

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. 12,766  
 )  
 APPLICATION OF PRIMERO OPERATING, INC., )  
 FOR APPROVAL OF A UNIT AGREEMENT, )  
 SOCORRO COUNTY, NEW MEXICO )  
 )

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: MICHAEL E. STOGNER, Hearing Examiner

November 15th, 2001

Santa Fe, New Mexico

01 DEC -4 AM 9:58  
OIL CONSERVATION DIV

This matter came on for hearing before the New Mexico Oil Conservation Division, MICHAEL E. STOGNER, Hearing Examiner, on Thursday, November 15th, 2001, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South Saint Francis Drive, Room 102, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

\* \* \*

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November 15th, 2001  
 Examiner Hearing  
 CASE NO. 12,766

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NMSA 70-2-17.E	33

\* \* \*

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

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## FOR THE APPLICANT:

KELLAHIN & KELLAHIN  
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By: W. THOMAS KELLAHIN

\* \* \*

1           WHEREUPON, the following proceedings were had at  
2 9:34 a.m.:

3           EXAMINER STOGNER: Hearing will come to order.

4           At this time I'll call next case, Number 12,766,  
5 which is the Application of Primero Operating, Inc., for  
6 approval of its Cat Head Mesa unit agreement in Socorro  
7 County, New Mexico.

8           Call for appearances.

9           MR. KELLAHIN: Mr. Examiner, I'm Tom Kellahin of  
10 the Santa Fe law firm of Kellahin and Kellahin, appearing  
11 on behalf of the Applicant, and I have two witnesses to be  
12 sworn.

13           EXAMINER STOGNER: Okay, will the witnesses  
14 please stand to be sworn?

15           (Thereupon, the witnesses were sworn.)

16           MR. KELLAHIN: Mr. Examiner, my first witness is  
17 Mr. Ben Donegan.

18                               BEN DONEGAN,

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

21                               DIRECT EXAMINATION

22 BY MR. KELLAHIN:

23           Q. Mr. Donegan, for the record, sir, would you  
24 please state your name and where you reside?

25           A. I'm Ben Donegan, that's D-o-n-e-g-a-n. I live at

1 Albuquerque, New Mexico.

2 Q. On prior occasions, have you testified before the  
3 New Mexico Oil Conservation Division?

4 A. Yes, I have.

5 Q. And you have a number of decades of experience as  
6 not only a petroleum geologist but in matters involving  
7 petroleum land management?

8 A. Yes, I do.

9 Q. Are you knowledgeable, Mr. Donegan, about the oil  
10 and gas interests in the particular area that's the topic  
11 of this hearing?

12 A. Yes, I am.

13 Q. And are you knowledgeable about the lease  
14 acquisition and the distribution of the oil and gas  
15 interests to the various parties within the proposed unit  
16 area?

17 A. Yes, I am.

18 Q. In fact, you are the principal involved in  
19 consolidating the leases, arranging to have a framework or  
20 a structure to develop this prospect on a unit basis?

21 A. Yes, sir.

22 Q. Were you the representative on behalf of the  
23 proposed working interest owners and the proposed operator  
24 who was responsible for complying with the Bureau of Land  
25 Management and the State Land Office requirements for

1 approval of units?

2 A. Yes.

3 Q. Are you appearing this morning on behalf of  
4 Primero Operating, Inc., as their agent?

5 A. Yes.

6 MR. KELLAHIN: We tender Mr. Donegan as a  
7 geologic and a land expert.

8 EXAMINER STOGNER: Mr. Donegan is so qualified.

9 MR. KELLAHIN: For your information, Mr. Stogner,  
10 we do have Mr. Greg Hair, who is an experienced petroleum  
11 geologist, to give you the geologic presentation, but Mr.  
12 Donegan is also a geologist. He's familiar with the  
13 existing wellbores in the area and can respond to those  
14 questions if he needs to.

15 EXAMINER STOGNER: Okay.

16 Q. (By Mr. Kellahin) For the record, Mr. Donegan,  
17 if you'll take what we have marked as Primero Exhibit 1, it  
18 should be the large map which is attached as Exhibit A to  
19 the proposed unit agreement. Let's take a moment and  
20 unfold that document.

21 Are we looking at an area, Mr. Donegan, that you  
22 have proposed to identify as the Cat Head Mesa Unit Area?

23 A. Yes.

24 Q. Describe where we are. Where is this?

25 A. The Cat Head Mesa Unit Area is in Socorro County,

1 New Mexico, about 25 miles northwest of Carrizozo, 18 miles  
2 northeast of Bingham and about 50 miles northeast of  
3 Socorro. And I may have said -- Yeah, I did say west of  
4 Carrizozo; that is correct.

5 Q. What is indicated by the black-hatched outline on  
6 the Exhibit Number 1?

7 A. The proposed Cat Head Mesa Unit Area.

8 Q. Within that area there's a number of numbers  
9 associated with circles. What do those represent?

10 A. Those are tract numbers that are shown on Exhibit  
11 B.

12 Q. Exhibit B would be the attachment to the unit  
13 agreement?

14 A. Yes.

15 Q. All right. So the tract numbers that are circled  
16 are tract numbers that represent the various leases being  
17 consolidated for unit purposes?

18 A. Right.

19 Q. At the bottom of the display, Exhibit 1, there's  
20 a breakout of acreage. Would you summarize for us how the  
21 acreage is distributed among federal, state and fee?

22 A. Yes, sir. The Cat Head Mesa Unit Area is  
23 comprised of 37,339.04 acres and covers all or part of 15  
24 federal leases, 14 state leases and two fee leases. The  
25 acreage is comprised of 26,499.79 acres of federal lands or

1 about 70.97 percent of the proposed unit area, the state  
2 lands covered by leases in the Cat Head Mesa Unit Area  
3 cover 6532.38 acres or 17.5 percent of the unit, and the  
4 two fee leases cover patented lands covering 4306.87 acres  
5 or 11.53 percent of the proposed unit area.

6 Q. Are all of the mineral interests within the  
7 proposed unit boundary leased?

8 A. Yes.

9 Q. And did you initially acquire those leases?

10 A. Yes, I was involved in the acquisition of all of  
11 those leases.

12 Q. Is this a leasehold ownership from the surface  
13 down to total depth?

14 A. Yes, sir.

15 Q. And the unitized interval would correspond to any  
16 production from the surface down to some total depth?

17 A. Yes.

18 Q. Have you used a particular form for your proposed  
19 unit agreement?

20 A. The proposed Cat Head Mesa Unit agreement  
21 conforms very closely with the form proposed by the Bureau  
22 of Land Management in their handbook for formation of  
23 units, and it's very close, almost identical, to the  
24 Bennett Ranch Unit which was approved a few years ago by  
25 the Bureau of Land Management and the Oil Conservation

1 Division and the State Land Office.

2 And the only differences in that particular, or  
3 the principal differences in the Cat Head Mesa Unit  
4 agreement and the Bennett Ranch agreement, which covers an  
5 area where Burlington and Harvey E. Yates Company and  
6 others have been drilling in Otero County, New Mexico, is  
7 Section 9, the paragraph relating to discovery and, of  
8 course, the description of the acreage and the size of the  
9 unit.

10 Q. You're referring to what we've marked for this  
11 hearing as Exhibit Number 2?

12 A. Yes, sir.

13 Q. Has both the Commissioner of Public Lands and the  
14 Bureau of Land Management given you preliminary approval  
15 for the unit?

16 A. Yes, they have.

17 Q. We'll come to the documents in a moment, but as  
18 part of that plan have they also approved your proposal to  
19 use a re-entry as the initial qualifying well?

20 A. Yes, they have.

21 Q. Let's show Mr. Stogner on Exhibit 1 what has been  
22 proposed and agreed to as the initial qualifying well.

23 A. The initial qualifying well is the former Manzano  
24 Oil Company Number 1 Cat Head Mesa well, located in the  
25 northeast quarter of the southwest quarter of Section 8,

1 Township 4 South, 9 East, or on the exhibit, by the numbers  
2 of the case, Exhibit Number 1, it's on Tract Number 31.

3 Q. What is the current status of that wellbore?

4 A. It is a well plugged and abandoned in conformance  
5 with an approved -- and it's plugged and abandoned by the  
6 Oil Conservation Division.

7 Q. Let's turn now and have you identify Exhibit  
8 Number 3. What is Exhibit Number 3?

9 A. Exhibit Number 3 is the proposed operating  
10 agreement for the Cat Head Mesa Unit Area.

11 Q. Have both the unit agreement and the unit  
12 operating agreement been circulated for approval among the  
13 working interest owners and the proposed operator?

14 A. We're in the process of circulating it. It  
15 conforms very closely with operating agreements that we've  
16 had with these same parties on these leases prior to the  
17 formation of the unit, so that we don't expect any  
18 disapproval.

19 Q. Have all the working interest owners and the  
20 operator, proposed operator, at least communicated to you  
21 verbally that they're in agreement with you about the  
22 unitization and the method of development and operation?

23 A. Yes, they have.

24 Q. Let's turn now to the series of approvals,  
25 starting first with the stapled package of letters, the

1 first of which is a letter dated October 15th, and it's  
2 marked as Exhibit 4. Let's start at that point. What is  
3 the purpose of this letter?

4 A. Exhibit 4 is a letter from the operator, Primero  
5 Operating, Inc., to the Bureau of Land Management,  
6 requesting approval of the -- preliminary approval of the  
7 proposed unit area and the proposed initial test well.

8 Q. Have you defined or determined what will be the  
9 initial formation that is the objective of the re-entry and  
10 test?

11 A. Yes, as shown in the letter of Exhibit 4, the  
12 Atoka formation is the proposed target formation for  
13 testing in the re-entry.

14 Q. Let's turn to the next page that's stapled  
15 together, it's marked as Exhibit 5. What are we looking at  
16 here?

17 A. Exhibit 5 is a letter from Ben Donegan to Pete  
18 Martinez, New Mexico State Land Office, similarly asking  
19 for preliminary approval of the proposed unit area and the  
20 plan for development and exploration.

21 Q. After filing the application for preliminary  
22 approval with the Bureau of Land Management, did you either  
23 concurrently with that filing or subsequently submit to the  
24 BLM the supporting geologic documentation?

25 A. Yes, we did.

1 Q. And thereafter did you meet with representatives  
2 of the Bureau of Land Management concerning their consent  
3 and agreement to the boundary of the unit and the tracts to  
4 be committed to the unit?

5 A. Yes, we did.

6 Q. Let's refer to Exhibit 6. What does that  
7 represent?

8 A. Exhibit 6 is a letter from the Bureau of Land  
9 Management at Roswell advising us of preliminary approval  
10 of our unit area and the form of our proposed unit  
11 agreement.

12 Q. All right, sir, let's turn now to the next  
13 letter. I have it marked as Primero Exhibit 7. Identify  
14 what this is.

15 A. Exhibit 7 is a letter from John Simitz, a staff  
16 geologist with the Bureau of Land Management at Roswell, in  
17 which Mr. Simitz clarified the Bureau of Land Management's  
18 approval of the re-entry of the Manzano well as qualifying  
19 as the initial test well.

20 This letter was issued subsequently, because it  
21 wasn't clearly set out in the initial approval letter,  
22 Exhibit 6.

23 Q. All right, sir. Finally, then, in this stapled  
24 package of letters, would you turn to Exhibit 8 and  
25 identify and describe what this letter is?

1           A.    Exhibit 8 is a copy of a letter from the  
2 Commissioner of Public Lands notifying us of preliminary  
3 approval of our unit area and our unit agreement, the form  
4 of the unit agreement, and our plan for exploration and  
5 development of the unit area.

6           Q.    All right, sir.  Let's turn now past those  
7 documents, and there is a separate letter marked as Exhibit  
8 9.  Do you have that?

9           A.    Yes, I do.

10          Q.    Identify and describe what this letter is about.

11          A.    This letter is a letter to Mr. Stogner from  
12 Phelps White, president of Primero Operating, Inc.,  
13 advising that Primero Operating, Inc., has agreed to be  
14 operator of the Cat Head Mesa Unit and that Ben Donegan is  
15 authorized to appear at the hearing for Primero Operating,  
16 Inc.

17          Q.    When the Application for hearing was filed before  
18 the Division, did you cause to be circulated among the  
19 operator and all proposed working interest owners a copy of  
20 that hearing Application?

21          A.    Yes, I did.

22          Q.    And is Exhibit 10 the certification showing that  
23 those parties or entities were notified of this process  
24 that's taking place this morning?

25          A.    Yes.

1 MR. KELLAHIN: That concludes my examination of  
2 Mr. Donegan, Mr. Stogner.

3 We move the introduction of his Exhibits 1  
4 through 10.

5 EXAMINER STOGNER: Exhibits 1 through 10 will be  
6 admitted into evidence.

7 EXAMINATION

8 BY EXAMINER STOGNER:

9 Q. Mr. Donegan, is there some override royalty  
10 involved in this matter?

11 A. Yes, there is, the overriding royalty interest  
12 owners are shown on page 5 of the Exhibit B of the unit  
13 agreement, which is Oil Conservation Division Exhibit 2.

14 Q. Two or 3?

15 A. Well, actually it's in both of them.

16 Q. Both of them, okay.

17 A. It's in 2 and 3, but I think it's -- Yeah, it's  
18 the identical pages in both agreements.

19 Q. Okay, now what is the -- does this 5-percent  
20 override royalty -- is that consistent throughout the unit,  
21 or does that come up in different tracts at different  
22 percentages?

23 A. No, the overriding royalty is the same in every  
24 lease. And incidentally, the working interest ownership is  
25 the same in every lease in the unit area.

1 Q. Now, have any of these non-operators or the  
2 working interests -- one and the same, are they not?

3 A. Mr. Stogner, please repeat that question.

4 Q. Okay. Are you referring to the working interests  
5 as non-operators?

6 A. Yes.

7 Q. Okay. Now, are any of these parties -- have they  
8 joined this voluntary unit agreement yet?

9 A. All of the owners shown on page 5 under the  
10 triple asterisk where it says "Ownership of the 100.0%  
11 working interest", all of those owners, which comprise 100  
12 percent of the working interests, have indicated that they  
13 will approve and will join the unit.

14 Q. But have any of them actually signed it?

15 A. No, we're in the process of circulating it now.

16 Q. Okay.

17 A. And we have no reason to expect that anyone will  
18 not join.

19 Q. Okay. Now, how about -- Here again, I'm still  
20 referring to this page 5 of Exhibit B of the Unit  
21 agreement. How about the royalty interest owners?

22 A. We are in the process of circulating ratification  
23 and joinders to all of the royalty interest owners, and we  
24 have -- There are quite a few of those scattered around the  
25 U.S., and those that live out there we expect to join, the

1 ones that we know, and like the lady that owns the ranch  
2 there where the well is located, that's Knollene Lovelace  
3 McDaniel, shown under that basic royalty down there.

4 The others, we haven't had a response from them  
5 now. We'll have to wait and see what their answers are.

6 Q. Now, your preliminary well, are you anticipating  
7 Atoka oil or Atoka gas production?

8 A. We are not sure. We have indications of  
9 potential hydrocarbons, but it remains to be seen whether  
10 oil or gas is present there.

11 EXAMINER STOGNER: Mr. Kellahin, on Exhibit  
12 Number 10 this is your notice; is this right?

13 MR. KELLAHIN: Yes, sir.

14 EXAMINER STOGNER: I'll throw this question out.  
15 Why wasn't the royalty interest notified of the proposed  
16 unit?

17 MR. KELLAHIN: We simply didn't do it. There's  
18 no obligation to notify them. Had I thought about it, I  
19 guess I could have sent some more notices. If it's an  
20 oversight, I think there's no consequence to it. It's  
21 not -- In fact, notification of the working interest owners  
22 is not required.

23 In fact, there's a whole notice problem with  
24 units. I don't know what's required.

25 But we at least did this much.

1 Q. (By Examiner Stogner) On Exhibit Number 1, you  
2 talked about the utilization of the re-entry of the old  
3 Manzano well. Are there any other wellbores out here in  
4 the proposed unit?

5 A. Yes, there is one well, one dry hole, located in  
6 Section 2, Tract Number 22, on Exhibit 1. That well is the  
7 Primero Operating, Inc., Number 1 Dulce Draw State Well.

8 Q. Okay. Do you know when that was drilled and when  
9 it was --

10 A. That was completed in the last few months, and  
11 plugged and abandoned this summer.

12 Q. And do you know why this section is still being  
13 considered within the unit area, if it's already been  
14 proven that it's nonproductive?

15 A. We're not sure that it's nonproductive, as Mr.  
16 Hair will relate to you later.

17 As a matter of fact, the drilling of that well is  
18 what caused us to realize that we had promise in this  
19 Manzano well and that we should be re-entering it and  
20 requesting approval and formation of this unit in order  
21 that we could do it under a unit agreement.

22 EXAMINER STOGNER: I don't have any other  
23 questions of this witness.

24 You may be excused, Mr. Donegan. Appreciate it.

25 THE WITNESS: Thank you.

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GREGORY L. HAIR,

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

DIRECT EXAMINATION

BY MR. KELLAHIN:

Q. Mr. Hair, for the record, sir, would you please state your name and occupation?

A. Greg Hair. I'm a consulting petroleum geologist. I live in Midland, Texas.

Q. On prior occasions have you testified as a petroleum geologist before the Division?

A. Yes.

Q. And pursuant to your employment as a consultant, have you made a geologic study of the proposed Cat Head Mesa Unit?

A. Yes.

MR. KELLAHIN: We tender Mr. Hair as an expert petroleum geologist.

EXAMINER STOGNER: Mr. Hair is so qualified.

Q. (By Mr. Kellahin) Let me ask you, sir, to turn to Exhibit 12, unfold it before you, locate for us on that display the proposed unit boundary.

A. The proposed unit boundary here is the black hachured line shown on the exhibit.

Q. What's the significance to you of the area

1 described with the orange marker?

2 A. The orange marker there is the extent of dip on  
3 the Cat Head Mesa structure. In other words, at that point  
4 the dip reverses and you're off the structure. And we have  
5 set up the unit outline to match that structural point.

6 Q. Why is that of importance to you?

7 A. The structure itself we believe is cause for  
8 formation of the traps here for hydrocarbons. We think  
9 that the uplift of that structure is where the oil and/or  
10 gas would be trapped.

11 Q. What is the source of the data, Mr. Hair, that  
12 allowed you to make this interpretation about this  
13 potential structural trap?

14 A. This map is a photogeologic map done by E.C.  
15 Beaumont, and from that map, then, we've made  
16 interpretations based on what we know about the geology of  
17 the area. And it is a surface geologic map.

18 Q. Give us a geologic justification for the  
19 configuration of the proposed unit boundary to the area  
20 that you have defined to be within this geologic figure.

21 A. Based on the reversal of dip there, once you get  
22 outside of the unit boundary, which is also shown by the  
23 orange line, more or less, you start having a reversal dip,  
24 your structure opens up, and you no longer have a trap. So  
25 we think anything within that closure can certainly

1 produce.

2 Q. In your opinion, for purposes of unitization, is  
3 there a reasonable geologic justification to the proposed  
4 unit boundary for this unit?

5 A. Yes, that structure is well defined and we feel  
6 it is well justified in being testified and having the unit  
7 defined that way.

8 Q. Do you have a recommendation to the principals  
9 involved in this project, as well as the Hearing Examiner,  
10 as to where to locate the initial qualifying well for the  
11 unit?

12 A. Yes, we feel that the initial qualifying well,  
13 the Manzano well, Cat Head Mesa Number 1, is optimally  
14 located on this structure and was drilled in the right  
15 position and inadequately tested. So we feel that further  
16 testing of that well is definitely warranted.

17 Q. Let me turn your attention to the next display,  
18 Mr. Hair. There's an exhibit marked Exhibit Number 13.  
19 Let's take a moment to unfold that, and you tell me what  
20 we're looking at when we look at Exhibit 13.

21 A. This is an electric log on the Manzano Number 1  
22 Cat Head Mesa well. And marked in red on that, all the  
23 formations are marked, as well as zones of interest that we  
24 intend to perforate and test in that well.

25 The primary zone of interest in this well is the

1 Atoka formation, specifically a sand in the Atoka.

2 We have secondary zones of interest in the Abo,  
3 and we also have an interest in a tertiary diabase sill  
4 which is injected into the Abo formation, and we think that  
5 it also has indications of possible production, and we  
6 intend to test it.

7 But the primary zone is the Atoka.

8 Q. What is there about the log characterization that  
9 you see as an expert that causes you to hold the belief  
10 that the Atoka has some probability of success?

11 A. The Atoka sand here has extremely high porosity  
12 compared to other sands within this same depositional  
13 basin. There have been two wells test a sand very similar  
14 to this. Both those wells have porosity less than 6  
15 percent. This well has porosities of 12 percent. Both of  
16 those wells tested the gas from the formation at  
17 noncommercial rates, but they did test gas. And we feel  
18 that when the porosity is raised from 6 percent up to 12,  
19 those rates could increase to where they could be  
20 commercial.

21 Q. What was Manzano's original objective, if you  
22 know, for drilling this Manzano well at its particular  
23 location?

24 A. Well, as I said, I think it was probably because  
25 structurally they were optimally located, and that's what

1 they were trying to do, is hit the crest of this structure.  
2 Past that, I do not know what their --

3 Q. Do you have information to allow you to form an  
4 opinion or understanding as to why Manzano abandoned the  
5 well before attempting to adequately test the Atoka  
6 interval?

7 A. Yes, during the drilling of the well Manzano got  
8 down to about 3900 feet and set pipe. They drilled out of  
9 there. When they hit the top of the objective that we're  
10 looking at, the Atoka sand, they lost circulation. From  
11 the top of that zone to TD they lost well over a thousand  
12 barrels of drilling fluid, most of it lost into that zone.  
13 Using log characteristics and several things, we feel that  
14 zone took a tremendous amount of water.

15 They attempted to drill stem test that zone, the  
16 Atoka zone, and I believe they recovered 24 barrels of  
17 water, if I remember right -- no, 40 barrels of water, I'm  
18 sorry. And that water was of very similar composition to  
19 the drilling. And we feel that all they really tested was  
20 the drilling fluid that they put in there, and the only  
21 adequate way to test this zone is to set a swabbing unit on  
22 there and actually swab the fluid out of the formation and  
23 hopefully kick the thing off flowing.

24 The formations out here are slightly  
25 underpressured, so you do have to get them on vacuum to get

1 them to produce.

2 Q. Would that method of drilling the well engaged in  
3 by Manzano be contrary to how you would want to drill for  
4 an underpressured zone in this area, such as the Atoka?

5 A. Well, it makes it very difficult, I'll say that,  
6 whether it's contrary or not. The ideal way to do this  
7 would be to air-drill the well, and that proposes its own  
8 set of difficulties out here. Because this is such a wild  
9 area I believe, you know, a lot of the drilling will be by  
10 feel.

11 And since Manzano -- this was their first  
12 attempt, they did the best that they could, but they just  
13 had a tremendously difficult time shutting off lost  
14 circulation in that zone.

15 Q. Does Exhibit 11, which we skipped initially,  
16 represent a written summary of your geologic opinions and  
17 observations concerning this prospect?

18 A. Yes, this outlines my opinions as to the geology,  
19 the deposition, the drilling and tests of the well, it  
20 gives all the formation tops and talks about the results of  
21 the two wells, both the Cat Head Mesa Well and the Primero  
22 Dulce Draw Well out here.

23 It also discusses why I believe the boundary  
24 delineation is right and justification for the initial test  
25 well.

1 Q. Were your Exhibits 11 through 13 submitted to the  
2 Commissioner of Public Land prior to obtaining preliminary  
3 approval?

4 A. Yes.

5 Q. And were your exhibits also submitted to the  
6 Bureau of Land Management precedent to their preliminary  
7 approval?

8 A. Yes.

9 MR. KELLAHIN: That concludes my examination of  
10 Mr. Hair, Mr. Stogner.

11 We move the introduction of his Exhibit 11, 12  
12 and 13.

13 EXAMINER STOGNER: Exhibits 11, 12 and 13 will be  
14 admitted into evidence at this time.

15 EXAMINATION

16 BY EXAMINER STOGNER:

17 Q. Mr. Hair, in referring to the log, I show  
18 Pennsylvanian and Atoka. Is this the only formation --

19 A. Yeah --

20 Q. -- in the Pennsylvanian age that's present in  
21 this area?

22 A. Yes, it's the -- Based on some fossil evidence,  
23 it has been identified as Atoka. Now, it may lap over into  
24 other formations that we haven't done a totally detailed  
25 analysis, but at least the information that we have says

1 that this is Atoka in age.

2 Q. And also you go from the Atoka to the  
3 Precambrian, so there's an absence of the lower  
4 Mississippian --

5 A. -- and Devonian, all of that's been either not  
6 deposited or eroded off.

7 Q. Now, when you denote Precambrian here, that is  
8 definitely base rock, or is it a granite wash type of a  
9 material?

10 A. Well, it was originally thought to be a granite  
11 wash, that's why Manzano drilled so much of it. You can  
12 see they drilled a tremendous amount. And it drilled  
13 fairly quickly, but I think in re-examining the cuttings  
14 and looking at what we have here, that they probably  
15 drilled base Precambrian, basal Precambrian.

16 Q. Now, the Precambrian outcrops to the north, does  
17 it not?

18 A. North, and I believe to the northeast also.

19 Q. And I believe we're talking about the --

20 A. But we're in a -- This is in a basin we call the  
21 Carrizozo Basin, and when you get to those outcrops you've  
22 gone across several large structures and gotten out of this  
23 Basin totally. As a matter of fact, we're at the edge of  
24 the Basin right here.

25 Q. Okay, now we're talking about the Pedernals up to

1 the north?

2 A. Yes, yes.

3 Q. Okay. Now, you show a formation here I'm not  
4 totally familiar with and that's the sill?

5 A. Okay, that is an igneous intrusive.

6 Q. All right.

7 A. It's of tertiary age, probably. It hasn't been  
8 dated, but that would be the most likely case.

9 Q. Now, that's actually an intrusive?

10 A. Yes, it was injected into the Abo formation.

11 Q. Wouldn't that have heated up the Atoka or Abo?

12 A. Yeah, but you find out when these things are  
13 studied that the effects of that heating are very slim.  
14 You can -- There's been lots of studies done in the  
15 affected zones. Some zones it's only a few inches,  
16 sometimes it's a few feet. It really doesn't affect it too  
17 greatly. It's not a large, massive body like a pluton  
18 would be, that would affect the regional area.

19 Q. Okay. In referring to your Exhibit Number 12,  
20 this is your map again --

21 A. Uh-huh.

22 Q. -- and I asked Mr. Donegan about the Primero well  
23 over in Section 2. Do you propose to re-enter that one  
24 later, or -- I understand it wasn't adequately tested, you  
25 don't believe?

1           A.    The tests run in that well, they did test the Abo  
2   formation, which was one of our objectives, and they  
3   recovered nonflammable gases with traces of hydrocarbons in  
4   them.

5                    We feel that that well is either just in the play  
6   or right on the edge of it, and you see we've shown it  
7   right on the edge of the unit. We feel that that well did  
8   not have flammable gas in it because it had no source.  
9   This area is very similar, we believe, to the Pecos Slope  
10  area in Chaves County, the Abo there. And the source is  
11  primarily Pennsylvanian. There is no Pennsylvanian in that  
12  well, but we feel there is Pennsylvanian immediately  
13  adjacent to it, that that's probably one of the -- the  
14  boundary is right there. But we feel that there's still a  
15  possibility of Abo production from that well.

16           Q.    When you say nonflammable gas, what type of gas  
17  was it?

18           A.    It had nitrogen, CO<sub>2</sub> and some methane, traces of  
19  methane.

20           Q.    Now, also I notice here on the map there's  
21  several circle with crosses in them, two below the Manzano  
22  well, one below the Primero well and then one over on the  
23  eastern -- or, I'm sorry, the western side of the -- I'm  
24  sorry --

25           A.    Those are --

1 Q. -- the eastern side of the map.

2 A. -- dip symbols, and what that means is, the  
3 aerial photographer has said that those beds are flat, have  
4 less than two degrees of dip. And the key for that is in  
5 the lower right-hand corner of the map where it talks about  
6 strike and dip of beds, lower right-hand in the legend, I'm  
7 sorry, down at the bottom.

8 Q. Okay, so that's not a well symbol?

9 A. No, there are no well symbols, the only two wells  
10 out here that we know about are the two shown, the Manzano  
11 and the Primero.

12 Q. Or proposed well symbols?

13 A. No, those are structural symbols.

14 EXAMINER STOGNER: Okay, I have no further  
15 questions of Mr. Hair.

16 However, I do have another follow-up question for  
17 Mr. Donovan [*sic*].

18 Mr. Donovan, on the royalty interest owners, are  
19 those interests leased at this time?

20 MR. DONEGAN: They're overrides that were created  
21 after the leases were acquired, and they are under all of  
22 the existing leases. They do not require any further  
23 commitment from them. They're already committed to the  
24 terms of the leases.

25 EXAMINER STOGNER: Okay, I'm not talking about

1 the override, I'm talking about the royalty interest in the  
2 fee lease and the fee areas. Are those leased?

3 MR. DONEGAN: Yes, there are only two fee tracts  
4 in there, two -- Harvey Mineral Trust is one, and then that  
5 Knollene McDaniel Lovelace [sic] family, the other, and we  
6 have leases covering all of their lands.

7 EXAMINER STOGNER: Okay, thank you, Mr. Donegan.

8 MR. DONEGAN: Thank you.

9 EXAMINER STOGNER: Mr. Kellahin, I have nothing  
10 further of either of the witnesses at this time. Do you  
11 have anything further?

12 MR. KELLAHIN: Not specifically with regards to  
13 the specifics of this case, Mr. Stogner, but if you'll  
14 provide me an opportunity, I would like to comment on the  
15 Division's practice of having us appear before you in cases  
16 like this. Can we take a minute or not?

17 I was going to supplement Mr. Carr's comments for  
18 Mr. Brooks.

19 EXAMINER STOGNER: Well, let's go ahead and put  
20 it on the record and make that available.

21 MR. KELLAHIN: All right, sir.

22 When I was going to law school in the late 1960s,  
23 the only oil and gas course you could take was really a  
24 property law course on leasing. It had nothing to do with  
25 exploration, oil and gas rules and regulations.

1           And so in the early 1970s when I went to work for  
2 my dad, he was the source of my knowledge and experience  
3 about oil and gas matters, particularly regulatory matters.  
4 And he was recognized as, if not the best, certainly one of  
5 the best experts in this area. And at that time, the  
6 practice for young lawyers was to be mentored by older  
7 lawyers, and Jason did that for me.

8           After that occurred, what knowledge I have about  
9 the unit process I learned from him, and I've had it  
10 confirmed by experience.

11           Because I thought that process was so successful,  
12 when my young friend Mr. Carr graduated from law school and  
13 became a young lawyer in New Mexico, and particularly in  
14 Santa Fe, I tried to mentor him.

15           On occasion I find that he and I now disagree on  
16 certain things that Jason taught me and that I thought I  
17 had taught Mr. Carr. And occasionally before you and  
18 others I have to remind him of that disagreement and I have  
19 to take responsibility for the fact that I did not require  
20 him to do the level of homework that may have been  
21 necessary and required.

22           But on this one point we do, in fact, agree.  
23 What I learned from Jason years ago is that historically  
24 the Oil Conservation Commission at that time was in the  
25 practice of approving unit agreements. And in the time I

1 had to search I searched all the R orders, and there's  
2 nothing in those orders that will explain to you why the  
3 Commission was ever involved.

4 I then searched to go to the series of orders  
5 that predate the R orders, and my current level of  
6 investigation has taken me back to Order Number 570, it's  
7 in Case 54. It's the Picacho Unit, P-i-c-a-c-h-o, approved  
8 by the Commission on August 4th of 1944. I have not  
9 attempted to find the transcript, if it still exists, but  
10 the order itself is a reference at least back in the early  
11 1940s to the Commissioner of Public Lands, the Bureau of  
12 Land Management and the Oil Conservation Commission  
13 processing these units very much like we're doing now.

14 I do recall, as Mr. Carr recalls, that in the  
15 1950s there were certain instances where the Commissioner  
16 of Public Lands had concerns about unit boundaries.  
17 Because the Commissioner of Public Lands at that time did  
18 not have a technical staff to review boundaries -- he had  
19 no geologist, no engineer, had no hearing process -- as an  
20 informal agreement he asked the Oil Conservation Division  
21 to use its technical staff and its hearing process to at  
22 least give the Commissioner some comfort that he had a  
23 forum to have that discussion.

24 If you look for the statutory reference in the  
25 Oil and Gas Act, you will find, as Mr. Carr told you

1 earlier, there is no such authority, unless you crawl under  
2 the comfy, cozy blanket of protection, waste and  
3 correlative rights. If you're looking for a specific  
4 authority there is none. In the statute that enumerates  
5 the specific authority of the Commission, you can't find  
6 it.

7 Mr. Carr this morning said the only thing he can  
8 find to possibly link this to is a reference to the  
9 Commission approving plans of development. You find that  
10 reference in 70-2-17.E, and let me give you a copy so you  
11 can read it with me.

12 I will disagree with Mr. Carr at this point. I  
13 think his pronouncement in the public paper he presented at  
14 a forum saying there was no authority for this process and  
15 for which he was criticized is an unfair criticism.

16 When you read E, it says the Division can pass on  
17 -- and it's the third line under E and it says, "...or upon  
18 any other plan for the development or operation of such  
19 pool..."

20 Remember that the unit process here is an  
21 exploratory unit for which no pool has been established and  
22 that we can't have a pool until we have a discovery well.

23 So my argument is that this doesn't fit. It  
24 deals with plans of operation, particularly allowables,  
25 spacing, that kind of thing, after you have a discovery and

1 have a pool. This predates that entire process.

2 My suggestion to you is, the current practice we  
3 have is obsolete, you either need to abandon it or refine  
4 it, and you have some options.

5 In the three decades I've been doing this, I can  
6 think of only two or three occasions for which there has  
7 been any attempt to have a dispute before you on units.  
8 One of them occurred this last year when Mr. Carr  
9 represented one party, Mr. Bruce another, where there was a  
10 dispute over a huge unit in western New Mexico that spilled  
11 over into eastern Arizona. I can find the case number, I  
12 simply don't recall it at this point.

13 There have been occasions where there was a  
14 boundary dispute as to what's appropriate within the unit.  
15 There is no process we have for notification of the  
16 boundary interest owners. In fact, there's no notification  
17 at all.

18 So if you want to continue the process one way to  
19 do it would be to docket these as decisions to be made  
20 without objection. You would require the applicant to file  
21 an application, submit to you preliminary approvals for the  
22 state and federal agencies, if involved, notification to  
23 fee owners of all categories to see if they're voluntarily  
24 committed, notification to the boundary interest owners.  
25 If all that's satisfied, you say you're done, you issue

1 your order.

2           The other option is to abandon the process,  
3 because there is no requirement for you to be involved.  
4 The support for that option is to decide that this is a  
5 voluntary process, and in fact it is. It's a voluntary  
6 agreement. If it's not approved by the Land Office for  
7 Land Office acreage, it collapses. If it's not approved by  
8 the BLM on a voluntary basis, it collapses.

9           If there's an owner who doesn't commit, he has an  
10 uncommitted window, and you have to pool him on a spacing  
11 unit basis to commit his interest to the well in that drill  
12 block. It's all voluntary, it's all contractual, it's all  
13 done outside of the process that you need to worry about.

14           So one option is to say, Why do we this anymore,  
15 there's no point to it, we've got other things we need to  
16 deal with, let's forget it.

17           We have moved to that direction because back --  
18 and I forgot to bring a copy of the order. There was a  
19 Commission order entered before the R orders, one of the  
20 early R orders, I think, where the Commission decided at  
21 least for amendments to the unit, we're going to do that  
22 administratively.

23           And so they stepped way back then, in the 1950s,  
24 I think, to say, We're not even going to deal with this  
25 past the initial approval.

1 I think now, some four decades later or five  
2 decades later, it's time to say, Why do we do this at all?

3 Thank you, Mr. Stogner.

4 EXAMINER STOGNER: Thank you, Mr. Kellahin. I'll  
5 see that this transcript is circulated appropriately.  
6 Thank you for those comments.

7 If there's nothing further in Case 12,766, this  
8 case will be taken under advisement.

9 (Thereupon, these proceedings were concluded at  
10 10:23 a.m.)

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## CERTIFICATE OF REPORTER

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

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

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

WITNESS MY HAND AND SEAL November 27th, 2001.




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STEVEN T. BRENNER  
 CCR No. 7

My commission expires: October 14, 2002