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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: )  
BASIN FRUITLAND COAL/GAS POOL, ) CASE NO. 9420  
\_\_\_\_\_ )

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: DAVID R. CATANACH, Hearing Examiner

January 24, 1991

Santa Fe, New Mexico

This matter came on for hearing before the Oil Conservation Division on January 24, 1991, at 1:35 p.m. at Oil Conservation Division Conference Room, State Land Office Building, 310 Old Santa Fe Trail, Santa Fe, New Mexico, before Freda Donica, RPR, Certified Court Reporter No. 417, for the State of New Mexico.

FOR: OIL CONSERVATION DIVISION BY: FRED DONICA, RPR  
Certified Court Reporter  
CCR No. 417

(ORIGINAL)

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I N D E X

January 24, 1991  
Examiner Hearing  
CASE NO. 9420

PAGE

APPEARANCES

3

REPORTER'S CERTIFICATE

61

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

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FOR THE DIVISION:            ROBERT G. STOVALL, ESQ.  
                                  General Counsel  
                                  Oil Conservation Commission  
                                  State Land Office Building  
                                  310 Old Santa Fe Trail  
                                  Santa Fe, New Mexico 87501

FOR THE AMOCO:                CAMPBELL & BLACK P.A.  
                                  110 N. Guadalupe  
                                  Santa Fe, New Mexico  
                                  BY: WILLIAM F. CARR, ESQ.

FOR AMOCO:                    ERIC L. NITCHER, ESQ.  
                                  Amoco Production Company  
                                  Post Office Box 800  
                                  Denver, Colorado 80201

FOR MERIDIAN:                KELLAHIN, KELLAHIN & AUBREY  
                                  117 N. Guadalupe  
                                  Santa Fe, New Mexico  
                                  BY: W. THOMAS KELLAHIN, ESQ.

FOR MESA:                     MILLER, STRATVERT, TORGERSON  
                                  & SCHLENKER, P.A.  
                                  Santa Fe, New Mexico  
                                  BY: SCOTT HALL, ESQ.

FOR UNICAL:                  HINKLE LAW FIRM  
                                  Albuquerque, New Mexico  
                                  BY: JAMES BRUCE, ESQ.

FOR NASSAU:                  SUTIN THAYER & BROWNE  
                                  Santa Fe, New Mexico  
                                  BY: RICHARD BIRCHY, ESQ.

1 HEARING EXAMINER: I'll call the hearing back to order  
2 at this time. And at this time I'll call the case which is  
3 -- basically, this is the prehearing conference in the  
4 matter of the hearing that's going to be called by the Oil  
5 Conservation Division during February to reexamine the rules  
6 for the Basin Fruitland Coal/Gas Pool in San Juan, Rio  
7 Arriba and McKinley and Sandoval Counties, New Mexico.

8 MR. STOVALL: The original case number for this case is  
9 9420, and the consideration of the temporary pool rule for  
10 the pool as promulgated by order R-8768 which created the  
11 temporary pool rule for the Basin Fruitland Coal Pool.

12 I suggest, Mr. Examiner, at this time we call for  
13 appearances and then I will explain what we're here for  
14 today.

15 HEARING EXAMINER: Do we have appearances in this  
16 case?

17 MR. CARR: May it please the Examiner, my name is  
18 William F. Carr with the law firm of Campbell & Black of  
19 Santa Fe. I'd like to enter our appearance on behalf of  
20 Amoco Production Company. I'm appearing in association with  
21 Eric Nitcher, an attorney for Amoco from Denver. I would  
22 also like to enter an appearance on behalf of Blackwood and  
23 Nichols Company, a limited partnership; Arco Oil and Gas  
24 Company; and Texaco, Inc.

25 MR. KELLAHIN: Mr. Examiner, I'm Tom Kellahin of the

1 Santa Fe law firm of Kellahin, Kellahin & Aubrey. I'm  
2 appearing today on behalf of Meridian Oil Inc.; Marathon Oil  
3 Company, in association with Mr. Tom Lowrey, an attorney  
4 with that company; and Phillips Petroleum Company.

5 MR. HALL: Mr. Examiner, Scott Hall from the Miller  
6 Stratvert law firm, Santa Fe, on behalf of Mesa Operating  
7 Limited Partnership.

8 MR. BRUCE: Mr. Examiner, Jim Bruce from the Hinkle law  
9 firm. I enter an appearance on behalf of Union Oil Company,  
10 California.

11 MR. BIRCHY: Richard Birchy with the Sutin law firm in  
12 Santa Fe on behalf of Nassau Resources.

13 HEARING EXAMINER: Do we have any other appearances?

14 GAS RESEARCH INSTITUTE REPRESENTATIVE: We're not  
15 represented by counsel at this time. There's been a study  
16 that's been performed by a group called Coalbed Methane  
17 Committee of San Juan Basin and the Gas Research Institute,  
18 and we would like to have the opportunity to present the  
19 results here.

20 MR. STOVALL: Are you with the Gas Research Institute?

21 GAS RESEARCH INSTITUTE REPRESENTATIVE: I'm with the  
22 Gas Research Institute.

23 MR. STOVALL: Mr. Examiner, I will enter my appearance  
24 on behalf of the Oil Conservation Division, Robert G.  
25 Stovall of Santa Fe. And as I will explain here in a few

1 minutes, we will incorporate that study into -- and I'll  
2 explain how we intend to do so.

3 HEARING EXAMINER: Do we have other appearances?

4 MR. STOVALL: I'm gathering since this case was not  
5 actually on the docket, but you're all here, that you must  
6 have received the memo explaining the purpose of this  
7 prehearing conference.

8 As I think you all know, the temporary special  
9 pool rules for the Basin Fruitland Coal Pool were up for  
10 review actually in October of 1990. At the request of  
11 several operators and the operators committee, the case has  
12 been continued to the February 28th, 1991, docket. The  
13 purpose of that continuance was to allow time for the study  
14 group to complete whatever research it felt was necessary  
15 and to allow operators to take that information and decide  
16 what they wanted to do with it. Because of the size of the  
17 pool, the significance of it, the number of people involved,  
18 number of operators involved, the commissioner of the  
19 division felt it was necessary to have this conference one  
20 month prior to the hearing so that we can figure out what's  
21 going to happen next February.

22 Quite frankly, we had no idea -- if you'll  
23 remember, the original pool rules case was an all-day  
24 hearing in Farmington. The division had no idea whether  
25 this was going to be a similar type of hearing or a one-hour

1 keep-it-the-way-it-is-type of case or what the parties  
2 wanted. And in order to manage the docket properly, we felt  
3 it was necessary to call this conference. We're going to  
4 ask each party who wishes to appear at and present evidence  
5 at the hearing to identify themselves, their position, how  
6 they intend to support the position with a general statement  
7 as to evidence that they intend to present, how they intend  
8 to present it. In other words, we're going to determine how  
9 to conduct the case procedurally.

10 Based upon the information that we receive today  
11 at this hearing, a number of things will be decided. First  
12 of all, perhaps one of the major ones is whether or not it  
13 will be necessary to have a special docket just for this  
14 case, with no other cases on the docket. If it appears that  
15 this is going to be an all-day case, there's no point in  
16 having everybody else come to Santa Fe or wherever the  
17 hearing is held on that day. Depending on what you tell us  
18 today, we'll make that preliminary decision. The other  
19 decision, as I say, the original case was in Farmington two  
20 years ago. One of the questions to be decided is whether  
21 this case should be heard in Farmington. And I believe we  
22 have the college theater reserved for February 28th if we  
23 decide that it is appropriate to have that hearing in  
24 Farmington.

25 MR. BUSCH: The 21st, tentatively.

1           MR. STOVALL: February 21st, excuse me. Tentatively  
2 reserved. So we do have a space in Farmington, if we want  
3 to have the hearing up there on the 21st.

4           We are making a record of this proceeding so that  
5 we've got something to look at. It seems a whole lot easier  
6 than trying to make notes. In a case of this magnitude, I  
7 think it's very useful to have a record of it.

8           Because of that, we are going to ask parties to  
9 -- people here to speak one at a time, identify yourself.  
10 Primarily, we're going to ask that the attorneys,  
11 representing parties, address the parties' concerns and  
12 issues. If there are any parties here who are not  
13 represented by counsel -- and GRI folks, I'll tell you, will  
14 be represented by counsel, namely me -- you will have the  
15 opportunity to discuss your position. We are not taking any  
16 testimony, there will be no testimony, no swearing of  
17 witnesses today. Don't want any argument as to position,  
18 but be prepared to put it on the table as to where you stand  
19 on the coalbed issue. It's sort of a now or get relegated  
20 to the tail end of the docket on the 21st of February. If  
21 you don't say where you are now and give us the information  
22 we need to arrange the docket in a meaningful manner, those  
23 who have failed to appear here today do run the risk of  
24 getting tagged onto the end of the docket, which I'm not  
25 sure is an advantageous position if you've got significant

1 issues that you want to bring forward.

2 Are there any questions about what we're here for  
3 today before I start into substance? Everybody generally  
4 understand?

5 I will then initiate the proceeding by telling  
6 you what, from the division's standpoint, what the division  
7 expects to do. Again, looking back at the hearing two years  
8 ago, there was a committee report which I acted as counsel  
9 on behalf of the committee and had witnesses testify with  
10 respect to the information which the operators committee at  
11 that time had developed, recommendations which that  
12 committee made.

13 Subsequently then, also I shifted gears, put on a  
14 different hat, then had division witnesses who represented  
15 the division as a regulatory agency and rendering opinions  
16 on what should be part of the rules at that time, based upon  
17 what the division knew at that time. Basically, that's what  
18 we intend to do again.

19 I think the division -- I will act as counsel, if  
20 you will, unless there's any objections on anybody's part,  
21 for the operators committee. As I've discussed with Ernie  
22 Busch, what the division intends to do at that time is we'll  
23 have -- Ernie will be placed on the stand, I guess, as the  
24 New Mexico chairman of the committee. I think he's operated  
25 in that capacity for at least part of the research project.

1 Ernie will explain the background, the purpose, what has  
2 gone on during the past two years through the operators  
3 committee and how that committee has functioned, the history  
4 of it. And he will introduce the fact -- I understand we do  
5 have a report from GRI as has been discussed here and all  
6 the information with respect to that. At this time I then  
7 -- and I don't have the names of the witnesses, I'm afraid  
8 -- Ernie, you'll have to help me out with this -- I think  
9 we'll introduce the technical people who either with or  
10 through GRI have actually produced the report to explain the  
11 technical basis for the report and introduce the report into  
12 the record. And that will -- Ernie, go ahead.

13 MR. BUSCH: The subcommittee chairman is here today  
14 Richman McBane, with Gas Research Institute, and he will  
15 lead off with the technical portion, introducing the portion  
16 that ICF would present.

17 MR. STOVALL: Richman and I have not had a chance to  
18 talk. But for my information, as well as everybody else's,  
19 I'll ask you to introduce the report. As I say, how was it  
20 prepared, what -- was it prepared, what conclusions, if any,  
21 did you reach in terms of scientific analysis, not  
22 necessarily in the way of recommendations. As I understand,  
23 ICF and GRI are not necessarily prepared to make specific  
24 recommendations as to spacing, but rather to point to some  
25 at least preliminary conclusions that you've reached with

1 respect to effective drainage and the data that goes into  
2 that and other similar issues; is that correct?

3 MR. McBANE: Yes, that's correct. It focuses primarily  
4 on looking at the parameters that influence gas production  
5 and drainage and attempts to give the commission some tools  
6 to work with in evaluating production from the Fruitland  
7 Coals. And we'll show, to some extent, how that production  
8 might differ from conventional reservoir theories.

9 MR. STOVALL: Then, Ernie, help me out; do we have any  
10 other witnesses that we intend to put on as a division and  
11 through the committee?

12 MR. BUSCH: Yes. As I understand, ICF will present the  
13 technical portion. Have you decided -- on the matter of  
14 counsel, have you decided to --

15 MR. McELHINEY: We're still considering that issue, but  
16 we will resolve it here in the next few days.

17 MR. STOVALL: Please identify yourself.

18 MR. McELHINEY: I'm John McElhiney with ICF Resources  
19 in Denver.

20 MR. STOVALL: You are considering ICF actually having  
21 separate counsel?

22 MR. McELHINEY: Well, having separate counsel to  
23 represent the coalbed methane spacing committee rather than  
24 yourself. We're still in a bit of a dilemma about that, but  
25 we will resolve that matter in the next few working days so

1 that everyone will know how we expect to be represented.

2 MR. STOVALL: In that regard, does ICF or GRI  
3 anticipate making specific recommendations as to spacing in  
4 all or portions of the basin?

5 MR. McELHINEY: We have the statement that the 13  
6 members of the committee have drawn up that we are prepared  
7 to enter into the record and then to demonstrate, as Mr.  
8 McBane has just discussed, what the relevant issues are that  
9 go behind this statement.

10 MR. STOVALL: Let me just ask right now, am I correct  
11 in my understanding that the committee report, as we're just  
12 talking about it, will be presented by GRI and ICF, does not  
13 necessarily represent the position of individual companies?  
14 There may be some alternative recommendations? Or is that  
15 report unanimously accepted as representing the individual  
16 members as well as the committee as a whole?

17 MR. KELLAHIN: Mr. Stovall, Tom Kellahin on behalf of  
18 Meridian, Marathon and Phillips. That's something we need  
19 to resolve. My company supports the conclusions of the  
20 study, and we're here to determine whether or not the  
21 division will allow this to take place in a rule-making  
22 context as opposed to an adversarial proceeding that we  
23 evolved into several years ago.

24 If it is apparent this afternoon that there is  
25 any individual company that wants to take a different

1 position, then I will want to reserve the right to put on  
2 specific technical information for my clients to support the  
3 work of the group. For example, I think the basin is  
4 unique. Our position is the rules should be made permanent,  
5 that the current rules, except for some possible  
6 modifications of administrative procedures which I'll  
7 express to you later, but in terms of well spacing, well  
8 locations, the horizontal and vertical boundaries of the  
9 basin pool, we propose that you make those rules permanent.  
10 If that is the concurrence of everyone here, then I would  
11 suggest to you it might make this proceeding very short and  
12 concise, and we would have an objective presentation by the  
13 study group and the consulting engineer with regards to the  
14 reservoir simulation and the parameters, and we would not  
15 have to reserve the several days that would be necessary to  
16 oppose any effort to either separate out the basin into  
17 separate pools at this time, to provide for an infill  
18 drilling program at this time, or to downspace any portion  
19 of the basin at this time.

20 I recognize that any individual company,  
21 regardless of whether these rules are made permanent, will  
22 have the opportunity, including my clients, to come before  
23 you and ask for a specific case, for a specific area, for  
24 their own rules that may be different from the basin rules.  
25 But we're asking you that, based upon this case, that the

1 rules as they now exist be made permanent.

2 MR. STOVALL: Thank you. Mr. Kellahin, I think you  
3 brought up a couple of things which, again, the purpose of  
4 this hearing is to address. I view this from -- although we  
5 don't distinguish between them within our procedural rules  
6 of the division -- I view this as a rule-making type of  
7 proceeding.

8 And I will say just at the outset that anybody  
9 who recommends something different from any other party, I  
10 would ask that you be prepared to do so by direct  
11 presentation of a case rather than by spending hours trying  
12 to cross-examine and make your case with somebody else's  
13 witness. So if anybody has any recommendations, for  
14 example, for downspacing or splitting the basin into  
15 different areas, please be prepared to do so by preparing  
16 your own direct evidence. I think it's much more efficient  
17 and it is more in the nature of rule-making. We really are  
18 talking about rule-making in that area.

19 The second point you brought out, and I think  
20 that's why we're here today, is to find out if there are  
21 going to be differences so that parties can be adequately  
22 prepared. As you say, if everybody's in total agreement  
23 that the rules should be made permanent, then it doesn't  
24 look like it should be a very long hearing and very  
25 complicated. It would then become rather redundant for each

1 operator to present similar evidence on the same issue. If,  
2 on the other hand, it appears that there are going to be  
3 different positions, different parties are going to  
4 represent or present positions other than in support of  
5 making the rules permanent or a common recommendation, let's  
6 find that out today so that each party has a chance to  
7 prepare a case that is appropriate and necessary to do  
8 whatever they seek to accomplish.

9 Now, I guess the answer to my question is that  
10 until we go around the room and find out parties' positions,  
11 we don't know if the committee report is a consensus report  
12 or merely the official committee report which may be  
13 differed with and disagreed with.

14 Yes.

15 MR. McELHINEY: John McElhiney with ICF Resources.  
16 Maybe in that vein it might be appropriate to have Mr.  
17 McBane read the statement adopted by the spacing committee  
18 last Friday in Farmington so that all other personnel who  
19 are here wanting to know what sort of conclusion might have  
20 come out of the committee would serve as a basis from which  
21 they might answer your question as to how they would  
22 proceed. Is that an appropriate --

23 MR. STOVALL: I think in order to know what the  
24 committee is going to recommend, they probably ought to know  
25 what the committee recommends. Is it relatively short?

1 MR. McBANE: Yes, it's a paragraph.

2 MR. STOVALL: All right.

3 MR. McBANE: "The current 320 acre temporary spacing  
4 rules provide appropriate basis for initial development and  
5 evaluation of the Fruitland Coal pool of the San Juan  
6 Basin. However, this study indicates that there are many  
7 combinations of reservoir properties where spacing other  
8 than the existing temporary rules of 320 acres may be  
9 appropriate. There are likely to be areas of the basin  
10 where these combination of properties exist; however, there  
11 are not sufficient data at this time to properly define the  
12 location and extent of these areas. In order to prevent  
13 waste and protect correlative rights, individual operators  
14 should be afforded every opportunity to present testimony  
15 and technical data to support their application for spacing  
16 in their respective areas. This study has identified key  
17 parameters which should be considered in spacing  
18 applications which may include the following: Well  
19 Performance Data, Permeability, Porosity, Coal Thickness,  
20 Pressure, Gas Content, Sorption Isothem, and Initial  
21 Water/Gas Saturation."

22 MR. STOVALL: That is essentially the committee's  
23 position. Can we make a copy of that?

24 MR. McBANE: Sure.

25 MR. McELHINEY: It's on the fourth page, I believe. I

1 think it's on the fourth page, "Conclusion," D as in David.

2 MR. STOVALL: What I'm going to recommend we do,  
3 perhaps, is --

4 MR. McELHINEY: Ernie asked us to bring a list of  
5 potential exhibits for the final hearing and some sort of  
6 recommendation for the amount of time that we thought might  
7 be necessary to present the results of the report. And so  
8 that's what this package alludes to, is kind of an outline  
9 of what we think might be appropriate and the time that we  
10 think it might take, with a respectful request that if you  
11 think it's too voluminous we will endeavor to cut it down.

12 MR. STOVALL: My initial reaction is that perhaps this  
13 whole package -- have the operators and members of the  
14 committee gotten copies of this?

15 MR. McELHINEY: They saw preliminary copies of this  
16 outline and this list of exhibits last Friday in  
17 Farmington. There have been some slight changes made from  
18 it, but nothing that's significant in terms of what I think  
19 they would disagree with.

20 MR. STOVALL: Is there any problem with reproducing and  
21 distributing this to --

22 MR. McELHINEY: I don't think so, no.

23 MR. STOVALL: This is exactly the sort of thing we're  
24 here today to find out, is what's going to be there and what  
25 else. So I think that would be the way to do it, is that

1 we'll get this reproduced and redistributed. We could do  
2 that here.

3 MR. McELHINEY: If you would permit me, once that's  
4 done, I think in five minutes I can tell you about what the  
5 structure is and the key components and the way we think it  
6 should go, and then maybe you'd have the basis from which to  
7 respond.

8 MR. STOVALL: I think that would probably be most  
9 helpful, would it not, to have this information available?  
10 And perhaps what we can do is arrange to have this copied.  
11 And can you summarize it while it's being done?

12 MR. McELHINEY: Certainly.

13 MR. STOVALL: And then we'll get copies available. Why  
14 don't you go ahead then and summarize --

15 MR. McELHINEY: We think that the testimony that we  
16 would like to make which would explain the findings of the  
17 committee basically break down into three areas. One would  
18 be kind of an introductory and technical statement about the  
19 basis for the work and what approach was taken and why. The  
20 second piece -- and the first piece would include some --  
21 it's a simulation-based approach, as you probably know. We  
22 would like to talk a bit about the validation of the  
23 simulation in the earliest portion of that three-part  
24 statement. The second part would be a discussion of history  
25 matching results with the simulator at both Cedar Hill and

1 Tiffany Fields and the northern end of the San Juan Basin.  
2 And the third part would include a description of  
3 sensitivity analyses around the important reservoir  
4 variables that we identified from the history matching. We  
5 think that testimony, although the number of exhibits looks  
6 to be quite voluminous, could be accomplished in probably a  
7 couple of hours, maybe two hours and a half, something like  
8 that.

9 HEARING EXAMINER: Mr. McElhiney, are you going to have  
10 two witnesses at the hearing?

11 MR. MCELHINEY: Yes, I will probably do the bulk of the  
12 testimony, but there's a possibility of a second witness.  
13 And Mr. McBane will also give the introduction to the study,  
14 so I guess that's a maximum of three.

15 MR. STOVALL: Mr. McBane, would you anticipate that I  
16 would put you on similar to Mr. Busch?

17 MR. MCBANE: It could actually be done either way. One  
18 of the things that hasn't really come out fully is that I  
19 know originally there was a coalbed methane committee, a  
20 group of operators of the San Juan Basin, and in the conduct  
21 of the study that we're talking about here, not all basin  
22 producers chose to participate in that study. So this is  
23 really a subset of that overall group that have  
24 participated. And I would be, I guess, presenting what --  
25 the prospective of the GRI and that subgroup of operators.

1           MR. STOVALL: The progression then is Mr. McBane would  
2 discuss the creation and formulation of the study, and Mr.  
3 McElhiney will discuss the actual report itself.

4           MR. McELHINEY: That's correct.

5           MR. STOVALL: That, to me, makes the most sense to  
6 start off. At this point I suggest that we go around and  
7 see if there are any different positions. Mr. Carr?

8           MR. CARR: As I understand it, this is a conclusion  
9 that is the result of the committee work, and it is not an  
10 actual recommendation that needs to be adopted. Is that  
11 true?

12          MR. McELHINEY: That's correct, although it does take  
13 the form of a conclusion.

14          MR. CARR: That may not be anything but form over  
15 substance. We might decide that someone needs to actually  
16 recommend that the conclusions be adopted, and I think Amoco  
17 would be prepared to do that, if that is needed. In any  
18 event, Eric may want to comment on that as to what Amoco's  
19 position is.

20          MR. NITCHER: Amoco's position in this hearing is we  
21 basically support, I think, Meridian's position that the  
22 temporary rules should be made permanent, including the  
23 320-acre spacing. Once we've looked at Meridian's changes  
24 to their administrative rules, we might be in support of  
25 those once we had a chance to review those.

1           We also support and have been relying upon the  
2 findings of the Coalbed Methane Committee, and we will be  
3 prepared to present testimony at the 21st hearing concerning  
4 Amoco's interpretations of the findings. And we generally  
5 support the statement of the Coalbed Methane Committee. And  
6 I think that we would be prepared to put on three witnesses,  
7 a landman, a petroleum engineer and an additional petroleum  
8 engineer who would also be discussing some policy  
9 statements. We think that we can do this within an hour's  
10 time and maybe shorter, but we should be able to expedite  
11 the proceeding.

12           In terms of exhibits, we don't expect them to be  
13 very voluminous. I would expect to have around seven to ten  
14 very simple exhibits which could be discussed very quickly.

15           MR. STOVALL: Did I understand you correctly that Amoco  
16 is primarily relying on the ICF study for its form, its  
17 technical conclusions?

18           MR. NITCHER: Amoco is relying on the technical data  
19 from that study, and that is where we came up with our  
20 position that the rules concerning the 320-acre spacing  
21 should be made permanent. And we do recognize that the  
22 committee in their statement has supported, actually given  
23 the commission an actual statement. And Amoco would like to  
24 present testimony to support our interpretation of that.  
25 And it might not be identical word for word, but we would be

1 recommending that the basic format of the committee's  
2 conclusions be adopted.

3 MR. STOVALL: What would the landman's testimony be  
4 primarily related to or directed at?

5 MR. NITCHER: The landman's testimony is -- what Amoco  
6 is interested in is a showing that Amoco is a major operator  
7 in the field. And we have a major interest in this  
8 proceeding and would just be putting that on to show the  
9 commission what our position is in the field and where we're  
10 located. That's not necessary testimony, but we thought it  
11 would be enlightening to show what our position is.

12 MR. STOVALL: All right.

13 MR. NITCHER: We would be putting on Mr. Maken here as  
14 a reservoir engineer talking about reservoir engineering  
15 facts. And he was also a member of the committee, I  
16 believe. And he can, I think, shed some light and give some  
17 good testimony.

18 We'll be putting on Mr. Hawkins more as a policy  
19 witness and probably going into some details which maybe the  
20 technical committee didn't look at in detail that Amoco  
21 feels are important. That would be a synopsis of our  
22 testimony.

23 MR. STOVALL: Thank you.

24 MR. CARR: Mr. Examiner, I can advise you that both  
25 Arco Oil and Gas and Texaco, Inc. each intend to present one

1 engineering witness. In both cases the testimony, we  
2 anticipate, will take less than 20 minutes, that's 20  
3 minutes each. I cannot tell you exactly what the exhibits  
4 will be today. We intend to coordinate our presentation  
5 with the presentation to be made by Amoco to try to avoid a  
6 redundant presentation to you. So we may, in fact, need  
7 less time than that.

8 The witness for Arco at this time we believe will  
9 be John Mangewaring and the witness for Texaco will be Tim  
10 McCant. Nichols Company intends to present a statement.  
11 And all of the parties for whom I've entered an appearance  
12 will be supportive of the conclusions of the technical study  
13 committee.

14 HEARING EXAMINER: Mr. Carr, does either Arco or Texaco  
15 have any suggested changes in any other of the rules?

16 MR. CARR: No, at this time they do not.

17 HEARING EXAMINER: The witnesses for Arco and Texaco,  
18 are they engineers?

19 MR. CARR: Yes, each is a petroleum engineer. I would  
20 note that if the information is fully covered, I don't  
21 intend to present a witness just because we've today  
22 indicated that we intend to. We'll advise you if it appears  
23 that our testimony would only be cumulative.

24 HEARING EXAMINER: You included in your list of clients  
25 Blackwood and Nichols. They also have the same --

1 MR. CARR: Their position is consistent. They're  
2 supporting the study committee. I understand they're going  
3 to only want to make a statement.

4 HEARING EXAMINER: No witnesses?

5 MR. CARR: Not that I'm aware of.

6 MR. STOVALL: There's a letter from Blackwood and  
7 Nichols which confirms essentially what Mr. Carr has said.

8 HEARING EXAMINER: Mr. Kellahin, would you like to  
9 address Meridian any further, or Marathon and Phillips?

10 MR. KELLAHIN: Mr. Examiner, we will recommend and  
11 support that the rules be made permanent. In that regard,  
12 I'd like to reserve the opportunity to present an  
13 engineering witness. Mr. George Dunn, a petroleum engineer  
14 with Meridian is my potential engineering witness. In the  
15 event the subject of geology and the potential of discussion  
16 on either the vertical or the horizontal limits of the pool  
17 become an issue, then I'd reserve the opportunity to call a  
18 geologic witness.

19 I propose to call Mr. Alan Alexander from  
20 Meridian -- he's a landman -- to talk to you about two  
21 potential administrative changes in the rules, the first one  
22 of which is to append an additional sentence to Rule 3 so  
23 that it has the same type of language that you find in Rule  
24 5. The last sentence in Rule 5 has, in effect, what amounts  
25 to a self-certification under that rule, once the commission

1 approves the particular form filed under Rule 5.

2           What we're seeking to do with the change in Rule  
3 3 would be that by filing and having the division accept and  
4 approve the C-104, that would be a determination that we  
5 might rely upon the fact that the coal production or the gas  
6 production from that well has been determined to be 100  
7 percent coal methane gas production. It thereby gives us  
8 some comfort should the IRS ever audit that determination  
9 that we don't have a problem with regards to what portion of  
10 that well's production should be allocated to conventional  
11 Fruitland sandstone gas production.

12           The other change is to determine where we might  
13 relieve some of the administrative burden on the division  
14 concerning possible non-standard proration units. I've put  
15 on a considerable number of cases before the division which  
16 were uncontested and an administrative nuisance, but we had  
17 no remedy under the rules to solve it.

18           I'm speaking of the fact that in many instances  
19 we are committed, because of the irregularities in the  
20 township, to seek non-standard proration units. And in  
21 every instance, we have followed the prior solution used for  
22 the Blanco Mesaverde or the Basin Dakota. And what we will  
23 seek to do is if that is the position for the coal gas basin  
24 unit, we will want an administrative procedure to get that  
25 approved by the division and avoid the hearing process.

1           The third area is one in which, again, we're  
2 trying to relieve an administrative burden. There is a  
3 non-standard proration provision that says if the spacing  
4 unit is either 75 percent too small or 125 percent too big,  
5 I believe is the rule, that, in fact, you not only have to  
6 have the Aztec office approve it, Mr. Stogner down here must  
7 also write a letter. What we're suggesting is that in those  
8 instances that the absence of any opposition or of  
9 substitution of waiver from any parties, that we can then  
10 get those approved by the district office in their  
11 capacities and avoid coming to Santa Fe and getting another  
12 letter from the division, which in all instances, I believe,  
13 have always been approved. Those would be our  
14 administrative changes.

15           With regards to Marathon's position, we are  
16 prepared to present an engineering witness, Mr. Craig Kent.  
17 We'll be available to support the recommendation that the  
18 rules be made permanent. And then finally we have a  
19 witness, Mr. Tom Moore with Phillips, again, to present his  
20 position, which will be a recommendation that the rules be  
21 made permanent.

22           I, like Mr. Carr, believe that all those  
23 witnesses, except for Mr. Alexander, may, in fact, be  
24 redundant. We intend to rely heavily on the report of the  
25 consulting group in the industry work study report. I want

1 to reserve the opportunity to present those additional  
2 witnesses if it becomes a matter of controversy of whether  
3 these rules be made permanent or somehow modified.

4 MR. STOVALL: Mr. Kellahin, on the non-standard  
5 proration units, I think there have been a couple of cases  
6 in which the division has not necessarily followed the  
7 Blanco Mesaverde Basin Dakota spacing because it was  
8 possible to create a standard give-or-take survey of  
9 differences within a section.

10 MR. KELLAHIN: You raise a subtopic, that some of the  
11 cases come down here because under the current rules you  
12 can't cross a section line. There's an advantage to  
13 deleting that, but I think it's overcome by the fact that  
14 almost always we have rules that require you to come to a  
15 hearing when you cross a section line, and perhaps we need  
16 to leave that one alone. I'm suggesting only in those  
17 instances where the actual spacing unit conforms to Blanco  
18 Mesaverde or Basin Dakota, you have an administrative  
19 solution; and if they don't match, you've got to come here  
20 for a hearing.

21 MR. STOVALL: But what I'm saying, the cases I  
22 remember, they did match Blanco Mesaverde Basin Dakota, but  
23 the division did not approve following those because it  
24 preferred a solution of creating a half section or a  
25 320-acre give-or-take proration unit within a section rather

1 than across section lines. And in some cases it was  
2 possible, even though the other pools did do something  
3 different.

4 MR. KELLAHIN: I understand that point of view. That's  
5 why I have no specific language to address that. I raise it  
6 as a topic of concern and one which we'd like to explore at  
7 the hearing on the 21st. And we'll do our very best to  
8 circulate among all the people present today a proposed  
9 draft prior to hearing so they can comment on it. And  
10 perhaps we can't come to some consensus on that particular  
11 item, but I'm aware of what you've just told me, and we'll  
12 try to integrate that into our solution.

13 HEARING EXAMINER: As I understand it, Mr. Kellahin,  
14 you're going to have approximately three witnesses or maybe  
15 up to three witnesses for Meridian?

16 MR. KELLAHIN: Yes, sir.

17 HEARING EXAMINER: A landman, an engineer, maybe a  
18 geologist. Do you have any idea how long that might take?

19 MR. KELLAHIN: Until we go around the room and find out  
20 if there's any other competing, opposite position, I cannot  
21 tell you. In the absence of opposition to that point, I  
22 can't imagine any of those witnesses taking more than half  
23 an hour or so.

24 HEARING EXAMINER: How about for Marathon or Phillips?

25 MR. KELLAHIN: Same position, half an hour for each of

1 those companies.

2 HEARING EXAMINER: Mr. Hall, would you like to address  
3 Mesa's position?

4 MR. HALL: Mr. Catanach, Mesa has not yet advised me of  
5 their final position vis-a-vis the adoption of the committee  
6 recommendation. I'll let you all know as soon as I find  
7 out. If testimony is to be presented, I anticipate we'll  
8 hear from Ken Sheffield, petroleum engineering testimony,  
9 and Stewart Sampson, geologic testimony. It should not take  
10 more than 30 minutes.

11 MR. STOVALL: Did Mesa participate in the active  
12 committee work?

13 MR. McBANE: Yes, they were a contributing member and  
14 did participate.

15 MR. STOVALL: That's one of the problems I have here.  
16 If Mesa doesn't know quite where they are yet, it almost  
17 defeats the purpose of this. Once we start getting into  
18 that, "Gee, we don't know where we'll be, we don't" -- we're  
19 defeating the purpose.

20 MR. HALL: We're going to let you know as soon as we  
21 can.

22 MR. STOVALL: We may come back to that, Mr. Hall. We  
23 may ask you to make a phone call.

24 HEARING EXAMINER: Mr. Hall, did Mesa support the  
25 memorandum that was issued by the committee?

1           MR. HALL: They haven't told me as much. They haven't  
2 identified any specific problems with it. It's my  
3 understanding that they probably will.

4           MR. STOVALL: For purposes of the record, let's  
5 identify what has been distributed. It is a January 24th,  
6 1991, letter from John McElhiney of ICF Resources, addressed  
7 to the Oil Conservation Division. And it contains several  
8 pages of attachments, starting on the second page,  
9 identified as Proposed Outline of Testimony for the San Juan  
10 Basin Coalbed Methane Spacing Study to be Presented at the  
11 New Mexico Oil Conservation Division Examiner Hearing Case  
12 No. 9420, Order R-8768. And when we are making reference to  
13 the study summary or the ICF summary report or proposal,  
14 this is the document that we're talking about, for record  
15 purposes.

16           HEARING EXAMINER: Mr. Bruce on behalf of Union Oil of  
17 California.

18           MR. BRUCE: Mr. Examiner, Unical operates primarily in  
19 the area of 27 North, 6 and 7 West. Based upon the  
20 information they've gathered from their wells, Unical at the  
21 hearing will be proposing that the 320-acre spacing be made  
22 permanent. However, for the area that Unical operates in,  
23 they would ask that 160 acreage infill wells be allowed --  
24 they would ask that the rules contain a provision allowing  
25 infill at the discretion of the operator.

1           They would also like, to the extent it could be  
2 done at this time, that lines of demarcation be established  
3 between high recovery areas and lower recovery areas. They  
4 will be presenting data primarily on permeability and  
5 reservoir pressure. They will be presenting three witnesses  
6 approximately one hour total in length. The primary witness  
7 will be Bill Herring, the petroleum engineer. There will be  
8 a geologist and another engineer. I do not have their names  
9 with me.

10           HEARING EXAMINER: Two engineers and one geologist?

11           MR. BRUCE: Yes, sir.

12           MR. STOVALL: Does Unical plan to address the specific  
13 areas of demarcation and their evidence in support of that?

14           MR. BRUCE: That's what they told me.

15           MR. STOVALL: Are they proposing that within those  
16 different areas, as they identify in this, that some areas  
17 have 160 infill provisions and other areas not have it?

18           MR. BRUCE: I'm kind of like Scott here. I was  
19 contacted late yesterday afternoon, so I am not as fully  
20 informed on Unical's position as I hope to be. But, yes,  
21 they're basically interested in what you just said.

22           MR. STOVALL: We don't know exactly where those areas  
23 are, but we do know that they are going to break up the  
24 pool, if you will, into separate areas for different rules  
25 within the areas.

1           MR. BRUCE: I think their support will be mainly for  
2 their particular area of operation.

3           HEARING EXAMINER: Mr. Bruce, do you know if those  
4 areas are within the units?

5           MR. BRUCE: I have no idea.

6           MR. BUSCH: Mr. Examiner, I think I can speak to that.  
7 They are within the bridge column unit area.

8           MR. STOVALL: I might just at this point to throw out a  
9 thought, I notice -- I think, in fact, most -- particularly  
10 the bigger operators in the area, most of you have units,  
11 Unical, Meridian, I think Amoco has units, Blackwood and  
12 Nichols have units. I don't know how the participation  
13 within the units is established, but does it make sense to  
14 provide greater flexibility within a unit where the operator  
15 has got the ability to protect correlative rights because of  
16 the nature of participation rather than in areas where there  
17 is no unitization that's competitive?

18           MR. KELLAHIN: Let me comment on that point. If Mr.  
19 Bruce's client wants to proceed that particular procedure,  
20 we would suggest that they might consider docketing their  
21 own separate case to establish their own specific rules for  
22 their unit operation. And then we could determine whether  
23 or not we want to appear in that case. If they want to  
24 pursue what he has proposed this afternoon, I will suggest  
25 that we've now extended this into a week's hearing. We will

1 vigorously and aggressively oppose each and every of the  
2 recommendations his clients have voiced this afternoon. I  
3 will need to reserve the opportunity to call a reservoir  
4 simulating expert. And we are now into a very lengthy, very  
5 complicated and very heated problem with regards to creating  
6 an exception within the general rules that will allow infill  
7 drilling or downspacing, regardless of whether it's in a  
8 unit or not in a unit.

9 MR. STOVALL: Let's proceed and see where else we are.  
10 I think there's some concerns that you've raised, and maybe  
11 there's some alternate solutions that we can approach at  
12 this point.

13 HEARING EXAMINER: Mr. Birchy?

14 MR. BIRCHY: My client hasn't informed me of what its  
15 position with respect to the committee's report is, similar  
16 to Mr. Hall. They did ask me to request that they be  
17 allowed to reserve a right to present a witness at the  
18 hearing, however. The nature and scope of the testimony  
19 they did not discuss with me, but I would be happy to find  
20 that out and report back to you in terms of the time and the  
21 nature of the testimony as soon as possible.

22 MR. STOVALL: Let's move on for the moment. I think  
23 we're going to have to get Mr. Hall and Mr. Birchy to make  
24 some phone calls. And if their clients are unwilling at  
25 this point to state a position, then we may have to look at

1 the separate case solution to those. Let's move forward  
2 with the rest of the presentations.

3 Is there anybody else who has not yet appeared  
4 and who wants to state anything different? Or state  
5 anything period, different or the same?

6 Mr. Busch.

7 MR. BUSCH: If there isn't anyone else, I got a call  
8 late yesterday afternoon from Dugan Production, who I don't  
9 believe is here today, but indicated that they would be  
10 presenting testimony at the 21st hearing, they wanted to.

11 MR. STOVALL: Did they indicate to you what they were  
12 planning to do?

13 MR. BUSCH: They didn't give me any position at all or  
14 any other information. I couldn't get that out of them.

15 MR. STOVALL: Did they indicate who would be  
16 representing them.

17 MR. BUSCH: They did not.

18 MR. STOVALL: I think, for the record, I think we can  
19 say, based upon the record of the original hearing, that  
20 Dugan Production supported a position of 160-acre spacing in  
21 the southern portion of the basin. We can refer to the  
22 prior case. And their witness, I think, delineated the area  
23 in which they felt the 160 was more appropriate. I guess we  
24 can assume that that's the position that Dugan will be  
25 taking. Has anybody else joined with Dugan in that? There

1 were several smaller independents up there that were  
2 involved in that.

3 MR. BUSCH: Not that I know of, Bob.

4 MR. STOVALL: I'm concerned at this point about the  
5 fact that we've got some parties here who are indicating  
6 that they may be not accepting the committee report in the  
7 major substantive areas completely, that -- but we don't  
8 know what they intend to do. So now the others are stuck in  
9 the position of, "What do we do when we appear? What kind  
10 of testimony should we present?"

11 Mr. Hall, Mr. Birchy, I'm going to ask you to  
12 address this first. Since your clients have not stated a  
13 position, how are we going to manage this hearing without  
14 knowing what's going to happen with respect to those  
15 parties?

16 MR. HALL: All I can tell you, Bob, is I'll try to  
17 advise you as soon as I find out. I may be able to find out  
18 today. We've not indicated that we're going to take a  
19 position different from the committee's recommendation. We  
20 just want to preserve an option if there's any testimony.  
21 It may not be necessary that they do it. So I just want to  
22 preserve Mesa's opportunity to present testimony.

23 MR. STOVALL: Mr. Birchy?

24 MR. BIRCHY: All I can say at this point is that I will  
25 -- I think my client will want to see the report. I don't

1 know that they have seen the report. I will get it to them  
2 as soon as possible. I certainly understand counsel and the  
3 Hearing Examiner's position with respect to you need to know  
4 the scope of the testimony in order to be able to schedule a  
5 hearing; the other parties need to know.

6 I will certainly do everything I can to get that  
7 information to you as soon as possible, and so that you can  
8 engage in the appropriate planning for the hearing. That's  
9 all I can offer at this point in time. I don't have any  
10 further information from my client with respect to their  
11 position.

12 MR. STOVALL: I think I heard Amoco and Meridian  
13 correctly and other parties associated with those counsel.  
14 What you present is largely dependent on what's actually  
15 going to happen; is that correct, Mr. Kellahin? And it  
16 would be useful for you to know if somebody's going to come  
17 in with 160 for part of the basin, or infill drilling, or  
18 whatever?

19 MR. KELLAHIN: Not only will it be useful, it will be  
20 critically necessary. We can't possibly prepare -- well,  
21 it's hearing by ambush. The whole purpose of this exercise  
22 was to get down here and know your client's position. I  
23 tell you I know Mr. Dugan, I like him very well. John Rowe  
24 is one of my best friends up there. I love John Rowe. But,  
25 by golly, he knows how to do this down here. If he can't

1       come down here and enter an appearance, he's waived the  
2       opportunity to play the game.

3                 With regards to the other two companies, they  
4       leave us in an absolutely untenable position of now  
5       presenting a wealth of information to fight over an issue  
6       which I had understood was a non-event.  If they want to  
7       preserve the opportunity to infill drill, downspace, I  
8       seriously urge them to examine their position and file a  
9       separate case.

10                If we go about it the way it's headed now, we  
11       can't have the hearing on the 21st.  We've got to wait 'til  
12       all counsel disclose to us the position so that we know what  
13       to prepare against because we will prepare against all of  
14       them if they are there to do anything other than make these  
15       rules permanent and to keep them the way they are.

16                Now, as I said in the beginning, that does not  
17       preclude anyone ever from coming into this division and  
18       asking for a new pool in a special case for their own  
19       circumstance.  I don't want to be misunderstood.  I am not  
20       precluding anybody from that opportunity.  I've represented  
21       Nassau in the past before this division, and I have told  
22       them, and I will tell all the rest of you, that you always  
23       have that chance.

24                I think it does disservice to the basin rules  
25       though, after all this tremendous effort to handle a unique

1 and complicated reservoir, to sit here and fuss over a  
2 rule-making procedure and turn it into an adversarial  
3 process. We have to have your guidance because I think  
4 that's what's about to happen.

5 MR. STOVALL: Does anybody need more copies? We've got  
6 more copies.

7 MR. CARR: It might be wise to just take a few minutes  
8 and ask some people to make a few telephone calls. Some of  
9 us who have even worked for Mr. Dugan might call and just  
10 inquire what the position is because as it stands, I feel  
11 like I'm watching for a scud missile. I don't know if it's  
12 going to hit or not, but I've got to get ready, and it's  
13 going to take some time. I think we're sort of at a point  
14 where until we know, we can't really go much beyond this  
15 point.

16 MR. BIRCHY: On the other hand, it seems to me that  
17 requiring a phone call, an on-the-spot statement of position  
18 by counsel, might be inappropriate at this time for those  
19 people who haven't looked at the report. I'm hesitant to  
20 recommend to my client -- I can go make a phone call, but I  
21 would be hesitant to recommend that they take a position  
22 without having looked at the report, and I don't know if  
23 they have.

24 Would it be possible to set some kind of a  
25 deadline with respect to those of us who have not been

1 informed by our clients as to what our position is to get  
2 back to you with a general statement of position and list of  
3 witnesses and a statement of time within a short period of  
4 time? That still gives the other counsel almost a month to  
5 get ready for the hearing, assuming we could get back to you  
6 within a few days. It seems to me that would be perfectly  
7 appropriate. It seems to me we should be fair to both sides  
8 here. The people who haven't taken a position may need some  
9 time to be able to take a position. And that may end up  
10 being to the advantage of everybody in this room in terms of  
11 the timing of the hearing. I don't think that the Hearing  
12 Examiner and counsel for the division would want to force  
13 these parties into taking a position without giving them the  
14 time to have a few days to think about it.

15 MR. STOVALL: I'm curious where Nassau and Mesa were  
16 when the proceeding --

17 Scott, before you go, the thought -- the  
18 suggestion Mr. Birchy made is one that crossed my mind in  
19 the course of this. And I suspect we may need to take a few  
20 minutes' recess and let each of you regroup.

21 But one possibility which I would consider in  
22 recommending to the Examiner is setting a deadline, say,  
23 approximately seven to ten days, advising through whatever  
24 wide public notice we can get, that only those parties who  
25 file a statement of position with witnesses will be allowed

1 to testify at the hearing.

2           It's unusual for the division to do that, and as  
3 I say, I'm throwing it right now as a brainstorming thought  
4 and not as a recommendation, something you might think  
5 about. Bearing in mind, of course, Mr. Kellahin is correct,  
6 that it does not preclude any party later on from coming in  
7 and saying, "I need an exception to these rules in this area  
8 because," and allowing those exceptions to be carved out,  
9 looking at the exception area specifically rather than  
10 trying to write general rules with built-in exceptions. So  
11 we might think about that for a minute.

12           Anybody else have anything they'd like to offer  
13 at this time? Again, with the objective and -- you know,  
14 "sides" is probably too strong an issue. As I said in the  
15 beginning, we're talking rule-making, not adversarial  
16 proceeding. We're not going to advocate a competitive  
17 approach to this thing, but rather an information gathering  
18 so the division can make -- either make the rules permanent  
19 or modify them in such a way that you know what the ground  
20 rules are going in, and when you do need an exception, what  
21 the process should be for granting that exception more than  
22 incorporating the exception itself into the rules, I think  
23 would be the approach I'd be more in favor of initially.

24           MR. NITCHER: Mr. Stovall, from Amoco's perspective, if  
25 we're going to allow a period of time for people to make

1 statements and inform the commission and the other parties  
2 what their position is, I would hope that Amoco's statement  
3 today would suffice for that so we wouldn't have to be  
4 filing something else.

5 Also we would request a short period of time  
6 because their 20 days -- this is a major hearing -- if we  
7 are going to have to gear up and present testimony, we would  
8 like to have the most amount of time that we possibly could  
9 in order to get all our troops in order. I would recommend  
10 something less than ten days because I think they can get  
11 back with their clients. I think Nassau was informed within  
12 the committee process and it's familiar with what was going  
13 on. I don't think it will take that long for them to make  
14 an informed decision. We would request that it be a short  
15 period of time.

16 MR. STOVALL: An alternative thought on that possibly  
17 -- and I respect your request that those parties who  
18 appeared here today and stated their position should not be  
19 required to go to an additional burden to restate their  
20 position. To get more detailed, if that's the approach  
21 we're going to take, I would suggest that what would be --  
22 possibly we do is that any party who does not concur in the  
23 ICF report as summarized in the ICF summary of their report  
24 be required to notify the division, say, within seven days  
25 and identify how they are prepared to address it, if they

1 want to take any major exceptions, to get down to defining  
2 this a little more clearly.

3 And then any parties who have appeared here and  
4 are in support of the report may supplement their position  
5 as stated today within, say, seven days after that. That  
6 would give you a chance, for example, Meridian or Amoco, to  
7 say, "Because we received this we intend to offer this  
8 additional testimony or evidence."

9 MR. KELLAHIN: Let me suggest a small modification, Mr.  
10 Stovall. The study is, in fact, an objective recommendation  
11 that doesn't get you as far as you need to go. I would ask  
12 that those parties that seek to modify the existing rules,  
13 those are the ones that need to say something affirmatively  
14 to the rest of us. The recommendation doesn't say you  
15 should make the rules permanent. That is my company's  
16 position, and joined by others. So if there's someone here  
17 that wants to do other than make the rules permanent or to  
18 modify the rules --

19 MR. STOVALL: With respect to spacing, you're talking  
20 about; is that correct?

21 MR. KELLAHIN: Well, locations or, for me, anything  
22 else. I've got to get some rule changes in here for you on  
23 those administrative problems I was talking about.

24 MR. STOVALL: In other words, what you're suggesting is  
25 anybody who wishes to submit any proposed changes to the

1 rules should have those proposed changes to the division  
2 within seven days?

3 MR. KELLAHIN: Something like that. I'm talking about  
4 vertical or horizontal changes in the boundary, changes to  
5 address Mr. Bruce's client's idea of an infill provision in  
6 a unit. We need to know those kinds of things.

7 MR. STOVALL: Mr. Bruce, do you have any comment on  
8 that recommendation as far as -- again, remember the  
9 objective of this whole process is so that everybody has a  
10 chance to know what's going on when they show up on the 21st  
11 and you don't come prepared to shoot a bear when there's  
12 nobody out there, or you don't come prepared to shoot a  
13 rabbit when a bear's coming after you.

14 MR. BRUCE: I have some written comments that Unical  
15 forwarded to me. I was going to give a set to the Examiner,  
16 and then there's a few extra copies. Other than that, I  
17 have no further comments.

18 MR. STOVALL: But as far as the procedure itself, would  
19 these address the concerns that Tom just raised?

20 MR. BRUCE: Yes.

21 MR. STOVALL: Mr. Birchy, what is your comment on  
22 proceeding that way procedurally?

23 MR. BIRCHY: Are you talking about the seven-day period  
24 within which parties will state their general position if  
25 they have an exception to the committee report?

1 MR. STOVALL: If they request a change, any change to  
2 the pool rules as they stand today.

3 MR. BIRCHY: As far as I'm concerned, that sounds like  
4 a reasonable approach to the situation.

5 MR. STOVALL: The one question I would raise with  
6 respect to that is on the issue of creating exceptions to  
7 general rules for spacing, period, whether it's 320 or  
8 something else. If we start talking about exceptions such  
9 as Mr. Bruce has talked about, such as I have speculated  
10 that Mr. Dugan might want to do, or -- Nassau had an infill  
11 application in at one time. I don't know if that's their  
12 position now or not.

13 What is the feeling about the division requiring  
14 those to be presented in separate cases rather than  
15 addressing those as items of the pool rules in terms of case  
16 presentation at the February 21st hearing? Is my question  
17 clear? Do you understand where I'm coming from with that?

18 Jim, what's your -- for example, Unical is  
19 suggesting that there are areas, particularly until their  
20 area of interest, in which 160-acre spacing or infill  
21 drilling is appropriate because of engineering geological  
22 considerations. Should that be addressed in a separate  
23 proceeding, or does Unical feel that that should be  
24 incorporated into generic, general pool rules to the entire  
25 pool?

1           MR. BRUCE: I'm really not prepared to say, Bob. I was  
2 contacted late yesterday afternoon. I don't think you can  
3 get away from it in a general proceeding like this. The  
4 biggest one the division has had was called a rule-making  
5 procedure, and that got very adversarial. I just think by  
6 saying it's rule-making and it's not going to be  
7 adversarial, I don't think that one goes with the other. I  
8 think you have to deal with all these things at one hearing,  
9 at least as to Unical Drilling, etcetera. Otherwise, you're  
10 really telling people, "We're just here to adopt this  
11 rule." You're really cutting out their ability to put  
12 information before the commission.

13           MR. STOVALL: Well, for example, I can envision a  
14 situation where you come in and Unical would make their  
15 case, Meridian would put on testimony showing a different  
16 conclusion than Unical's, the division could adopt a rule  
17 which did not provide for infill drilling, and then you  
18 could still make a case. You could actually have two swipes  
19 at it, I guess, in the one instance. You're suggesting that  
20 we should be prepared to address at this hearing the idea of  
21 infill drilling or downsizing in particular areas? Is that  
22 what you're suggesting, that we should not preclude  
23 discussion --

24           MR. BRUCE: If you're talking about spacing, I don't  
25 see how you can get away from it.

1 MR. STOVALL: Mr. Kellahin?

2 MR. BRUCE: Otherwise, you're basically saying only  
3 320-acre spacing is allowed, period. You're not allowing  
4 anybody to say anything else.

5 MR. STOVALL: Mr. Kellahin, did you want to say  
6 something about that?

7 MR. KELLAHIN: No, sir.

8 MR. STOVALL: Scott, did you make your call?

9 MR. HALL: We vote yes, recommend adoption of the  
10 committee recommendation.

11 MR. STOVALL: It sounds to me like maybe the best  
12 procedure to follow is this idea of requesting parties who  
13 either did not submit a position today or who intend to  
14 present evidence in support of any changes to the current  
15 rules before they're made permanent to be required to submit  
16 a statement, a prehearing statement, if you will, and then  
17 allowing a response to that. Does that sound like a  
18 reasonable approach to manage this docket?

19 MR. KELLAHIN: Without a doubt, Mr. Stovall, I think  
20 that's the only way we can continue is to have some kind of  
21 a procedure where there is a proposal and a response. And  
22 it may require that we reschedule the ultimate hearing on  
23 the merits, but I think this is a positive start to handle a  
24 very difficult case. No one said this would be easy.

25 MR. STOVALL: Any other comments on that proposal?

1           MR. NITCHER: Is it my understanding that if the  
2 commission does receive proposed changes that we will not  
3 have the opportunity to cross-examine the people who are  
4 proposing such changes and we'll just be proceeding on our  
5 own testimony?

6           MR. STOVALL: No, I would not say that. What I am  
7 suggesting is that cross-examination be solely -- be  
8 directed primarily for the purpose of understanding,  
9 clarification, whatever of the proponent's testimony and  
10 that you not try to use somebody else's witness to make your  
11 own case?

12                   I think that tends to get rather cumbersome, and  
13 even in the simplest of cases makes for a difficult hearing  
14 procedure. I would much rather see you make your case in  
15 chief with your own witness rather than trying to use a  
16 different party's witness to make your case.  
17 Cross-examination will not be precluded. I don't think we  
18 can do that. Just make it efficient, I guess, and useful.

19                   Mr. Carr.

20           MR. CARR: Mr. Stovall, would the division make these  
21 prehearing statements available to the rest of us? Or how  
22 would you like us to go about getting copies of those?

23           MR. STOVALL: My feeling is for the parties who are  
24 here who are going to have to submit a prehearing statement,  
25 that they be required to submit it to every party who is

1 here.

2 MR. CARR: How do you know?

3 MR. STOVALL: That may be one problem with the  
4 seven-day timetable. We're going to have to notify parties  
5 who are not here that they're going to have to submit a  
6 statement to participate, and that's going to make the seven  
7 days impossible. And then it's going to be incumbent on  
8 them to call the division. I'm going to recommend that  
9 every party here, through counsel, submit an entry of  
10 appearance so that we have a list of folks who are in the  
11 case. Is there any problem with that? Mr. Pearce?

12 MR. PEARCE: I don't think you can do that. I don't  
13 think your rules allow you, outside of a formally-called  
14 hearing, to require somebody to submit a statement. I  
15 understand the frustration going around in the room, but I  
16 think you've got to put the thing on a docket, call the  
17 case, have a formal beginning of the hearing before you can  
18 stop anybody from participating.

19 MR. STOVALL: I was waiting for somebody to make that  
20 position. Thank you, Mr. Pearce. The thought had crossed  
21 my mind.

22 Why don't we take a ten-minute break and kind of  
23 gather our thoughts, and, again, formulate a procedure to  
24 get into this thing so that we are more efficient when we  
25 get there?

1 HEARING EXAMINER: Before we take a break -- Mr.  
2 McElhiney, is the committee report actually finished?

3 MR. McELHINEY: No, it is not.

4 HEARING EXAMINER: And do you know when that might be  
5 finished?

6 MR. McELHINEY: Well, it's in sort of parallel process  
7 along with preparation for this testimony, and whether or  
8 not it will be finished by the 21st of February is not  
9 completely certain at this time.

10 HEARING EXAMINER: And who has access to the committee  
11 report at this time, just the committee members?

12 MR. McELHINEY: Everyone that sponsored the study. I  
13 think there were 13 --

14 MR. McBANE: The committee members that sponsored the  
15 study had access to it. There are a number of producers who  
16 participated in the earlier coalbed methane committee who  
17 choose not to become sponsors of this particular study.

18 MR. McELHINEY: We can probably construct a list for  
19 you at the break, if that's helpful.

20 HEARING EXAMINER: That might be helpful.

21 Let's go ahead and break at this time.

22 (Recess, 2:52 p.m. to 3:22 p.m.)

23 HEARING EXAMINER: I'll call this proceeding back to  
24 order. And Mr. Stovall has some information as far as Dugan  
25 Production Corporation is concerned.

1           MR. STOVALL: Two things here. Just to get it in the  
2 record, Mr. McElhiney has provided me with a list of the  
3 study sponsors, Amoco Production Company, Arco Oil and Gas  
4 Company, Mobil Oil Company, Mobil Producing Texas and New  
5 Mexico, Marathon Oil Company, Mesa Operating Limited  
6 Partnership, Unical, Meridian, Phillips, Nassau Resources,  
7 Bowen Edwards Associates, Southern Ute Indian Tribe, Texaco  
8 and Devin on behalf of Blackwood and Nichols. Also  
9 participating was the Gas Research Institute. So that's the  
10 laundry list of the participants, I guess, who helped pay  
11 for this study and actively participated.

12                 During the break I took the liberty of calling  
13 Kurt Fagrelus at Dugan Production. And Kurt's concern is  
14 -- they expressed their specific concern is they're  
15 concerned about 320 acres because it is their belief, and  
16 they may present testimony to the effect, that the fractures  
17 in the coal pool and fractures in the Picture Cliff pool, in  
18 which they have a substantial interest, are in communication  
19 and that, in fact, the Gas from Picture Cliff wells has the  
20 same composition as gas from the coal wells. So that throws  
21 a wrinkle into it for all of you folks to consider. That is  
22 the large part of Dugan's belief that 160 acres, at least in  
23 the southern portion of the basin, is appropriate.

24                 During the course of the break, I think we had  
25 some side discussions about procedurally how to deal with

1 the problem we're dealing with and how to manage this case,  
2 and I think Mr. Kellahin had a thought. Would you like to  
3 express that, Tom?

4 MR. KELLAHIN: Mr. Examiner, I would recommend to you  
5 that the case be docketed for hearing on the 21st of  
6 February, that at that time it be called, all parties would  
7 enter appearances, that the only testimony to be provided  
8 would be the anticipated testimony of the consulting experts  
9 where they would give us an explanation of the report.

10 Parties could ask clarifying questions and  
11 participate in an objective way to understand the report.  
12 Thereafter, the case would be continued for 30 days, and we  
13 would come back, and we would deal specifically with any  
14 company that proposed specific rule changes.

15 That process is very similar to how we handled  
16 the Gavilan Mancus. Commissioner Weise at that time was not  
17 a commissioner, but he, on behalf of the commission, was  
18 acting as a consultant, provided his reservoir simulation  
19 analysis and his work on Gavilan. We recessed the case for  
20 30 days and came back and dealt with the rest of the matters  
21 on an individual company basis.

22 I recommend to you that those parties present  
23 today that have not made their positions known that within  
24 ten days of this date they disclose to the division and make  
25 available to all parties participating a statement of their

1 position with regards to whether or not they're going to  
2 propose any rule changes, and if so, what those changes  
3 are.

4 I think that will give us some way to manage a  
5 different problem. It will put those parties on notice at  
6 the actual hearing that they need to come forward and make  
7 their presence known. It gives us an opportunity for those  
8 of us here today to come away with some progress made  
9 towards ultimately deciding how to handle the rules for the  
10 basin. And I would recommend to you adopting the procedure  
11 along those guidelines.

12 MR. STOVALL: A question with respect to trying to  
13 refine that procedure to make sure that we give everybody  
14 their due process and get all the information in and not get  
15 overly cumbersome, one of the things we have tried to avoid  
16 by having this hearing is to avoid what has been referred to  
17 as sandbagging or coming in without making your position  
18 known ahead of time and presenting a case which nobody has a  
19 chance to prepare a response to or whatever.

20 As Mr. Pearce pointed out, I think we can require  
21 position statements to be submitted ten days from today or  
22 ten days in advance of February 21st, but we do have a  
23 problem of what if somebody shows up at the hearing who has  
24 not submitted any sort of prehearing statement of that  
25 nature? How do we deal with that?

1           And let me finish my question here. It's kind of  
2 a multi-part question. And I guess one of the questions I  
3 would ask is if at the February 21st hearing we call the  
4 hearing, call for appearances -- and I think we can even put  
5 out additional notification language in the notice of the  
6 hearing stating that all parties who plan to present  
7 testimony must enter an appearance at the commencement of  
8 the hearing on February 21st -- and then possibly -- this is  
9 just my thought, and I would appreciate comment on it -- at  
10 the conclusion of the consultant's presentation, take a  
11 recess and then just ask parties -- or perhaps even five  
12 days thereafter, ask parties to submit a statement of  
13 position at that time. Is there any merit to that idea?

14           And then at that point I think we can preclude  
15 additional parties from coming in who have not made an  
16 appearance and stated a position. Any thoughts on that?

17           MR. KELLAHIN: You certainly can't deny anyone from  
18 coming in on the 21st and making a position known. But I  
19 think in all fairness to the parties here, these are the  
20 major players in the basin. They have all participated,  
21 including Nassau and Unical in writing, the recommendation  
22 that was read. They've got people working on that stuff,  
23 and they ought to share with us their positions earlier than  
24 waiting to the 21st.

25           If you don't do it now, we're going to need more

1 time later. If we know the positions early, we can use the  
2 next three weeks to determine if we want to seriously oppose  
3 any of their proposals. You can't absolutely mandate it,  
4 but I'm suggesting in fairness, let's go ahead and start the  
5 process.

6 MR. STOVALL: I guess I don't disagree with that. My  
7 question is, for example, picking on Mr. Dugan for the  
8 moment; he's not officially represented here. The only  
9 reason we know where he is is because I called and Kurt was  
10 candid enough with me to state their position. They may or  
11 may not submit a statement, and they may show up at a  
12 hearing.

13 Do you want to deal with that, or do you consider  
14 that a serious enough problem procedurally to require an  
15 additional step after the hearing as far as taking the  
16 position after the first call of the hearing?

17 MR. KELLAHIN: It may require at that time at the  
18 hearing an additional step to deal with Mr. Dugan's  
19 position. But I would rather deal with that one as perhaps  
20 the only remaining position unknown at that time. It's  
21 easier to manage if we've already addressed the Unical  
22 concerns and the Nassau position earlier.

23 MR. STOVALL: Do you agree that at the time of the  
24 February 21st hearing, and properly advertised and docketed,  
25 that we can then preclude the entry of appearance

1 subsequently? We now have limited the parties participating  
2 and can require those parties to state a position and be  
3 prepared to go forward from there to deal with these people  
4 that aren't here today.

5 MR. KELLAHIN: I would think that's consistent with how  
6 we have continued to operate all hearings. Put it on the  
7 docket, it's properly notified and advertised, widely  
8 circulated. If a party doesn't show up, then they're out.

9 MR. CARR: Every notice letter we send out for an OCD  
10 case ends with a paragraph which says, "Failure to appear or  
11 otherwise become a party of record on this date," whatever  
12 the date is, "will preclude you from challenging the matter  
13 at a later time."

14 I don't know why you can't in your ad say,  
15 "Failure to appear and become a party of record will  
16 preclude you from participating in this at a later date."  
17 Somebody may come in and challenge it; you may have to deal  
18 with that at that time. But I think before you take that  
19 position, you should put everyone on notice that you're  
20 expecting them to be there. And if they're going to try and  
21 take a position contrary to that, whether or not you have to  
22 back down later, at least you've put them on notice that  
23 they're supposed to be there.

24 While I'm up, there are a couple of other things  
25 I would like to suggest. If Meridian is preparing some

1 amendments or some -- perhaps following the presentation of  
2 the consultants, anyone who's going to be suggesting some  
3 rule change ought to have a copy of it available for those  
4 who are present on the 21st. And I would also suggest that  
5 the hearing on the 21st be in Santa Fe.

6 MR. STOVALL: My question specifically -- I'll deal  
7 with the first part first -- is in a continued hearing,  
8 generally when a hearing is continued, a party may appear at  
9 the continued hearing date. What I am suggesting in this  
10 case, for example, an interested party could show up on the  
11 21st, listen, not participate, not make anybody aware of  
12 their presence, and then come back in at a continued date.  
13 Can we preclude that, do you think?

14 MR. KELLAHIN: It's certainly unfair for them to sit  
15 back and ambush us later.

16 MR. STOVALL: Mr. Pearce, you're the one that raised  
17 the concern before. What are your feelings on that?

18 MR. PEARCE: I don't think you can keep them out.

19 MR. STOVALL: If they don't enter their appearance at  
20 the call of the hearing, you don't think we can preclude  
21 them later?

22 MR. PEARCE: Not unless you stop the hearing. If you  
23 continue the hearing, I don't see how you can keep them  
24 out. I think it's unlikely that it would happen. I think  
25 you could beat them about the head and shoulders when they

1 do it, but I don't think you could throw them out the door.

2 MR. CARR: I think Perry is right. What I was  
3 suggesting is you put language in this sort of shotgun order  
4 for everybody to get in. But if, in fact, somebody shows up  
5 on the 21st of March, whatever day it might be, ready to go  
6 forward, I really think you'd be creating some problems down  
7 the road for the order and for the division in the context  
8 of that case.

9 MR. STOVALL: I also happen to think that that may --

10 MR. CARR: There may be some clarifying law on that.

11 MR. STOVALL: There may also be a problem on the  
12 quality of their evidence, I guess, would be a consideration  
13 at that time.

14 Any other comments or suggestions on what's being  
15 proposed? Does everybody understand it, that all parties  
16 who are present today -- and perhaps, Ernie, we can get out  
17 a notice? You still have labels and address lists that you  
18 used for this memorandum --

19 MR. BUSCH: Yes.

20 MR. STOVALL: -- on this hearing? That a position  
21 statement will be required to be submitted within, we'll  
22 say, approximately ten days of today, that the case will be  
23 heard on the -- the case will be called on the 21st, and  
24 that the consultant and committee's engineering study as  
25 prepared by ICF will be presented at that time, and that we

1 also request that all parties appear at that time who intend  
2 to present anything or participate in the case, and that any  
3 party proposing any changes to the current rules submit  
4 those proposed changes on the 21st, and that a hearing will  
5 then, after the conclusion of the ICF report and submittal  
6 of any proposed changes to the rules, that the hearing will  
7 be continued March 21st, and that the case will be continued  
8 for individual operator presentations at that time? Any  
9 comments, pro or con, on that proposal? Everybody agree?  
10 Mr. Birchy, does that sound acceptable?

11 MR. BIRCHY: I have no objection.

12 MR. STOVALL: Jim?

13 MR. BRUCE: No objection.

14 MR. STOVALL: Perry, as my non-participant advisor,  
15 does that sound good?

16 MR. PEARCE: That sounds good.

17 MR. STOVALL: Anybody else?

18 HEARING EXAMINER: Are there any remarks about the  
19 location of the February 21st hearing, any preferences?

20 MR. STOVALL: Santa Fe has been suggested by Mr. Carr.

21 MR. NITCHER: Amoco would back that up.

22 MR. KELLAHIN: We'd like to see it in Santa Fe on the  
23 regular docket.

24 MR. STOVALL: Anybody else? Any other -- I'd suggest  
25 that perhaps, as we tend to do with big cases, we will

1 simply place this at the end of the docket prior to sending  
2 that docket, so it will be the last case to be heard. Any  
3 problem with that? Don't know what that docket is going to  
4 look like at this point.

5 HEARING EXAMINER: It's my understanding that your  
6 presentation will take about two-and-a-half, three hours,  
7 something like that?

8 MR. STOVALL: Realistically, I would anticipate that it  
9 will be at least half a day by the time -- because I'm sure  
10 that we will offer all parties appearing in the case the  
11 opportunity to question -- again, bearing in mind,  
12 cross-examination is for the purpose of clarification and  
13 understanding primarily and not for making a case. But  
14 you'll have the opportunity to respond to any ambiguities  
15 which may occur.

16 MR. McELHINEY: I anticipated as much.

17 MR. STOVALL: Realistically, I would make plans for  
18 four to five hours minimum, I would think would be a  
19 realistic expectation.

20 Anything further? Hopefully, that will improve  
21 the process and avoid unnecessary, redundant testimony while  
22 at the same time giving everybody the opportunity to address  
23 major concerns, present helpful evidence in support of any  
24 position which any company may take. Anything else? Do we  
25 need to address anything else before we conclude this

1 conference?

2 MR. McELHINEY: Could I just make one comment? I said  
3 in the first paragraph of my letter that the list of  
4 exhibits is not entirely complete at this time. I would  
5 like that extended to the conclusions. I notice that the  
6 committee asked me to make more robust Roman IV A Conclusion  
7 which is on the fourth page. And I didn't get it done. And  
8 I just would like to reserve the right to clean that up. So  
9 this is somewhat tentative on both conclusions and exhibits  
10 at this time. Very close to the final product, but not  
11 quite there.

12 MR. STOVALL: I think it's very helpful. I hope the  
13 operators all find this as a useful tool to understand what  
14 the committee has done, even though they didn't actually  
15 participate directly. Appreciate your providing what you  
16 have. I think it is a good start. I appreciate the  
17 participation by everybody. Hopefully, we can make this an  
18 efficient process and not turn it into quite the adversarial  
19 event that the Gavilan hearings became after a while, and  
20 that we can come up with some rules that will really help  
21 you to operate effectively in that area.

22 HEARING EXAMINER: There being nothing further, I guess  
23 I'll adjourn this conference.

24 (The foregoing hearing was adjourned at the  
25 approximate hour of 3:40 p.m.)

1 STATE OF NEW MEXICO )

2 :  
3

4 COUNTY OF SANTA FE )

5 I, FREDA DONICA, RPR, a Certified Court Reporter, DO  
6 HEREBY CERTIFY that I stenographically reported these  
7 proceedings before the Oil Conservation Division; and that  
8 the foregoing is a true, complete and accurate transcript of  
9 the proceedings of said hearing as appears from my  
10 stenographic notes so taken and transcribed under my  
11 personal supervision.

12 I FURTHER CERTIFY that I am not related to nor employed  
13 by any of the parties hereto, and have no interest in the  
14 outcome hereof.

15 DATED at Santa Fe, New Mexico, this 19th day of  
16 February, 1991.

*Freda Donica*

Freda Donica  
Certified Court Reporter  
CCR No. 417

I do hereby certify that the foregoing is  
a complete record of the proceedings in  
the Examiner hearing of Case No. \_\_\_\_\_  
heard by me on \_\_\_\_\_ 19 \_\_\_\_.

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

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25