the payment thereof. In addition, upon default by any Non-Operator in the payment of its share of expense, Operator shall have the right, without prejudice to other rights or remedies, to collect from the purchaser the proceeds from the sale of such Non-Operator's share of oil and/or gas until the amount owed by such Non-Operator, plus interest, has been paid. Each purchaser shall be entitled to rely upon Operator's written statement concerning the amount of any default. Operator grants a like lien and security interest to the Non-Operators to secure payment of Operator's proportionate share of expense.

"ARTICLE XV. Item (4)

Subject to the provisions of Article VII.B. of this Operating Agreement, each Non-Operator grants to Operator a lien upon all of the rights, titles, and interests of each Non-Operator, whether now existing or

hereafter acquired, in and to (i) the oil, gas, and other minerals in, on, and under the Contract Area and (ii) any oil, gas, and other minerals leases covering the Contract Area or any portion thereof. In addition, each Non-Operator grants to Operator a security interest in and to all of such Non-Operator's rights, titles, interests, claims, general intangibles, proceeds, and products thereof, whether now existing or hereafter acquired, in and to (i) all oil, gas, and other minerals produced from the Cotnract Area when produced and all rights thereto, including, but not limited to, an underproduced party's right, if any, pursuant to any gas balancing agreement between the parties hereto against an overproduced party to make-up gas; (ii) all accounts receivable accruing or arising as a result of the sale of such oil, gas, and other minerals; (iii) all cash or other proceeds from the sale of such oil, gas, and other minerals once produced; and (iv) all oil and gas wells and other surface and subsurface equipment and facilities of any kind or character located on the Contract Area and the cash or other proceeds realized from the sale thereof. Operator grants a like lien and security interest to the Non-Operators to secure payment of Operator's proportionate share of expenses."

NOW, THEREFORE, the parties hereto hereby give notice of the liens and other security interests granted by Non-Operators to Operator in accordance with the provisions of the Agreement quoted hereinabove, and hereby grant, and give notice of, the following liens: (1) (i) a lien upon all of the rights, titles, and interests of each Non-Operator, whether now existing or hereafter acquired, in and to (a) the Lands and Interests described more particularly on Exhibit "A" attached hereto and (b) all oil, gas, and other minerals in, on, and under the Lands and Interests and (ii) a security interest in and to all of the rights, titles, interests, claims, general intangibles, proceeds, and products thereof of each Non-Operator, whether now existing or hereafter acquired, in and to (a) all oil, gas, and other minerals produced from the Lands and Interests when produced, and all rights thereto, including, but not limited to, an underproduced party's right, if any, pursuant to any gas balancing agreement between the parties hereto against an overproduced party to make-up gas, (b) all accounts receivable accruing or arising as the result of the sale of such oil, gas, and other minerals, (c) all cash or other proceeds from the sale of such oil, gas, and other minerals once produced, and (d) all oil and gas wells and other surface and subsurface equipment and facilities of any kind or character located on or within the Lands and Interests and the cash or other proceeds realized from the sale thereof; and (2) like liens and security interest to Non-Operators.

This Notice may be executed in any number of counterparts, which may be combined to form a single instrument for recording purposes. All parties need not execute this Notice in order for it to be effective as to those parties executing it.

EXECUTED in multiple originals for filing in the real property/mortgage and Uniform Commercial Code records of the hereinabove identified County(ies) of the State of _____ and as a Financing Statement under the Uniform Commercial Code of such state with the Secretary of the State of _____ on this the _____ day of _____, 19__.

ATTEST: _____
"OPERATOR"

_____

By: _____
Name: _____
Title: _____

"NON-OPERATOR"

ATTEST:

_____

By: _____
Name: _____
Title: _____

"NON-OPERATOR"

ATTEST:

_____

By: _____
Name: _____
Title: _____

"NON-OPERATOR"

ATTEST:

_____

By: _____
Name: _____
Title: _____

STATE OF _____ §
COUNTY OF _____ §

This instrument was acknowledged before me on _____, 19___, by _____, _____ of _____, on behalf of said corporation.

_____
Notary Public, State of _____
My Commission Expires: _____

STATE OF _____ §
COUNTY OF _____ §

This instrument was acknowledged before me on _____, 19___, by _____, _____ of _____, on behalf of said corporation.

_____
Notary Public, State of _____
My Commission Expires: _____

STATE OF _____ §
COUNTY OF _____ §

This instrument was acknowledged before me on _____, 19___, by _____.

_____
Notary Public, State of _____
My Commission Expires: _____

STATE OF _____ §
COUNTY OF _____ §

This instrument was acknowledged before me on _____, 19___, by _____ as attorney-in-fact on behalf of _____.

_____
Notary Public, State of _____
My Commission Expires: _____

Post-it™ brand fax transmittal memo 7671 | # of pages ▸

To Donna Bauer | From Sheryl Reed

Co. Strata Production | Co. Ernst & Young

Dept. | Phone # 713-750-1382

Fax # 505-623-3533 | Fax #

West Texas and Eastern New Mexico

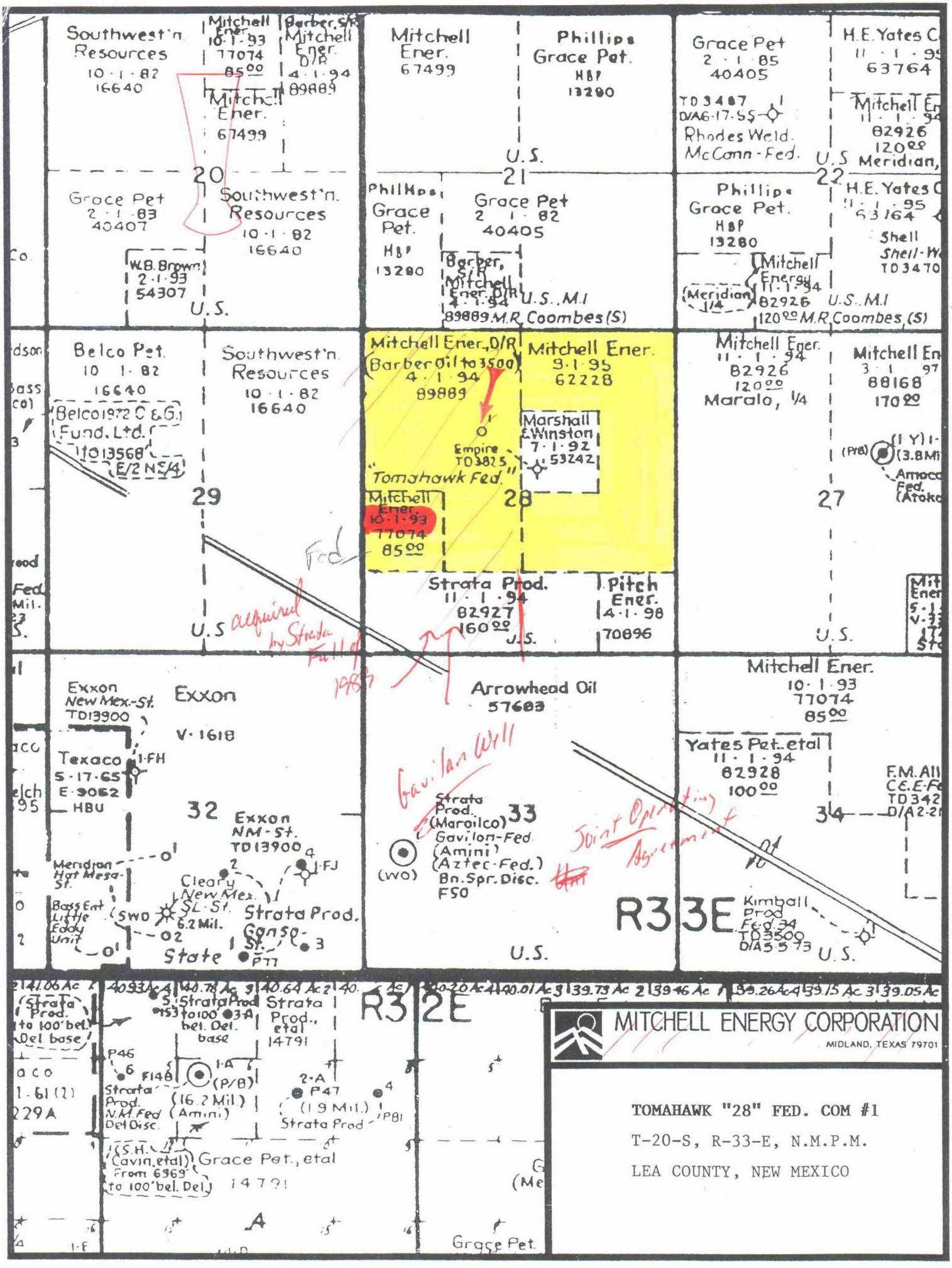
5 Oil Wells

Responses 1992	Responses 1991	Depth in Feet	Monthly Drilling Well Rates 1992 Mean	1992 Median	1991 Mean	1991 Median	Monthly Producing Well Rates 1992 Mean	1992 Median	1991 Mean	1991 Median
173	194	0 - 5,000	$3,271	$3,000	$3,208	$3,000	$326	$300	$319	$300
142	125	5,001 - 10,000	4,311	4,000	4,200	4,000	558	400	432	400
35	44	10,001 - 15,000	5,185	5,000	5,281	5,128	501	500	524	540
6	7	15,001 - 20,000	6,529	7,618	6,204	7,000	623	668	651	718
1	4	20,001 -	8,500	8,500	5,754	4,500	850	850	630	500
7	21	No Depth Limit	3,405	3,650	4,160	4,390	372	330	432	450

West Texas and Eastern New Mexico

5 Gas Wells

Responses 1992	Responses 1991	Depth in Feet	Monthly Drilling Well Rates 1992 Mean	1992 Median	1991 Mean	1991 Median	Monthly Producing Well Rates 1992 Mean	1992 Median	1991 Mean	1991 Median
90	85	0 - 5,000	$3,138	$3,000	$2,885	$3,000	$351	$300	$293	$300
73	60	5,001 - 10,000	4,325	4,141	4,110	4,000	447	400	398	400
26	24	10,001 - 15,000	5,388	5,000	5,105	5,000	514	500	526	513
10	8	15,001 - 20,000	5,289	5,000	5,879	7,000	544	575	658	700
2	5	20,001 -	8,500	8,500	6,006	7,014	600	600	647	718
5	20	No Depth Limit	4,406	3,816	4,182	4,390	430	389	431	450


Southwest'n Resources 10-1-82 16640
Mitchell Ener. 10-1-93 77074 85.00
Barber, S/R Mitchell Ener. D/R 4-1-94 89889
Mitchell Ener. 67499
Mitchell Ener. 67499
Phillips Grace Pet. HBP 13280
Grace Pet 2-1-85 40405
TD 3487 D/A 6-17-55
Rhodes Weld. McConn-Fed.
H.E. Yates C 11-1-9 63764
Mitchell En 11-1-9 82926 120.00
U.S. Meridian,
20
21
22
Grace Pet 2-1-83 40407
Southwest'n Resources 10-1-82 16640
W.B. Brown 2-1-93 54307
U.S.
Phillips Grace Pet. HBP 13280
Grace Pet 2-1-82 40405
Barber, S/R Mitchell Ener. D/R 4-1-94 89889
U.S. M.I
M.R. Coombes (S)
Phillips Grace Pet. HBP 13280
Mitchell Energy 11-1-94 82926 120.00
(Meridian) 1/4
H.E. Yates C 11-1-95 63164
Shell Shell-W TD 3470
U.S. M.I
M.R. Coombes, (S)
Belco Pet. 10-1-82 16640
Belco 1972 C & G Fund. Ltd. 10 13568 E/2 NE/4
Southwest'n Resources 10-1-82 16640
29
28
27
Mitchell Ener. D/R Barber Oil to 3500 4-1-94 89889
Mitchell Ener. 9-1-95 62228
Marshall & Winston 7-1-92 53242
Empire TD 3825
"Tomahawk Fed."
Mitchell Ener. 10-1-93 77074 85.00
Strata Prod. 11-1-94 82927 160.00
Pitch Ener. 4-1-98 70896
Mitchell Ener. 11-1-94 82926 120.00 Maralo, 1/4
Mitchell En 3-1-97 88168 170.00
(Pre)
Amoco Fed. (Atoka
U.S.
U.S.
acquired by Strata Fall of 1993
Exxon New Mex.-St. TD 13900
Exxon V-1618
Texaco 1-FH 5-17-65 E-9052 HBU
32
Exxon NM-St. TD 13900
Meridian Hat Mesa-St.
Cleary New Mex. St. St. 6.2 Mil.
Strata Prod. Gonso St. 3
State PT1
Bass Ent Little Eddy Unit
Arrowhead Oil 57683
Gavilan Well
Strata Prod. (Maroilco) Gavilon-Fed (Amini) (Aztec-Fed.) Bn. Spr. Disc. FSO
33
(WO)
Joint Operating Agreement
Mitchell Ener. 10-1-93 77074 85.00
Yates Pet. etal 11-1-94 82928 100.00
F.M. All C.E.E-Fe TD 342 D/A 2-2
34
R33E
Kimball Prod Fe-8-74 TD 3500 D/A 5-5-73
U.S.
U.S.
R32E
Strata Prod. to 100' bel. Del base
P46
F148
(P/B)
(16.2 Mil.)
(Amini)
Strata Prod. N.M. Fed Del Disc.
S. Strata Prod 9153 to 100 3-A bel. Del base
Strata Prod., etal 14791
2-A
P47
(1.9 Mil.)
Strata Prod
P81
(S.H. (Cavin, etal) From 6969 to 100' bel. Del.)
Grace Pet., etal 14791
Grace Pet.
MITCHELL ENERGY CORPORATION
MIDLAND, TEXAS 79701
TOMAHAWK "28" FED. COM #1
T-20-S, R-33-E, N.M.P.M.
LEA COUNTY, NEW MEXICO

HINKLE, COX, EATON, COFFIELD & HENSLEY

ATTORNEYS AT LAW
2800 CLAYDESTA CENTER
6 DESTA DRIVE
POST OFFICE BOX 3580
MIDLAND, TEXAS 79702
(915) 683-4691
FAX (915) 683-6518

700 UNITED BANK PLAZA
POST OFFICE BOX 10
ROSWELL, NEW MEXICO 88202
(505) 622-6510
FAX (505) 623-9332

1700 TEAM BANK BUILDING
POST OFFICE BOX 9238
AMARILLO, TEXAS 79105
(806) 372-5569
FAX (806) 372-9761

218 MONTEZUMA
POST OFFICE BOX 2068
SANTA FE, NEW MEXICO 87504
(505) 982-4554
FAX (505) 982-8623

500 MARQUETTE N.W., SUITE 800
POST OFFICE BOX 2043
ALBUQUERQUE, NEW MEXICO 87103
(505) 768-1500
FAX (505) 768-1529

LEWIS C. COX*
PAUL W. EATON
CONRAD E. COFFIELD
HAROLD L. HENSLEY, JR.*
STUART D. SHANOR*
ERIC D. LANPHERE*
C. D. MARTIN
PAUL J. KELLY, JR.*
ROBERT P. TINNIN, JR.*
MARSHALL G. MARTIN*
OWEN M. LOPEZ*
DOUGLAS L. LUNSFORD*
JOHN J. KELLY*
NICHOLAS J. NOEDING*
T. CALDER EZZELL, JR.*
WILLIAM B. BURFORD
RICHARD E. OLSON*
RICHARD R. WILFONG
THOMAS J. McBRIDE*
STEVEN D. ARNOLD
JAMES J. WECHSLER*
NANCY S. CUSACK*
JEFFREY L. FORNACIARI*
JEFFREY D. HEWETT
JAMES BRUCE*
JERRY F. SHACKELFORD
JEFFREY W. HELLBERG
ALBERT L. PITTS*
THOMAS M. HNASKO*
JOHN C. CHAMBERS
GARY D. COMPTON
MICHAEL A. GROSS*
THOMAS D. HAINES, JR.*
GREGORY J. NIBERT*
DAVID T. MARKETTE
MARK C. DOW*

KAREN M. RICHARDSON
FRED W. SCHWENDIMANN
JAMES M. HUDSON*
JEFFREY S. BAIRD
MACDONNELL GORDON*
REBECCA NICHOLS JOHNSON*
WILLIAM P. JOHNSON
STANLEY K. KOTOVSKY, JR.*
H. R. THOMAS*
KARA L. KELLOGG*

BETTY H. LITTLE
RUTH S. MUSGRAVE*
ELLEN S. CASEY*
S. BARRY PAISNER*
MARGARET CARTER LUDEWIG*
STEPHEN M. CRAMPTON
MARTIN MEYERS*
GREGORY S. WHEELER*
ANDREW J. CLOUTIER
JAMES A. GILLESPIE*
GARY W. LARSON*
STEPHANIE LANDRY*
JOHN R. KULSETH, JR.*
MARGARET R. McNETT*
BRIAN T. CARTWRIGHT
LISA K. SMITH
JAMES KENT SCHUSTER
ROBERT H. BETHEA
BRADLEY W. HOWARD*
CHARLES A. SUTTON
NORMAN D. EWART*
DARREN T. GROCE
MOLLY McINTOSH*

*NOT LICENSED IN TEXAS

CLARENCE E. HINKLE (1901-1985)
W. E. BONDURANT, JR. (1913-1973)
ROY C. SNODGRASS, JR. (1914-1987)

OF COUNSEL
O. M. CALHOUN
MACK EASLEY*
JOE W. WOOD*
RICHARD S. MORRIS

WASHINGTON, D.C.
SPECIAL COUNSEL
ALAN J. STATMAN

December 29, 1992

EXTRA
Mitchell Ex.
from 93
hearing

No. 31,439

IN RE: OPINION OF TITLE TO:

Tract 1: United States Oil and Gas Lease NM 57280, insofar as it covers NW¼, NE¼SW¼ Section 28, containing 200 acres, more or less, as to depths below 3,500 feet subsurface;

Tract 2: United States Oil and Gas Lease NM 77074, insofar as it covers NW¼SW¼ Section 28, containing 40 acres, more or less; and

Tract 3: United States Oil and Gas Lease NM 82927, insofar as it covers S½SW¼ Section 28, containing 80 acres, more or less;

said lands collectively composing W½ Section 28, Township 20 South, Range 33 East, N.M.P.M., Lea County, New Mexico, containing 320 acres, more or less.

Tomahawk "28" Fed. Com. No. 1
Top Hat Mesa Area

BEFORE EXAMINER STOGNER
Oil Conservation Division
Mitchell Exhibit No. 7
Case No. 10656

Mitchell Energy Corporation
1000 Independence Plaza
400 West Illinois
Midland, Texas 79701

Attention: Mr. Steven J. Smith
Senior Landman

Gentlemen:

In connection with title to the captioned leases, insofar as they cover the captioned lands and depths, we have examined the following:

(a) Federal Abstract Company Abstracts No. 44759, 45740 and 46192, which collectively cover the records in the Office of the Bureau of Land Management, United States Department of the Interior, in Santa Fe, New Mexico, pertaining to the captioned Lease NM 57280, insofar as it covers Tract 1 of the captioned lands (NW¼, NE¼SW¼ Section 28), among other lands, from the inception of records to November 2, 1992 at 9:00 A.M.;

(b) Federal Abstract Company Abstracts No. 44758 and 46187, which collectively cover the records in the Office of the Bureau of Land Management, United States Department of the Interior, in Santa Fe, New Mexico, pertaining to the captioned Lease NM 77074, covering Tract 2 of the captioned lands (NW¼SW¼ Section 28), from the inception of records to October 30, 1992 at 9:00 A.M.;

(c) Federal Abstract Company Abstract No. 46189, which covers the records in the Office of the Bureau of Land Management, United States Department of the Interior, in Santa Fe, New Mexico, pertaining to the captioned Lease NM 82927, insofar as it covers Tract 3 of the captioned lands (S½SW¼ Section 28), among other lands, from the inception of records to October 30, 1992 at 9:00 A.M.;

(d) Elliott & Waldron Title and Abstract Co., Inc. Abstract No. 92-663, which covers the public records of Lea County, New Mexico, pertaining to the captioned lands from the inception of records to November 6, 1992 at 7:00 A.M.;

(e) Copy of Operating Agreement dated September 1, 1989, between Mitchell Energy Corporation, as Operator, and Santa Fe Energy Operating Partners, L.P., as Non-Operator; and

(f) Copy of letter from Mitchell Energy Corporation to Santa Fe Energy Operating Partners, L.P., Maralo, Inc. and Neste Oil, Inc., dated October 27, 1992, transmitting a revised Exhibit "A" to said Operating Agreement.

From our examination of the foregoing, and based solely thereon, we now report the status of title to the captioned leases and lands, limited to the captioned depths as to Tract 1, for drilling purposes, as of the aforesaid dates of abstract certificates, as follows:

I. TITLE TO SURFACE:

United States of America ---------- All

II. TITLE TO OIL AND GAS, OR TITLE TO 12.5% ROYALTY, SUBJECT TO LEASES NM 57280, NM 77074 AND NM 82927:

United States of America ---------- All

III. RECORD TITLE TO LEASES:

Tract 1 (United States Oil and Gas Lease NM 57280, insofar as it covers NW¼, NE¼SW¼ Section 28):

Mitchell Energy Corporation ---------- All

Tract 2 (United States Oil and Gas Lease NM 77074, insofar as it covers NW¼SW¼ Section 28):

Mitchell Energy Corporation ---------- All

Tract 3 (United States Oil and Gas Lease NM 82927, insofar as it covers S½SW¼ Section 28):

Strata Production Company ---------- All

IV. TITLE TO OPERATING RIGHTS:

Tract 1 (80% operating rights under Lease NM 57280, insofar as it covers NW¼, NE¼SW¼ Section 28 as to depths below 3,500 feet subsurface):

Mitchell Energy Corporation ---------- 50%

Santa Fe Energy Operating
Partners, L.P. ---------- 25%
Maralo, Inc. ---------- 25%*

* The interest of Maralo, Inc. is subject to an additional 0.3% overriding royalty interest, owned by John Thoma.

Tract 2 (87.5% operating rights under Lease NM 77074, insofar as it covers NW¼SW¼ Section 28):

Mitchell Energy Corporation ---------- 50%
Santa Fe Energy Operating
Partners, L.P. ---------- 25%
Maralo, Inc. ---------- 25%*

* The interest of Maralo, Inc. is subject to an additional 0.328125% overriding royalty interest, owned by John Thoma.

Tract 3 (87.5% operating rights under Lease NM 82927, insofar as it covers S½SW¼ Section 28):

Strata Production Company ---------- All

V. **TITLE TO OVERRIDING ROYALTY INTERESTS:**

Tract 1 (Lease NM 57280, insofar as it covers NW¼, NE¼SW¼ Section 28, below 3,500 feet subsurface):

Barber Oil, Inc., a New
Mexico corporation ---------- 7.5% of 8/8
John Thoma, whose marital
status is unknown ---------- 0.3% of 8/8*

* The overriding royalty interest of John Thoma burdens only the working interest of Maralo, Inc.

Tract 2 (Lease NM 77074, insofar as it covers NW¼SW¼ Section 28):

John Thoma, whose marital
status is unknown ---------- 0.328125% of 8/8*

* This overriding royalty interest burdens only the working interest of Maralo, Inc.

Tract 3 (Lease NM 82927, insofar as it covers S½SW¼ Section 28):

None

VI. **OIL AND GAS LEASES - RENTALS - ASSIGNMENTS - OVERRIDING ROYALTY INTERESTS - COMMUNITIZATION - OPERATING AGREEMENT - PRODUCTION HISTORY:**

1. **Oil and Gas Leases**: The principal features of the captioned oil and gas leases are as follows:

Tract 1 (NW¼, NE¼SW¼ Section 28):

Lease No.:	NM 57280
Form:	3110-2 (January 1978) Non-competitive
Date:	April 1, 1984
Recording Data:	This lease is not recorded in Lea County, New Mexico, and

there is no necessity to record it.

Lessor: United States of America

Original Lessee: Barber Oil, Inc.

Lands Covered: Township 20 South, Range 33 East, N.M.P.M.

Section 5: Lots 1, 2, S½NE¼, SE¼
Section 8: NE¼
Section 9: N½, NE¼SE¼
Section 13: SE¼SE¼
Section 20: E½NE¼
Section 21: SE¼SW¼
Section 24: S½SE¼
Section 28: NW¼, NE¼SW¼

containing 1,281.34 acres, more or less, in Lea County, New Mexico. (It appears that said lands in Sections 13 and 24 will be segregated into a separate lease by assignment. See Exception to Title No. 3 hereinbelow.)

Term: Ten years and so long thereafter as oil or gas is produced in paying quantities.

Rentals: $1.00 per acre or fraction thereof, having increased to $2.00 per acre or fraction thereof for the second and subsequent lease years by virtue of notice to the lessee that a portion of the lands covered by the lease had been included in a known geologic structure. The federal abstracts for this lease reveal that rentals were paid up to April 1, 1988, prior to which date a well capable of producing oil or gas in paying quantities was completed on the lease, so that rentals are no longer payable.

Royalty: 12.5%

Other Features: This lease contains a rider adding Section 10 to the lease, providing, among other things, that development by unconventional extraction methods requires governmental approval; a potash stipulation under which wells may be drilled only with governmental approval, for the protection of potash deposits; a surface disturbance notice providing that the lessee must comply with requirements imposed for the protection of the surface; a rider containing

stipulations for the protection of endangered or threatened species and cultural resources; and a special stipulation regarding steep slopes, watershed damage, painting of facilities and protection of live water. See the attached schedule for other features of this lease form.

Tract 2 (NW¼SW¼ Section 28):

Lease No.:	NM 77074
Form:	3100-11 (June 1988) Competitive
Date:	October 1, 1988
Recording Data:	This lease is not recorded in Lea County, New Mexico, and there is no necessity to record it.
Lessor:	United States of America
Original Lessee:	Sun Exploration & Prod [sic]
Land Covered:	Township 20 South, Range 33 East, N.M.P.M. Section 4: Lots 1, 2, SE¼NE¼ Section 13: SW¼SW¼ Section 17: W½NE¼, NW¼SE¼ Section 20: NW¼NE¼ Section 28: NW¼SW¼ Section 34: NE¼, N½NW¼, NE¼SE¼ containing 640.52 acres, more or less.
Term:	Five years and so long thereafter as oil or gas is produced in paying quantities.
Rentals:	$1.50 per acre or fraction thereof during the primary term, $2.00 per acre or fraction thereof thereafter. The federal abstract covering this lease reveals that rentals have been paid up to at least October 1, 1992. See our discussion of rental payments hereinbelow.
Royalty:	12.5%
Other Features:	This lease contains an attached stipulation, for the protection of potash deposits, that no wells may be drilled except with the approval of the District Manager of the Bureau of Land Management. See the attached schedule for

	other features of this lease form.

Tract 3 (S½SW¼ Section 28):

Lease No.:	NM 82927
Form:	3100-11b (August 1988) Competitive
Date:	November 1, 1989
Recording Data:	This lease is not recorded in Lea County, New Mexico, and there is no necessity to record it.
Lessor:	United States of America
Original Lessee:	Strata Production Company
Lands Covered:	S½SW¼, SW¼SE¼ Section 28, Township 20 South, Range 33 East, N.M.P.M., Lea County, New Mexico, containing 120 acres, more or less.
Term:	Five years and so long thereafter as oil or gas is producing in paying quantities.
Rentals:	$1.50 per acre or fraction thereof during the primary term, $2.00 per acre or fraction thereof thereafter. The federal abstract for this lease reveals that rentals have been paid at least up to November 1, 1992. See our discussion of rental payments hereinbelow.
Royalty:	12.5%
Other Features:	This lease contains an attached stipulation, for the protection of potash deposits, that no wells may be drilled except with the approval of the District Manager of the Bureau of Land Management. See the attached schedule for other features of this lease form.

2. **Rental Payments**: As noted hereinabove, it appears that rental payments for Lease NM 57280, covering Tract 1 (NW¼, NE¼SW¼ Section 28) were made up until the establishment of production on the lease. With respect to the other two leases, rentals apparently have been paid at least up to their anniversary dates in 1992. We suspect that the 1992 rental payments actually were made on or before the anniversary dates, and that there has simply been a delay in posting the information to the computerized case abstract for each lease. Nothing in the abstracts, however, verifies that the 1992 rental payments were made so as to maintain the leases in effect.

NO. 93-115-C
L I M I T E D
C E R T I F I C A T E

STATE OF NEW MEXICO)
)SS
COUNTY OF LEA)

Elliott & Waldron Title & Abstract Company, Inc., a corporation, duly incorporated and doing business under and by virtue of the laws of the State of New Mexico, hereby certifies that the following is a list of all instruments filed listing Strata Production Company as assignor and any other party as assignee affecting title to the following described real estate located in Lea County, New Mexico, to-wit:

S/2 SW/4, SW/4 SE/4 Section 28, Township 20 South, Range 33 East, N.M.P.M., Lea County, New Mexico

NONE

This certificate covers time period beginning November 6, 1992 at 7:00 a.m. and ending January 19, 1992 at 7:00 a.m.

Although believing our interpretation of the records to be correct, The Elliott & Waldron Title & Abstract Company, Inc., a corporation cannot properly certify to ownership, therefore we limit this certificate accordingly. The liability of Elliott & Waldron Title & Abstract Company, Inc., a corporation is limited to a refund of the consideration paid for this Limited Certificate and runs only in favor of the person paying such consideration in the first instance. Issuer expressly disclaims any and all other liabilities, warranties or responsibilities hereunder to any and all other persons.

IN WITNESS WHEREOF, The Elliott & Waldron Title & Abstract Company, Inc., a Corporation, has caused this Limited Certificate to be signed at its office in the City of Lovington, Lea County, New Mexico, on this 19th day of January, 1993 at 7:00 a.m.

ELLIOTT & WALDRON TITLE & ABSTRACT CO., INC.

By: Kay Hardin
Kay Hardin, Assistant Secretary

Searcher: KH
No. 93-115-C

MEMORANDUM

January 19, 1993

To: Steve Smith
Land - Midland Office

From: Harriet Minton
Joint Venture Accounting - Woodlands Office

Subject: Overhead for Drilling and Producing Operations
Operating Agreement No. 1130
Various Lands in T-20-S, R-33-E
Lea County, New Mexico
Anasazi "9" Fed. No. 1 Well
Top Hat "26" Fed. No. 1 Well

I have reviewed our Operating Agreement No. 1130 in reference to the Accounting Procedure for Joint Operations. The overhead rates per well as defined under Article III are a fixed rate basis of $5,500 for drilling and $550 for producing. The date of the agreement is September 1, 1989 and allows for an annual adjustment as of the first day of April each year following the effective date of the agreement. The annual adjustments are as follows:

DRILLING RATE

Effective Dates	Percentage Increase	Effective Rate
9/89 - 3/90	0	$5500
4/90 - 3/91	8.1	5946
4/91 - 3/92	7.2	6374
4/92 - 3/93	1.5	6470

PRODUCING RATE

Effective Dates	Percentage Increase	Effective Rate
9/89 - 3/90	0	$550
4/90 - 3/91	8.1	595
4/91 - 3/92	7.2	638
4/92 - 3/93	1.5	647

Therefore, the current rates to be charged per Operating Agreement No. 1130 are $6,470 for drilling and $647 for producing wells.

File

November 20, 1992

CERTIFIED RETURN RECEIPT MAIL

BEFORE EXAMINER STOGNER
Oil Conservation Division
Mitchell Exhibit No. 10
Case No. 10656

Strata Production Company
648 Petroleum Building
Roswell, New Mexico 88201

Attention: Mr. Mark Murphy

RE: Well Proposal and Farmout Request
Tomahawk "28" Fed COM #1
1,980' FWL & 1,650' FNL Section 28
Township 20 South, Range 33 East, NMPM
Lea County, New Mexico
TOP HAT MESA AREA

Not transmitted to "partners".

Dear Mr. Murphy:

As previously discussed in our telephone conversations on October 29th and November 18th, Mitchell Energy Corporation is preparing to drill a 14,300 foot Morrow test at a location 1,980' FWL and 1,650' FNL of Section 28, T-20-S, R-33-E, Lea County, New Mexico. We anticipate a 320 acre proration unit for this well covering the W/2 of said Section 28 should the well be successfully completed in the Morrow which would include 80.00 acres of your 120.00 acre lease which covers the S/2 SW/4 and SW/4 SE/4 of said Section 28.

Please be advised that we have reviewed your proposal to sell the deep rights only under your lease (below the base of the Wolfcamp at approximately 11,700 feet) for $300.00 per net acre delivering a 78% net revenue and have determined it to be unacceptable. As a counterproposal, Mitchell respectfully requests a farmout of Strata Production Company's interest in Federal Oil and Gas Lease NM-82927 covering the S/2 SW/4 and SW/4 SE/4 of Section 28, T-20-S, R-33-E, Lea County, New Mexico, based upon the following general terms which are subject to final Mitchell Management approval:

1. Within 120 days of execution of a formal Farmout Contract, Mitchell would agree to commence drilling operations at the above described location with the intent to drill said well to a depth of 14,300' or a depth sufficient to adequately test the Morrow Formation, whichever is the lesser depth.

2. Upon completion of the test well as a commercial producer, Mitchell would earn 100% of Strata's interest within the proration unit assigned to the well subject to Strata's reservation of a proportionately reducible overriding royalty interest equal to the difference by which 22% exceeds existing lease burdens. At payout of the test well, Strata would have the option, but not the obligation, to convert all of its retained overriding royalty interest to a proportionately reducible 25% working interest.

3. Mitchell would also have the right to earn the balance of the Farmout Acreage not committed to the proration unit for the test well under the same terms described in item 2 above through continuous development with no more than 120 days between completion of one well and commencement of the next.

4. If the test well is completed and assigned a proration unit which does not include Strata's lease, Mitchell would have the option, but not the obligation, to drill an option test well on Strata's lease, or lands pooled therewith, within 90 days of completion of the initial test well. Upon completion of the option test well as a commercial producer, Mitchell would earn Strata's interest in the same manner as provided in items 2 and 3 above.

5. All rights earned would be limited to 100 feet below total depth drilled in each earning well.

In the alternative, should Strata elect not to farmout to Mitchell based upon the aforementioned terms, Mitchell would propose that Strata participate in the captioned well for a 25% working interest. In connection therewith, enclosed for your review and execution are two (2) copies each of the AFE Cost Estimates for Dry Hole Costs and Completed Well Costs for this well.

Upon your review and consideration of this proposal, please indicate your election to either farmout or participate by executing and returning to the undersigned one (1) copy of this letter. Should you elect to participate, please also execute and return one (1) copy each of the AFE Cost Estimates along with your geological information requirements and the names of personnel to receive reports. Should you elect to farmout, upon receipt of your election, we will prepare and send you a more formal Farmout Contract for your execution.

Thank you for your consideration and cooperation.

Sincerely,

MITCHELL ENERGY CORPORATION

Steven J. Smith
Senior Landman

SJS/jm

Enclosures

☐ We elect to farmout based upon the aforementioned terms.

☐ We elect to participate in the Tomahawk "28" Fed COM #1

STRATA PRODUCTION COMPANY

BY:_____

TITLE:_____

DATE:_____

Type Project (check 1 only)

☒ Exploratory ☐ Injection ☐ Water Supply

☐ Development ☐ Disposal ☐ Depth 14,300'

Form B-1 ☐ Add ☐ Change ☐ Delete

AFE Number _____

Property/Well Name Tomahawk "28" Fed. #1

Project Description Drill

Net Working Interest 0.

Group Code _____

Location Code _____

Department Number 712

County Lea St. NM

Operator MEC

Estimated Date Project Will Be Completed _____ (Mo./Yr.)

	DRILLING COSTS	Amount
	INTANGIBLE	
10	Dry Hole Abandonment	
11	Rig Mobilization and Demobilization	
12	Power and Fuel	
13	Water	$ 35,000
14	Solids Control Equipment Rental	5,000
*15	Directional Equipment and Services	
16	Fishing Tools and Services	
17	Subsurface Casing Equipment	7,000
18	Contract Labor and Services (welding,inspect,csg crews, BOP tsts)	25,000
19	Supervision - Company and/or Contract (40 days @ $500/day)	20,000
50	Road and Site Preparation	30,000
51	Footage Contract Fee (14,300' @ $21.50/ft)	310,000
52	Daywork Contract Fee (5 days @ $5000/day)	25,000
53	Mud and Chemicals (mud-up @ 9400')	75,000
54	Bits and Reamers	
55	Drilling Tool and Equipment Rental (PVT, tank,WB,trailer,chk, trash)	25,000
56	Cement and Cement Services	50,000
*57	Open Hole Logging-Testing (incl 35 days ML, 2 log runs)	80,000
*58	Drill Stem Testing (1 DST)	3,000
59	Coring and Analysis (SW)	5,000
60	Transportation	14,000
61	Air/Marine Transportation	
63	Overhead	10,000
64	Insurance	
65	Company Labor and Services	
*66	Prospect Generation	20,000
67	Miscellaneous Services and Contingency	50,000
	TOTAL INTANGIBLE COSTS	$789,000
	TANGIBLE	
21	Casing-Drive Pipe & Conductor 40' - 30" cond	$ 4,000
40	Casing - Surface 500'-20" 94# K-S @ $51.50/ft	25,800
41	Casing - Intermediate 4750'-13-3/8" 68# K-S @ $23.37/ft	110,000
42	Casinghead Equipment (Including Valves) (3000 psi)	4,500
43	Casing Spool (Including Valves) (5000 psi)	18,000
44	Miscellaneous Equipment	
	TOTAL TANGIBLE COSTS	$162,300
	TOTAL DRILLING (DRY HOLE) COSTS	$951,300

* Invalid for disposal and water supply wells.

MEDC 252-02

Rev. 4/29/85

Prepared By: G. W. Tullos

Date Prepared: 8/27/92

STRATA PRODUCTION COMPANY

BY: _____

TITLE: _____

DATE: _____

☐ Exploratory ☐ Recompletion (Zone Change Only) ☐ Disposal

☒ Development ☐ Plug and Abandon (Previously Producing Well) Depth 13,800'

☐ Injection ☐ Water Supply

Form 8-2 ☐ Add ☐ Change ☐ Delete

AFE Number _____

Property/Well Name Anasazi "9" Fed Com #2

Project Description Complete

Net Working Interest _____

Group Code _____

Location Code _____

Department Number 730

County Lea St. NM

Operator MEC

Estimated Date Project Will Be Completed _____ (Mo./Yr.)

	COMPLETION COSTS	Amount
	INTANGIBLE	
22	Overhead	$ 2,000
23	Company Labor and Services	
24	Contract Labor and Services	40,000
25	Air/Marine Transportation	
26	Other Transportation	15,000
27	Plugging and Abandonment	
28	Rig Mobilization and Demobilization	
29	Supervision - Company and/ or Contract	3,000
30	Site Preparation and Clean-up	1,000
31	Subsurface Casing Equipment	5,000
32	Squeeze Cement and Service	
33	Completion Fluids	4,000
34	Pump Truck Services	1,000
35	Rental Tools	10,000
36	Bits and Reamers	
37	Insurance	
38	Wireline Services	4,000
39	Fishing Tools and Services	
*53	Tertiary Injectants	
68	Fencing	
83	Daywork Contract Fee	10,000
84	Cement and Cement Services - Primary	30,000
85	Acidizing and Fracturing	20,000
*86	Cased Hole Logging and Perforating	32,000
94	Miscellaneous Services and Contingency	5,000
	TOTAL INTANGIBLE COSTS	$182,000
	TANGIBLE	
69	Tubinghead Equipment (Including Valves)	14,000
70	Casing-Production and/or Liner 13,800' 5½" 17# S-95 & N-80	92,000
71	Tubing 13,600' 2 3/8" 4.7# N-80	39,500
72	Packers and Subsurface Equipment	5,000
73	Production Tree (Including Valves)	22,000
74	Storage Tanks 2-210 Bbl STL + 1-210 Bbl F.G.	10,000
75	Separating Equipment 250 MBTU 16"x8' Stack Pak & 30"x10' 3P Sep.	15,000
76	Treating Equipment	
77	Artificial Lift Equipment	
78	Line Pipe	5,000
79	Valves and Fittings Beyond Wellhead	6,000
80	Miscellaneous Equipment	4,500
81	Platform and Structures	
82	Metering Equipment	2,000
87	Pumps	
90	Electrical Equipment	
91	Instrumentation Equipment	
96	Dehydrators and Dryers	
	TOTAL TANGIBLE COSTS	$215,000
	TOTAL COMPLETION COSTS	$397,000

* Invalid for disposal and water supply wells.

MEDC 252-03
Rev. 4/29/85

Prepared By: James Blount JSB
Date Prepared: 9-18-92

STRATA PRODUCTION COMPANY
BY: _____
TITLE: _____
DATE: _____

Sent to Strata Prod.	
Street and No. 648 Petrol. Bldg.	
P.O., State and ZIP Code Roswell, N.M. 88201	
Postage	$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt showing to whom and Date Delivered	
Return Receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	$
Postmark or Date 11/20/92	

PS Form 3800, June 1985 ★U.S.G.P.O. 1989-234-515

● SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.
Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.
1. [X] Show to whom delivered, date, and addressee's address. (Extra charge) 2. ☐ Restricted Delivery (Extra charge)

3. Article Addressed to:
Strata Production Company
648 Petroleum Building
Roswell, New Mexico 88201
ATTN: MR. MARK MURPHY

4. Article Number
P 355 201 973

Type of Service:
☐ Registered ☐ Insured
[X] Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature — Addressee
X

6. Signature — Agent
X

7. Date of Delivery
11-23-92

8. Addressee's Address (ONLY if requested and fee paid)
700 Pet. Bldg
Roswell, NM 88201

PS Form 3811, March 1989 U.S.G.P.O. 1989-238-815 DOMESTIC RETURN RECEIPT

DEC 11 1992

POST OFFICE DRAWER 1030
ROSWELL, NM 88202-1030

STRATA PRODUCTION COMPANY

TELEPHONE (505) 622-1127
FACSIMILE (505) 623-3533

309 WEST FIRST STREET, ROSWELL PETROLEUM BUILDING, SUITE 700
ROSWELL, NEW MEXICO 88201

BEFORE EXAMINER STOGNER
Oil Conservation Division
Mitchell Exhibit No. 11
Case No. 10656

December 9, 1992

VIA TELEFAX (915-682-6439)HARD COPY BY CERTIFIED MAIL

Mitchell Energy Corporation
1000 Independence Plaza
400 W. Illinois
Midland, Texas 79701

Attention: Steven J. Smith, Senior Landman

Re: Well Proposal and Farmout Request per Mitchell correspondence dated November 20, 1992

Dear Mr. Smith:

We have reviewed Mitchell's proposal contained in the above-referenced correspondence and have determined it to be unacceptable. As a point of clarification, I proposed to you that Strata would favorably consider selling the deep rights under the S/2 SW/4 and SW/4 SE/4 of Section 28, T-20-S, R-33-E, Lea County, New Mexico subject to the terms set forth in the above referenced correspondence with the exception that the deep rights would include from the top (not the base) of the Wolfcamp to 100' below depth drilled. In the alternative, we would propose the following:

1. The purchase price is Thirty-six thousand dollars (120 acres x $300/acre).

2. Strata will deliver a 75% Net Revenue Interest with the retained overriding royalty "pooled" under the W/2 of Section 28. In other words, Strata would, regardless of the proration unit, retain a 3.125% ORRI (12.5% x 25%).

3. The rights to be delivered would be from surface to the base of the Pennsylvania Formation.

In an effort to accommodate Mitchell, I offer as an alternative to the proposal set forth above the following general farmout terms which are subject to final approval by Strata and

it's partners:

1. The acreage to be included in the farmout by Strata et al is the S/2 SW/4 and SW/4 SE/4 of Section 28 limited in depth from the surface to the base of the Pennsylvania Formation.

2. Within 120 days of execution of a formal Farmout Contract, Mitchell would agree to commence drilling operations at a legal location in the SW/4 NW/4 (Unit F) of Section 28, T-20-S, R-33-E, NMPM Lea County, New Mexico with the intent to drill said well to a depth of 14,300' or a depth sufficient to adequately test the Morrow Formation, whichever is the lesser depth.

3. Upon completion of the test well as a commercial producer, Mitchell would earn 100% of Strata's interest within the proration unit assigned to the well subject to Strata's reservation of a proportionately reducible overriding royalty interest equal to the difference between existing lease burdens and 25%. In other words, Strata et al would deliver prior to payout of the test well a 75% Net Revenue Interest. At payout of the test well, Strata would have the option, but not the obligation, to convert all of its retained overriding royalty interest to a proportionately reducible 25% working interest.

4. Mitchell would also have the right to earn the balance of the Farmout Acreage not committed to the proration unit for the test well under the same terms described in item 3 above through continuous development with no more than 120 days between the release of the drilling rig from one well and commencement of the next.

5. If the test well is completed and assigned a proration unit which does not include Strata's lease, Mitchell would have the option, but not the obligation, to drill an option test well on Strata's lease, or lands pooled therewith, within 90 days of release of the drilling rig from the initial test well. Upon completion of the option test well as a commercial producer, Mitchell would earn Strata's interest in the same manner as provided in items 3 and 4 above.

6. The rights earned would be from the surface to the base of the Pennsylvania Formation or 100 feet below total depth drilled in each earning well.

I would appreciate your response no later than Friday, December 18, 1992. Thank you for your consideration and cooperation.

Very truly yours,

STRATA PRODUCTION COMPANY

Mark B. Murphy
President

MBM/clk

POST OFFICE DRAWER 1030
ROSWELL, NM 88202-1030

STRATA PRODUCTION COMPANY

200 WEST FIRST STREET, ROSWELL PETROLEUM BUILDING, SUITE 700
ROSWELL, NEW MEXICO 88201

TELEPHONE (505) 622-1127
FACSIMILE (505) 623-3533

JAN 12 1993

December 30, 1992

BEFORE EXAMINER STOGNER
Oil Conservation Division
Mitchell Exhibit No. 12
Case No. 10656

Via Telefax (915) 682-6439

Mitchell Energy Corporation
1000 Independence Plaza
400 W. Illinois
Midland, Texas 79701

Attention: Steven J. Smith, Senior Landman

Re: Letter Agreement Concerning Purchase and Sale of United States Oil and Gas Lease NM 82927 which covers the following lands in Lea County, New Mexico

Township 20 South, Range 33 East, N.M.P.M.
Section 28: S 1/2 SW 1/4, SW 1/4 SE 1/4
being 120 acres more or less

North Gavilon Prospect

Dear Gentlemen:

This Letter Agreement ("Agreement") sets forth our Agreement regarding Mitchell Energy Corporation ("Mitchell") obligation to purchase and Strata Production Company's ("Strata") obligation to sell the above-described lease and lands ("Subject Lease") on the following terms and conditions:

1. Assignment: Strata shall at Closing execute and deliver an assignment of 100% of the record title in the Subject Lease by execution and delivery of quadruplicate originals of the Assignment of Record Title Interest ("Strata Assignment") attached hereto as Exhibit A. The Strata Assignment includes by an exhibit thereto with various provisions (including specifically a reassignment provision) which Mitchell hereby approves and acknowledges.

2. Reserved Overriding Royalty Interest: The Strata Assignment reserves unto Strata an overriding royalty interest ("ORRI") equal to (1) 1.875% 8/8ths of the oil

and/or gas produced, saved and marketed from the Subject Lease insofar as it covers the S 1/2 SW 1/4, and (2) .9375% of 8/8ths of the oil and/or gas produced, saved and marketed from the Subject Lease insofar as it covers the SW 1/4 SE 1/4.

3. Payment of Purchase Price: Mitchell hereby agrees unconditionally to pay unto Strata at Closing the $[illegible] in consideration of the execution and delivery of the above-described assignment. In the event Mitchell fails to pay this amount when due, Strata shall be entitled to bring a suit for collection and shall be entitled to recover all reasonable costs including specifically attorney's fees, plus 15% interest on the unpaid amount until paid.

4. Additional Consideration: As additional consideration for the Strata Assignment, Mitchell hereby agrees to assign unto Strata (1) an overriding royalty interest equal to 1.875% of 8/8ths of the oil and/or gas produced, saved and marketed from the lease or leases covering the N 1/2 SW 1/4 and NW 1/4 of Section 28, and (2) an overriding royalty interest equal to .9375% of 8/8ths of the oil and/or gas produced, saved and marketed from the lease or leases covering the SE 1/4 SE 1/4, N 1/2 SE 1/4 and NE 1/4 of Section 28. This Assignment ("Mitchell Assignment") shall be on an appropriate form or forms for filing with the BLM and recording in the Lea County Records. The Mitchell Assignment shall be made without warranty, express or implied, except by, through or under Mitchell. The Mitchell Assignment shall contain the following language concerning the calculation and payment of overriding royalty interest:

The overriding royalty interest hereby assigned shall be computed and paid at the same time and in the same manner as royalties payable to the lessor under the terms of the lease are computed and paid, and Strata shall be responsible only for its proportionate part of all taxes and assessments levied upon or against or measured by the production of oil and/or gas therefrom. It is expressly agreed and understood that Strata and its successors-in-interest and assigns shall have the right to receive overriding royalty payments directly from the oil and/or gas purchasers.

Mitchell represents and warrants unto Strata that it owns or controls a sufficient interest in the above-described lands to make the Mitchell Assignment.

5. Title: By execution and delivery of this Agreement in a timely manner, Mitchell is deemed to have approved title

as it now stands. Mitchell agrees and acknowledges that it is prepared to close on the basis of such title. Mitchell shall be excused from paying the purchase price at Closing only if Strata takes some affirmative action which adversely affects title to the Subject Lease.

6. Closing: The Closing shall take place at 10:00 a.m. on January 8, 1993 at the offices of Strata at 100 North Pennsylvania, Roswell, New Mexico. The time and place of Closing may be changed only by the mutual agreement of the parties hereto.

7. Undisclosed Owners: There are certain undisclosed owners of undivided interest in the Subject Lease whose interest are not reflected in the county or Bureau of Land Management records. Strata hereby represents and warrants unto Mitchell that it has the right, power and authority to sell 100% of the Subject Lease for the benefit of such undisclosed owners.

8. Authority: The undersigned signatories hereby represent and warrant unto each other that they have actual, express authority to execute this Agreement and bind their respective companies to perform under the terms hereof. At the same time Mitchell delivers to Strata an executed original of this Agreement, it will provide Strata with a copy of the Power of Attorney of the undersigned signatory.

9. Execution in Counterparts: This Agreement may be executed in any number of counterparts, and each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute for all purposes one Agreement.

10. Geologic and Technical Information: Mitchell agrees to provide to Strata, in a timely manner, all drilling and geologic information for any wells drilled on the Subject Lease, or drilled on a proration unit which contains all or any portion of the Subject lease including well logs, mudlogs, core data, drilling time and related drilling, completion and production information.

11. Binding Effect: The terms, limitations and conditions of this Agreement shall be covenants running with the ownership of the Subject Lease and, as such, shall be binding upon and shall insure to the benefit of the parties hereto, their heirs, personal representatives, successors and assigns.

If the terms of this Agreement correctly set forth Mitchell's understanding, please execute both originals of this Agreement and return one executed original to Strata.

Very truly yours,

STRATA PRODUCTION COMPANY

Mark B. Murphy
President

MBM/clk

Agreed to and accepted by _____
of Mitchell Energy Corporation, on behalf of said company.

_____ By: _____
Date

Title: _____

EXHIBIT "A" that certain Letter Agreement ted December 30, 1992.

Form 3000-3
June 1988)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

FORM APPROVED
OMB NO. 1004-0034
Expires: August 31, 1989

ASSIGNMENT OF RECORD TITLE INTEREST IN A LEASE FOR OIL AND GAS OR GEOTHERMAL RESOURCES

Lease Serial No.
NM-82927

Lease Effective Date
(Anniversary Date)

New Serial No.

Mineral Leasing Act of 1920 (30 U.S.C. 181 et seq.)
Act for Acquired Lands of 1947 (30 U.S.C. 351-359)
Geothermal Steam Act of 1970 (30 U.S.C. 1001-1025)
Department of the Interior Appropriations Act, Fiscal Year 1981 (42 U.S.C. 6508)

Type or print plainly in ink and sign in ink.

PART A: ASSIGNMENT

1. Assignee* Mitchell Energy Corporation
Street 1000 Independence Plaza
City, State, ZIP Code 400 W. Illinois
Midland, Texas 79701

*If more than one assignee, check here ☐ and list the name(s) and address(es) of all additional assignees on the reverse of this form or on a separate attached sheet of paper.

This record title assignment is for: *(Check one)* ☒ Oil and Gas Lease, or ☐ Geothermal Lease

Interest conveyed: *(Check one or both, as appropriate)* ☒ Record Title, ☐ Overriding Royalty, payment out of production or other similar interests or payments

2. This assignment conveys the following interest:

Land Description	Percent of Interest			Percent of Overriding Royalty or Similar Interests	
Additional space on reverse, if needed. Do not submit documents or agreements other than this form; such documents or agreements shall only be referenced herein.	Owned	Conveyed	Retained	Reserved	Previously reserved or conveyed
a	b	c	d	e	f
The following lands in Lea County, NM: Township 20 South, Range 33 East, N.M.P.M. Section 28: S½SW¼, SW¼SE¼ Containing 120 acres, more or less. The lease and lands covered thereby are hereinafter referred to as the "Subject Lease." This Assignment of Record Title Interest is subject to the terms, conditions and limitations contained in Exhibit "A" hereto, and a Letter Agreement dated December 30, 1992 between the parties hereto. *An overriding royalty interest equal to 1.875% of 8/8ths is reserved under the S½SW¼. **An overriding royalty interest equal to .9375% of 8/8ths is reserved under the SW¼SE¼.	100%	100%	0	1.875%* .9375%**	0

FOR BLM USE ONLY—DO NOT WRITE BELOW THIS LINE

UNITED STATES OF AMERICA

This assignment is approved solely for administrative purposes. Approval does not warrant that either party to this assignment holds legal or equitable title to this lease.

☐ Assignment approved for above described lands;

☐ Assignment approved for attached land description

Assignment approved effective _____

☐ Assignment approved for land description indicated on reverse of this form.

Part A (Continued): ADDITIONAL SPACE for Names and addresses of additional assignees in Item No. 1, if needed, or for Land Description in Item No. 2, if needed.

STATE OF NEW MEXICO)
: ss.
COUNTY OF CHAVES)

The foregoing instrument was acknowledged before me this ____ day of _____, 1993, by Mark B. Murphy, President of Strata Production Company, a New Mexico corporation, on behalf of said corporation.

_____
Notary Public

My Commission Expires:

_____

PART B: CERTIFICATION AND REQUEST FOR APPROVAL

1. The assignor certifies as owner of an interest in the above designated lease that he/she hereby assigns to the above assignee(s) the rights specified above.
2. Assignee certifies as follows: (a) Assignee is a citizen of the United States; an association of such citizens; a municipality; or a corporation organized under the laws of the United States or of any State or territory thereof. For the assignment of NPR-A leases, assignee is a citizen, national, or resident alien of the United States or association of such citizens, nationals, resident aliens or private, public or municipal corporations. (b) Assignee is not considered a minor under the laws of the State in which the lands covered by this assignment are located; (c) Assignee's chargeable interests, direct and indirect, in either public domain or acquired lands, do not exceed 200,000 acres in oil and gas options or 246,080 in oil and gas leases in the same State, or 300,000 acres in leases and 200,000 acres in options in each leasing District in Alaska, if this is an oil and gas lease issued in accordance with the Mineral Leasing Act of 1920 or 51,200 acres in any one State if this is a geothermal lease; (d) All parties holding an interest in the assignment are otherwise in compliance with the regulations (43 CFR Group 3100 or 3200) and the authorizing Acts; (e) Assignee is in compliance with reclamation requirements for all Federal oil and gas lease holdings as required by sec. 17(g) of the Mineral Leasing Act; and (f) Assignee is not in violation of sec. 41 of the Mineral Leasing Act.
3. Assignee's signature to this assignment constitutes acceptance of all applicable terms, conditions, stipulations and restrictions pertaining to the lease described herein.

For geothermal assignments, an overriding royalty may not be less than one-fourth (¼) of one percent of the value of output, nor greater than 50 percent of the rate of royalty due to the United States when this assignment is added to all previously created overriding royalties (43 CFR 3241).

I certify that the statements made herein by me are true, complete, and correct to the best of my knowledge and belief and are made in good faith.

Executed this _____ day of _____, 19 _____

Name of Assignor as shown on current lease Strata Production Company
Please type or print

Assignor _____
(Signature)
or By: Mark B. Murphy President
Attorney-in-fact _____
(Signature)

P. O. Box 1030
(Assignor's Address)

Roswell, NM 88202-1030
(City) (State) (Zip Code)

Executed this _____ day of _____, 19

Mitchell Energy Corporation

Assignee _____
(Signature)
or
Attorney-in-fact _____
(Signature)

1000 Independence Plaza
400 W. Illinois
Midland, Texas 79701

Title 18 U.S.C. Sec. 1001 makes it a crime for any person knowingly and willfully to make to any Department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

☆ U.S. GOVERNMENT PRINTING OFFICE: 1988—673-016/95011

THIS EXHIBIT A IS ATTACHED TO THE ASSIGNMENT OF RECORD TITLE INTEREST BY STRATA PRODUCTION COMPANY TO MITCHELL ENERGY CORPORATION.

EXHIBIT A

ADDITIONAL TERMS AND PROVISIONS

---

1. Reassignment:

a. If Assignee ("Mitchell") fails to commence actual drilling operations on the Subject Lease or on lands communitized or unitized therewith on or before 120 days before the end of its primary term then Mitchell shall reassign to Assignor ("Strata") all of Mitchell's right, title and interest in the Subject Lease, without further encumbrance or limitation. The reassignment shall be on a form appropriate for filing in the county and with the BLM; it shall be on a form which is to the reasonable satisfaction of both parties.

b. If Mitchell fails or refuses to make the reassignment in a timely manner, then it shall be obligated to pay to Strata liquidated damages equal to $18,000.00 upon demand by Strata.

c. If Strata is required to bring legal action to enforce this reassignment provision of payment of liquidated damages, then it shall be entitled to recover all reasonable costs including its attorneys' fees.

2. Rentals:

Mitchell will use its best efforts to pay all rentals and/or minimum royalties that may be necessary to maintain the subject lease in force and effect in the absence of production. Mitchell has a current inter-company system set up to pay its rental and/or minimum royalty obligations. If due to a failure in our system, or human error without malicious intent, a rental and/or minimum royalty payment required to maintain the subject lease in force and effect is not properly paid, Mitchell shall not be liable to Strata for this non-payment. In the event a rental and/or minimum royalty payment is not paid by Mitchell due to malicious intent, Mitchell will be liable to Strata for the liquidated damage amount described in 1.b.

3. Overriding Royalty Interest:

Strata hereby excepts and reserves an overriding royalty interest equal to (1) 1.825% of 8/8ths of the oil and/or gas produced, saved and marketed from the Subject Lease insofar as it covers the S 1/2 SW 1/4, and (2) .9375% of 8/8ths of the oil and/or gas produced, saved and marketed from the Subject Lease insofar as it covers the SW 1/4 SE 1/4. This overriding royalty interest shall be computed and paid at the same time and in the same manner as royalties payable to the lessor under the terms of the Subject Lease are computed

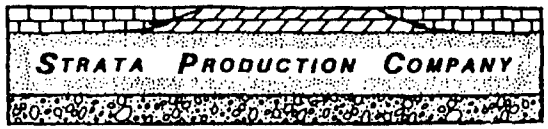
and paid, and Strata shall be responsible for its proportionate part of all taxes and assessments levied upon or against or measured by the production of oil and/or gas therefrom. The overriding royalty interest shall be the total obligation and shall include all existing overriding obligations payable out of production from the Subject Lease over and above the royalty payable to lessor, and shall be proportionately reduced if this assignment grants to Mitchell less than the entire leasehold estate in the Subject Lease. It is expressly agreed and understood that Strata and its successors in interest and assigns shall have the right to receive overriding royalty payments directly from the oil and/or gas purchasers.

4. Binding Effect:

The terms, limitations and conditions for this Assignment shall be covenants running with the ownership of the Subject Lease covered by this Assignment and, as such, shall be binding upon and shall inure to the benefit of the parties hereto, their heirs, personal representatives, successors, and assigns.

5. Warranty:

This Assignment is made without warranty, express or implied, except by, through or under Strata.



POST OFFICE DRAWER 1030
ROSWELL, NEW MEXICO 88202-1030

TO: Mitchell Energy
1000 Independence Plaza
400 West Illinois
Midland, Texas 79701
Attn: Mr. Steven J. Smith

FIRST CLASS MAIL

January 5, 1993

COPY VIA FAX
ORIGINAL VIA CERTIFIED MAIL

BEFORE EXAMINER STOGNER
Oil Conservation Division
Mitchell Exhibit No. 13
Case No. 10656

Strata Production Company
200 West First Street
Suite 700
Roswell, New Mexico 88201

Attention: Mr. Mark B. Murphy
President

RE: Purchase of Non-Producing Leasehold
Federal Oil and Gas Lease NM-82927
Township 20 South, Range 33 East, NMPM
Section 28: S/2 SW/4 and SW/4 SE/4
containing 120.00 acres, more or less
Lea County, New Mexico
TOP HAT MESA PROSPECT

Dear Mr. Murphy:

This letter shall serve to confirm the agreement reached on or about December 23, 1992, between Mitchell Energy Corporation ("Mitchell") and Strata Production Company ("Strata") regarding the sale by Strata of all of its 100% Record Title Interest and Operating Rights in the captioned lease and lands to Mitchell. The general terms agreed to are as follows:

1) Strata agrees to assign to Mitchell 100% of the Record Title to the captioned lease and lands as to all depths. Said assignment shall be on the appropriate Federal Form and shall be in quadruplicate. Therein Strata shall reserve unto itself an overriding royalty equal to the difference by which 20% exceeds existing lease burdens thereby delivering to Mitchell an 80% net revenue assignment.

2) As consideration for the assignment, Mitchell agrees to pay Strata a total of $18,000.00 being $150.00 per net mineral acre assigned.

MITCHELL ENERGY CORPORATION 1000 INDEPENDENCE PLAZA
400 W. ILLINOIS, MIDLAND, TEXAS 79701 915/682-5396
A subsidiary of Mitchell Energy & Development Corp.

If the terms stated above correctly set forth the agreement between Strata and Mitchell concerning the sale by Strata of the captioned lease and lands to Mitchell, please execute and return to the undersigned one copy of this letter.

Sincerely,

MITCHELL ENERGY CORPORATION

Steven J. Smith
Senior Landman

SJS/jm

Enclosures

ACCEPTED AND AGREED TO THIS ____ DAY OF _____, 1993.

STRATA PRODUCTION COMPANY

_____

MARK B. MURPHY
PRESIDENT

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.
Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.
1. ☒ Show to whom delivered, date, and addressee's address. *(Extra charge)* 2. ☐ Restricted Delivery *(Extra charge)*

3. Article Addressed to:

Strata Production Company
200 West First Street
Suite 700
Roswell, New Mexico 88201
ATTN: MR. MARK B. MURPHY
PRESIDENT

4. Article Number
P 355 201 997

Type of Service:
☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature — Addressee
X

6. Signature — Agent
X Jan Stamps

7. Date of Delivery
1-6-93

8. Addressee's Address *(ONLY if requested and fee paid)*
200 W 1st #700
Roswell NM
88201

PS Form 3811, Apr. 1989 U.S.G.P.O. 1989-234-815 DOMESTIC RETURN RECEIPT

P 355 201 997

RECEIPT FOR CERTIFIED MAIL
NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL
(See Reverse)

Sent to Strata Prod. Co.	
Street and No. 200 W 1st St. Suite 700	
P.O., State and ZIP Code Roswell, N. M. 88201	
Postage	$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt showing to whom and Date Delivered	
Return Receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	$
Postmark or Date mailed 1/5/93	

PS Form 3800, June 1985 U.S.G.P.O. 1989-234-555

POST OFFICE DRAWER 1030
ROSWELL, NM 88202-1030

STRATA PRODUCTION COMPANY

TELEPHONE (505) 622-1127
FACSIMILE (505) 623-3533

200 WEST FIRST STREET, ROSWELL PETROLEUM BUILDING, SUITE 1000
ROSWELL, NEW MEXICO 88201

January 6, 1993

Via Telefax (915) 682-6439/Hard Copy by Certified Mail.

Mitchell Energy Corporation
1000 Independence Plaza
400 West Illinois
Midland, Texas 79701

Re: Strata's North Gavilon Prospect
Mitchell's Top Hat Mesa Prospect
Lea County, New Mexico

Dear Steve:

I have informed my partners that Mitchell has refused to execute Strata's Letter Agreement dated December 30, 1992. We have also reviewed and discussed Mitchell's counter proposal dated January 5, 1993. Unfortunately, it appears that we will be unable to resolve the sale, farmout or participation by Strata prior to the OCD hearing scheduled for Thursday January 7, 1993. In accordance with our discussion yesterday, you advised me that Mitchell will request that the OCD force pooling hearing be rescheduled for the next hearing date which you stated that you believed will be on or about January 21, 1993. Please ask your counsel (Tom Kellahin) to forward a copy of said request to me by facsimile (505) 623-3533.

It is our desire to continue discussions with Mitchell in order to facilitate the drilling of the Tomahawk "28" Federal Com #1. As we have discussed, Strata may wish to join in the drilling of said well. You have provided an Authority for Expenditure Cost Estimate. However, it is my understanding that the proposed location that Mitchell now intends to drill has been changed from your original proposal. It is also my understanding that there is or may be a challenge by offset operators and owners to your currently proposed location. We wish to be apprised of any opposition to Mitchell's proposed location as this is pertinent to our decision. Please advise me of the location that Mitchell now intends to drill.

In addition, in order for Strata to determine if we wish to participate we will need to review and possibly discuss Mitchell's proposed Joint Operating Agreement. Please provide me a copy of said JOA at you earliest convenience.

Very truly yours,

STRATA PRODUCTION COMPANY

Mark B. Murphy
President

MBM/mo

cc: Sealy Cavin, Jr., Esq.
Stratton and Cavin
320 Gold Avenue S.W., Suite 918
Albuquerque, New Mexico

STRATA PRODUCTION COMPANY

POST OFFICE DRAWER 1030
ROSWELL, NEW MEXICO 88202-1030

Fold at line over top of envelope to the right of the return address

CERTIFIED

P 144 799 138

MAIL

U.S. POSTAGE
$2.20

Steven J. Smith
Mitchell Energy Corporation
1000 Independence Plaza
400 West Illinois
Midland, Texas 79701

RETURN RECEIPT REQUESTED

Attle

January 7, 1993

COPY VIA FAX
ORIGINAL VIA CERTIFIED MAIL

BEFORE EXAMINER STOGNER
Oil Conservation Division
Exhibit No. 15
Case No. 10622

Strata Production Company
200 West First Street
Suite 700
Roswell, New Mexico 88201

Attention: Mr. Mark B. Murphy
President

RE: Tomahawk "28" Fed. COM #1 Well
1,980' FWL & 1,650' FNL Section 28
Township 20 South, Range 33 East, NMPM
Lea County, New Mexico
TOP HAT MESA PROSPECT

Dear Mr. Murphy:

In response to your letter dated January 6, 1993, please be advised that the location for the captioned well remains as proposed to Strata by letter dated November 20, 1992. While said location is unorthodox, it is so only because of archeological and topographical reasons. In fact, if compulsory pooling were not an issue, this location would likely be approved administratively by the NMOCD. To this date, we are unaware of any protests and expect none. If you become aware of any opposition to Mitchell's location, we wish to be apprised of such opposition.

Pursuant to your request, enclosed is a copy of the Joint Operating Agreement Mitchell proposes to govern Strata's participation in the captioned well. The enclosed Joint Operating Agreement is identical to the Joint Operating Agreement in place between the parties who have already agreed to participate in this well with the exception of the following:

1) The enclosed Joint Operating Agreement is dated January 1, 1993;

2) The contract area covers only the W/2 of said Section 28 being the proposed proration unit for the captioned well;

3) Article VI.A. has been revised to reflect the drilling of the captioned well;

MITCHELL ENERGY CORPORATION 1000 INDEPENDENCE PLAZA
400 W. ILLINOIS, MIDLAND, TEXAS 79701 915/682-5396
A subsidiary of Mitchell Energy & Development Corp.

4) The overhead rates in the COPAS have been revised to reflect the rates currently in use under the existing Joint Operating Agreement.

As a matter of clarification, the following is a summary of the discussions and correspondence between Strata and Mitchell to date regarding the captioned well:

1) On October 28, 1992, you returned my telephone call of October 26, 1992. I advised you of Mitchell's desire to drill the captioned well. You advised that Strata had no interest in participating in a deep well but would consider selling its interest in Federal Lease NM-82927 covering the S/2 SW/4 and SW/4 SE/4 of Section 28, T-20-S, R-33-E, for $300.00 per net acre delivering a 78% net revenue and retaining all rights above approximately 11,707 feet.

2) On November 18, 1992, you returned my telephone call of November 17, 1992. I advised you that Mitchell Management had considered Strata's proposal to sell its lease and found it unacceptable. You advised that you felt your offer to be reasonable and advised again that Strata had no interest in participating in the proposed well.

3) By letter dated November 20, 1992, Mitchell officially advised Strata that its offer to sell its lease was unacceptable. As a counterproposal, Mitchell requested a farmout of Strata's lease, or in the alternative, that Strata participate for a 25% interest in the captioned well.

4) By letter dated December 9, 1992, Strata advised that Mitchell's counterproposal of November 20, 1992, was unacceptable. As an alternative, Strata proposed to either a) sell its lease from the surface to the base of the Pennsylvania formation for $300.00 per net acre delivering a 75% net revenue with the provision that Strata's retained ORRI be pooled under the W/2 of said Section 28 or b) farmout its interest under substantially the same terms proposed in Mitchell's letter of November 20, 1992.

5) On or about December 16, 1992, I contacted you by telephone and advised you that Mitchell would accept Strata's proposal to Farmout as outlined in Strata's letter dated December 9, 1992. You advised that you preferred to sell rather than

farmout and asked that Mitchell consider making Strata its best offer to purchase Strata's lease.

6) On or about December 18, 1992, you contacted me by telephone and I advised you that Mitchell would consider purchasing all of Strata's right, title and interest in Federal Lease NM-82927 for $150.00 per net acre with Strata reserving an overriding royalty equal to the difference by which 20% exceeds existing lease burdens thereby delivering to Mitchell an 80% net revenue assignment. You advised that you would recommend to your partners accepting Mitchell's offer and would call me back with an answer.

7) On or about December 23, 1992, you contacted me by telephone and advised that Strata had accepted Mitchell's proposal to purchase its interest in the subject lease. We discussed the need for a confirmation letter and you advised that you would draw one up and try to have it to me the next day.

8) On December 30, 1992, via telefax, Strata submitted to Mitchell a Letter Agreement dated December 30, 1992, intended to govern the sale by Strata of Federal Lease NM-82927 to Mitchell. While the Letter Agreement correctly described the lease and the agreed to purchase price, it also contained numerous other terms and conditions which were not discussed in our two preceding telephone conversations including, but not limited to, a provision to pool Strata's retained overriding royalty under All of said Section 28.

9) On January 5, 1993, via telefax and by U.S. Mail, Mitchell submitted to Strata a Letter Agreement dated January 5, 1993, intended to confirm the terms discussed and agreed to in our two preceding telephone conversations regarding the sale by Strata of Federal Lease NM-82927 to Mitchell.

10) On January 5, 1993, you contacted me by telephone and we discussed each other's letter agreements. I advised that pooling Strata's ORRI was not part of Mitchell's offer to purchase Strata's lease and was not something Mitchell would consider. You advised that, while we had not discussed pooling the ORRI, you felt it was implicitly part of the agreement because you had made it part of your December 9, 1992, letter. I advised that I disagreed.

11) On January 6, 1993, via telefax and by U.S. Mail, Strata sent to Mitchell a letter dated January 6, 1993, indicating that, while an impass apparently had been reached in our negotiations, Strata wanted to continue discussions in an effort to facilitate the drilling of the captioned well. Additionally, you indicated that Strata might now consider participating in the proposed well and you necessarily requested a copy of a proposed Joint Operating Agreement, a copy of which is attached.

It is also Mitchell's desire to continue discussions with Strata that might result in a cooperative agreement facilitating the drilling of the Tomahawk "28" Fed COM #1 Well. In order to make clear Mitchell's position on this matter, we offer to you, in order of preference, solutions to the apparent impass that Mitchell is willing to accept.

1) Strata agrees to participate in the drilling of the captioned well as proposed in Mitchell's letter to Strata dated November 20, 1992.

2) Strata agrees to sell all of its right, title and interest in Federal Lease NM-82927 to Mitchell pursuant to the terms outlined in Mitchell's letter to Strata dated January 5, 1993.

3) Strata agrees to farmout its interest in Federal Lease NM-82927 to Mitchell pursuant to the terms outlined in Strata's letter to Mitchell dated December 9, 1992, subject to the following changes:

   a) On line 3 of item 2 on page 2, the word "legal" be deleted.

   b) On line 3 of item 2 on page 2, the legal description "SW/4 NW/4" be revised to read "SE/4 NW/4".

We look forward to hearing from you regarding this matter in the near future.

Sincerely,

MITCHELL ENERGY CORPORATION

Steven J. Smith
Senior Landman

SJS/jm
Enclosures

P 355 202 000

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL
(See Reverse)

Sent to Strata Production	
Street and No. 200 W. 1st St.	
P.O. State and ZIP Code Roswell, N. M. 88201	
Postage	$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt showing to whom and Date Delivered	
Return Receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	$
Postmark or Date Mailed 1/6/93	

PS Form 3800, June 1985 ☆U.S.G.P.O. 1989-234-555

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.
Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fee.
and check box(es) for additional service(s) requested.
1. ☒ Show to whom delivered, date, and addressee's address. 2. ☐ Restricted Delivery. *(Extra charge)* *(Extra charge)*

3. Article Addressed to:
Strata Production Company
200 West First Street
Roswell, New Mexico 88201

4. Article Number
P 355 202 000

Type of Service:
☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail ☒ Return Receipt for Merchandise

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature — Addressee
Orie Stowers

6. Signature — Agent

7. Date of Delivery

8. Addressee's Address *(ONLY if requested and fee paid)*

PS Form 3811, Apr. 1989 ☆U.S.G.P.O. 1989-238-815 DOMESTIC RETURN RECEIPT

JAN 13 1993

POST OFFICE DRAWER 1030
ROSWELL, NM 38202-1030

STRATA PRODUCTION COMPANY

TELEPHONE (505) 622-1127
FACSIMILE (505) 623-3533

200 WEST FIRST STREET, ROSWELL PETROLEUM BUILDING, SUITE 300
ROSWELL, NEW MEXICO 88201

BEFORE EXAMINER STOGNER
Oil Conservation Division
Mitchell Exhibit No. 16
Case No. 10656

January 12, 1993

Via Telefax (915) 682-6439/Hard Copy by Certified Mail

Mitchell Energy Corporation
1000 Independence Plaza
400 West Illinois
Midland, Texas 79701

Attn: Steve Smith

RE: Response to Mitchell correspondence dated January 7, 1993.

Dear Mr Smith:

I appreciate you clarifying that it is Mitchell's intent to drill the above referenced well at the following location: 1980' FWL & 1650' FNL Section 28 T-20-S, R-33-E NMPM. We continue to be in opposition to a West Half spacing unit and would note that Mitchell's proposed location is orthodoxed for a North Half spacing unit. While we understand that you wish to hold the NW/4 SW/4 of Section 28, as previously discussed, we do not believe that this justifies an unorthodoxed location.

I have not had the opportunity to review your proposed Joint Operating Agreement ("JOA"). However, I do have the following question in regards to item numbered 4) concerning the COPAS overhead rates. What are the COPAS overhead rates in the JOA between Mitchell and "the parties who have already agreed to participate"? If you propose to charge Strata higher overhead rates than you do the other parties, what is your justification for doing so? I note that the Ernest and Young 1991 overhead rate is $513.00 for producing wells and $5000.00 for drilling wells.

In addition, I have found numerous omissions, mischaracterizations and misstatements in your "summary of the discussions and correspondence between Strata and Mitchell". It is my practice to keep detailed and accurate notes of my discussions and the following reflects my review of said notes, correspondence and other materials.

1). October 26, 1992 0755-0802 hrs. - Telephone conversation
I returned your telephone call and you informed me that Mitchell intended to drill a Morrow well in the W/2 of Section 28, T-20-S, R-33-E. You stated that said well would probably be located somewhere in the NW/4 of Section 28. You stated that public records indicated that Strata owns Lease #NM-82927 and that the S/2 SW/4 of Section 28 would be included in Mitchell's proposed proration unit. You stated that currently your partners are Santa Fe and Maralo and that you intended to commence operations in early 1993. I advised you that Strata and it's partners would probably not wish to participate but would prefer to either sell or farmout. You requested proposed terms. I told you that I would need to discuss your proposal with my geologic staff and partners and then get back to you.

2). October 29, 1992 approximately 0900 hrs.- Telephone conversation.
I called you and informed you that Strata would recommend to it's partners that we sell the S/2 SW/4 of Section 28 for $300 per acre delivering a 78% Net Revenue Interest ("NRI") and rights from the base of the Bone Springs (top of the Wolfcamp) to basement. You informed me that you "will consider our proposal and call back when closer to doing something".

3). November 18, 1992 0850-0900 hrs. - Telephone conversation.
I returned your telephone call and you informed me that Mitchell would not accept Strata's proposal as discussed during our 10-29-92 telephone conversation. You said that you believed our proposal to be excessive with regards to the acreage price of $300 per acre. I responded that the acreage price was consistent with acreage prices being paid in the area during recent state & federal lease sales. You informed me that Mitchell would make a formal farmout request which would include all rights from the surface to basement. I responded that Strata would prefer to keep its rights down through and including the Delaware and Bone Springs formations. I stated the reason we bought the lease was because of the existence of Strata operated wells producing from these intervals located one to one-half miles south. I informed you that we could not see any technical basis for a West Half proration unit. I requested that you reconsider the West Half proration unit and in the alternative form a North Half proration unit thereby eliminating the need to include Strata's lease.

You stated that the reason Mitchell intended to form a West Half proration unit was based upon "lease

all of their ORRI to WI. I suggested that in order for Mitchell to avoid the administrative burden of approximately fifteen (15) individuals with options to convert to very small working interest, (in some cases less than .5% WI) that Mitchell considering making it's best cash offer. I asked what your experience was in the area and you said that you had recently purchased an interest from Mobil for $100 per acre and a 75% NRI% You said you would discuss it with management and call me back.

During our previous conversations of November 18, 1992 you took issue with Strata's proposal of $300.00 per acre. The retained ORRI, the ORRI pooling provision and the depth limitation were not terms to which you stated any objection.

8). December 18, 1992 approximately 1400 hrs. - Telephone conversation.

I returned your call from my home and you informed me that Mitchell would pay Strata $150 per acre with Strata retaining a 7.5% ORRI proportionately reduced. You said that Mitchell considered the $150 per acre to be reasonable but with the condition that Strata agree to the retention of a lesser ORRI. I responded that I would recommend your terms to Strata's partners.

9). December 23, 1992 - approximately 1115 hrs - Telephone conversation.

I returned your call from my home and informed you that due to the holidays, I had been unable to contact all of Strata's partners. However,I had contacted the majority of them and they were agreeable to the terms proposed by Mitchell and Strata. You requested that I provide a Letter Agreement and I agreed to provide Strata's form.

10). January 4, 1993 1405-1415 hrs - Telephone conversation.

I called and informed you that I had completed the Letter Agreement and requested your fax number (915-682-6439). I specifically reviewed with you the ORRI pooling provision and you responded that you had failed to remind Mitchell's management of this provision when you presented your recommendation to purchase the Lease. I stated that this was a very important part of the consideration and that absent this condition we did not have a deal. You stated that I should finalize the Letter Agreement and forward same to you. In addition, you requested that you intended for the interval to be delivered to be from the surface to basement. You stated that you believed that you had previously said that you wanted from the surface to the base of the Morrow formation. I responded that I did not recall

your request for surface to the base of the Morrow and had assumed that Strata would deliver all rights. I informed you that the Letter Agreement had been drafted accordingly, thereby delivering all rights. You responded that you appreciated this and would await receipt of Strata's Letter Agreement.

11). Strata correspondence dated December 30, 1992 faxed to Mitchell Energy 1650 hrs 1-4-93.

Correspondence speaks for itself.
Note that the terms were identical to those proposed in Strata's correspondence dated December 9, 1992 and discussed by telephone as set forth in 8) and 10) above. The additional terms are consistent with industry practice and primarily address title, rental payment responsibility, reassignment and other reasonable requests including the sharing of geologic data.

12). Mitchell correspondence dated January 5, 1993.
Correspondence speaks for itself.

13). January 5, 1993 approximately 0900 hrs - Telephone conversations.

I called you and asked why you had sent a Letter Agreement when I had already forwarded one per your request. You said that when you went back to management they informed you that they would not accept the ORRI pooling provision. You went on to say that they felt "blindsided". I responded that it was not my intent to blindside anybody and reminded you that we had discussed the ORRI pooling provision prior to me sending the Letter Agreement. You also stated that Mitchell did not intend to share the geologic information due to the lease expiration of the SW/4 NE/4 of Section 28. I responded that we would be most willing to sign a Confidentiality/Non Compete Agreement in order to alleviate any concern. However, the geologic data was important to us because of our lease position in the area specifically Section 33, T-20-S, R-33-E. You stated that you were instructed to draft the letter as presented and forward same to Strata. I responded that it did not contain the provisions we had previously agreed to. You said that it was Mitchell's position that it accurately reflected our agreement. I advised that I disagreed. You further stated that all previous terms and proposals including those in my 12-9-92 were now null and void. I said I did not know what Strata's partners would want to do. You advised that absent an agreement by the next day (Wednesday January 6, 1993) you would instruct your counsel to reschedule the force pooling hearing until the next

hearing date which you believed would be on or about January 21, 1993.

14). Strata correspondence dated January 6, 1993. Correspondence speaks for itself, but note that due to the failure of Mitchell to honor our verbal agreement Strata must reconsider all of it's options including participation in the well.

15). Mitchell correspondence dated January 7, 1993. Correspondence speaks for itself.

In order to clarify Strata's position and in an effort to accommodate Mitchell's desire to drill the Tomahawk "28" Fed Com Well #1 Strata offers, and subject to our partners approval the following:

1). Mitchell agrees to purchase all of Strata's right, title, and interest in Federal lease NM-82927 pursuant to the terms and conditions as set forth in Strata's Letter Agreement dated December 30, 1992. In addition, Strata will agree to execute either by amendment or separate agreement a mutually acceptable Confidentiality/Non Compete agreement as it pertains to the SW/4 NE/4 of Section 28.

I am unable to give any indication as to our desire to farmout or participate until I have the opportunity to review the JOA, evaluate your response to my questions concerning the COPAS overhead rates and receive a response from Mitchell to alternative 1. above.

Our proposal to sell expires at 5:00 p.m. Friday January 15, 1993 and is subject to partner approval. If we are unable to resolve this then I will provide you with a list of the leasehold partners and overriding royalty owners so that you can contact those individuals direct. Since you have had notice that these undisclosed owners exist we would ask that you grant another two (2) week continuance and notify these parties of your application. I look forward to receiving your reply.

Yours very truly,

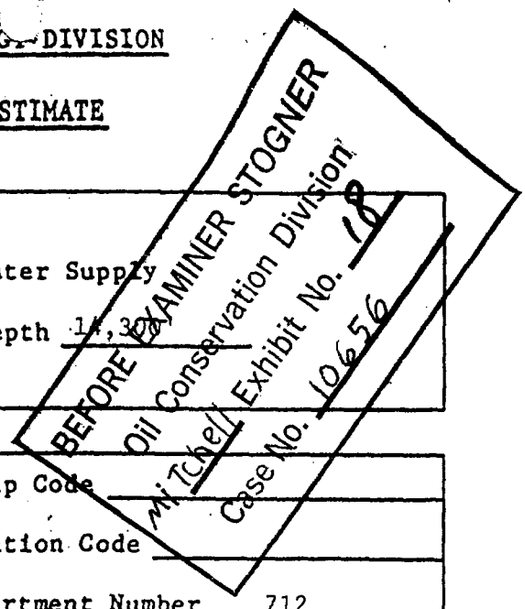
STRATA PRODUCTION COMPANY

Mark B. Murphy
President

cc: Sealy H. Cavin Jr., Esq.
MBM/mo

MITCHELL ENERGY & DEVELOPMENT CORP. - ENERGY DIVISION

AUTHORITY FOR EXPENDITURE (AFE) COST ESTIMATE



Type Project (check 1 only)

☒ Exploratory ☐ Injection ☐ Water Supply

☐ Development ☐ Disposal ☐ Depth 14,300'

Form B-1 ☐ Add ☐ Change ☐ Delete

AFE Number _____

Property/Well Name Tomahawk "28" Fed. #1

Project Description Drill

Net Working Interest 0.375

Group Code _____

Location Code _____

Department Number 712

County Lea St. NM

Operator MEC

Estimated Date Project Will Be Completed _____ (Mo./Yr.)

	DRILLING COSTS	Amount
	INTANGIBLE	
10	Dry Hole Abandonment	
11	Rig Mobilization and Demobilization	
12	Power and Fuel	
13	Water	$ 35,000
14	Solids Control Equipment Rental	5,000
*15	Directional Equipment and Services	
16	Fishing Tools and Services	
17	Subsurface Casing Equipment	7,000
18	Contract Labor and Services (welding,inspect,csg crews, BOP tsts)	25,000
19	Supervision - Company and/or Contract (40 days @ $500/day)	20,000
50	Road and Site Preparation	30,000
51	Footage Contract Fee (14,300' @ $21.50/ft)	310,000
52	Daywork Contract Fee (5 days @ $5000/day)	25,000
53	Mud and Chemicals (mud-up @ 9400')	75,000
54	Bits and Reamers	
55	Drilling Tool and Equipment Rental (PVT, tank,WB,trailer,chk, trash)	25,000
56	Cement and Cement Services	50,000
*57	Open Hole Logging-Testing (incl 35 days ML, 2 log runs)	80,000
*58	Drill Stem Testing (1 DST)	3,000
59	Coring and Analysis (SW)	5,000
60	Transportation	14,000
61	Air/Marine Transportation	
63	Overhead	10,000
64	Insurance	
65	Company Labor and Services	
*66	Prospect Generation	20,000
67	Miscellaneous Services and Contingency	50,000
	TOTAL INTANGIBLE COSTS	$789,000
	TANGIBLE	
21	Casing-Drive Pipe & Conductor 40' - 30" cond	$ 4,000
40	Casing - Surface 500'-20" 94# K-S @ $51.50/ft	25,800
41	Casing - Intermediate 4250'-13 3/8" 68# K-S @ $23.37/ft 4850'-8 5/8" 32# K-S @ $8.92/ft	110,000
42	Casinghead Equipment (Including Valves) (3000 psi)	4,500
43	Casing Spool (Including Valves) (5000 psi)	18,000
44	Miscellaneous Equipment	
	TOTAL TANGIBLE COSTS	$162,300
	TOTAL DRILLING (DRY HOLE) COSTS	$951,300

* Invalid for disposal and water supply wells.

MEDC 252-02

Rev. 4/29/85

Prepared By: G. W. Tullos

Date Prepared: 8/27/92

MITCHELL ENERGY & DEVELOPMENT CORP. - ENERGY DIVISION

AUTHORITY FOR EXPENDITURE (AFE) COST ESTIMATE

Type Project (check 1 only)

☒ Exploratory ☐ Recompletion (Zone Change Only) ☐ Disposal

☐ Development ☐ Plug and Abandon (Previously Producing Well) Depth 14,300'

☐ Injection ☐ Water Supply

Form B-2 ☐ Add ☐ Change ☐ Delete

AFE Number _____

Property/Well Name Tomahawk "28" Fed. #1

Project Description Complete

Net Working Interest .375

Group Code _____

Location Code _____

Department Number 730

County Lea St. NM

Operator MEC

Estimated Date Project Will Be Completed _____ (Mo./Yr.)

	COMPLETION COSTS	Amount
	INTANGIBLE	
22	Overhead	$ 5,000
23	Company Labor and Services	
24	Contract Labor and Services	40,000
25	Air/Marine Transportation	
26	Other Transportation	14,000
27	Plugging and Abandonment	
28	Rig Mobilization and Demobilization	
29	Supervision - Company and/ or Contract	4,000
30	Site Preparation and Clean-up	
31	Subsurface Casing Equipment	5,000
32	Squeeze Cement and Service	
33	Completion Fluids	4,000
34	Pump Truck Services	1,000
35	Rental Tools	10,000
36	Bits and Reamers	
37	Insurance	
38	Wireline Services	4,000
39	Fishing Tools and Services	
*53	Tertiary Injectants	
68	Fencing	
83	Daywork Contract Fee	10,000
84	Cement and Cement Services - Primary	45,000
85	Acidizing and Fracturing	20,000
*86	Cased Hole Logging and Perforating	30,000
94	Miscellaneous Services and Contingency	5,000
	TOTAL INTANGIBLE COSTS	$197,000
	TANGIBLE	
69	Tubinghead Equipment (Including Valves)	$ 14,000
70	Casing-Production and/or Liner 14,300' 5½" 17# N-80 & S-95	95,200
71	Tubing 14,200' 2 3/8" 4.7# N-80	41,300
72	Packers and Subsurface Equipment	5,000
73	Production Tree (Including Valves)	22,000
74	Storage Tanks 2-210 bbl STL + 1-210 bbl F.G.	14,000
75	Separating Equipment 16"x7' 750 MBTU Stack-Pak + 30"x10' 3 P. Sep	21,000
76	Treating Equipment	
77	Artificial Lift Equipment	
78	Line Pipe	5,000
79	Valves and Fittings Beyond Wellhead	7,000
80	Miscellaneous Equipment	2,500
81	Platform and Structures	
82	Metering Equipment	2,000
87	Pumps	
90	Electrical Equipment	
91	Instrumentation Equipment	
96	Dehydrators and Dryers	
	TOTAL TANGIBLE COSTS	$229,000
	TOTAL COMPLETION COSTS	$426,000

* Invalid for disposal and water supply wells.

MEDC 252-03
Rev. 4/29/85

Prepared By: James Blount JAB

Date Prepared: 8-27-92

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

IN THE MATTER OF THE HEARING CALLED
BY THE OIL CONSERVATION DIVISION
FOR THE PURPOSE OF CONSIDERING:

CASE NO. 10656

APPLICATION OF MITCHELL ENERGY
CORPORATION FOR COMPULSORY POOLING
AND AN UNORTHODOX GAS WELL LOCATION,
LEA COUNTY, NEW MEXICO

CERTIFICATE OF MAILING

AND

COMPLIANCE WITH ORDER R-8054

W. THOMAS KELLAHIN, attorney in fact and authorized representative of MITCHELL ENERGY CORPORATION, states that the notice provisions of Division Rule 1207 (Order R-8054) have been complied with, that Applicant has caused to be conducted a good faith diligent effort to find the correct addresses of all interested parties entitled to receive notice, that on DECEMBER 7, 1992, I caused to be mailed by certified mail return-receipt requested notice of this hearing and a copy of the application for the above referenced case along with the cover letter, at least twenty days prior to the hearing set for JANUARY 21, 1993 to the parties shown in the application as evidenced by the attached copies of return receipt cards, and that pursuant to Division Rule 1207, notice has been given at the correct addresses provided by such rule.

W. Thomas Kellahin

SUBSCRIBED AND SWORN to before me this 19TH day of JANUARY, 1993.

Notary Public

My Commission Expires:

10/7/95

JAY C. LAUBSCHER

cert118.031

BEFORE EXAMINER STOGNER
Oil Conservation Division
Mitchell Exhibit No. 19
Case No. 10656

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.
Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.
1. ☐ Show to whom delivered, date, and addressee's address. *(Extra charge)* 2. ☐ Restricted Delivery *(Extra charge)*

3. Article Addressed to:

Mark B. Murphy
Strata Production Company
648 Petroleum Building
Roswell, NM 88201

4. Article Number
P676 666 381

Type of Service:
☐ Registered ☐ Insured
☑ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature — Addressee
X

6. Signature — Agent
X Jan Starnes

7. Date of Delivery
12-9-92

8. Addressee's Address *(ONLY if requested and fee paid)*

PS Form **3811**, Apr. 1989 ★U.S.G.P.O. 1989-238-815 DOMESTIC RETURN RECEIPT

MWK FP TOM 28#1

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.
Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.
1. ☐ Show to whom delivered, date, and addressee's address. *(Extra charge)* 2. ☐ Restricted Delivery *(Extra charge)*

3. Article Addressed to:

Southwestern Resources
111 W. Country Club Road
Roswell, NM 88201

MWK FP Tom 28#1

4. Article Number
P676 666 382

Type of Service:
☐ Registered ☐ Insured
☑ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature — Addressee
X Mary Beth Desmond

6. Signature — Agent
X

7. Date of Delivery
12/9/92

8. Addressee's Address *(ONLY if requested and fee paid)*

PS Form **3811**, Apr. 1989 ★U.S.G.P.O. 1989-238-815 DOMESTIC RETURN RECEIPT

SENDER:
- Complete items 1 and/or 2 for additional services.
- Complete items 3, and 4a & b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt Fee will provide you the signature of the person delivered to and the date of delivery.

I also wish to receive the following services (for an extra fee):
1. ☐ Addressee's Address
2. ☐ Restricted Delivery
Consult postmaster for fee.

3. Article Addressed to:

Enerlock Resources, Inc.
616 Mechem Drive
Ruidoso, NM 88345-6903

4a. Article Number
P676 666 383

4b. Service Type
☐ Registered ☐ Insured
☑ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

7. Date of Delivery
12.9.92

5. Signature (Addressee)
L. McBryde

8. Addressee's Address (Only if requested and fee is paid)

6. Signature (Agent)

PS Form **3811**, November 1990 ★U.S. GPO: 1991—287-086 DOMESTIC RETURN RECEIPT

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.

Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. ☐ Show to whom delivered, date, and addressee's address. *(Extra charge)*
2. ☐ Restricted Delivery *(Extra charge)*

3. Article Addressed to:

Santa Fe Energy Operating
Partners, L.P.
550 W. Texas, Suite 1330
Midland, TX 79701

Mit FP Tom 28

4. Article Number
P676 666 384

Type of Service:
☐ Registered ☐ Insured
☑ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature — Addressee
X

6. Signature — Agent
X Betty Parks

7. Date of Delivery
12-14-92

8. Addressee's Address *(ONLY if requested and fee paid)*

PS Form **3811**, Apr. 1989 ★U.S.G.P.O. 1989-238-815 **DOMESTIC RETURN RECEIPT**

SENDER:
- Complete items 1 and/or 2 for additional services.
- Complete items 3, and 4a & b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):
1. ☐ Addressee's Address
2. ☐ Restricted Delivery
Consult postmaster for fee.

3. Article Addressed to:

Maralo, Inc.
P.O. Box 832
Midland, TX 79702

Mit FP Tom 28

4a. Article Number
P676 666 385

4b. Service Type
☐ Registered ☐ Insured
☑ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

7. Date of Delivery
DEC 10 1992

5. Signature (Addressee)
D. Guzman

6. Signature (Agent)

8. Addressee's Address (Only if requested and fee is paid)

PS Form **3811**, December 1991 ★U.S. GPO: 1992—323-402 **DOMESTIC RETURN RECEIPT**

Thank you for using Return Receipt Service.

Is your RETURN ADDRESS completed on the reverse side?

SENDER:
- Complete items 1 and/or 2 for additional services.
- Complete items 3, and 4a & b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):
1. ☐ Addressee's Address
2. ☐ Restricted Delivery
Consult postmaster for fee.

3. Article Addressed to:

Phillips Petroleum Co.
4001 Penbrook, Ste 401
Odessa, TX 79762

Mit. FP Tom 28

4a. Article Number
P676 666 386

4b. Service Type
☐ Registered ☐ Insured
☑ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

7. Date of Delivery
12-10-92

5. Signature (Addressee)
B. Burns

6. Signature (Agent)

8. Addressee's Address (Only if requested and fee is paid)

Thank you for using Return Receipt Service.

Is your RETURN ADDRESS completed on the reverse side?

Is your RETURN ADDRESS completed on the reverse side?

SENDER:
- Complete items 1 and/or 2 for additional services.
- Complete items 3, and 4a & b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):
1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

Oryx Energy Corporation
(Formerly Sun Exploration)
P.O. Box 2880
Dallas, TX 75221-2880

4a. Article Number
P676 666 387

4b. Service Type
☐ Registered ☐ Insured
☑ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

7. Date of Delivery
DEC 09 1992

MIT FP TOM 28

5. Signature (Addressee)

8. Addressee's Address (Only if requested and fee is paid)

6. Signature (Agent)

PS Form **3811**, December 1991 ★U.S. GPO: 1992—323-402 **DOMESTIC RETURN RECEIPT**

Thank you for using Return Receipt Service.

Is your RETURN ADDRESS completed on the reverse side?

SENDER:
- Complete items 1 and/or 2 for additional services.
- Complete items 3, and 4a & b.
- Print your name and address on the reverse of this form so that we can return this card to you.
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- Write "Return Receipt Requested" on the mailpiece below the article number.
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I also wish to receive the following services (for an extra fee):
1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

Grace Petroleum Corp.
6501 North Broadway
Oklahoma City, OK 73116

4a. Article Number
P676 666 388

4b. Service Type
☐ Registered ☐ Insured
☑ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

7. Date of Delivery
12/11

MIT FP TOM 28

5. Signature (Addressee)

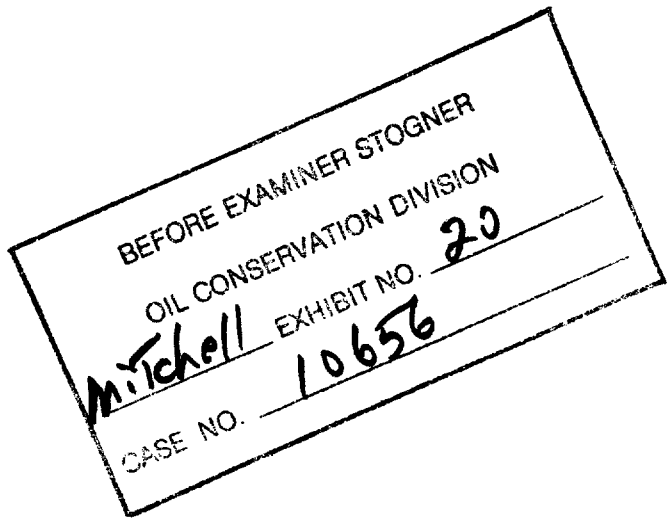
8. Addressee's Address (Only if requested and fee is paid)

6. Signature (Agent)

PS Form **3811**, December 1991 ★U.S. GPO: 1992—323-402 **DOMESTIC RETURN RECEIPT**

Thank you for using Return Receipt Service.

VIA FEDERAL EXPRESS



November 20, 1992

United States Department of
the Interior
Bureau of Land Management
101 E. Mermod
Carlsbad, NM 88220

Re: **Application for Permit to Drill**
Tomahawk "28" Federal No. 1
Lea County, New Mexico

Gentlemen:

Enclosed you will find an original and five (5) copies of Form 3160-3 and various other information to aid you in permitting the subject well.

Thank you in advance for your prompt attention to this matter and if I can be of any further help, kindly advise.

Very truly yours,

MITCHELL ENERGY CORPORATION

Original Signed By
GEORGE MULLEN

George Mullen
Regulatory Affairs Specialist

GM:mw
3gfed.lt
Enc.

bcc: Mark Whitley - MND-4N
Ed Earles - Midland
Jack Stanley - Midland
George Tullos - Midland
Bennie Davis - 2002-5
Carol Osborne - MND-3N
Betty Porter - MND-1N
Susan Norman - OB3
Central Records - MND-2N

Form 3160-3
(December 1990)

SUBMIT IN TRIPLICATE*
(Other instructions on reverse side)

Form approved.
Budget Bureau No. 1004-0136
Expires: December 31, 1991

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

APPLICATION FOR PERMIT TO DRILL OR DEEPEN

5. LEASE DESIGNATION AND SERIAL NO.: NM 57280

6. IF INDIAN, ALLOTTEE OR TRIBE NAME: N/A

1a. TYPE OF WORK: DRILL [X] DEEPEN [ ]

7. UNIT AGREEMENT NAME: N/A

b. TYPE OF WELL: OIL WELL [ ] GAS WELL [X] OTHER — SINGLE ZONE [X] MULTIPLE ZONE [ ]

8. FARM OR LEASE NAME, WELL NO.: Tomahawk "28" Federal #1

2. NAME OF OPERATOR: Mitchell Energy Corporation

9. API WELL NO.:

3. ADDRESS AND TELEPHONE NO.: P.O. Box 4000 The Woodlands, TX 77387-4000

10. FIELD AND POOL, OR WILDCAT: South Salt Lake - Morrow

4. LOCATION OF WELL (Report location clearly and in accordance with any State requirements.*)
At surface: 1,980' FWL and 1,650' FNL (SE/NW)
At proposed prod. zone: 1,980' FWL and 1,650' FNL (SE/NW)

11. SEC., T., R., M., OR BLK. AND SURVEY OR AREA: Sec. 28, T20S., R33E

14. DISTANCE IN MILES AND DIRECTION FROM NEAREST TOWN OR POST OFFICE*: 22 miles SE of Maljamar, NM

12. COUNTY OR PARISH: Lea

13. STATE: NM

15. DISTANCE FROM PROPOSED* LOCATION TO NEAREST PROPERTY OR LEASE LINE, FT. (Also to nearest drlg. unit line, if any)	16. NO. OF ACRES IN LEASE	17. NO. OF ACRES ASSIGNED TO THIS WELL
660	1,161.34	320
18. DISTANCE FROM PROPOSED LOCATION* TO NEAREST WELL, DRILLING, COMPLETED, OR APPLIED FOR, ON THIS LEASE, FT.	**19. PROPOSED DEPTH**	**20. ROTARY OR CABLE TOOLS**
N/A	14,500	Rotary

21. ELEVATIONS (Show whether DF, RT, GR, etc.): 3,595 GR

22. APPROX. DATE WORK WILL START*: 12-15-92

23. PROPOSED CASING AND CEMENTING PROGRAM

SIZE OF HOLE	GRADE, SIZE OF CASING	WEIGHT PER FOOT	SETTING DEPTH	QUANTITY OF CEMENT
26"	20"	94#	500'	TOC = Surface
17-1/2"	13-3/8"	68#	2550'	TOC = Surface
12-1/4"	8-5/8"	32#	5600'	TOC = 2,000'
7-7/8"	5-1/2"	17 & 20#	TD	TOC = 10,000'

The operator proposes to drill to a depth sufficient to test the Morrow formation for gas. If productive, 5-1/2" casing will be cemented at TD. If non-productive, the well will be plugged and abandoned in a manner consistent with federal regulations. Specific programs as per Onshore Oil & Gas Order #1 are outlined in the following attachments:

Drilling Program

Surface Use & Operating Plan
Exhibit #1 & 1A - Blowout Preventer Equip.
Exhibit #2 - Location & Elevation Plat
Exhibit #3 - Planned Access Roads
Exhibit #4 - One-mile Radius Map
Exhibit #5 - Production Facilities Layout
Exhibit #6 - Drilling Rig Layout

IN ABOVE SPACE DESCRIBE PROPOSED PROGRAM: If proposal is to deepen, give data on present productive zone and proposed new productive zone. If proposal is to drill or deepen directionally, give pertinent data on subsurface locations and measured and true vertical depths. Give blowout preventer program, if any.

24.

SIGNED George Mullen (George Mullen) TITLE Regulatory Affairs Specialist DATE 11-20-92

(This space for Federal or State office use)

PERMIT NO. _____ APPROVAL DATE _____

Application approval does not warrant or certify that the applicant holds legal or equitable title to those rights in the subject lease which would entitle the applicant to conduct operations thereon.

CONDITIONS OF APPROVAL, IF ANY:

APPROVED BY _____ TITLE _____ DATE _____

*See Instructions On Reverse Side

Title 18 U.S.C. Section 1001, makes it a crime for any person knowingly and willfully to make to any department or agency of the

DRILLING PROGRAM

Attached to Form 3160-3
Mitchell Energy Corporation
Tomahawk "28" Federal No. 1
1980' FWL & 1650' FNL
SE/NW, Sec. 28, T20S, R33E
Lea County, New Mexico

1. Geologic Name of Surface Formation:

   Permian

2. Estimated Tops of Important Geologic Markers:

Permian	Surface	Wolfcamp	10750'
Rustler	1450'	Strawn	12725'
Base Salt	2400'	Atoka	12900'
Yates	3210'	Morrow	13180'
Delaware	5610'	Total Depth	14500'
Bone Spring	8500'		

3. Estimated Depths of Anticipated Fresh Water, Oil or Gas:

Upper Permian Sands	to 100'	Fresh Water
1st Bone Spring SS	9470'	Oil
Wolfcamp	10750'	Oil
Atoka	12900'	Gas
Morrow SS	13650'	Gas

No other formations are expected to give up oil, gas, or fresh water in measurable quantities. The surface fresh water sands will be protected by setting 20" casing at 500' and circulating cement back to surface. The potash zone will be protected by setting 13 3/8" casing at 2550' and circulating cement back to surface. Any zones above TD which contain commercial quantities of oil and/or gas will have cement circulated across them behind the 8 5/8" casing or by inserting a cementing stage tool into the 5-1/2" production casing which will be run at TD.

4. Casing Program:

Hole Size	Interval	OD Casing	Weight, Grade, Jt, Cond, Type
36"	0-40'	30"	Conductor, 0.3" wall thickness
26"	Surf-500'	20"	94#, K-55 St&C, New, R-3
17-1/2"	Surf-2550'	13-3/8"	68#, K-55, St&C, New, R-3
12-1/4"	Surf-5600'	8-5/8"	32#, K-55, LT&C, New, R-3
7-7/8"	Surf-TD	5-1/2"	17 & 20#, N-80, LT&C, New, R-3

Cement Program:

20" Surface Casing @ 500':	Cemented to surface with 1150 sx Prem Plus + 2% $CaCl_2$.
13-3/8" Intermediate Casing @ 2550':	Cemented to surface with 1600 sx Prem Plus Halliburton Lite + 6% gel + 15#/sx salt + 1/4#/sx Flocele and 250 sx Prem. Plus + 2% $CaCl_2$.
8-5/8" Intermediate Casing @ 5600':	Cemented to 2000' with 950 sacks Halliburton Lite + 6% gel + 0.3 % Halad 9 + 1/4 #/sx Flocele and 250 sx Prem. Plus.
5-1/2" Production Casing @ TD:	Cemented with 500 sx Halliburton Lite + 6% gel + 0.4% Halad 9 and 500 sx Prem 50/50 POZ + 2% gel + 0.6% Halad 22A + 0.4% CFR-2. This cement slurry is designed to bring TOC to 10000'. Shallower productive zones will be cemented by placing a cementing stage tool below the zone of interest if necessary and cementing with a similar type of cement.

5. Minimum Specifications for Pressure Control:

The blowout preventer equipment (BOP) shown in Exhibit #1 will consist of a double ram-type (5,000 psi WP) preventer and a bag-type (hydril) preventer (3000 psi WP). Both units will be hydraulically operated and the ram-type preventer will be equipped with blind rams on top and 4-1/2"drill pipe rams on bottom. Both BOP's will be nippled up on the 13-3/8" intermediate casing and used continuously until TD is reached. All BOP's and accessory equipment will be tested to 1000 psi before drilling out of 13-3/8" casing. Before drilling out of 8-5/8" casing, the ram-type BOP and accessory equipment will be tested to 5,000 psi and the hydril to 70% of rated working pressure (2100 psi). This testing procedure will be duplicated at 10700' (prior to drilling Wolfcamp formation) and after any use under pressure during the drilling of the well.

Pipe rams will be operationally checked each 24 hour period. Blind rams will be operationally checked on each trip out of the hole. These checks will be noted on the daily tour sheets. A 2" kill line and 3" choke line will be included in the drilling spool located below the ram-type BOP. Other accessories to the BOP equipment will include a kelly cock and floor safety valve (inside BOP) and choke lines and choke manifold with 5000 psi WP rating.

6. Types and Characteristics of the Proposed Mud System:

The well will be drilled to TD with a combination brine, cut brine, and polymer/KCl mud system. The applicable depths and properties of this system are as follows:

Depth	Type	Weight (ppg)	Viscosity (sec)	Waterloss (cc)
0-500'	Fresh Water (spud)	8.5	40-45	NC
500-1400'	Fresh Water	8.4	28	NC
1400-2550'	Brine Water	10.0	30	NC
2550-5600'	Fresh Water	8.4	28	NC
5600-8500'	Brine Water	10.0	30	NC
8500-9400'	Cut Brine	9.2-9.5	30	NC
9400-12900'	Cut Brine/Polymer	9.2-9.5	32-34	<40
12900-13500'	Brine/Polymer	10.2-10.5	34-38	10
1500-TD	Brine/Polymer/KCl	10.2-10.5	34-38	5

Sufficient mud materials to maintain mud properties and meet minimum lost circulation and weight increase requirements will be kept at the wellsite at all times.

7. Auxiliary Well Control and Monitoring Equipment:

A. A kelly cock will be kept in the drill string at all times.

B. A full opening drill pipe stabbing valve (inside BOP) with proper drill pipe connections will be on the rig floor at all times.

C. An electronic pit-volume-totalizer system will be used continuously below 9400' to monitor the mud and pump system. The drilling fluids system will also be visually monitored at all times.

D. A mud logging unit will be continuously monitoring drilling penetration rate and hydrocarbon shows from 3200' to TD.

E. A mud-gas separator, vacuum degasser and remote drilling choke will be operational at all times below 12900' to facilitate handling a gas kick or gas cutting of the mud until the mud weight can be increased.

8. Logging, Testing and Coring Program:

A. Drillstem tests will be run on the basis of drilling shows. At least one test is anticipated.

B. The electric logging program will consist of GR-Dual Laterolog-MSFL and GR-Sonic from TD to intermediate casing and GR-Compensated Neutron-

Density from TD to surface. Selected SW cores will be taken in zones of interest.

C. No conventional coring is anticipated.

D. Further testing procedures will be determined after cementing the 5½" production casing at TD based on drill shows, log evaulation and/or drill stem test results.

9. Abnormal Conditions, Pressures, Temperatures, & Potential Hazards:

No abnormal pressures or temperatures are anticipated. The estimated bottom-hole temperature (BHT) at TD is 190°F and estimated bottom-hole pressure (BHP) is 6500 psig. No hydrogen sulfide or other hazardous gases or fluids have been encountered, reported or are known to exist at this depth in this area. No major loss circulation zones have been reported in offsetting wells.

10. Potash Area

BLM records indicate that this acreage is not currently leased for potash development.

11. Anticipated Starting Date and Duration of Operations:

Road and location work will not begin until approval has been received from the BLM. The anticipated spud date is December 15, 1992. Once commenced, the drilling operation should be finished in approximately 60 days. If the well is productive, an additional 30 days will be required for completion and testing before a decision is made to install permanent facilities.

SURFACE USE AND OPERATING PLAN

Attached to Form 3160-3
Mitchell Energy Corporation
Tomahawk "28" Federal No. 1
1980' FWL & 1650' FNL
SE/NW, Sec. 28, T20S, R33E
Lea County, New Mexico

1. Existing Roads:

   A. The well site and elevation plat for the proposed well is shown in Exhibit #2. It was staked by John Jacquess Consulting Engineers, Artesia, New Mexico.

   B. All roads to the location are shown in Exhibit #3. The existing roads are illustrated in red and are adequate for travel during drilling and production operations. Upgrading of the road prior to drilling will be done where necessary as determined during the onsite inspection.

   C. Directions to Location: Take Hwy. 62/180 west from Hobbs, NM.; go 35.8 miles to Hwy. 176, turn south. Go 2.85 miles, turn northeast on new lease road; then go 0.85 miles to Tomahawk "28" Fed #1 location.

   D. Routine grading and maintenance of existing roads will be conducted as necessary to maintain their condition as long as any operations continue on this lease.

2. Proposed Access Road:

Exhibit #3 shows the 0.85 mile of new access road to be constructed and is illustrated in yellow. The road will be constructed as follows:

   A. The maximum width of the running surface will be 15'. The road will be crowned and ditched and constructed of 6" of rolled and compacted caliche. Ditches will be at 3:1 slope and 4 feet wide. Water will be diverted where necessary to avoid ponding, prevent erosion, maintain good drainage, and to be consistent with local drainage patterns. BLM may specify any additions or changes during the onsite inspection.

   B. The average grade will be less than 1%.

   C. No turnouts are planned.

   D. A cattleguard will be installed in the fence where new lease road begins. No culverts, gates, or low-water crossings are necessary.

E. Surfacing material will consist of native caliche. Caliche will be obtained from the nearest BLM-approved caliche pit. Any additional materials that are required will be purchased from the dirt contractor.

F. The proposed access road as shown in Exhibit #3 has been centerline flagged by John Jacquess Consulting Engineers, Artesia, New Mexico.

3. Location of Existing Wells:

Exhibit #4 shows all existing wells within a one-mile radius of this well.As shown on this plat there is one abandoned oil/gas well. There are no shut-in, injection or observation wells within a one-mile radius.

4. Location of Existing And/Or Proposed Facilities:

A. There are no existing facilities or pipelines of any kind owned or controlled by Mitchell Energy on this lease or within a one-mile radius of proposed well.

B. If the well is productive, contemplated facilities will be as follows:

(1) Production facilities are shown in Exhibit #5 and will be located on the caliche drilling pad and within the 350' x 350' area of the pad.

(2) The tank battery and facilities including all flowlines and piping will be installed according to API specifications.

(3) Any additional caliche which is required for firewalls, etc. will be obtained from a BLM-approved caliche pit. Any additional construction materials will be purchased from contractors.

(4) No power will be required if the well is productive of gas. However, if productive of oil, an electric, gas or LPG-fueled, self-contained pumping unit may be required.

C. If the well is productive, rehabilitation plans are as follows:

(1) The reserve pit will be back-filled after the contents of the pit are dry (within 120 days after the well is completed).

(2) Caliche from unused portions of the drill pad will be removed. Topsoil removed from the drill site will be used to recontour the pit area and any unused portions of the drill pad to the original natural level, as nearly as possible, and reseeded as per BLM specifications.

D. In the event that gas production is established, plans for permanent

gas lines will be submitted to the appropriate agencies for ROW approval.

5. Location and Type of Water Supply:

The well will be drilled with a combination brine and fresh water mud system as outlined in the drilling program. Brine and fresh water will be obtained from commercial water stations in the area and hauled to the location by transport truck over the existing access roads as shown in Exhibit #3. If a commercial fresh water source is nearby, fasline may be laid along existing road ROW's and fresh water pumped to the well. No water well will be drilled on the location.

6. Source of Construction Materials:

Any caliche required for construction of the drill pad and the proposed new access road will be obtained from a BLM-approved caliche pit. All roads and pads will be constructed of 6" of rolled and compacted caliche.

7. Methods of Handling Waste Disposal:

A. Drill cuttings not retained for evaluation purposes will be disposed into the reserve pit.

B. Drilling fluids will be contained in steel mud tanks. The reserve pit will contain any excess drilling fluid or flow from the well during drilling, cementing, and completion operations. The reserve pit will be an earthen pit, approximately 150' x 150' x 6' deep and fenced on three sides prior to drilling. It will be fenced on the fourth side immediately following rig removal. The reserve pit will be plastic-lined (5-7 mil thickness) to minimize loss of drilling fluids and saturation of the ground with brine water.

C. Water produced from the well during completion may be disposed into the reserve pit or a steel tank (depending on the rates). After the well is permanently placed on production, produced water will be collected in tanks (fiberglass or steel) until hauled by transport to an approved disposal system; produced oil will be collected in steel tanks until sold.

D. A portable chemical toilet will be provided on the location for human waste during the drilling and completion operations.

E. Garbage and trash produced during drilling or completion operations will be contained in a trash bin and properly disposed of in an approved dump site. All waste material will be contained to prevent scattering by the wind. All water and fluids will be disposed of into the reserve pit. Salts and other chemicals produced during drilling or testing will be disposed into the reserve pit. No toxic waste or hazardous chemicals will be produced by this operation.

F. After the rig is moved out and the well is either completed or abandoned, all waste materials will be cleaned up within 30 days. No adverse materials will be left on the location. The reserve pit will be completely fenced and netted and kept closed until it has dried. When the reserve pit is dry enough to breakout and fill and, as weather permits, the unused portion of the well site will be leveled and reseeded as per BLM specifications. Only that part of the pad required for production facilities will be kept in use. In the event of a dry hole, only a dry hole marker will remain.

8. Ancillary Facilities:

No airstrip, campsite, or other facilities will be built as a result of the operations on this well.

9. Well Site Layout:

A. The drill pad layout, with elevations staked by Jacquess Engineers, is shown in Exhibit #6. Dimensions of the pad and pits and location of major rig components are shown. Topsoil, if available, will be stockpiled per BLM specifications as determined at the on-site inspection. Because the pad is almost level no major cuts will be required.

B. Exhibit #6 shows the planned orientation for the rig and associated drilling equipment, reserve pit, pipe racks, turn-around and parking areas, and access road. No permanent living facilities are planned but 2 temporary foreman/toolpusher's trailers will be on location during the drilling operations.

C. The reserve pit will be lined with a high-quality plastic sheeting (5-7 mil thickness).

10. Plans for Restoration of the Surface:

A. Upon completion of the proposed operations, if the well is to be abandoned, the caliche will be removed from the location and road and returned to the pit from which it was taken. The pit area, after allowing to dry, will be broken out and leveled. The original top soil will be returned to the entire location which will be leveled and contoured to as nearly the original topography as possible. All trash, garbage and pit lining will be buried or hauled away in order to leave the location in an aesthetically pleasing condition. All pits will be filled and the location leveled within 120 days after abandonment.

B. The disturbed area will be revegetated by reseeding during the proper growing season with a seed mixture of native grasses as recommended by

the BLM.

C. Three sides of the reserve pit will be fenced prior to drilling operations. At the time that the rig is removed, the reserve pit will be fenced on the rig (fourth) side and netted to prevent livestock or wildlife from being entrapped. The fencing and netting will remain in place until the pit area is cleaned up and leveled. No oil will be left on the surface of the fluid in the pit.

D. Upon completion of the proposed operations, if the well is completed, the reserve pit area will be treated as outlined above within the same prescribed time. The caliche from any area of the original drillsite not needed for production operations or facilities will be removed and used for construction of thicker pads or firewalls for the tank battery installation. Any additional caliche required for facilities will be obtained from a BLM - approved caliche pit. Topsoil removed from the drill site will be used to recontour the pit area and any unused portions of the drill pad to the original natural level and reseeded as per BLM specifications.

11. Surface Ownership:

The wellsite and lease is located entirely on Federal surface. Kenneth Smith has the Federal grazing lease on this surface.

12. Other Information:

A. The area around the well site is grassland and the top soil is sandy. The vegetation is native scrub grasses with abundant oakbrush, sagebrush, yucca, and prickly pear.

B. There is no permanent or live water in the immediate area.

C. A Cultural Resources Examination has been requested and will be forwarded to your office in the near future.

13. Lessee's and Operator's Representative:

The Mitchell Energy Corporation representative responsible for assuring compliance with the surface use plan is as follows:

George W. Tullos, District Drilling Manager
Mitchell Energy Corporation
400 W. Illinois, Ste 1000
Midland, Texas 79701
Phone: (915) 682-5396 (office)
(915) 687-3711 (home)

Certification:

I hereby certify that I, or persons under my direct supervision, have inspected the proposed drillsite and access route; that I am familiar with the conditions which currently exist; that the statements made in this plan are, to the best of my knowledge, true and correct; and the work associated with the operations proposed herein will be performed by Mitchell Energy Corporation and its contractors and subcontractors in conformity with this plan and the terms and conditions which it is approved. This statement is subject to the provisions of 18 U.S.C. 1001 for the filing of a false statement.

Date: November 20, 1992 Signed: Patrick J. Noyes

Patrick J. Noyes
Region Engineering Manager

Attachment

3DRI6.gm

MINIMUM BLOWOUT PREVENTER REQUIREMENTS

5,000 psi Working Pressure

5 MWP

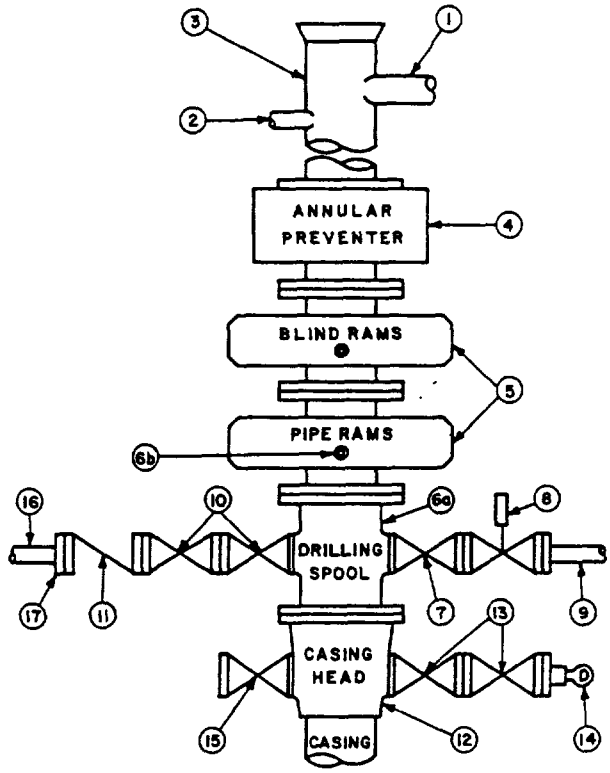
EXHIBIT 1
Tomahawk "28" Federal No. 1
Lea County, New Mexico

STACK REQUIREMENTS

No.	Item	Min. I.D.	Min. Nominal
1	Flowline		
2	Fill up line		2"
3	Drilling nipple		
4	Annular preventer		
5	Two single or one dual hydraulically operated rams		
6a	Drilling spool with 2" min. kill line and 3" min. choke line outlets or		
6b	2" minimum kill line and 3" minimum choke line outlets in ram. (Alternate to 6a above.)		
7	Gate valve	3-1/8"	
8	Gate valve — power operated	3-1/8"	
9	Line to choke manifold		3"
10	Gate valves	2-1/16"	
11	Check valve	2-1/16"	
12	Casing head		
13	Gate valves	1-13/16"	
14	Pressure gauge with needle valve		
15	Gate Valve or Flanged Valve w/Control Plug	1-13/16"	
16	Kill line to rig mud pump manifold		2"

OPTIONAL			
17	Roadside connection to kill line		2"

CONFIGURATION A



CONTRACTOR'S OPTION TO FURNISH:

1. All equipment and connections above bradenhead or casinghead.
2. Automatic accumulator (80 gallon, minimum) capable of closing BOP in 30 seconds or less and, holding them closed against full rated working pressure.
3. BOP controls, including control for hydraulically operated wing valve, to be located near drillers position with remote controls located away from rig floor.
4. Kelly equipped with Kelly cock and Hydril Kelly valve, or its approved equivalent.
5. Hydril Kelly valve or its approved equivalent and approved inside blow-out preventer to fit drill pipe in use on derrick floor at all times.
6. Kelly saver-sub equipped with rubber casing protector at all times.
7. Extra set of pipe rams to fit pipe being used on location.
8. Plug type blowout preventer tester.
9. Type RX ring gaskets in place of Type R.
10. Outlet for Halliburton on kill line.

MEC TO FURNISH:

1. Bradenhead or casinghead and side valves.
2. Wear bushing, if required.

GENERAL NOTES:

1. Deviations from this drawing may be made only with the express permission of MEC's Drilling Manager.
2. All connections, valves, fittings, piping, etc., subject to well or pump pressure must be flanged (suitable clamp connections acceptable) and have minimum working pressure equal to rated working pressure of preventers. Valves must be full opening and suitable for high pressure mud service.
3. Controls to be of standard design and each marked, showing opening and closing position.
4. Chokes will be positioned so as not to hamper or delay changing of choke beans. Replaceable parts for adjustable choke, other bean sizes, retainers, and choke wrenches to be conveniently located for immediate use.
5. All valves to be equipped with handwheels or handles ready for immediate use.
6. Choke lines must be suitably anchored.
7. Handwheels and extensions to be connected and ready for use.
8. Valves adjacent to drilling spool to be kept open. Use outside valves except for emergency.
9. All seamless steel control piping (3000 psi working pressure) to have flexible joints to avoid stress. Approved hoses will be permitted.
10. Casinghead connections shall not be used except in case of emergency.
11. Do not use kill line for routine fill-up operations.
12. Rig pumps ready for hook-up to BOP control manifold for emergency use only.

Attachment to Exhibit #1
NOTES REGARDING THE BLOWOUT PREVENTERS
TOMAHAWK "28" FEDERAL No. 1
LEA COUNTY, NEW MEXICO

1. Drilling nipple to be so constructed that it can be removed without use of a welder through rotary table opening, with minimum I.D. equal to preventer bore.

2. Wear ring to be properly installed in head.

3. Blow out preventer and all fittings must be in good condition, 5000 psi W.P. minimum.

4. All fittings to be flanged.

5. Safety valve must be available on rig floor at all times with proper connections, valve to be full bore 5000 psi W.P. minimum.

6. All choke and fill lines to be securely anchored, especially ends of choke lines.

7. Equipment through which bit must pass shall be at least as large as the diameter of the casing being drilled through.

8. Kelly cock on kelly.

9. Extension wrenches and hand wheels to be properly installed.

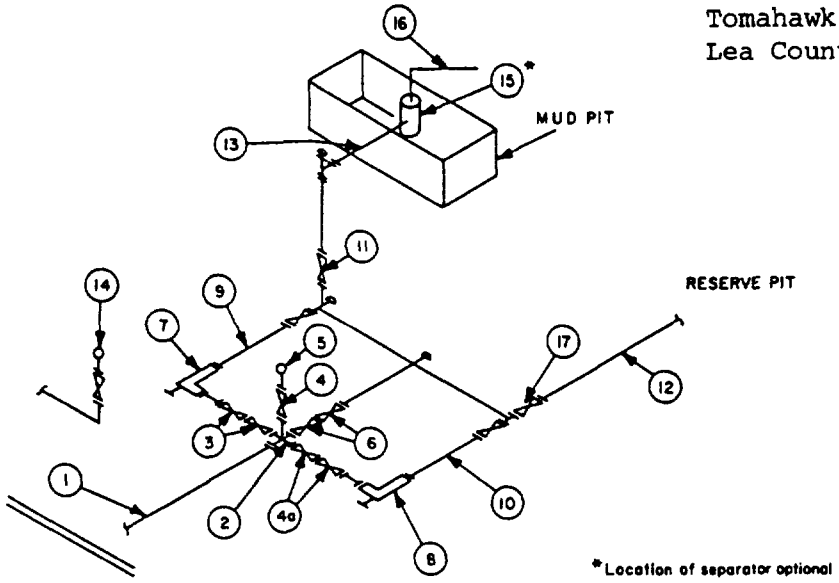
10. Blow out preventer control to be located as close to driller's position as feasible.

11. Blow out preventer closing equipment to include minimum 40 gallon accumulator, two independent sources of pump power on each closing unit installation, and meet all API specifications.

MINIMUM CHOKE MANIFOLD
3,000, 5,000 and 10,000 PSI Working Pressure

3 MWP - 5 MWP - 10 MWP

EXHIBIT 1-A
Tomahawk "28" Federal No. 1
Lea County, New Mexico



MINIMUM REQUIREMENTS										
		3,000 MWP			5,000 MWP			10,000 MWP		
No.		I.D.	NOMINAL	RATING	I.D.	NOMINAL	RATING	I.D.	NOMINAL	RATING
1	Line from drilling spool		3"	3,000		3"	5,000		3"	10,000
2	Cross 3"x3"x3"x2"			3,000			5,000			
	Cross 3"x3"x3"x3"									10,000
3	Valves(1) Gate ☐ Plug ☐(2)	3-1/8"		3,000	3-1/8"		5,000	3-1/8"		10,000
4	Valve Gate ☐ Plug ☐(2)	1-13/16"		3,000	1-13/16"		5,000	1-13/16"		10,000
4a	Valves(1)	2-1/16"		3,000	2-1/16"		5,000	3-1/8"		10,000
5	Pressure Gauge			3,000			5,000			10,000
6	Valves Gate ☐ Plug ☐(2)	3-1/8"		3,000	3-1/8"		5,000	3-1/8"		10,000
7	Adjustable Choke(3)	2"		3,000	2"		5,000	2"		10,000
8	Adjustable Choke	1"		3,000	1"		5,000	2"		10,000
9	Line		3"	3,000		3"	5,000		3"	10,000
10	Line		2"	3,000		2"	5,000		3"	10,000
11	Valves Gate ☐ Plug ☐(2)	3-1/8"		3,000	3-1/8"		5,000	3-1/8"		10,000
12	Lines		3"	1,000		3"	1,000		3"	2,000
13	Lines		3"	1,000		3"	1,000		3"	2,000
14	Remote reading compound standpipe pressure gauge			3,000			5,000			10,000
15	Gas Separator		2'x5'			2'x5'			2'x5'	
16	Line		4"	1,000		4"	1,000		4"	2,000
17	Valves Gate ☐ Plug ☐(2)	3-1/8"		3,000	3-1/8"		5,000	3-1/8"		10,000

(1) Only one required in Class 3M.

(2) Gate valves only shall be used for Class 10M.

(3) Remote operated hydraulic choke required on 5,000 psi and 10,000 psi for drilling.

EQUIPMENT SPECIFICATIONS AND INSTALLATION INSTRUCTIONS

1. All connections in choke manifold **shall** be welded, studded, flanged or Cameron clamp of comparable rating.
2. All flanges **shall** be API 6B or 6BX and ring gaskets **shall** be API RX or BX. Use only BX for 10 MWP.
3. All lines **shall** be securely anchored.
4. Chokes **shall** be equipped with tungsten carbide seats and needles, and replacements **shall** be available.
5. Choke manifold pressure and standpipe pressure gauges **shall** be available at the choke manifold to assist in regulating chokes. As an alternate with automatic chokes, a choke manifold pressure gauge **shall** be located on the rig floor in conjunction with the standpipe pressure gauge.
6. Line from drilling spool to choke manifold should be as straight as possible. Lines downstream from chokes **shall** make turns by large bends or 90° bends using bull plugged tees.
7. Discharge lines from chokes, choke bypass and from top of gas separator should vent as far as practical from the well.

Submit to Appropriate
District Office
State Lease - 4 copies
Fee Lease - 3 copies

DISTRICT I
P.O. Box 1980, Hobbs, NM 88240

DISTRICT II
P.O. Drawer DD, Artesia, NM 88210

DISTRICT III
1000 Rio Brazos Rd., Aztec, NM 87410

State of New Mexico
Energy, Minerals and Natural Resources Department

OIL CONSERVATION DIVISION

P.O. Box 2088
Santa Fe, New Mexico 87504-2088

Form C-102
Revised 1-1-89

EXHIBIT 2
Tomahawk "28" Federal No.1
Lea County, New Mexico

WELL LOCATION AND ACREAGE DEDICATION PLAT

All Distances must be from the outer boundaries of the section

Operator	Lease	Well No.
MITCHELL ENERGY Corporation	TOMAHAWK 28 FEDERAL	#1

Unit Letter	Section	Township	Range	County
F	28	20S.	33E. NMPM	LEA

Actual Footage Location of Well:
1650 feet from the NORTH line and 1980 feet from the WEST line

Ground level Elev.	Producing Formation	Pool	Dedicated Acreage:
3595	Morrow	South Salt Lake-Morrow	320 Acres

1. Outline the acreage dedicated to the subject well by colored pencil or hachure marks on the plat below.

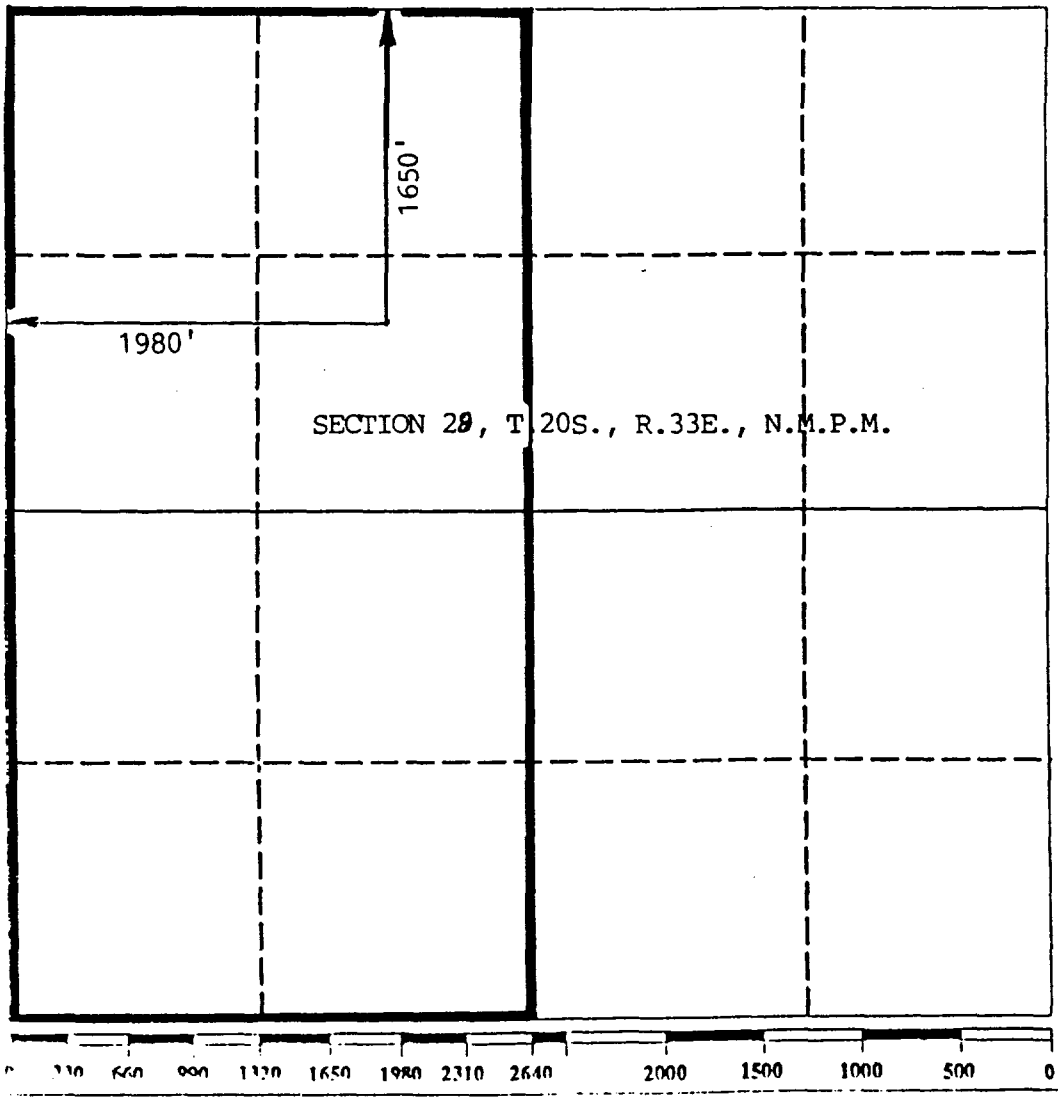
2. If more than one lease is dedicated to the well, outline each and identify the ownership thereof (both as to working interest and royalty).

3. If more than one lease of different ownership is dedicated to the well, have the interest of all owners been consolidated by communitization, unitization, force-pooling, etc.?

☐ Yes ☐ No If answer is "yes" type of consolidation _____

If answer is "no" list the owners and tract descriptions which have actually been consolidated. (Use reverse side of this form if neccessary. _____

No allowable will be assigned to the well until all interests have been consolidated (by communitization, unitization, forced-pooling, or otherwise) or until a non-standard unit, eliminating such interest, has been approved by the Division.



OPERATOR CERTIFICATION

I hereby certify that the information contained herein in true and complete to the best of my knowledge and belief.

Signature: George Mullen
Printed Name: George Mullen
Position: Reg. Affairs Specialist
Company: Mitchell Energy Corp.
Date: November 4, 1992

SURVEYOR CERTIFICATION

I hereby certify that the well location shown on this plat was plotted from field notes of actual surveys made by me or under my supervison, and that the same is true and correct to the best of my knowledge and belief.

Date Surveyed: 10/15/92
Signature & Seal of Professional Surveyor: JOHN D. JAQUESS, NEW MEXICO, 6290, REGISTERED PROFESSIONAL ENGINEER
Certificate No. 6290
ME282033

JOHN D. JAQUESS
CONSULTING ENGINEERS
P.O. Box 2565
ROSWELL, NEW MEXICO 88201
(505) 622-8866

GRID ELEVATIONS

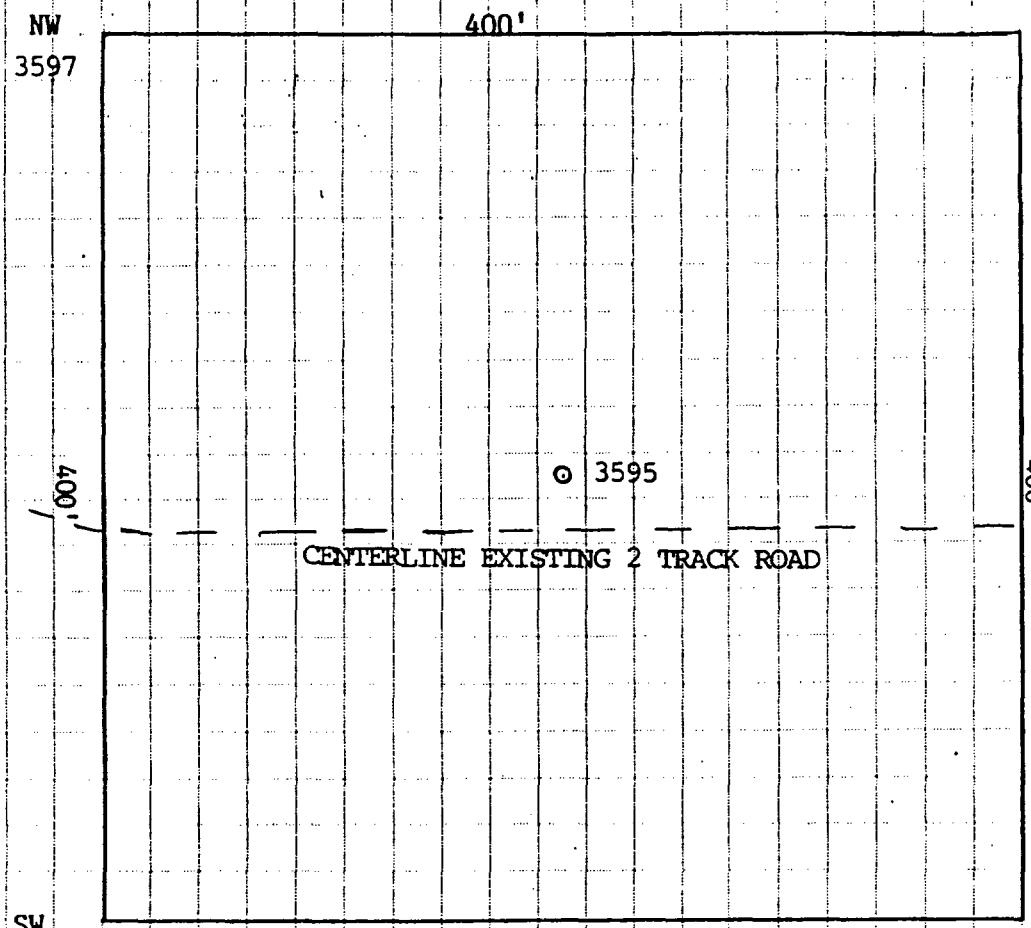
JOB _____

SHEET NO. _____ OF _____

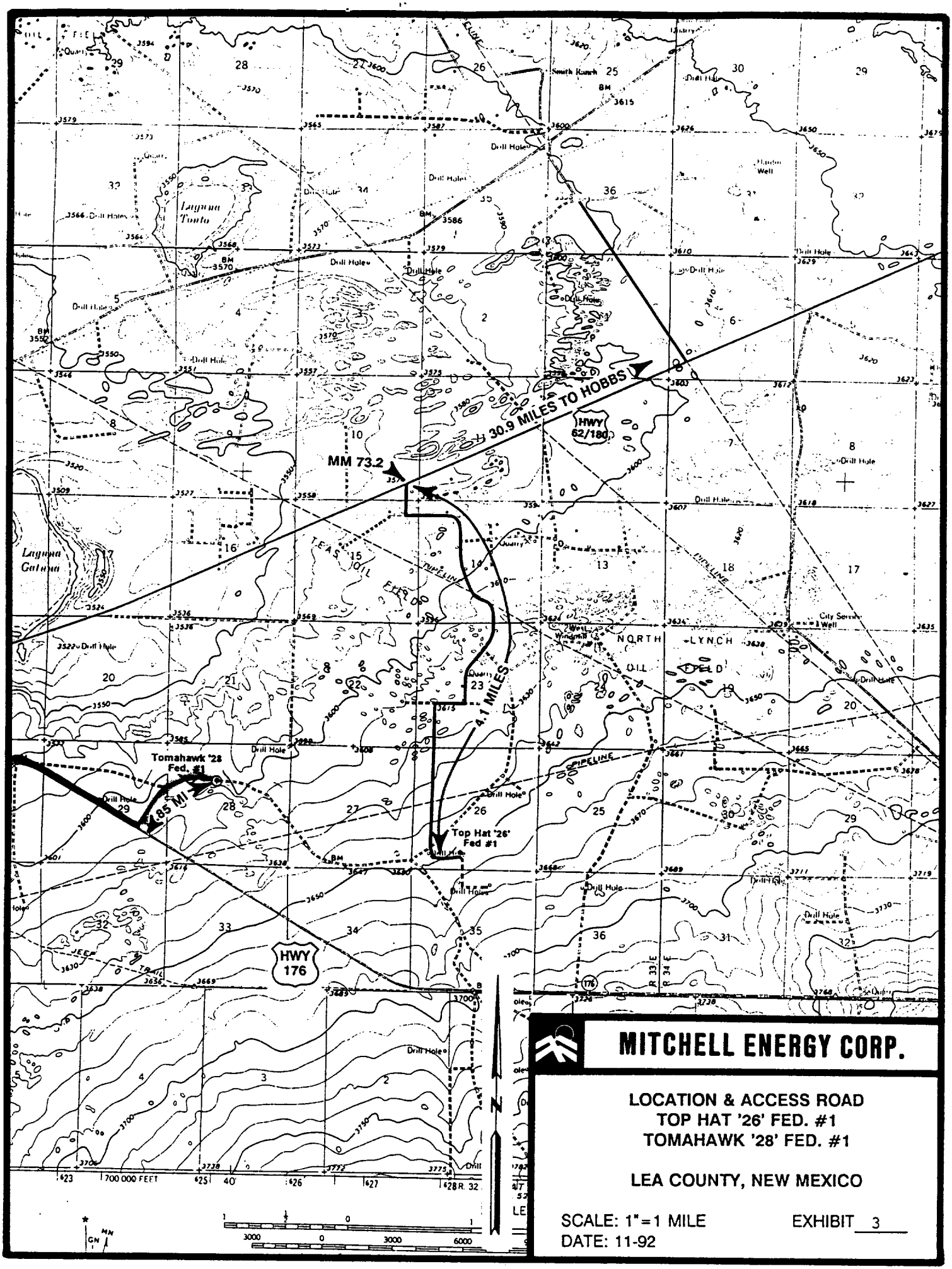
CALCULATED BY _____ DATE _____

CHECKED BY _____ DATE _____

SCALE _____



Attachment to Exhibit 2
TOMAHAWK 28 FEDERAL #1
1650 FNL, 1980 FWL,
SECTION 28, T.20S., R.33E., N.M.P.M.
LEA COUNTY, NEW MEXICO



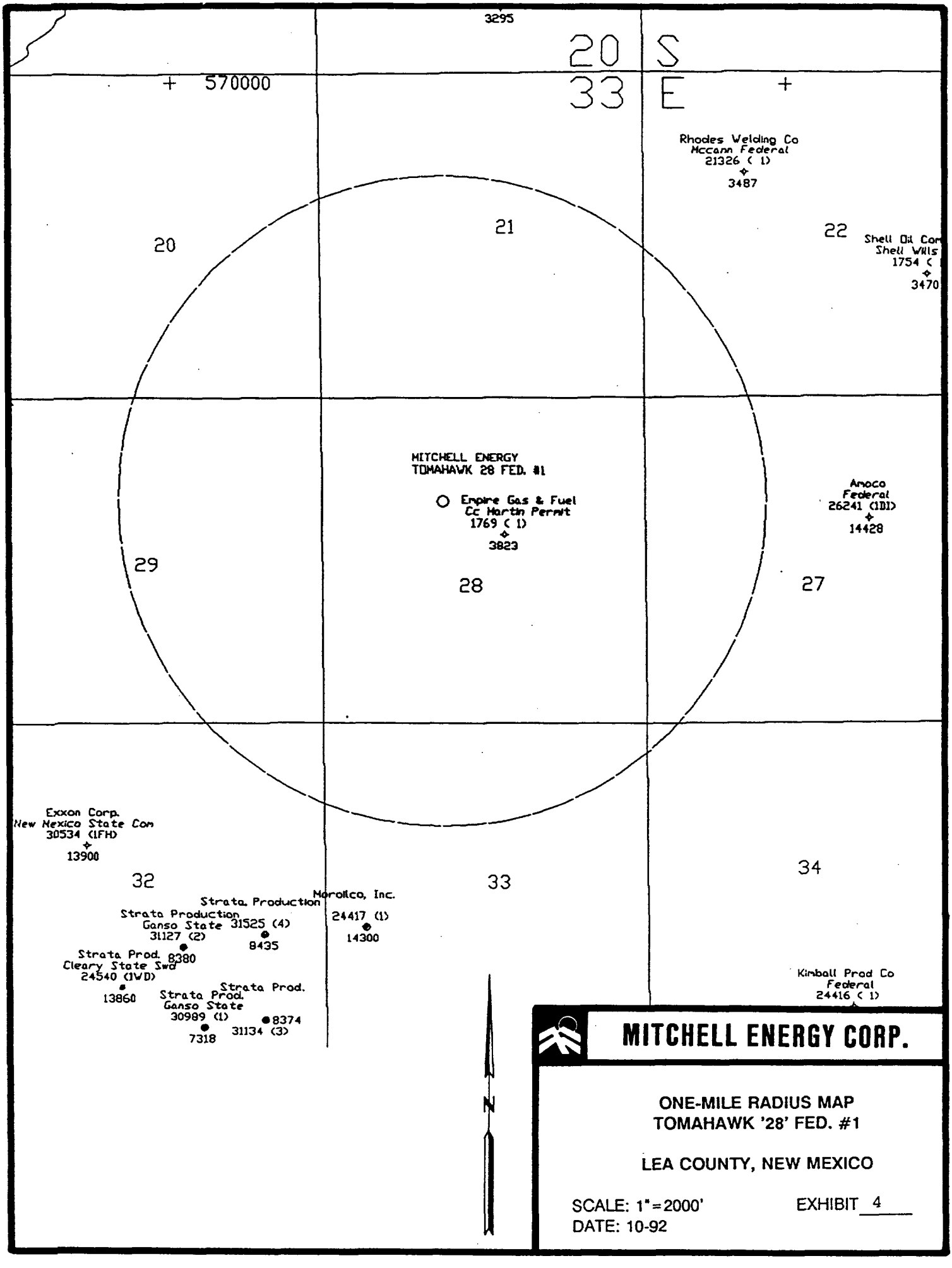
MITCHELL ENERGY CORP.

LOCATION & ACCESS ROAD
TOP HAT '26' FED. #1
TOMAHAWK '28' FED. #1

LEA COUNTY, NEW MEXICO

SCALE: 1"=1 MILE
DATE: 11-92

EXHIBIT 3



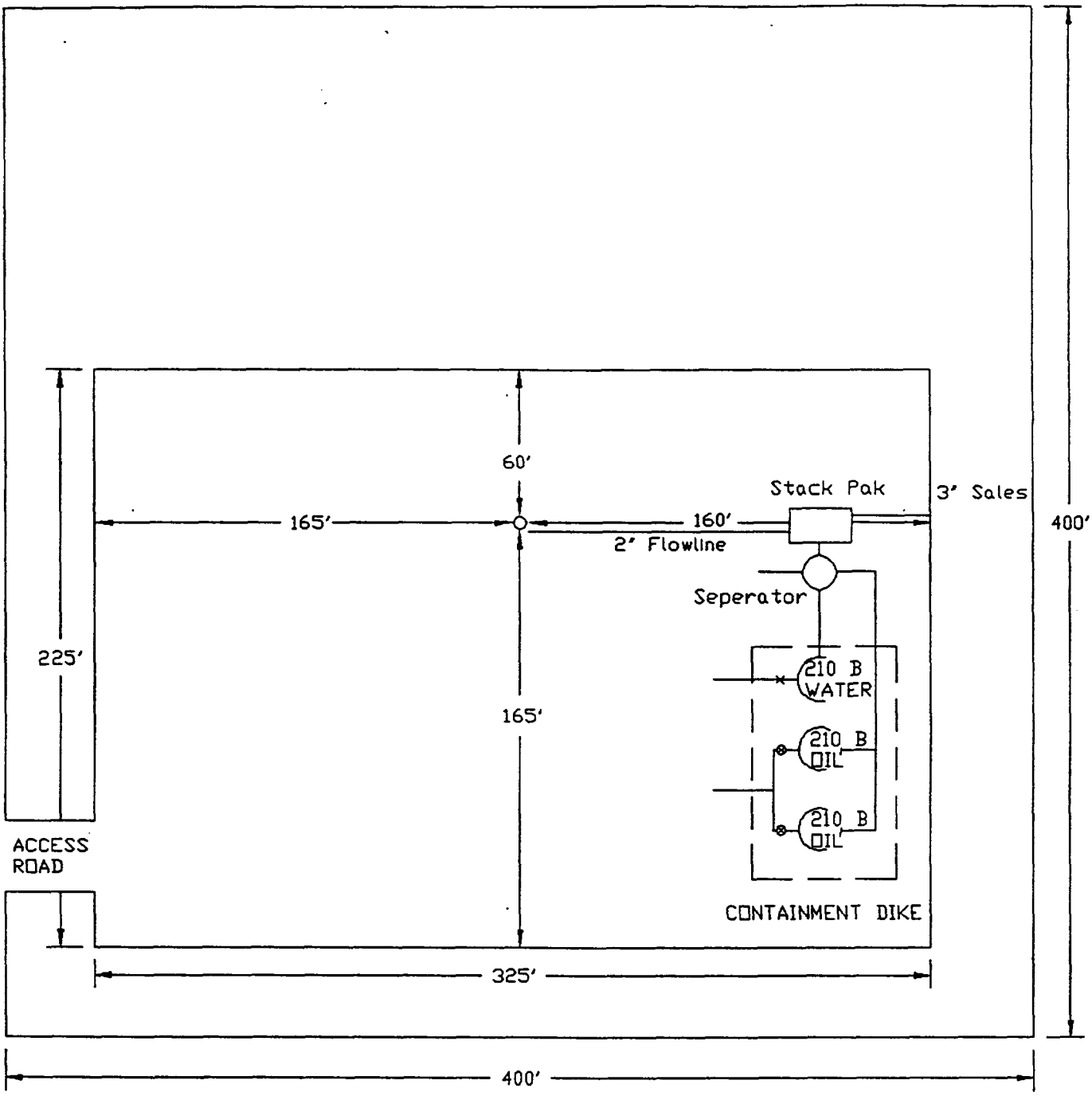
MITCHELL ENERGY CORP.

ONE-MILE RADIUS MAP
TOMAHAWK '28' FED. #1

LEA COUNTY, NEW MEXICO

SCALE: 1"=2000'
DATE: 10-92

EXHIBIT 4



N

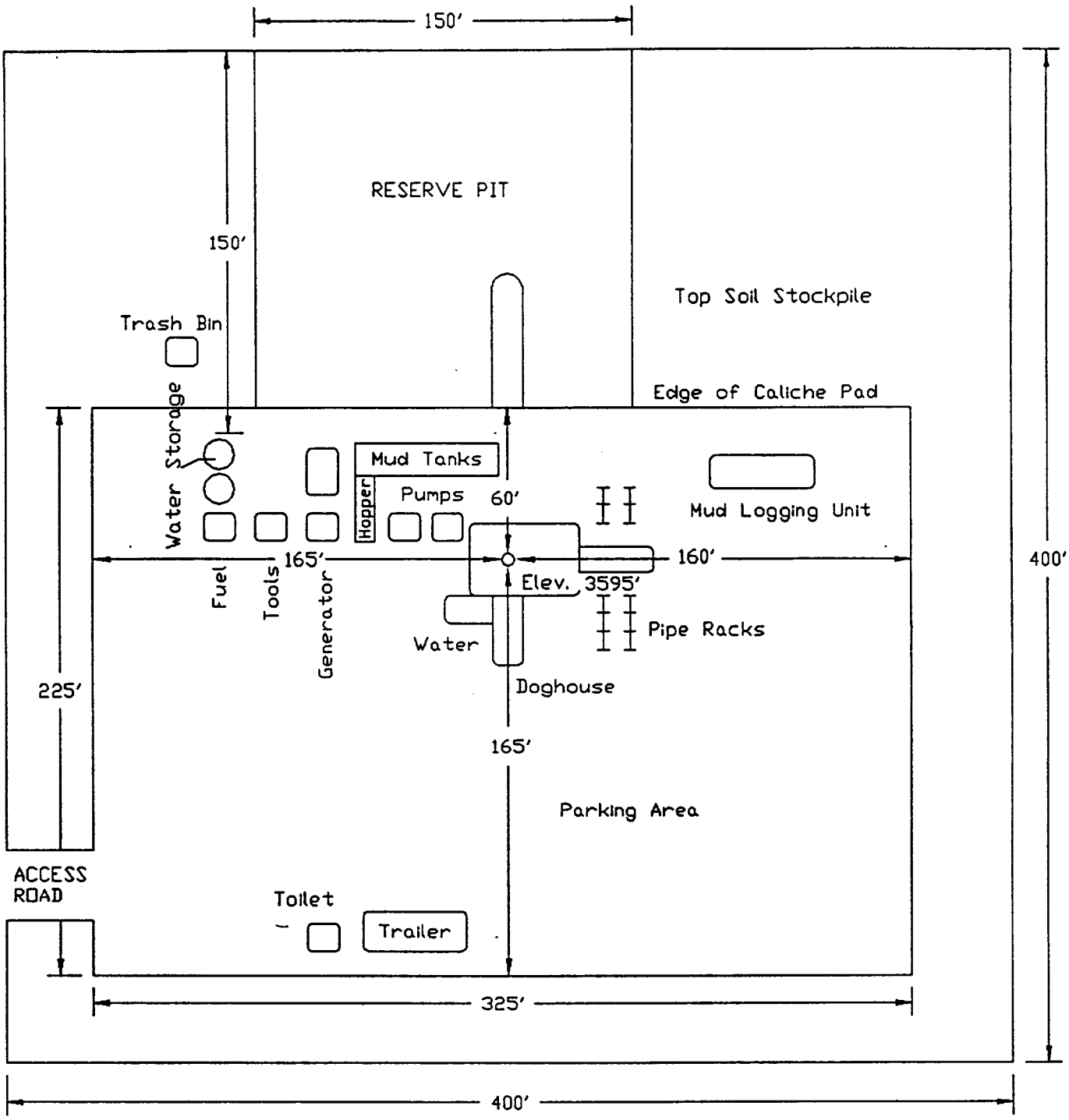
MITCHELL ENERGY CORP.

PRODUCTION FACILITIES LAYOUT FOR TOMAHAWK '28' FED. #1

LEA COUNTY, NEW MEXICO

SCALE: 1"=60'
DATE: 10-92

EXHIBIT 5



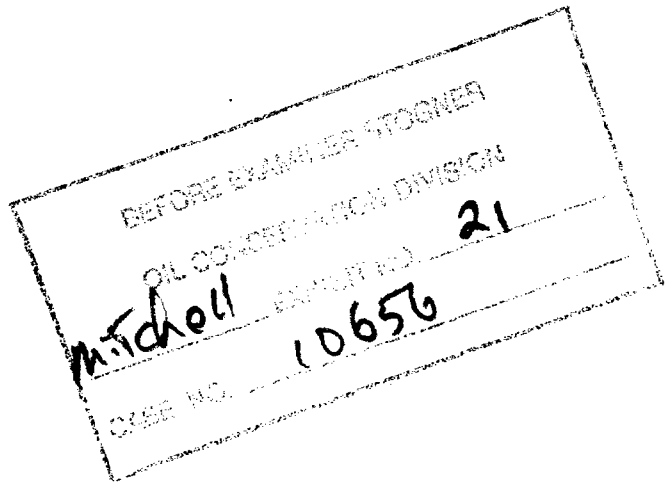
MITCHELL ENERGY CORP.

DRILLING RIG LAYOUT AND ELEVATIONS
TOMAHAWK '28' FED. #1

LEA COUNTY, NEW MEXICO

SCALE: 1"=60'
DATE: 10-92

EXHIBIT 6



CERTIFIED MAIL
Receipt No. P 771 497 541

November 17, 1992

Mr. Randy Foote
Mississippi Chemical Corporation
1996 Potash Mine Road
Carlsbad, New Mexico 88220

Re: Tomahawk "28" Federal Well No. 1
Lea County, New Mexico

Dear Mr. Foote:

By this letter, Mitchell Energy Corporation notifies you that it intends to file an application with the Bureau of Land Management for a permit to drill the above referenced well. The proposed location is 1,650 feet from the north line and 1,980 feet from the west line of Section 28, Township 20 South, Range 33 East (plat enclosed).

Should you require additional information or if I can be of any further help, kindly advise.

Very truly yours,

MITCHELL ENERGY CORPORATION

George Mullen
Regulatory Affairs Specialist

GM:mw
TOMAHAWK.gm

Enclosure

cc: Mr. Tony Herrell - BLM Carlsbad

MITCHELL ENERGY CORPORATION 2001 TIMBERLOCH PLACE
P.O. BOX 4000, THE WOODLANDS, TEXAS 77387-4000 713/377-5500
A subsidiary of Mitchell Energy & Development Corp.

Submit to Appropriate
District Office
State Lease - 4 copies
Fee Lease - 3 copies

DISTRICT I
P.O. Box 1980, Hobbs, NM 88240

DISTRICT II
P.O. Drawer DD, Artesia, NM 88210

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State of New Mexico
Energy, Minerals and Natural Resources Department

OIL CONSERVATION DIVISION

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Santa Fe, New Mexico 87504-2088

Form C-102
Revised 1-1-89

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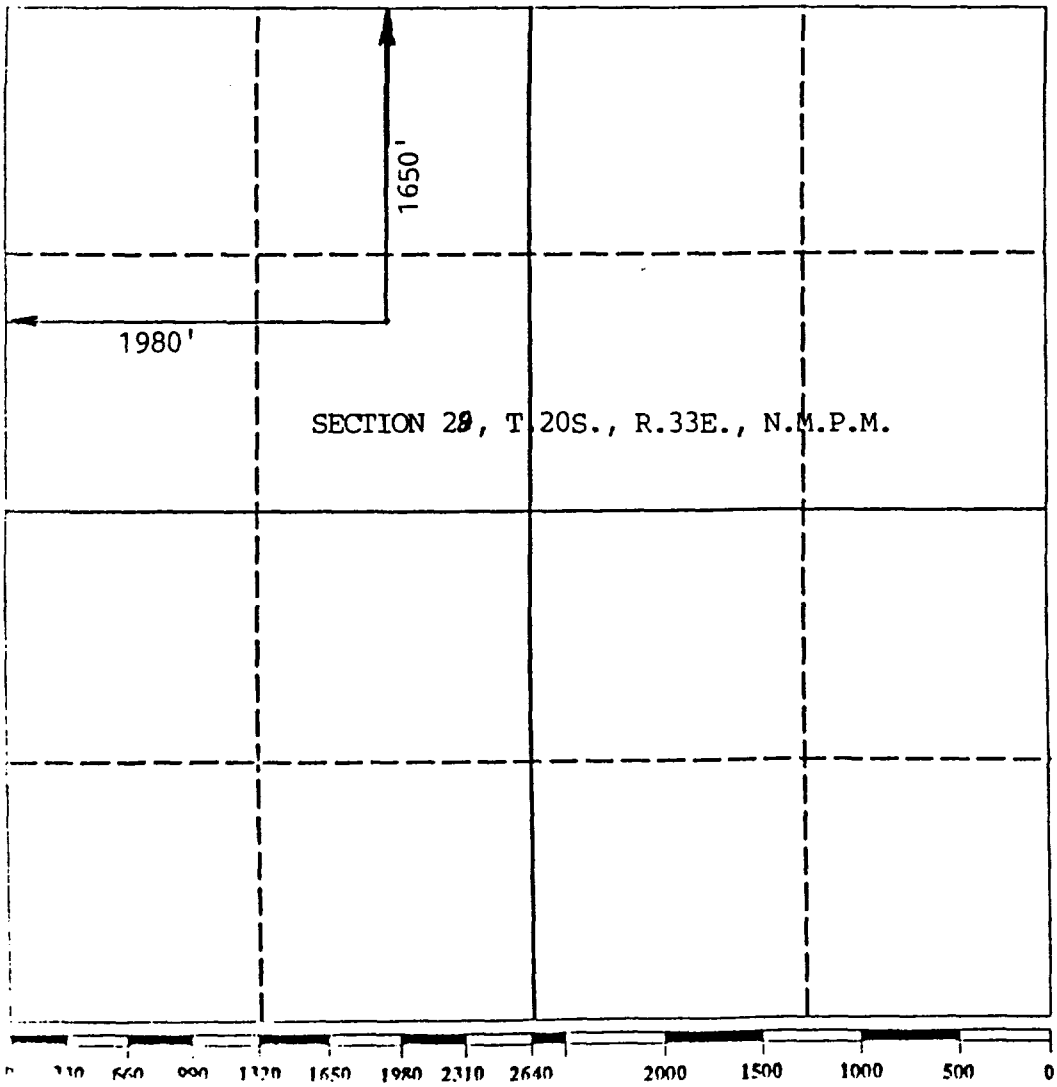

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Printed Name: George Mullen
Position: Reg. Affairs Specialist
Company: Mitchell Energy Corp.
Date: November 4, 1992

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Date Surveyed: 10/15/92
Signature & Seal of Professional Surveyor: GARY D. JACQUES, NEW MEXICO, 6290, REGISTERED PROFESSIONAL ENGINEER
Certificate No. 6290
ME282033