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STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION DIVISION
CASE 9998

EXAMINER HEARING

IN THE MATTER OF:

Application of Yates Energy Corporation to Amend
Division Order No. R-9093, as Amended, Eddy
County, New Mexico

TRANSCRIPT OF PROCEEDINGS

BEFORE: DAVID R. CATANACH, EXAMINER

STATE LAND OFFICE BUILDING

SANTA FE, NEW MEXICO

July 25, 1990

ORIGINAL

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A P P E A R A N C E S (Cont'd)

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ALSO PRESENT:

JAMES MORROW
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1 WHEREUPON, the following proceedings were had
2 at 11:32 a.m.:

3 EXAMINER CATANACH: At this time we'll call
4 Case Number 9998.

5 MR. CARROLL: Application of Yates Energy
6 Corporation to amend Division Order Number R-9093, as
7 amended, Eddy County, New Mexico.

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

10 MR. PADILLA: Yes, Mr. Examiner, my name is
11 Ernest L. Padilla with the firm of Padilla and Snyder,
12 Santa Fe, New Mexico, for the Applicant.

13 I have three witnesses to be sworn.

14 EXAMINER CATANACH: Other appearances?

15 MR. KELLAHIN: Mr. Examiner, I'm Tom Kellahin
16 of the Santa Fe law firm of Kellahin, Kellahin and
17 Aubrey, appearing on behalf of Chevron USA, Inc.

18 MR. CARR: May it please the Examiner, my
19 name is William F. Carr with the law firm Campbell and
20 Black, P.A., of Santa Fe.

21 We represent Spiral, Inc.; Explorers
22 Petroleum Corporation; Heyco Employees, Ltd; and W.T.
23 Wynn.

24 I do not intend to call a witness.

25 EXAMINER CATANACH: Mr. Carr, once again,

1 Spiral, Inc.; Explorer's Petroleum --

2 MR. CARR: -- Corporation, Heyco Employees,
3 Ltd; and W.T. Wynn.

4 EXAMINER CATANACH: Mr. Kellahin, are you
5 going to have any witnesses?

6 MR. KELLAHIN: I propose to swear one witness
7 at this time. I have other potential witnesses.

8 EXAMINER CATANACH: Okay. Will all the
9 witnesses please stand to be sworn in?

10 (Thereupon, the witnesses were sworn.)

11 EXAMINER CATANACH: Mr. Padilla, you may
12 proceed at this point, unless --

13 MR. KELLAHIN: Mr. Examiner we have a pending
14 Motion for decision before the Division. I'm prepared
15 to argue and discuss that Motion with you at this
16 point.

17 We filed as part of our prehearing statement
18 before the Division on Friday a Motion to dismiss this
19 case, and we're prepared at this time to discuss it. I
20 think the issues of concern to me, which I will raise
21 now, go to the fundamental aspects of this case, and we
22 would request that you rule on those matters now. The
23 outcome of those decisions may, in fact, determine what
24 happens with the rest of the case.

25 (Off the record)

1 EXAMINER CATANACH: Mr. Kellahin, do you want
2 to present any additional arguments at this time?

3 MR. KELLAHIN: Yes, Mr. Examiner, if I might.

4 MR. PADILLA: Mr. Examiner, if I may
5 interject at this point, I have not received or been
6 served with a copy of the Motion, and it may have been
7 mailed, but I don't have a copy of that.

8 MR. KELLAHIN: Well, I apologize to Mr.
9 Padilla. I thought he would have it, and I'll
10 certainly provide him another copy. It's nothing I
11 haven't discussed with him on the telephone.

12 It went to some of the procedural and legal
13 issues involved in this attempt to amend the pooling
14 order, and I think both sides can adequately argue this
15 question at this point.

16 If you need additional copies, Mr. Examiner,
17 I have them.

18 EXAMINER CATANACH: Mr. Kellahin, was your
19 Motion filed just in conjunction with the prehearing
20 statement?

21 MR. KELLAHIN: It was, to alert all parties
22 of the pending Motion. I certainly need to explain it
23 to you orally to make it clear what we're seeking to
24 accomplish and the specific concerns that we have.

25 EXAMINER CATANACH: Okay, you may proceed.

1 MR. KELLAHIN: In order to give you the --
2 the record an adequate foundation for the points I want
3 to discuss with you, we would request at this time that
4 the Examiner take administrative notice of the original
5 pooling case, which is Case 9845, resulting in Order
6 Number R-9093, and we would so move at this time.

7 EXAMINER CATANACH: Administrative notice
8 will be taken of that case number and order number.

9 MR. KELLAHIN: Let me attempt to state as
10 clearly as I can what I think is the sequence of
11 events, and then I will explain to you our concern and
12 our proposed solution.

13 Pursuant to the Compulsory Pooling Statute,
14 the Division has authority under that Act to enter
15 orders pooling spacing units for individual pools for
16 which there is not voluntary agreement for how to share
17 the cost and the production.

18 The Commission has for a number of years
19 stopped entering generic force-pooling orders where you
20 pool from the surface down to the total depth drilled.
21 We consistently now, and I think for the last few
22 years, have asked the Division to enter more specific
23 pooling orders.

24 You can see on your docket today that there
25 are a number of applications in which the applicant

1 tells you the spacing unit and the formations and the
2 pools in which he doesn't have agreement and for which
3 he needs a pooling order.

4 In December of last year, Mr. Stogner heard
5 the Yates case, 9845. The discussion in the record, as
6 I read the record, is specifically focused on only one
7 pool. It was the Tamano-Bone Springs. I think it's
8 beyond dispute that the Order entered, 9093, is
9 specifically limited to pooling the interest in the
10 Bone Springs 40-acre oil spacing. I see no other way
11 to read that Order.

12 After the Order was entered, Yates sends
13 notice to the parties that had their interest pooled in
14 that formation, one of which was Chevron, USA. They
15 furnished them an AFE for the drilling of the Bone
16 Springs test. Chevron elected not to participate by
17 paying their share of the costs of that attempt, and so
18 they were deemed to have elected to go nonconsent under
19 the pooling order for the Bone Springs.

20 Thereafter, Yates drilled the well and was
21 unsuccessful in obtaining any oil or gas production out
22 of the Bone Springs, and it is our position that the
23 force-pooling order expired.

24 However, at that point Yates, without coming
25 back to the Commission to pool any other formation, to

1 determine whether or not they still had an effective
2 force-pooling order, took it upon themselves to test
3 other formations in that wellbore, and they eventually
4 found oil production in the San Andres at about 5000
5 feet.

6 The Bone Springs force-pooling took place in
7 an interval about 8800 feet.

8 And so we contend in absence of a pooling
9 order and without authority, they have completed at
10 their own election, at their own risk, production in
11 the San Andres, some 25 percent of which belongs to my
12 client, who was never afforded the opportunity to elect
13 and to participate in the attempt in that formation.

14 So what we seek from you this morning, first
15 of all, is that a decision should be made by the
16 Examiner that the original pooling order expired when
17 the party drilled the well pursuant to that order and
18 failed to obtain production.

19 There's nothing else that can happen. That
20 pooling order was for a particular attempt in a
21 particular pool. You can't do anything else with it.
22 It's gone. And in order to get another one, you have
23 to go through the steps and the procedures that we have
24 developed before this Division by contacting your
25 working-interest owners and asking them to join and

1 participate with you and send you what is an AFE for
2 the cost of the recompletion or the attempt to drill in
3 the San Andres, none of which have happened.

4 Chevron wants to participate in the San
5 Andres, and Yates won't give us the chance. It is
6 their position that by going nonconsent in the Bone
7 Springs, that precluded us from ever having an election
8 on any other formation, despite the fact they never
9 pooled anything else. And we say their Application
10 today to amend and resurrect a terminated order is
11 fundamentally wrong. It's fatally flawed, and the
12 Application cannot stand.

13 They must go back to square one and start
14 over and give us the opportunity to join.

15 And that's our position with regards to this
16 Motion, that it should be dismissed, because I think
17 it's undisputed that they've never given us the chance
18 to participate.

19 I have a witness here to tell you that he's
20 ready, willing and able, we'll pay our proportionate
21 share of the fair cost determined by this Division.
22 But we don't know what those costs are. We've never
23 been told. And it's premature to go ahead with this
24 case, to talk about costs, when we've never had a
25 chance to see what those costs are.

1 And this case is not ripe for hearing until
2 the Applicant meets its burden of satisfying the due-
3 process requirements of the statute before they
4 confiscate and take our oil production out of the San
5 Andres.

6 We would seek to move to dismiss the
7 Application at this point for those grounds.

8 EXAMINER CATANACH: Mr. Padilla?

9 MR. PADILLA: First of all, let me start by
10 saying that this wellbore that was drilled to test the
11 Bone Springs formation under the original Order 9093
12 has never been abandoned by Yates Energy.

13 In addition to that, we will show today -- by
14 way -- that it is prudent for an oil and gas operator
15 to test formations on the way down. You simply don't
16 totally ignore what's above the Bone Springs test.
17 And I should emphasize that this was a Bone Springs
18 test. It wasn't a test limited strictly to the Bone
19 Springs formation.

20 What we have here is a company who has
21 obtained and is trying to take advantage of a risk that
22 was assumed by Yates Energy, and they're trying to
23 attribute all of the risk for drilling the well and one
24 of three wells essentially. That is unfair, and that
25 should not be allowed by the Division.

1 I would say that it is unfortunate, and it
2 was an oversight to have limited the Application to the
3 Bone Springs formation. But nonetheless, the person
4 who is having to bear the cost in this case has been
5 the Applicant in this case, and they should be allowed
6 to recover, at the very minimum, their proportionate
7 well costs.

8 In addition to that, they should be allowed
9 to recover a reasonable risk factor under the
10 circumstances, considering what Yates Energy expected
11 to encounter at the time that the well was drilled.
12 That includes everything from the surface down to the
13 base of the Bone Springs, or the total depth of the
14 well.

15 We have here a situation that requires the
16 Division to look at this thing with an open mind, so
17 that we do not get in a circumstance where the person
18 fronting the costs in this well is going to, in fact,
19 have those costs totally condemned or confiscated as --
20 to use the word that Mr. Kellahin used.

21 The notion that the Order has expired, I
22 don't think is appropriate, because -- especially when
23 the wellbore has never been abandoned. At all times
24 there has been some type of effort to complete the
25 well, whether it's in the Bone Springs, whether

1 upstream or up above that in the San Andres formation
2 which is ultimately completed.

3 So it's not a question of simply saying a
4 situation where a well was drilled, the hole was
5 abandoned, and then somehow there's a re-entry of that
6 wellbore being attempted. That's not the case at all
7 in this case.

8 In terms of due process, I don't see how due
9 process is affected. There's no question here but that
10 Chevron had adequate notice in connection with -- in
11 compliance with the Rules of the Oil Conservation
12 Division.

13 As a matter of fact, I personally noticed
14 that I was not giving Chevron enough time, and I
15 continued the case from July 11th to today's date,
16 simply because I felt that we might be pushing and
17 crowding the 20-day notice requirement.

18 I think it's totally inappropriate for the
19 Division, absent a hearing in this matter, to summarily
20 dismiss the Applicant's Application at this point.

21 At the very minimum, the Division should go
22 on with the hearing and then decide whether or not the
23 Application is well-founded and should be decided on
24 its merits, not on a Motion to -- as proposed by
25 Chevron.

1 MR. KELLAHIN: May I respond, Mr. Examiner?

2 EXAMINER CATANACH: Uh-huh.

3 MR. KELLAHIN: Mr. Padilla has not given you
4 any proposed tender of proof that gives you any
5 controverted factual issue to resolve. Apparently it's
6 admitted and uncontested that Yates has not given us a
7 chance to participate in the San Andres, and they take
8 the position that we should not have that right.

9 They do one thing and then ask you to accept
10 another. How is this case any different than if they
11 come in here and force-pool the Morrow only, recomplete
12 in the Atoka or the Strawn, in an interval that we want
13 to participate in, and you don't get the chance?

14 You set yourself up for a terrible precedent
15 with this case by going forward with it in its current
16 posture. We always require the Applicant in a pooling
17 case to provide parties an opportunity to participate.
18 It's uncontested that there was no opportunity to
19 participate in the San Andres. We're here with our
20 offer of proof to say we want to participate.

21 We don't want Yates to bear the risk they say
22 they have assumed and undertaken for themselves. We're
23 going to pay our share of this well, what you determine
24 to be those appropriate costs. But it's premature to
25 ask you to determine what those costs are when they

1 haven't shared them with us. And I don't think you
2 need to take evidence when there is no dispute about
3 the evidence; you simply make a decision on how to
4 apply those facts uncontributed to the law that you
5 understand them, and you and your attorney and staff
6 want to apply.

7 And I think that's where we are with this
8 case. We think it's not ready for hearing.

9 EXAMINER CATANACH: Let's take a short
10 recess.

11 (Thereupon, a recess was taken at 11:50 a.m.)

12 (The following proceedings had at 11:52 a.m.)

13 MR. CARROLL: Mr. Carr, do the other parties
14 in this proceeding have a position on this matter?

15 MR. CARR: We're in a little different
16 posture than Chevron. We did participate in the
17 drilling of the original hole at the last minute.

18 I can confer with them and advise you if
19 you'll give me just one second.

20 MR. CARROLL: Okay.

21 MR. CARR: I did not know that we don't stand
22 exactly in the same posture before the Division.

23 (Thereupon, a recess was taken at 11:53 a.m.)

24 (The following proceedings had at 12:10 p.m.)

25 MR. CARR: May it please the Examiner, I've

1 conferred with my clients, and they concur in the
2 position taken by Chevron in this matter.

3 EXAMINER CATANACH: Concur with Chevron?

4 MR. CARR: Yes, sir.

5 EXAMINER CATANACH: We've concluded or
6 decided that the Motion to Dismiss may be enforced. If
7 the evidence indicates that it should be enforced, it
8 can be enforced after the hearing is held. So I think
9 that we'll go ahead and hear the evidence and testimony
10 in the case at this point and proceed from there.

11 (Thereupon, a recess was taken at 12:10 p.m.)

12 (The following proceedings had at 1:08 p.m.)

13 EXAMINER CATANACH: Let's proceed at this
14 time, turn it over to Mr. Padilla.

15 MR. PADILLA: Mr. Examiner, we'll call Sherry
16 Hamilton at this time.

17 SHARON R. HAMILTON,
18 the witness herein, after having been first duly sworn
19 upon her oath, was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. PADILLA:

22 Q. Miss Hamilton, have you -- Well, first of
23 all, state your full name, please.

24 A. My name is Sharon R. Hamilton.

25 Q. And you live in Roswell?

1 A. Yes, I do.

2 Q. And do you work for Yates Energy Corporation?

3 A. Yes, I do, as a landman.

4 Q. And have you previously testified before the
5 Oil Conservation Division as a petroleum landman and
6 had your credentials accepted as such?

7 A. Yes, I have.

8 Q. Miss Hamilton, did you testify in the hearing
9 in Case 9845 which resulted in Order R-9093?

10 A. Yes, I did.

11 Q. And are you familiar with the ownership of
12 the land in question and under consideration here
13 today?

14 A. Yes, I am.

15 MR. PADILLA: Mr. Examiner, we tender Miss
16 Hamilton as an petroleum landman.

17 EXAMINER CATANACH: She is so qualified.

18 Q. (By Mr. Padilla) Miss Hamilton, let's start
19 out first of all with your telling the Examiner a
20 little bit about the history of this prospect, and
21 start out generally with the -- how you came about to
22 drill the well that was drilled in this particular
23 tract.

24 Before we get on, would you please state what
25 is the proration unit that is under consideration?

1 A. It's a 40-acre proration unit of the
2 southeast of the southwest quarter of Section 1, 18
3 South, 31 East.

4 Q. And is that proration unit the same proration
5 unit that was -- or the same 40-acre tract that was the
6 subject of that hearing in Case 9845?

7 A. Yes, it is.

8 Q. Okay. Let me have you go back to the history
9 of what you did in connection with that hearing
10 briefly, since -- and tell the Examiner what you know
11 about that case.

12 A. We had proposed the drilling of a well to
13 test the Bone Springs formation as a primary target.
14 We solicited participation from all owners involved.
15 We went through the force-pool hearing, and then
16 subsequently all but Chevron participated in the
17 drilling of the well.

18 Q. What is the purpose and nature of the hearing
19 today? Why are we here today? Can you tell us that?

20 A. Yates Energy would like to extend the Order
21 that's in effect to include the shallow formations
22 since they were not all included in the original Order.

23 Q. When you say shallow formations, what do you
24 mean by shallow formations?

25 A. Particularly the San Andres formation in this

1 area.

2 Q. Are you saying all formations above the Bone
3 Springs formations?

4 A. Yes, from the surface down, we were
5 interested in.

6 Q. Why -- What is the problem that has been
7 encountered by -- or why do you need to force-pool
8 those formations above the Bone Springs?

9 A. After drilling and testing the well, we
10 eventually made a well in the San Andres formation.

11 Q. Okay. Did you go all the way down to the
12 Bone Springs and test the Bone Springs?

13 A. Yes, we drilled total depth and -- deeper, in
14 fact, than our original intentions -- and tested all
15 three Bone Springs formations, I believe.

16 Q. And then you came uphole?

17 A. Yes, sir.

18 Q. Now, why was this hearing necessary today? I
19 mean, have you had any communications with Chevron or
20 the other working-interest owners that would require
21 this hearing here today?

22 A. We in title verification discovered that the
23 Order did not include all rights from the surface down.

24 Q. Let me ask you this question, then. When did
25 you discover that the Order did not include all

1 formations?

2 A. When the title attorney was preparing a
3 divisional title opinion.

4 Q. And who was that title attorney?

5 A. Doug Lunsford with the Hinkle law firm.

6 Q. And what did Mr. Lunsford tell you?

7 A. He recommended that we contact Chevron and
8 request that the existing Order be contractually
9 amended to include all rights from the surface.

10 Q. And did you contact Chevron?

11 A. Yes, we did. We wrote a letter.

12 Q. And what did you say in that letter?

13 A. Just simply stating that the -- that we had
14 discovered that the Order did not recover all rights,
15 and we requested to -- requested that they
16 contractually amend the Order to include all rights.

17 Q. Did Chevron respond to your letter?

18 A. Yes, sir, they did.

19 Q. Who did you talk to?

20 A. Mickey Cohlma, the landman.

21 Q. And did you have telephone conversations with
22 Mr. Cohlma?

23 A. Yes, we had.

24 Q. Approximately how many telephone
25 conversations did you have?

1 A. We've had at least three or four discussions.

2 Q. What was the outcome of your discussions?

3 A. We discussed several different possibilities
4 and eventually did not reach an agreement.

5 Q. What were the possibilities that you
6 discussed with Mr. Cohlma?

7 A. There were several different farmout
8 discussions that were proposed and then our
9 participation.

10 Q. Okay, and what -- Can you be more specific as
11 to the type of farmouts that were offered by Chevron?
12 I take it Chevron offered the farmouts?

13 A. They did. They offered, and then they
14 withdrew the proposal.

15 Q. Did they have a time limit on the time during
16 which you were to accept the proposal?

17 A. Not that I recall.

18 Q. Do you know why they withdrew the proposal?

19 A. No, sir, I do not.

20 Q. Now, you mentioned also that Chevron had
21 wanted to participate in some manner in the well. Can
22 you tell us about that?

23 A. They indicated that they would be interested
24 in participating in the San Andres test.

25 Q. What does that mean?

1 A. To me it just indicated that they were
2 willing to participate in the completion that had
3 already been obtained.

4 Q. Would that participation be as to the total
5 well costs that had been incurred to that time?

6 A. No, they were not.

7 Q. What well costs did you discuss?

8 A. They were just interested in the San Andres
9 completion costs and not in the drilling of the well.

10 Q. Was there any other question -- any question
11 as to what the San Andres costs would be?

12 A. In this particular well, we had not addressed
13 the separate costs because we had drilled it as a Bone
14 Springs well, so the costs were included.

15 Q. Had you been involved in other wells with --
16 that involved a Chevron interest? Only to the San
17 Andres?

18 A. Yes, we have proposed an offset well to the
19 Thornbush Federal Number 1 that is just strictly a San
20 Andres test, and we had submitted an AFE on that well.

21 Q. Did Chevron ever question that AFE?

22 A. No, they did not.

23 Q. Did Chevron participate in that well?

24 A. That well has not been drilled yet. We just
25 received a force-pooling order on that property, and we

1 will be proceeding with the drilling next month.

2 Q. So let me see, what is the practical effect
3 of Chevron's position in this case?

4 A. Well, we feel that they -- they're wanting to
5 participate in a subsequent completion without bearing
6 the cost of drilling the well involved.

7 Q. I don't understand that. Do I take that to
8 mean that Chevron is only willing to accept the cost
9 down to the San Andres but not below the San Andres?

10 A. Yes, that's right.

11 Q. Is the ownership -- Can you tell us about the
12 oil and gas ownership from the surface to the base of
13 the Bone Spring formation?

14 A. The ownership is uniform in this 40-acre
15 tract, as well as in the entire west half of Section 1,
16 for all depths.

17 Q. And who are the owners of the oil and gas
18 interest?

19 A. Harvey E. Yates Company; Spiral, Inc.;
20 Explorers Petroleum Corporation; Heyco Employees, Ltd;
21 Yates Energy Corporation and Chevron and W.T. Wynn.

22 Q. Is the ownership consistent with your
23 previous testimony in Case 9845?

24 A. Yes, sir.

25 Q. What -- Are you familiar with the overhead

1 charges that would be used in a well to the San Andres
2 only?

3 A. Yes, sir, in the Order that was just issued,
4 it was \$3200 drilling overhead and \$320 producing rate,
5 was accepted by the Commission.

6 Q. Should the Division be amenable to amending
7 the previous Order, would you be amenable to changing
8 the producing overhead rate from the previous amount to
9 \$320?

10 A. Yes, we would.

11 Q. Does Yates Energy wish to be named the
12 operator in an Order of the Division?

13 A. Yes, we do.

14 Q. Have all AFE's -- Or has the AFE that was
15 used in Case 9845, was that submitted to Chevron at the
16 time that you proposed the Bone Springs test?

17 A. Yes. Yes, it was.

18 Q. What other information did you submit to
19 Chevron at that time, before the well was drilled?

20 A. We submitted an operating agreement, a
21 geologic proposal, and a well AFE.

22 Q. Let me ask you about the other interest
23 owners.

24 You mentioned -- Well, the other interest
25 owners other than Chevron, what has been their position

1 with regard to completion in the San Andres formation?

2 A. All owners participated in the completion of
3 the well.

4 Q. When you say participation in the completion
5 of the well, does that mean the San Andres tests only,
6 or does that mean total cost to date?

7 A. They participated in total cost to date to
8 drill and test the entire well.

9 Q. And Chevron is the only interest owner that
10 has not participated?

11 A. That's correct.

12 MR. PADILLA: Mr. Examiner, I believe that's
13 all I have.

14 EXAMINER STOGNER: Mr. Kellahin?

15 MR. KELLAHIN: Thank you, Mr. Examiner.

16 CROSS-EXAMINATION

17 BY MR. KELLAHIN:

18 Q. Miss -- Mrs. Hamilton?

19 A. Mrs. Hamilton.

20 Q. Mrs. Hamilton, how long have you been
21 employed as a petroleum landman for Yates?

22 A. For Yates Energy, a year.

23 Q. During that period of time have you ever been
24 involved in any aspects of compulsory pooling cases
25 other than the one we're talking about today?

1 A. During the time -- Just the last, most recent
2 Application that we made.

3 Q. The one we're talking about today was for the
4 Thornbush?

5 A. Yes.

6 Q. And you have been involved in any others?

7 A. The Prickly Pear, which is the subsequent
8 well that we just received the Order on.

9 Q. So the Thornbush, Case 9845, was your first
10 involvement with compulsory pooling?

11 A. Yes, sir.

12 Q. In looking at the spacing unit, you had a 40-
13 acre spacing unit for potential oil production out of
14 this undesignated Tamano-Bone Springs pool?

15 A. Yes, sir.

16 Q. When we look at that 40-acre tract, was the
17 ownership from the surface down to the base of the Bone
18 Springs common among these interest owners?

19 A. Yes, it was.

20 Q. After obtaining -- After the Commission
21 issued the compulsory pooling Order -- my copy shows a
22 date of January 8th, 1990 -- what did you do with this
23 order?

24 A. I supplied it to my attorney, and then we
25 verified the overhead rate that would apply to the

1 well, and with the notices for the participation in the
2 well.

3 Q. And at that point, then, the only
4 nonconsenting party that you were aware of that would
5 be subject to the pooling would have been Chevron?

6 A. Yes, sir.

7 Q. And what was their interest in the well?
8 What percentage? Do you recall?

9 A. Twenty-five percent.

10 Q. Okay. Did you look at the Order to determine
11 what you needed to do in order to notify Chevron of
12 their elections under that pooling Order?

13 A. Yes, sir, for participation.

14 Q. And what did you do?

15 A. Sent the AFE -- I sent a copy of the Order
16 with the -- with an AFE for their election to pay their
17 -- prepay their pro-rata share.

18 Q. And that was for the participation pursuant
19 to this pooling order?

20 A. Yes, sir.

21 Q. And the AFE that you sent is the same AFE
22 that was in the exhibits from the prior pooling
23 hearing, 9845, that was held back on December 27th?

24 A. Yes, same AFE.

25 Q. And within the election period, then, Chevron

1 did not pay their share or sign the AFE?

2 A. Correct.

3 Q. Yates then commenced drilling the well?

4 A. Yes, sir.

5 Q. Went down to the Bone Springs or below, you
6 said?

7 A. To the base of the lowest Bone Spring
8 formation.

9 Q. Did they stay within the vertical limits of
10 the Bone Springs pool, as you best know?

11 A. As I best know.

12 Q. Okay, and the results of that effort as
13 communicated to you were that the Tamano-Bone Springs
14 pool was nonproductive of hydrocarbons?

15 A. That's my understanding.

16 Q. Did anyone notify you at that time, that they
17 would desire to come back and test any other shallower
18 zones?

19 A. I'm sorry, I don't --

20 Q. Did anyone with Yates say, Gee, we've got to
21 the Bone Springs, it's non-economic, non-productive --
22 Did they ask you if they had the necessary approvals in
23 order to test any other zone?

24 A. No, sir. We were under the impression that
25 we had the rights from the surface, so we just

1 proceeded with a standard field procedure getting --
2 you know, to go up the hole.

3 Q. What gave you that impression?

4 A. It was our original intent to have rights
5 from the surface, all of -- You know, that is what we
6 intended to do all along.

7 Q. Do you have any communications that you sent
8 to the Commission, either yourself, anyone on behalf of
9 Yates or their attorneys, to express in writing the
10 intent to commit every interest owner from the surface
11 down to the base of the Bone Springs?

12 A. Nothing that was sent to the Commission.

13 Q. Did anyone for Yates contact you and then ask
14 you about whether it was appropriate for them to test
15 these shallower zones as they went back up and tested
16 them?

17 A. No, sir.

18 Q. When did you first, then, become aware of the
19 need to get additional approvals to obtain authority to
20 produce out of these other formations?

21 A. When the title attorney was preparing a
22 Division Order title opinion.

23 Q. Okay, when did that occur in terms of the
24 sequence of attempts in this wellbore?

25 A. It was after the completion of the well.

1 Q. Having been advised by the title attorney
2 that you did not have the authorities to force-pool
3 those other zones, did you send an AFE to any of the
4 working-interest owners about their proportionate share
5 of the costs in the San Andres?

6 A. No, sir, we did not.

7 Q. What was your first written communication to
8 Chevron about their interest in the San Andres in this
9 well?

10 A. It was the letter requesting that they
11 contractually amend the Order to include rights from
12 the surface down.

13 Q. Did you do anything other than send them that
14 order? I mean that request to contractually amend the
15 pooling Order?

16 A. No, sir, no other letters.

17 Q. Okay. Did you ever in writing, up until this
18 day, communicate on behalf of your company to Chevron
19 what your company believed were Chevron's proportionate
20 share of the costs of this well attributable to their
21 share of the production out of the San Andres?

22 A. No, sir.

23 Q. Have you afforded Chevron the opportunity to
24 participate in the San Andres?

25 A. No, sir. We prefer to extend this order.

1 Q. The participation or the request for
2 participation, then, came from Mr. Cohlma of Chevron,
3 to participate in the well?

4 A. Yes, sir, he indicated that that was one of
5 the options that they were considering.

6 Q. Has Mr. Cohlma communicated to you and your
7 company that in fact Chevron does want to participate
8 in the San Andres production?

9 A. Yes, sir, he did.

10 Q. And what have you responded or told him with
11 regards to that request?

12 A. We received the notice just prior to this
13 hearing, so --

14 Q. Have you acted on that?

15 A. No, sir, we haven't.

16 Q. Up to now, though, you have not agreed to
17 give Chevron the opportunity to participate, then, in
18 the San Andres?

19 A. No, sir, we haven't.

20 Q. When we look at the interests that were
21 voluntarily committed at the time the well was spudded,
22 is it my understanding of your testimony, is that all
23 interest -- working-interest owners -- were committed
24 except for the Chevron 25 percent?

25 A. That's correct.

1 Q. Among those interest owners, then, someone
2 paid for the costs of the well, right?

3 A. Yes, sir.

4 Q. How were those costs attributable among the
5 voluntary working-interest owners to pay for the
6 Chevron-carried interest?

7 A. Yates Energy assumed that cost; the other
8 owners did not participate in the nonconsent.

9 Q. So the process was for Yates Energy to pay
10 Chevron's 25 percent of those estimated well costs, and
11 the other participants only paid their proportionate
12 share of their costs?

13 A. Yes, sir.

14 Q. After the well is drilled and tested, have
15 you received the actual costs of the well?

16 A. I believe we have those figures available.

17 Q. Is that your responsibility, to handle the
18 actual cost of the well?

19 A. No, sir, it is not.

20 Q. The Yates Energy Corporation, their -- they
21 paid the 25 percent of Chevron's cost of this well?

22 A. We have an investment group with us that
23 we've participated with in the cost.

24 Q. I thought you said --

25 A. Well, we have internal -- I mean, we have

1 some partners that have participated with us under the
2 Yates Energy.

3 Q. Okay. Let me make sure I understand the
4 arrangement.

5 Yates Energy Corporation, then, advances
6 Chevron's share of the costs of the well? Does Yates
7 Energy Corporation itself retain the rights to be
8 reimbursed for that 25 percent?

9 A. I'm not sure that I understand.

10 Q. Okay. Under the mechanics of the pooling
11 Order, if Chevron goes nonconsent, one of the
12 participants pays those costs, they're entitled under
13 the pooling Order to be repaid out of future production
14 the costs advanced for that nonconsenting party, plus
15 the penalty factor?

16 A. Yes.

17 Q. Are you familiar with that concept?

18 A. Yes.

19 Q. Okay. Was there anything done, to the best
20 of your knowledge, to sell, transfer or assign the
21 rights to any of the penalty portion of the recoupment
22 of production from this well?

23 A. Yes, sir, we have some trade partners
24 participating with us for that nonconsent interest.

25 Q. And who are those partners or individuals?

1 A. Bearing Service and Supply Company, Western
2 Oil Producers, Inc., and LDY Corporation.

3 Q. What's LDY Corporation, to the best of your
4 knowledge?

5 A. It is a corporation controlled by my
6 employer, Fred Yates, and his mother, Louise Yates.

7 Q. Okay. Western Oil?

8 A. I believe that's an ownership of Ken Reynolds
9 and Arnold Newkirk of Roswell.

10 Q. Bearing Services?

11 A. It's a supply company out of Artesia that
12 has, I believe, a variety of ownership.

13 Q. What is the arrangement with these three
14 companies with regards to recoupment of the penalty
15 portion of the production attributable to Chevron's
16 interest?

17 A. They were participating just under the force-
18 pooling order for their -- for the share of the well.

19 Q. If the Commission determines that Chevron has
20 not been given the opportunity to participate in the
21 San Andres and is entitled to an opportunity to pay
22 their share of the costs, what happens to the Yates
23 Commitment to these three other entities with regards
24 to this issue?

25 A. Their participation was based on the force-

1 pooling Order, so if it is determined that they only
2 had the rights to the Bone Springs, then that would be
3 their only participation.

4 Q. From your perspective of management in this
5 question, is there a potential conflict between these
6 three other entities and Chevron with regards to this
7 interest in the San Andres at this point?

8 A. What do you mean by a conflict?

9 Q. Well, I guess I'm not sure of the contractual
10 commitment by which Yates Energy has committed the
11 nonparticipation portion to Chevron, to these other
12 companies, and whether or not, if the Commission
13 determines that Chevron has another election, we're
14 faced with a controversy with these other parties as to
15 what to do.

16 A. Well, in my opinion, their participation was
17 subject to the Order as issued, and if the Commission
18 does not extend the Order as we requested and they
19 stand on the Order as issued, then their participation
20 is based on that Order, as stated.

21 Q. Is that the reason this arrangement -- Is
22 that the reason that Yates has not extended
23 participation to Chevron in the San Andres?

24 A. We feel that if -- after -- as not
25 participate in the entire well cost, that they should

1 be allowed to benefit from the discovery of a shallow
2 formation without assuming the cost that it took to
3 drill the entire well.

4 Q. Even though that shallow production was never
5 included in the pooling Order?

6 A. Yes, sir, because it was an oversight on our
7 part not to have included it. It was intended to be
8 included.

9 Q. But your proposed solution, then, is because
10 of your oversight Chevron must then be penalized for
11 not being able to participate in their share of the
12 production?

13 A. We feel that they should be at risk to the
14 entire well cost and not just a single formation.

15 MR. KELLAHIN: No further questions, Mr.
16 Examiner.

17 EXAMINER CATANACH: Anything further?

18 MR. PADILLA: I have one question.

19 REDIRECT EXAMINATION

20 BY MR. PADILLA:

21 Q. Miss Hamilton, did you ever think that you
22 had to send an AFE to -- other than the original AFE --
23 to Chevron?

24 A. No, sir, we did not.

25 MR. PADILLA: No further questions.

EXAMINATION

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BY EXAMINER CATANACH:

Q. Miss Hamilton -- Well, first of all, you proposed, am I correct in understanding, overhead rates of \$3200 and \$320?

A. Yes, sir.

Q. If this is approved for a San Andres?

A. For a San Andres formation, yes.

Q. So we would have to amend the old overhead rates?

A. Yes, sir.

Q. Okay. Now, you've been testifying that it was your intent all along to pool all of the various formations. What proof do you have that it was your intent originally to do so?

A. Well, the exhibit attached to the operating agreement covered all depths. There was no limit in the original operating agreement proposed for the prospect. Our application to drill that was filed with the Bureau of Land Management prior to the Application indicated that we were going to drill and test the primary objective of the Bone Springs but that we would test intermediate zones if encountered. And we have a drilling prognosis that also indicates that we intended to test additional zones if encountered.

1 Q. Okay. Focusing in on the operating
2 agreement, that did contain -- what, again?

3 A. The operating agreement, as originally
4 submitted, covered the entire 640 acres in Section 1
5 and covered all rights from the surface down. There
6 was no limit, no limitation.

7 Q. Now, originally was Chevron supplied a copy
8 of this operating agreement?

9 A. Yes, sir, they were.

10 Q. In your correspondence, I assume that you
11 were -- Did you handle all the correspondence in the
12 original case --

13 A. Yes, sir.

14 Q. -- for this force-pooling? And so you
15 handled the correspondence between Chevron and Yates?

16 A. Yes, sir.

17 Q. Now, was there ever any correspondence
18 between Chevron and Yates that would indicate that
19 Yates had any intention of testing other zones besides
20 the Bone Spring?

21 A. No, sir. The original proposal was a Bone
22 Springs objective, so that was what was originally
23 proposed.

24 (Off the record)

25 Q. Ms. Hamilton, referring to the interest

1 that -- of the three parties that you spoke of, if the
2 Commission decides not to amend the Order, do these
3 interest owners -- They lose all their interest that
4 they put in the well?

5 A. That would be my understanding, because they
6 would not share in the production that's been
7 established.

8 MR. MORROW: Would the same thing apply to
9 the four who did go consent with you? I understood
10 there were three who were just kind of an et al. with
11 your company, and then four others that participated
12 because they owned separate tracts. Was that the case?

13 THE WITNESS: Yes, sir. They -- They own in
14 the well.

15 MR. MORROW: They what?

16 THE WITNESS: They would own in the well and
17 in all formations, because they participated in the
18 completion.

19 MR. MORROW: So you wouldn't think they would
20 be excluded then?

21 THE WITNESS: Right.

22 Q. (By Examiner Catanach) Did Yates Energy pay
23 any of Chevron costs, or did the other three parties
24 bear all of the costs?

25 A. The grantees controlled -- or took the 25

1 percent of Chevron's cost.

2 EXAMINER CATANACH: I believe that's all I
3 have. The witness may be excused.

4 MR. PADILLA: Mr. Examiner, we'll call Mr.
5 O'Briant at this time.

6 JAMES F. O'BRIANT,
7 the witness herein, after having been first duly sworn
8 upon his oath, was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. PADILLA:

11 Q. Mr. O'Briant, would you please state your
12 full name?

13 A. James Franklin O'Briant, Junior.

14 Q. And how do you spell your last name?

15 A. O-'-B-r-i-a-n-t.

16 Q. Where do you live, Mr. O'Briant?

17 A. Midland, Texas.

18 Q. And are you a consultant for Yates Energy
19 Corporation in this case?

20 A. Yes, sir, I am.

21 Q. What kind of -- Well, let me ask, have you
22 previously testified before the Oil Conservation
23 Division in connection with hearings before the
24 Division or the Commission?

25 A. Yes, sir, I have.

1 Q. And in what capacity have you testified?

2 A. As a petroleum engineer, consulting engineer.

3 Q. And is that in connection with drilling and
4 completing the wells?

5 A. Drilling, completion, operation, various
6 aspects.

7 Q. And your credentials have been accepted
8 before?

9 A. Yes, sir, they have.

10 Q. And you're familiar with the well costs in
11 connection with drilling of the Yates Energy well --

12 A. Yes, sir, I am.

13 Q. -- Thornbush Number 1?

14 A. Yes, sir.

15 MR. PADILLA: Mr. Examiner, we tender Mr.
16 O'Briant as an expert drilling and completion engineer.

17 EXAMINER CATANACH: He is so qualified.

18 Q. (By Mr. Padilla) Mr. O'Briant, let me hand
19 you what we have marked as Exhibits 4, 5 and 6, and I
20 want you to identify all three of them at this time if
21 you would, please.

22 A. ~~Exhibit~~ Exhibit Number 4, page 1, is an AFE that I
23 believe Yates submitted to all the partners relative to
24 drilling a Bone Springs test at this location.

25 Pages 2 and 3 is a summary prepared by Yates

1 Energy's comptroller relative to costs through June
2 30th, 1990.

3 Q. What is the total cost as shown on that -- on
4 those last two pages?

5 A. The total cost through June 30th, 1990, is
6 shown as \$563,055.

7 Q. Where is that figure found?

8 A. It's found at the third from the last column
9 on the right at the bottom of the second page.

10 Q. Is that the second page or last page of --

11 A. Well, the second page --

12 Q. -- third page of the whole --

13 A. -- third page of the whole exhibit --

14 Q. Okay.

15 A. -- second page of the tabulation.

16 Q. Okay. What's Exhibit Number 5?

17 A. Exhibit Number 5 is a summary well plan
18 prepared by me and submitted to Yates Energy to be used
19 in the drilling and completion of this well.

20 Q. And what's Exhibit Number 6?

21 MR. PADILLA: Incidentally, Mr. Examiner, I
22 have taken Exhibits 4, 5 and 6 out of order.

23 THE WITNESS: I don't have an Exhibit 6. Is
24 this -- You changed it to 6?

25 Q. (By Mr. Padilla) Yes.

1 A. Okay. Exhibit Number 6 is an AFE that I
2 prepared for the drilling and completion of the next
3 Yates Energy well, proposed well, Prickly Pear Federal
4 Number 1, a south offset to the Thornbush.

5 MR. PADILLA: Mr. Examiner, this is the same
6 AFE that was used in Case 9978, and that was Exhibit
7 Number 7. Our marking of the exhibit for this hearing
8 is right up here at the upper one-third of the page.

9 EXAMINER CATANACH: Okay.

10 MR. PADILLA: The bottom one is simply an
11 identification for the previous hearing.

12 Q. (By Mr. Padilla) Okay, Mr. O'Briant, tell us
13 about the AFE as shown on Exhibit Number 4 in
14 connection with the well plan for the drilling of the
15 Bone Springs test.

16 A. Exhibit Number 4 details the anticipated cost
17 to drill a well to -- in this case, 8800 feet, plus or
18 minus, to test the Bone Spring formation.

19 It includes a surface and intermediate
20 casing. The completion costs include a tank battery
21 and the necessary other equipment to produce the well
22 from the Bone Springs formation.

23 Q. In your opinion, is that a -- I understand
24 that you did not prepare this particular AFE; is that
25 correct?

1 A. That is correct, I did not prepare it. But
2 it's within the range of acceptable limits for an AFE
3 for this depth and type well.

4 Q. And you've independently reviewed the costs
5 and made that decision based on your review of that --
6 the costs as shown on that AFE?

7 A. Yes, sir, that is correct.

8 Q. How do those well costs as estimated on the
9 AFE compare to the actual well cost to date?

10 A. To date we -- the costs are running very
11 close. As expressed earlier, the cumulative cost
12 through June 30th is \$563,000. The total AFE,
13 completed AFE, is a little over \$603,000. And so that
14 leaves about \$41,000 that has not been spent to date.

15 Q. In terms of the -- you mentioned -- You used
16 the phrase "well plan" earlier. Can you tell us what
17 you mean by "well plan"?

18 A. A well plan is the -- the way I draw up and
19 plan to drill a well when Mr. Yates says we want to
20 drill a well at this point.

21 And then I have interaction with his
22 geologists, with the other field people involved, the
23 service companies, mud companies, drilling contractors,
24 to plan a well to drill and test in the most efficient
25 manner possible to the specified depth and to test the

1 zones which the geology would specify.

2 Q. When you say test the zones, do you mean test
3 potential productive zones on the way down?

4 A. Test any and all zones that they direct me
5 to. In this case, the zones that we -- the uppermost
6 zone that I considered in here, in my write-up, was the
7 Seven Rivers at 2730.

8 Q. And now you're referring to Exhibit Number 5;
9 is that right?

10 A. I'm referring to Exhibit Number 5; that is
11 correct.

12 Q. And what is that, exactly? What is Exhibit
13 Number 5?

14 A. Exhibit Number 5 is a summary well plan.

15 Q. Does that summary have a prognosis for --
16 ahead of time before drilling? Is that prepared before
17 drilling the well?

18 A. Yes, sir, it is. This particular revision
19 was prepared, according to my computer dating, 2-12-90.
20 The well, I believe, was spudded 2-14-90.

21 Q. Okay. So what does that Exhibit Number 5
22 show in particular as far as investigating the
23 potential of -- potential producing horizons above the
24 Bone Springs formation?

25 A. We had listed as potential DST intervals the

1 Seven Rivers formation at 2730 feet KB, the Delaware at
2 4770 feet KB, and then the Bone Springs formation at
3 5720 KB or below.

4 Q. Mr. O'Briant, in your experience is this a
5 prudent method of completing a Bone Springs test in
6 terms of investigating the potential producing horizons
7 on the way down?

8 A. Yes, sir, the well was drilled in good -- in
9 workmanlike practice.

10 Q. And with what geologists did you confer in
11 producing this exhibit?

12 A. The prior geologist employed by Yates Energy
13 Corporation, Keith Anderson, and then later with Bill
14 Baker, Jr., who will testify later today.

15 Q. Okay. Does that Exhibit 5 manifest or show
16 an intention that you were going to test these
17 intervening horizons?

18 A. Given the proper shows and conditions and the
19 position of the geologic department that they indicated
20 possible production, we would have tested them, right.

21 Q. Do you, in fact, know whether or not these
22 particular formations were tested on the way down?

23 A. We did not run any DST's. We did not
24 encounter the Delaware, and instead -- and Mr. Baker
25 will explain this more fully.

1 We did not encounter the Delaware, is my
2 understanding. We encountered San Andres, that there
3 is -- This is a transition area where the San Andres
4 and the Delaware finger in and out. That's not my
5 field of expertise. But we did encounter the San
6 Andres dolomite in this borehole at the completion
7 interval.

8 Q. Let me ask you now, in terms of total well
9 costs, you've testified about total well costs to date
10 of some \$563,000 well costs to date. What, in your
11 opinion, is the appropriate figure to use for
12 completion of this particular well in the San Andres
13 formation?

14 A. Well, to complete this well in the San Andres
15 formation, we drilled to the Bone Springs, we had
16 intervals that we felt required production testing, we
17 set pipe and perforated and attempted completion in
18 four zones in the Bone Springs interval.

19 Then we -- After those were completed, the
20 completion attempts were made and determined to be
21 nonproductive. They were plugged off in accordance
22 with the Commission's rules and regulations, and we
23 moved up and attempted a completion which was
24 successful in the San Andres.

25 Q. Okay, let me call your attention -- or direct

1 your attention to Exhibit Number 6 and have you compare
2 the figures as shown in that exhibit with the total
3 well costs and tell me why it's necessary to attribute
4 the well costs, as shown on Exhibit 4, instead of the
5 well costs as shown on Exhibit Number 6.

6 A. Exhibit Number 6 depicts the anticipated cost
7 to drill and complete a San Andres test only to a depth
8 of 5000 feet.

9 There are several things that occur with a
10 shallower-depth well. Your drilling cost generally is
11 smaller, your location size is smaller.

12 In this particular case, we do not require an
13 intermediate casing. We'll only set surface casing and
14 then production casing if it proves to be productive.

15 In the Bone Springs well, it's a deeper well
16 requiring probably a higher drilling cost, per-foot
17 drilling cost. It required the use of an intermediate
18 casing. It required more mud, more types of materials
19 that are necessary when you drill to a greater depth.

20 Q. Mr. O'Briant, in this case is it appropriate
21 to use the well costs as shown on Exhibit Number 4?

22 A. These costs were derived from trying to drill
23 and complete this well as the original well plan set
24 forth, and they are reasonable and necessary to arrive
25 at this point to complete the well.

1 Q. As was done in this case?

2 A. As was done in this case, yes, sir.

3 MR. PADILLA: Mr. Examiner, we offer Exhibits
4 4, 5 and 6 in the -- Well, let me ask one more
5 question.

6 Q. (By Mr. Padilla) Mr. O'Briant, would
7 approval of this Application, in your opinion, prevent
8 economic waste from having to drill additional wells?

9 A. If the disapproval would require you to drill
10 another well on this pad, that would sure be wasteful.

11 Q. And would approval of this Application, in
12 your opinion, be in the best interests of conservation
13 of oil and gas?

14 A. It appears that it would to me.

15 MR. PADILLA: I have no further questions.
16 We offer Exhibits 4, 5 and 6.

17 EXAMINER CATANACH: Exhibits 4, 5 and 6 will
18 be admitted as evidence.

19 Mr. Kellahin?

20 MR. KELLAHIN: Thank you, Mr. Examiner.

21 CROSS-EXAMINATION

22 BY MR. KELLAHIN:

23 Q. Mr. O'Briant, I think Exhibit 4 is the Yates
24 AFE on the Thornbush Federal 1; am I correct?

25 A. I believe that's correct. Mine's not

1 stamped, but I believe that is correct.

2 Q. Well, mine's not either, and I think we're
3 looking at the same thing.

4 A. Okay. Yours is stamped there also.

5 Is it Callahan or Calvin? I'm sorry, I
6 didn't --

7 Q. It's Kellahin.

8 A. -- I confused myself. Callahan.

9 Q. Kellahin.

10 A. Like the guy from California.

11 Q. He spells his with a C.

12 A. Oh, really? Okay.

13 (Off the record)

14 Q. (By Mr. Kellahin) Let me pose a hypothetical
15 to you, so I can give you the sense of what I want to
16 ask you as a drilling expert.

17 My hypothetical is that in the San Andres
18 formation for your well, you're going to have some
19 difference in ownership between the San Andres and the
20 Bone Springs. And your client, then, wants to drill to
21 total depth the Bone Springs and back up the hole and
22 test any zone he can find to the surface.

23 But he recognizes that he must make a
24 vertical allocation of the costs so that the
25 participants in the shallow zone are not obligated to

1 pay more than their fair share for their zone. And
2 conversely, the deeper interest owners do not have to
3 pay more than their share.

4 All right, sir? Are you with me?

5 A. (Nods)

6 Q. Have you as a drilling expert and an
7 individual familiar with AFE's processed, approved and
8 reviewed split-allocation AFE's?

9 A. I don't remember ever seeing --

10 MR. PADILLA: Mr. Examiner, I'm going to
11 object to the question. The facts of the split
12 allocation are not before the Division at this time.

13 MR. KELLAHIN: I can make them relevant, Mr.
14 Examiner, if you'll bear with me, please.

15 EXAMINER STOGNER: Continue.

16 Q. (By Mr. Kellahin) When we look at the
17 shallow zone, in order to get to the deeper zone we've
18 got to go through the shallower zone with a certain
19 portion of these costs, do we not?

20 A. Yes, sir.

21 Q. When we look at the AFE for the Thornbush
22 Federal, have you attempted to prepare an exhibit that
23 shows us what portion of these costs are 100-percent
24 attributable to efforts below the base of the San
25 Andres?

1 A. I have not at this time.

2 Q. Would you agree with me, sir, though, that
3 some portion of the costs from the surface down to the
4 base of the San Andres should be borne by the owners of
5 the deeper zone?

6 A. I think -- You can't get there without doing
7 it.

8 Q. Yes, sir.

9 A. You've got to go through it. Now, if you --
10 If you're a prudent operator you take certain
11 precautions to protect the upper zones, which they did.

12 Q. I understand that. In terms of cost
13 allocation?

14 A. Well, in terms of cost allocation, that would
15 increase the operator's cost, to take care of these
16 zones, to drill through them, to protect them and to
17 make a completion attempt more viable.

18 Q. When the Examiner is faced with the question
19 of determining what Chevron's share of the fair costs
20 attributable to their interest in the San Andres, what
21 is your recommendation?

22 A. What is my recommendation?

23 Q. Yes, sir.

24 A. As how to determine it?

25 Q. Yes, sir.

1 A. You're going to have to supply me with a well
2 plan of how you want it done and how you want it
3 protected before I can make that calculation.

4 Q. I thought that was the purpose of why you
5 were here today, Mr. O'Briant, is to render your expert
6 opinion about what portion of these costs, whether a
7 hundred percent or zero, should be assessed against
8 Chevron for their share of production out of the San
9 Andres.

10 A. In this particular hole --

11 Q. Yes, sir.

12 A. -- the costs as shown here, the \$563,000, is
13 the cost attributable to get to this point and complete
14 the San Andres.

15 Q. So under your proposal, an owner in the San
16 Andres is going to be charged with a -- with 100
17 percent of the costs attributable to efforts below the
18 San Andres?

19 A. In this particular well, those are the costs
20 to get back to effect a San Andres completion.

21 Q. Okay. Then your proposal is to allow Yates
22 to recover out of the San Andres production 100 percent
23 of all the costs expended on this wellbore, regardless
24 of where they ultimately obtain that production?

25 A. I think you're getting over to an area that's

1 not my expertise, to make proposals and settlements.

2 I'm telling you what the costs are in this
3 particular borehole to get back to effect a San Andres
4 completion.

5 Q. Okay. And that's all you're telling us?

6 A. Yes, sir.

7 Q. All right. You have no recommendation, then,
8 about how to allocate those costs among the interest
9 owners in the San Andres?

10 A. I don't think that's in my field of
11 expertise. I think that will be handled by other --

12 MR. KELLAHIN: No further questions. Thank
13 you.

14 EXAMINATION

15 BY EXAMINER CATANACH:

16 Q. Mr. O'Briant, is it possible to calculate
17 what the drilling costs would have been to the San
18 Andres formation and completion costs at that point?

19 A. Yes, sir, we can figure that. It will be
20 different from the AFE, Exhibit Number 6 you have,
21 because of the different necessity of a different pipe
22 program in order to drill a deeper well.

23 Q. Uh-huh.

24 A. But it can be -- It can be computed, yes,
25 sir.

1 EXAMINER CATANACH: I have no further
2 questions.

3 Anything further?

4 The witness may be excused.

5 MR. PADILLA: Mr. Examiner, we'll call Bill
6 Baker at this time.

7 BILLY DON BAKER, JR.,

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

10 DIRECT EXAMINATION

11 BY MR. PADILLA:

12 Q. Mr. Baker, would you please state your full
13 name?

14 A. Billy Don Baker, Jr.

15 Q. And you live in Roswell?

16 A. Yes, sir, I do.

17 Q. And you work for Yates Energy Corporation?

18 A. Yes, sir, I do.

19 Q. And what do you do for Yates?

20 A. I'm chief geologist for Yates Energy.

21 Q. Have you previously testified before the Oil
22 Conservation Division regarding the geology of this
23 area?

24 A. Yes, sir, I did.

25 Q. And were your credentials as a geologist

1 accepted in that case?

2 A. Yes, sir, they were.

3 Q. When was that?

4 A. That was approximately one month ago on case
5 9978, which was a forced-pooling case for the Prickly
6 Pear well.

7 Q. And is that a south offset to this particular
8 well?

9 A. Yes, sir, it is.

10 Q. Have you prepared certain exhibits for
11 introduction here today?

12 A. Yes, sir, I've prepared three exhibits.

13 Q. And they involve what formation?

14 A. The first exhibit is a productive interval
15 map of the objective prospect area.

16 Q. Just briefly.

17 A. Okay. And it's just a production map
18 concerning all productive formations from surface down
19 through the Morrow formation in this area.

20 Q. Okay. Your credentials have also been
21 accepted before, this last testimony in this other
22 case?

23 A. Yes, sir.

24 MR. PADILLA: Mr. Examiner, we tender Mr.
25 Baker as a geologist, expert geologist.

1 MR. KELLAHIN: Point of inquiry, Mr.
2 Examiner. To what purpose is this geologist testifying
3 that's relevant in this case?

4 MR. PADILLA: Risk factor, Mr. Examiner. We
5 feel that risk factor is necessary to show what kind of
6 risk would be assumed and expected in the San Andres
7 completion.

8 MR. KELLAHIN: Two points of dispute, Mr.
9 Examiner.

10 One, risk factor is no longer relevant.
11 Yates assumed the entire risk of the completion in the
12 San Andres without benefit of a pooling order, and they
13 assumed that risk.

14 Second of all, this geologist appears to have
15 taken geologic information from the Thornbush well and
16 made a post-drilling geologic interpretation of the
17 current analysis of the San Andres, which has no
18 relevance, materiality or bearing on your assessment of
19 risk. He wants to construct for you his post-drilling
20 assessment of risk and have it apply retroactively back
21 to a pre-drilling assessment of San Andres risk. It
22 makes no sense, and I think it's a waste of our time to
23 talk about it.

24 MR. PADILLA: I think it's within the scope
25 of the hearing, Mr. Examiner. The Application calls

1 for retroactive effect -- amendment of the Order.

2 That's within the scope of the hearing.

3 MR. KELLAHIN: The risk, Mr. Examiner, is the
4 choice of risk at the point they abandon the Bone
5 Springs and come uphole in an attempt to complete in
6 that San Andres. At that point, that is the only risk
7 involved. They found it to be commercial, they assumed
8 the risk, and this is not relevant.

9 EXAMINER CATANACH: Mr. Kellahin, I'm going
10 to let this testimony proceed. When the Division comes
11 out with an Order, that will determine the relevancy of
12 this testimony.

13 Q. (By Mr. Padilla) Mr. Baker let's go on to --
14 Well, first of all, let me have you briefly tell us
15 about the kind of geology that you find in the area of
16 the San Andres formation, the shallow formations in
17 this area.

18 A. Well, this particular prospect area is
19 located on the Four Basins side of the Abo Reef trend
20 which is located approximately two miles to the north
21 of us.

22 And at this particular point on the San
23 Andres shelf in here, it's a very complex series of
24 stratigraphic traps occurring between a San Andres
25 carbonate/dolomite and the Delaware sands in which they

1 are interfingering, literally, with each other and
2 forming stratigraphic traps. It's an extremely complex
3 stratigraphic area.

4 Q. Did you testify about the geology in Case
5 9978 that resulted in the Order that you said came out
6 last month?

7 A. Yes, sir, I did.

8 MR. PADILLA: Mr. Examiner, we ask that
9 administrative notice be taken of Case 9978 and the
10 record in that case.

11 MR. KELLAHIN: I object to it. It's not
12 relevant, Mr. Examiner.

13 EXAMINER CATANACH: Case 9978 being the
14 compulsory pooling for the Prickly Pear; is that
15 correct?

16 MR. PADILLA: Yes, sir.

17 EXAMINER CATANACH: And for what purpose do
18 you request administrative notice, Mr. Padilla?

19 MR. PADILLA: For a description of the
20 geology and the -- of course, the risk factors assessed
21 by the Division in that case.

22 EXAMINER CATANACH: Administrative notice
23 will be taken of that case.

24 Q. (By Mr. Padilla) Okay, Mr. Baker, let's go
25 on now. Have you completed your description of the

1 general geology of the San Andres and --

2 A. Yes, sir.

3 Q. -- shallower formations?

4 A. Yes, sir.

5 Q. Okay. Let's go on to what we have marked as
6 ~~Exhibit 1~~ 1, and tell us what that is.

7 A. Okay. Exhibit Number 1 is a productive
8 interval map of this prospect area in here. The
9 prospect -- or this particular map has been color-coded
10 by formation for simple identification of the multiple
11 different producing formations in this, what I call the
12 Tamano field area.

13 And as indicated by the multiple colors on
14 here, you can see that we are in an area of multiple
15 producing horizons in here.

16 And it should be noted that in this
17 particular map, with the exception of two wells on this
18 entire map, all the productive horizons in here either
19 produced from the Bone Springs formation or formations
20 shallower than the Bone Springs formation. And it
21 basically just indicates that when Yates drilled the
22 Thornbush Fed, they knew they were in an area which had
23 the potential for shallow production in here.

24 Q. How far away was the closest San Andres
25 formation -- or production -- form the Thornbush

1 Federal Number 1?

2 A. For the San Andres, it's approximately one
3 mile to the north in Sections 35 and 36.

4 Q. At the time the well was drilled, what kind
5 of -- How would you categorize the San Andres test?

6 A. Well, a San Andres test here would have been
7 a pure wildcat. Curt Anderson was the geologist for
8 Yates Energy at the time this well was proposed, and
9 Mr. Anderson recognized that there were shallow --

10 MR. KELLAHIN: Objection, Mr. Examiner, it's
11 hearsay.

12 EXAMINER CATANACH: Sustained.

13 Q. (By Mr. Padilla) Have you made an
14 independent study of Mr. Anderson's work?

15 A. Yes, sir, I have.

16 Q. Now, can you -- Let me ask you in terms of,
17 have you made a study of the exhibits that he submitted
18 before the Oil Conservation Division in Case 9845?

19 A. Yes, sir, I have reviewed them.

20 Q. And what were those materials?

21 A. Basically, he supplied a structure map on the
22 top of the Bone Springs formation and an isopach of
23 what he considered to be the primary objective in the
24 Thornbush Federal well, which was the first Bone
25 Springs carbonate, as he called it.

1 Q. Did you review any of the materials that show
2 anything concerning the shallow formations?

3 A. Yes, sir, I reviewed his geological prognosis
4 which indicated the potential for shallow production in
5 what he believed at that time would be Delaware. He
6 was really looking for the Delaware, as well as
7 Grayburg and the Seven Rivers.

8 Q. How do you know he was looking for the
9 Delaware?

10 A. Well, for one thing he put on a mud logger at
11 2600 feet, right out from under intermediate casing,
12 and you generally don't put a mud logger on unless
13 you're anticipating some shows or evaluating
14 formations.

15 Q. In terms of -- In terms of the prognosis or
16 forecast before you -- before the well was drilled,
17 does Exhibit Number 5 give you some indication as to
18 what Mr. Anderson was looking for?

19 A. Well, yes, sir.

20 MR. KELLAHIN: Objection, Mr. Examiner, this
21 is not a proper line of questioning of this witness.
22 He's an expert in his own right with regards to
23 geology, and why don't we find out what he thinks,
24 rather than what he thinks he recalls Mr. Anderson
25 thinks? He's not going about this the right way, Mr.

1 Examiner, and I object.

2 EXAMINER CATANACH: Can you rephrase the
3 question or redirect this line of questioning?

4 Q. (By Mr. Padilla) Well, let me refer you to
5 what we have marked as Exhibit Number 5, Mr. Anderson.
6 In terms of --

7 A. Mr. Baker.

8 Q. Mr. Baker, excuse me. In terms of the
9 Delaware, what was encountered in the Delaware
10 formation?

11 A. Our geological prognosis for this well
12 indicated a productive Delaware sand at approximately
13 4770. Instead, it had a productive -- or at the level
14 of 4770, we had a San Andres carbonate, dolomite
15 carbonate, in there that had replaced the San Andres in
16 this particular position that was productive.

17 Q. Does this conform with your interfingering of
18 the Delaware and the San Andres in that area?

19 A. Yes, sir. Yes, sir, it conforms with my
20 study of the area.

21 Q. And you in fact encountered the San Andres at
22 about the same depth that you -- Mr. Anderson
23 anticipated hitting the Delaware?

24 A. Slightly higher, yes, sir.

25 Q. How about the other formations, intervening

1 formations?

2 A. Well, I mean, we drilled through the Seven
3 Rivers and the Grayburg formations, which also had
4 hydrocarbon shows on the mud log, but we deemed them
5 not good enough to test.

6 Q. In your opinion, would the Delaware have been
7 a wildcat also?

8 A. Yes, sir, it was a wildcat out in here too.

9 Q. Before the well was drilled?

10 A. Yes, sir.

11 Q. Okay. Let's go back to Exhibit Number 1 and
12 have you finish your discussion of that exhibit.

13 A. Well, basically that I was pretty much
14 through with. It was -- This particular exhibit is
15 just simply to show that as a prudent operator Yates
16 Energy knew they were drilling in an area where they
17 had multiple shallow horizons, and it -- I mean, as a
18 prudent operator, you look for those shallow horizons
19 when you drill through it. Although it was not a
20 direct offset to any shallow production, you have to be
21 aware that there is the potential here, and therefore
22 as a prudent operator you have to look at it.

23 Q. Is that all you have concerning Exhibit
24 Number 1?

25 A. Yes, sir.

1 Q. Let's go on to Exhibit Number 2 and have you
2 identify that for the Examiner.

3 A. ~~Exhibit Number 2 is a structure map on~~
4 the top of the San Andres formation that I compiled.
5 It's my data that I compiled in here. This basically
6 just shows the regional geology at the top of the San
7 Andres formation in what I call the Tamano field area.

8 It indicates that in this particular area
9 we've got relatively strong south southeast dip on the
10 top of the San Andres formation.

11 And what I have done here is, I have overlain
12 by the dashed outline and then colored in productive
13 shallow trends. And this also goes with Exhibit Number
14 1. I've color-coded productive shallower trends.

15 Now, as you can see, we were in an area here,
16 once again, that indicated that there was the potential
17 for some shallow production serendip'ed in through
18 here.

19 Q. Now, what have you depicted in the pink
20 color?

21 A. This is actually Grayburg production in the
22 pink. These are Grayburg trends right through here.
23 The yellow is indicative of San Andres production in
24 here, and then the orange depicts Delaware production.

25 Q. I notice that you have colored in yellow

1 portions of Section 1, where the Thornbush well was
2 completed. Would that -- Does that reflect before --

3 A. No, sir, I personally would not have had any
4 data to indicate a yellow at this particular position
5 prior to the well being drilled. All this map tells me
6 is that I've got some shallow trends in here.

7 Therefore, as a prudent operator you should be looking
8 for them on the way down.

9 Q. Before the well was drilled, what does this
10 exhibit show as far as risk is concerned?

11 A. Well, it basically shows that in Section 1,
12 anything -- any shallower formation would have been a
13 wildcat, and even for the Bone Springs it was a step-
14 out.

15 Q. Okay, what does the orange indicate?

16 A. This is indicative of Delaware production,
17 Delaware sands.

18 Q. What else do you have in terms -- Do you have
19 anything further to add concerning Exhibit Number 2?

20 A. No, sir, I do not.

21 Q. Let's go on to what we have marked as Exhibit
22 Number 3.

23 A. ~~Clay. The [redacted] in~~
24 Application for a Discovery Allowable and the Creation
25 of a New Pool that I applied for with the OCD once the

1 San Andres was completed in this well.

2 I filed this Application with a structure
3 map and some cross-sections to the OCD in Artesia and
4 asked for a new discovery allowable and new pool
5 designations because of the fact that we were
6 approximately a mile or a little over a mile from the
7 nearest San Andres production.

8 Q. Did you receive a new pool designation as a
9 result of your Application?

10 A. I believe that is being heard today, docket
11 number -- Case Number 10,027, and it has been
12 recommended as the new pool of North Shugart and San
13 Andres pool.

14 Q. So what you're saying, this pool was not
15 there before the well was drilled?

16 A. No, sir. No, sir.

17 Q. What recommendation do you have as a result
18 of your study of the area, and especially the San
19 Andres formation and the completion of the well in the
20 San Andres formation, in terms of risk-penalty factor?

21 A. Well, basically you have to assess at the
22 maximum risk since you were not offsetting anything
23 that was productive out here.

24 Q. Is this well still at risk?

25 A. Yes, sir. I mean, this particular formation

1 and this well is still at risk simply because even
2 though the well has proved up hydrocarbon production,
3 we have not deemed it commercial at this point. I
4 mean, it's been producing for approximately two months,
5 but it still has a long way to go before it's deemed
6 commercial.

7 Q. Mr. Baker, what did the Division assess as
8 far as risk-penalty factor in the recent Application of
9 Yates Energy on the south offset to this well?

10 A. The maximum, 200 percent.

11 MR. PADILLA: I have no further questions,
12 and we tender Exhibits Numbers 1, 2 and 3.

13 EXAMINER CATANACH: Exhibits 1 through 3
14 will --

15 MR. KELLAHIN: We renew our objection, Mr.
16 Examiner.

17 EXAMINER CATANACH: Exhibits 1 through 3 will
18 be admitted as evidence in this case.

19 You may proceed.

20 CROSS-EXAMINATION

21 BY MR. KELLAHIN:

22 Q. Mr. Baker, were you the well-site geologist
23 that sat on the Thornbush well?

24 A. I did the logging of it at the final TD. I
25 went to work for Yates Energy right square during the

1 middle of this -- drilling of this well.

2 Q. Who was the well-site geologist?

3 A. Okay, we had -- we had -- Moroco was the mud
4 loggers, or geological consultants as you might want to
5 say, and Curt Anderson was the acting geologist in the
6 office, and then he went to the field whenever he
7 deemed he needed to.

8 Q. Describe for me your first personal
9 involvement, then. The well's at total depth?

10 A. No, sir. I came to Yates Energy at about the
11 time that they had just cut the San Andres formation,
12 and they were in the Delaware at that time, and that
13 was --

14 Q. All right, we're drilling down --

15 A. We're drilling --

16 Q. -- and we haven't got to the Bone Springs
17 yet?

18 A. No, you have not got there.

19 Q. When they cut the San Andres, was that
20 information made available to you on the San Andres at
21 that time?

22 A. I wasn't there when they cut the San Andres.
23 I came to work with them -- February 20th, they had
24 already cut through the San Andres and were in the
25 Delaware. There were several lower Delaware sands

1 below the San Andres. That's where they were at, at
2 the time I went to work for Yates Energy.

3 Q. What were you asked to do then?

4 A. Not much except observe at that particular
5 time. Mr. Anderson was still in capacity as a
6 geologist for Yates Energy for another 30 days, I
7 believe, and he was going to handle the well, and I was
8 just to observe.

9 Q. At the point the well's at TD, we test the
10 San Andres -- the Bone Springs?

11 A. We went out, logged the well. There were
12 four excellent shows in the Bone Springs, and we
13 recommended setting pipe through the Bone Springs.

14 Q. And did you?

15 A. Yes, sir.

16 Q. And did you perforate and production test the
17 Bone Springs?

18 A. Yes, sir, four intervals.

19 Q. And what results?

20 A. Noncommercial pay.

21 Q. Then what happened?

22 A. We moved up to where we had our next show in
23 the well, which was the San Andres.

24 Q. When you say next show, what are you looking
25 at to tell you there's a show?

1 A. The mud log.

2 Q. Are you looking at anything else?

3 A. You do water saturation from electric logs in
4 here and compare that with your mud log to deem it
5 potentially productive for the area.

6 Q. All right. And when we start from the TD of
7 the well above the Bone Springs, what's the next
8 interval that you said had enough prospective potential
9 that you recommended a test?

10 A. It was the San Andres.

11 Q. Okay. So we got from the Bone Springs back
12 up to the San Andres before you found in your
13 examination enough information to cause you as a
14 geologist to recommend that you actually test that
15 formation?

16 A. Yes, sir.

17 Q. Okay. What did you have that you saw as a
18 geologist in the San Andres to make a recommendation as
19 to the test?

20 A. Excellent oil shows when we drilled through
21 it.

22 Q. What does that mean?

23 A. That basically means that you're seeing oil
24 in the samples as you're cutting the well. The samples
25 come to the surface, your mud loggers catch the sample.

1 You're seeing the presence of oil in the rock, you see
2 fluorescence, you see cut, you have an excellent gas
3 show. These are all indicative of what --

4 Q. What would be an excellent gas show?

5 A. In this particular area --

6 Q. Quantify those terms.

7 A. -- this would probably be 200-unit gas show.

8 And the presence of C₁ through C₅ which -- These are
9 different gases. C₃, C₄ and C₅ indicate the presence
10 of heavies or liquid hydrocarbons. C₁'s, C₂'s are
11 generally more gas, methane.

12 Q. On looking at the log, what gross interval in
13 the San Andres, in terms of distance, are you dealing
14 with for this well?

15 A. If you look just strictly at the log, you
16 would have said there was possibly a hundred feet of
17 porous carbonate here. By mud log, we indicated we had
18 approximately 40 feet of good-looking show.

19 Q. What, then, did you do?

20 A. We just recommended coming up to the San
21 Andre interval and perf testing it.

22 Q. Where were the perforations in the well?

23 A. 4636-37.

24 Q. 4636 through 4637?

25 A. Yes, sir, one foot.

1 Q. That's all?

2 A. Yes, sir.

3 Q. No other perforations?

4 A. No, sir.

5 Q. Okay.

6 A. One foot.

7 Q. What were the results of the test?

8 A. I believe on initial perforation we didn't --
9 We swabbed it dry, we didn't get much back of anything.
10 I think we even acidized it with a small acid job,
11 didn't see anything back from it. We acidized it with
12 1000 gallons, got a little bit of an oil show plus a
13 little bit of water. We subsequently acidized it with
14 3000 gallons and produced 126 barrels of oil a day,
15 nine barrels of water and approximately 400 MCF a day.

16 Q. That would be your initial production test of
17 the well?

18 A. Yes, sir.

19 Q. Is it typical to have to stimulate production
20 out of the San Andres?

21 A. Yes, sir, from all the information that I
22 have around here, you typically need to stimulate.
23 That's the reason that I believe Mr. Anderson did not
24 DST the zone on the way down, is that the San Andres in
25 the past has typically not DST'd good.

1 Q. All right, you've got your initial production
2 test on the well.

3 A. Uh-huh.

4 Q. And you have produced it consistently for the
5 last two months or not?

6 A. No, sir.

7 Q. Okay.

8 A. During that time -- now, I'm -- We put on
9 what's called a plunger lift in there, and I'm not
10 completely familiar with all this. It's more
11 engineering. But we put what's called a plunger lift
12 on there. The plunger lift did not work very good. We
13 went with that for approximately one month, and it was
14 just not responding properly. We had a lot of down
15 time, essentially.

16 So we pulled the plunger lift and went to a
17 pure pump, and the well, I believe, went on pump June
18 the 4th? July 4th? July 5th? So it's probably been
19 producing approximately 20 days on the pump.

20 Q. On pump, the first days on pump, can you
21 estimate for us what the rates were?

22 A. It was about 101 barrels of oil. I want to
23 say somewhere between 9 and 13 barrels of water, and
24 156 MCF.

25 Q. Have you changed the pump rate or the

1 configuration by which you operate the well?

2 A. I do not believe so.

3 Q. All right. What's the current producing rate
4 of the well?

5 A. 51 barrels of oil a day, 9 barrels of water,
6 and still about 150 MCF a day.

7 Q. Has Yates made an assessment of the potential
8 cumulative recoveries of hydrocarbons from the well?

9 A. No, sir, we're waiting for an extended
10 production test in which we can do a good decline curve
11 on this to determine what we feel like the well will
12 truly make.

13 Q. You haven't prepared the decline curve, or
14 your engineers have not prepared the decline curve --

15 A. No, sir, not at this time.

16 Q. In looking at this well, other than the San
17 Andres, do you see potential for any other formation?

18 A. We had some shows in the Grayburg and the
19 Seven Rivers, but now that we have pipe set across it,
20 you would want to perf test prior to plugging and
21 abandoning the well. But that's -- They're very weak
22 shows.

23 Q. Other than the San Andres, what other
24 potential formations do we have?

25 A. Grayburg and the Seven Rivers.

1 Q. Anything else?

2 A. No, sir.

3 MR. KELLAHIN: Okay. No further questions.

4 EXAMINER CATANACH: Did you have anything?

5 MR. PADILLA: I don't have anything further.

6 EXAMINATION

7 BY EXAMINER CATANACH:

8 Q. Mr. Baker, you said those are weak shows,
9 that you don't anticipate anything coming of those?

10 A. Well, what it is is, in the drilling of it
11 they were more thin than they were weak. They were,
12 you know, four- to six-foot-type intervals. Generally,
13 intervals like that, even with good mud-log shows, they
14 may IP some commercial production, but they don't last
15 very long.

16 Q. It is possible, though, you could get
17 production --

18 A. Yes.

19 Q. -- out of one of those zones?

20 A. Yes, sir, there is that possibility.

21 Q. Your request today is to pool interests -- to
22 pool the interests in the San Andres, and --

23 A. I --

24 Q. -- not including anything else; is that
25 correct?

1 A. I thought the intent was to force-pool from
2 the surface down.

3 EXAMINER CATANACH: That's not what the
4 advertisement says, Mr. Padilla.

5 MR. PADILLA: Our Application requests that
6 an inclusion of all zones from the surface to the base
7 of the Bone Springs.

8 EXAMINER CATANACH: Mr. Padilla, it is -- I
9 notice that your Application indeed was correct. That
10 apparently was our mistake.

11 Q. (By Examiner Catanach) But your intent today
12 is to pool all mineral interests from the surface to
13 the base of the San Andres?

14 A. That's correct.

15 EXAMINER CATANACH: Let's take a short recess
16 here.

17 MR. KELLAHIN: Excuse me, is Mr. Baker
18 finished? No? Yes?

19 EXAMINER CATANACH: Yeah, for now, I'll say.

20 (Thereupon, a recess was taken at 2:23 p.m.)

21 (The following proceedings had at 2:31 p.m.)

22 EXAMINER CATANACH: We've determined that
23 unfortunately the case has to be continued and
24 readvertised for four weeks.

25 MR. PADILLA: For four weeks?

1 EXAMINER CATANACH: Until the August 22nd
2 hearing.

3 MR. PADILLA: I know I have some conflicts on
4 August 27th or --

5 EXAMINER CATANACH: 22nd.

6 MR. PADILLA: We all have to be back here on
7 the 27th. We would have some conflicts, but --

8 EXAMINER CATANACH: Well --

9 MR. PADILLA: -- I don't think we have to
10 come back. Is that what you're saying?

11 EXAMINER CATANACH: I don't think that -- I
12 think the testimony and evidence will be complete as
13 far as you two parties go. I would assume, Mr.
14 Kellahin?

15 MR. KELLAHIN: There should be no assumptions
16 made in this case, Mr. Examiner.

17 MR. PADILLA: We probably wouldn't have
18 anything further to add, except that the well went dry
19 obviously.

20 EXAMINER CATANACH: Is it all right with you,
21 then, that we continue to the 22nd?

22 MR. PADILLA: I guess I have no choice.

23 EXAMINER CATANACH: We can continue farther
24 than that.

25 MR. PADILLA: That would be fine.

1 EXAMINER CATANACH: The 22nd would be all
2 right, okay.

3 MR. KELLAHIN: Mr. Examiner, before you do
4 that, what's your plan? Are we going to continue this
5 case?

6 EXAMINER CATANACH: Yes, we're going to
7 finish this case up as far as what we've got today and
8 then continue and readvertise.

9 And I don't have anything further of Mr.
10 Baker. You may be excused.

11 Did you have anything further, Mr. Padilla?

12 MR. PADILLA: Nothing further.

13 EXAMINER CATANACH: Okay, Mr. Kellahin?

14 MR. KELLAHIN: Mr. Examiner, we renew at this
15 time, after you've heard the evidence, our motion to
16 dismiss this case. It's even worse than I expressed to
17 you in my opening statements, Mr. Examiner.

18 For example, the risk factor that the Yates
19 geologist proposes to apply to this case is a risk not
20 assumed by Yates but one in which they have
21 contractually transferred to three parties that are not
22 present and participating in this hearing. There is no
23 risk for the Applicant.

24 In addition, there's no testimony before you
25 from which you can have any hope of determining what

1 are reasonable costs for participation in the San
2 Andres. There has been no effort to comply with the
3 Viking Petroleum case, which obligates this Commission
4 to allocate the costs between the San Andres and the
5 Bone Springs.

6 And you're absolutely precluded from doing
7 what Mr. O'Briant has suggested, and that is simply to
8 assess against Chevron 100 percent of the cost of this
9 well, even though it was drilled and unsuccessful to a
10 deeper horizon. That is not permitted; you cannot do
11 that.

12 I asked him if he had made any kind of
13 analysis or allocation of costs between the San Andres
14 and the Bone Springs so that the San Andres owners
15 would not have to pay more than their fair share of
16 those costs, and he had not done that.

17 Miss Hamilton tells us that she never gave
18 Chevron an opportunity to participate in the San
19 Andres. They had an order that covered only the Bone
20 Springs.

21 I've done this for 20 years, Mr. Examiner,
22 and I've never seen a case like this. There is no
23 precedent that I can call to mind at this moment that
24 tells you the Division has ever done what Mr. Padilla
25 is asking you to do. This is so fatally flawed that I

1 think you can rule from the bench that this case needs
2 to be dismissed, and we so move.

3 MR. PADILLA: If I may respond briefly, I'll
4 try to be brief, Mr. Examiner.

5 There is precedent, I believe the Mallon
6 case that the Examiner heard not very long ago involved
7 similar issues.

8 The notion that Miss Hamilton never notified
9 Chevron is preposterous. She testified that she didn't
10 believe it was necessary to submit an additional AFE.

11 And furthermore, the whole question of Viking
12 Petroleum or allocation of the well costs on the way
13 down is also inappropriate. That issue is not before
14 the Division, and it shouldn't be here.

15 The question is, very precisely, in this
16 case, what are the appropriate well costs? It is our
17 decision that the well costs should be those for Bone
18 Springs test with a completion in the San Andres.

19 We have submitted an AFE, our Exhibit Number
20 6, that shows simply a San Andres well test, and the
21 circumstances in this case are far different from just
22 simply drilling a San Andres test.

23 The motion should be denied.

24 EXAMINER CATANACH: Well, Mr. Kellahin, as I
25 stated before, I think that after hearing all the

1 evidence, including any presentation that Chevron would
2 like to make, the Division then can make a better
3 determination whether or not this case should be
4 denied. It shall not be dismissed at this time,
5 however.

6 MR. KELLAHIN: We have no presentation for
7 you, Mr. Examiner. We'll rest on the case as it stands
8 now.

9 EXAMINER CATANACH: Okay. Do you have
10 anything else that either of you would like to state?

11 MR. KELLAHIN: Not at this time, Mr.
12 Examiner.

13 EXAMINER CATANACH: Okay. If not, this case
14 will be continued and readvertised for the August 22nd
15 hearing.

16 (Thereupon, these proceedings were concluded
17 at 2:37 p.m.)

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