

March 18, 2004

HAND DELIVERY

RECEIVED

MAR 18 2004

Ms. Carol Leach, Acting Director
Oil Conservation Division
New Mexico Department of Energy,
Minerals and Natural Resources
1220 South Saint Francis Drive
Santa Fe, New Mexico 87505

Oil Conservation Division
1220 S. St. Francis Drive
Santa Fe, NM 87505

REQUEST FOR EMERGENCY ORDER
IMMEDIATE ACTION REQUIRED

Re: Application of OXY USA WTP, Limited Partnership for rescission of the approval of an application for permit to drill and for compulsory pooling, Eddy County, New Mexico.

Dear Ms. Leach:

Enclosed is the Request for Emergency Order of OXY USA WTP, Limited Partnership in the above-referenced case. Copies of this Request for Emergency Order have been provided to Michael E. Stogner, the hearing examiner in this case, and served on James Bruce, attorney for Tom Brown Inc.

As you are aware, on March 4th, 2004 this case was heard by Examiner Stogner. At the end of the hearing the parties were directed to submit proposed orders. OXY has learned that instead of filing a proposed order pursuant to the directive of the Examiner, Tom Brown Inc. is now building the well location and preparing to commence the drilling of the well. By drilling the well prior to the entry of an order in this case, Tom Brown Inc. is attempting to moot the issues before the Examiner and, by its own unilateral act, usurp the statutory authority of the Division to protect the correlative rights of the interest owners in Section

Tom Brown Inc.'s action will have a direct impact on OXY's correlative rights in Section 15 and is an attempt by Tom Brown Inc. to prevent the Division from:

HOLLAND & HART^{LLP}

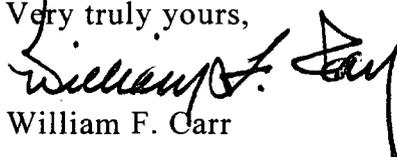


- A. ruling on the validity of the Tom Brown Application for Permit to Drill and determining if it was complete when filed and therefore properly approved by the Division;
- B. determining if the proposed acreage dedication constitutes imprudent and wasteful operations;
- C. determining if the proposal to form a S/2 spacing unit for this well is based on prudent operational concerns or if the proposed overlapping Wolfcamp spacing units are simply an attempt to gerrymander the dedicated acreage to exclude acreage owned by OXY and thereby keep OXY from receiving its just and reasonable share of the reserves under its acreage; and
- D. considering a compulsory pooling application that is properly before the Division and contains none of the problems set out hereinabove.

Unless the Oil Conservation Division stays this APD, Tom Brown Inc. will proceed with the drilling of the Forni Well No. 2 in total disregard of the March 4th Division proceedings where the very nature of the impact of its proposed well on the correlative rights of other owners in the subject section will be at issue. Furthermore, by refusing to stay the drilling of this well until the property issues involved by this action can be decided, the Division would be ignoring its statutory mandate to protect the correlative rights of OXY and the affected royalty owners in the subject lands.

The Acting Director of the Division has primary jurisdiction over the approval of APD's and must now take action to preclude Tom Brown from commencing drilling of the Forni Well No. 2 pending the entry of an order Division Case No. 13226.

Very truly yours,


William F. Carr

Enclosures

cc: Michael E. Stogner
James Bruce, Esq.
Gail MacQuesten, Esq.
Mr. Rick Foppiano

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

RECEIVED

MAR 18 2004

Oil Conservation Division
1220 S. St. Francis Drive
Santa Fe, NM 87505

IN THE MATTER OF THE APPLICATION OF OXY USA WTP LIMITED PARTNERSHIP FOR RESCISSION OF THE APPROVAL OF AN APPLICATION FOR PERMIT TO DRILL AND FOR COMPULSORY POOLING, EDDY COUNTY, NEW MEXICO.

CASE NO. 13226

REQUEST FOR EMERGENCY ORDER

OXY USA WTP Limited Partnership ("OXY"), through its undersigned attorneys, hereby requests the Oil Conservation Division enter an Emergency Order staying the drilling permit filed by Tom Brown Inc. ("Tom Brown") on January 21, 2004 for the Forni Well No. 2 to be drilled at a location 660 feet from the South and West lines of Section 15, Township 22 South, Range 27 East, NMPM, Eddy County, New Mexico, until an order is entered in this case and in support of its motion states:

1. OXY is the owner of oil and gas working interest in the W/2 of Section 15, Township 22 South, Range 27 East, NMPM and has the right to drill thereon.
2. Tom Brown is the operator of a standard gas spacing unit comprised of the E/2 of Section 15 that is dedicated to its Forni Well No. 1 which is a commercial well producing natural gas from the Wolfcamp formation.

MOTION FOR STAY

Page 1

3. By letter dated January 15, 2003, OXY proposed to Tom Brown the drilling of the Redemption Well No. 1 on a spacing unit comprised of the W/2 of Section 15 and enclosed a Joint Operating Agreement and AFE for the well. OXY proposes to drill at a standard well location 660 feet from the South and West lines of Section 15 and to drill to an approximate total depth of 12,400 feet to test any and all formations from the surface through the base of the Morrow formation – including the Wolfcamp formation.

4. Instead of responding to the OXY well proposal, Tom Brown filed an Application for Permit To Drill its Forni Well No. 2. Tom Brown proposes to drill at the same location as the OXY well. However, Tom Brown dedicates a S/2 spacing unit to the well comprised entirely of acreage that is owned by Tom Brown. Tom Brown's proposed spacing unit includes the SE/4 of the Section even though this acreage is already dedicated in the Wolfcamp formation to the Forni Well No. 1.

5. On January 23, 2004, OXY mailed its Application for Permit to Drill the Redemption Well No. 1 (Form C-101), an Acreage Dedication Plat (Form C-102) and its H2S Plan to the Division's District Office in Artesia. On January 30, 2004 the OXY APD was denied because Tom Brown already filed an APD for a well at this location.

6. In this case OXY has filed an application with the Division seeking an order (1) rescinding the Tom Brown ADP, and (2) pooling the W/2 of Section 15 for the OXY Redemption Well No. 1.

MOTION FOR STAY

Page 2

7. On March 4, 2004, this matter came on for hearing before Division Examiner Michael Stogner. At the conclusion of the hearing, the parties were directed to prepare and file proposed orders in this Case. On March 8, 2004 OXY has filed its proposed order.

8. Instead of filing a proposed order pursuant to the directive of the Examiner, Tom Brown Inc. is now building the well location and preparing to commence the drilling of the well.

9. By drilling the well prior to the entry of an order in this case, Tom Brown Inc. is attempting to moot the issues before the Examiner and by its own unilateral action usurp the statutory authority of the Division to protect the correlative rights of the interest owners in Section 15.

10. In New Mexico, interests in oil and gas rights are constitutionally protected property rights. Pursuant to the Oil and Gas Act, these rights include “the opportunity afforded...to the owner of each property in a pool to produce without waste his just and equitable share of the oil or gas or both in the pool” NMSA 1978, § 70-2-33 (H). The Oil Conservation Commission recently found that “[I]f drilling in accordance with the APD violates federal law or a property right, approval of the APD does not constitute any colorable authority for such violation.” Order No. R-12093-A, dated February 12th, 2004.

11. Tom Brown is unilaterally proceeding to drill its Forni Well No. 2 under the colorable authority of an APD while there is a pending case where the

Division is asked to rescind this APD and to otherwise exercise its statutory authority to protect the property rights of OXY.

12. At the March 4th Division Examiner hearing OXY presented evidence that established that:

- A. economic Morrow reserves in Section 15 underlay the W/2 only. Tom Brown's plan to develop these reserves with two lay-down spacing units dilutes OXY's interest in these reserves, and violates OXY's correlative rights in the Morrow;
- B. the best producing well in the subject area is the Tom Brown Forni Well No. 1 that produces from the Wolfcamp formation on a spacing unit comprised of the E/2 of Section 15;
- C. a principal objective in any well drilled 660 feet from the South and West lines of Section 15 will be the Wolfcamp formation and that a standard 320-acre spacing unit in Section 15 comprised of the W/2 of the section is available and can be dedicated to the well;
- D. if Tom Brown drills its well pursuant to the current APD and completes the well in the Wolfcamp formation, 50% of the acreage dedicated to the well will already be dedicated to another Wolfcamp well and Tom Brown will have to either form a W/2 unit for the well or ask the Division to create a

non-standard unit for the well which would exclude the acreage of OXY; and

- E. inclusion of the NW/4 of Section 15 in a W/2 spacing unit will not impair the correlative rights of Tom Brown by dedicating non-productive acreage to the well to be drilled thereon. Data currently available shows that the NW/4 of this section should be commercially productive as evidenced by the fact that Tom Brown has filed an Application for Permit to drill another deep gas well in the NW/4 of this section.

13. Permitting Tom Brown Inc. to proceed before the issues presented to the Examiner on March 4th will have a direct impact on OXY's correlative rights in Section 15 and is an attempt to prevent the Division from:

- A. ruling on the validity of the Tom Brown Application for Permit to Drill and determining if it was complete when filed and therefore properly approved by the Division;
- B. determining if the proposed acreage dedication constitutes imprudent and wasteful operations;
- C. determining if the proposal to form a S/2 spacing unit for this well is based on prudent operational concerns or if the proposed overlapping Wolfcamp spacing units are simply an attempt to gerrymander the dedicated acreage to exclude acreage owned by OXY and thereby keep OXY from

receiving its just and reasonable share of the reserves under its acreage;

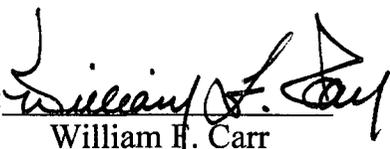
- D. considering a compulsory pooling application that is properly before the Division and contains none of the problems set out hereinabove.

14. Unless the Oil Conservation Division stays this APD, Tom Brown Inc. will proceed with the drilling of the Forni Well No. 2 in total disregard of the March 4th Division proceedings where the very nature of the impact of its proposed well on the correlative rights of other owners in the subject section will be at issue. Furthermore, by refusing to stay the drilling of this well until the property issues involved by this action can be reviewed, the Division would be ignoring its statutory mandate to protect the correlative rights of OXY in the subject lands.

15. The Acting Director of the Division has primary jurisdiction over the approval of APD's and must now take action to preclude Tom Brown from commencing drilling of the Forni Well No. 2 pending the entry of an order Division Case No. 13226.

WHEREFORE, OXY USA WTP, Limited Partnership request that the Division enter an emergency order staying the Application for Permit to Drill for the Tom Brown Inc. Forni Well No. 2, until there has been a decision in this case on OXY's application for compulsory pooling and the related issues raised by its application in this case.

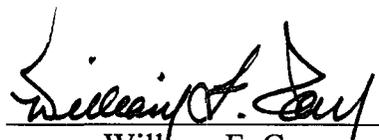
Respectfully submitted,
HOLLAND & HART LLP

By: 
William H. Carr
Post Office Box 2208
Santa Fe, New Mexico 87504
Telephone: (505) 988-4421

ATTORNEYS FOR OXY USA WTP LIMITED
PARTNERSHIP

CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of this Motion for Stay of Drilling Permit to be hand delivered to James Bruce, attorney for Tom Brown Inc., on this 18th day of March 2004.


William F. Carr

Case No. 13226

1

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

RECEIVED

MAR 18 2004

CONTINUED AND DISMISSED CASES

Oil Conservation Division
1220 S. St. Francis Drive
Santa Fe, NM 87505

REPORTER'S TRANSCRIPT OF PROCEEDINGS

BEFORE: MICHAEL E. STOGNER, Hearing Examiner

March 4th, 2004

Santa Fe, New Mexico

These matters came on for hearing before the New Mexico Oil Conservation Division, MICHAEL E. STOGNER, Hearing Examiner, on Thursday, March 4th, 2004, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South Saint Francis Drive, Room 102, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

* * *

STEVEN T. BRENNER, CCR
(505) 989-9317

I N D E X

March 4th, 2004
Continued and Dismissed Cases

	PAGE
REPORTER'S CERTIFICATE	6

* * *

1 WHEREUPON, the following proceedings were had at
2 8:18 a.m.:

3 EXAMINER STOGNER: This hearing will come to
4 order. Please note today's date, Thursday, March 4th,
5 2004. We're here to consider Docket Number 7-04. I'm
6 Michael Stogner, appointed Hearing Officer for today's
7 cases.

8 I'll go over the dismissals and continuances, and
9 then I'll make a short announcement about the schedule for
10 today, and then we'll proceed.

11 Okay, the first case to be dismissed is Case
12 13,225. This is the Application of Chi Energy, Inc., for
13 compulsory pooling and a nonstandard gas spacing and
14 proration unit, Eddy County, New Mexico. This case is
15 dismissed.

16 Page 2, down at the bottom, Case 13,229, this is
17 the Application of Yates Petroleum Corporation for an
18 unorthodox location and exception to Division Rule
19 104.C.(2).(b) and a retroactive approval date for any order
20 issued in this case, Chaves County, New Mexico. This case
21 will be continued to April 1st.

22 On page 3, the first one, Case 13,230, this is
23 the Application of Yates Petroleum Corporation for approval
24 of a unit agreement in Chaves County, New Mexico. This
25 case will be continued and readvertised to the March 18th

1 hearing.

2 The last two cases, 13,211 and 13,212, both of
3 these Applications are for compulsory pooling, Eddy County,
4 New Mexico. The Applicant in both cases is Nadel and
5 Gussman Permian, L.L.C. Both of these cases will be
6 dismissed.

7 Are there any other continuances or dismissals?

8 MR. CARR: May please the Examiner, on the first
9 page of the docket --

10 EXAMINER STOGNER: Yes, sir.

11 MR. CARR: -- is the Application of Concho
12 Resources.

13 EXAMINER STOGNER: Yes, that's 13,217. I
14 understand that case was heard by Mr. Catanach on February
15 19th; is that correct?

16 MR. CARR: That is correct, and it was continued
17 because Concho and some other parties in the subject
18 acreage were working on an agreement. They have continued
19 to work. They have a document now that I believe is being
20 reviewed by Concho, but it has not yet been executed, and
21 on behalf of Derrel Melton, who I represent, we're
22 requesting that the case be continued for two additional
23 weeks, and I believe that Concho does not oppose that.

24 MR. BRUCE: Yes, Mr. Examiner, I represent the
25 Applicant, and we would ask that it be continued for two

1 weeks to allow the parties to complete their negotiations.

2 EXAMINER STOGNER: Case 13,217 will be continued
3 to the March 18th hearing. Any other continuances or
4 dismissals at this time.

5 We have one contested case that I know of on the
6 docket today, and that is 13,226. That's the Application
7 of OXY for rescission of an APD and compulsory pooling.
8 This case will be put on the docket last, so we can get the
9 uncontested cases out first.

10 (Thereupon, these proceedings were concluded at
11 8:20 a.m.)

12 * * *

13
14
15
16
17 I do hereby certify that the foregoing is
18 a complete record of the proceedings in
19 the Docket hearing of Case No. 13226.
20 heard by me on March 2004
21  Examiner
22 Oil Conservation Division
23
24
25

CERTIFICATE OF REPORTER

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

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

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

WITNESS MY HAND AND SEAL March 5th, 2004.



STEVEN T. BRENNER
 CCR No. 7

My commission expires: October 16th, 2006

STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

RECEIVED

OIL CONSERVATION DIVISION

MAR 18 2004

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

Oil Conservation Division
1220 S. St. Francis Drive
Santa Fe, NM 87505

CASE NO. 13,226

APPLICATION OF OXY USA WTP LIMITED)
PARTNERSHIP FOR RESCISSION OF THE)
APPROVAL OF AN APPLICATION FOR PERMIT)
TO DRILL AND FOR COMPULSORY POOLING,)
EDDY COUNTY, NEW MEXICO)

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: MICHAEL E. STOGNER, Hearing Examiner

March 4th, 2004

Santa Fe, New Mexico

This matter came on for hearing before the New Mexico Oil Conservation Division, MICHAEL E. STOGNER, Hearing Examiner, on Thursday, March 4th, 2004, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South Saint Francis Drive, Room 102, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

* * *

I N D E X

March 4th, 2004
 Examiner Hearing
 CASE NO. 13,226

	PAGE
EXHIBITS	4
APPEARANCES	5
OPENING STATEMENTS:	
By Mr. Carr	7
By Mr. Bruce	11
APPLICANT'S WITNESSES:	
<u>ROBERT L. DOTY</u> (Geologist)	
Direct Examination by Mr. Carr	13
Cross-Examination by Mr. Bruce	32
Redirect Examination by Mr. Carr	37
Examination by Examiner Stogner	38
<u>DOUGLAS W. HURLBUT</u> (Landman)	
Direct Examination by Mr. Carr	42
Cross-Examination by Mr. Bruce	51
Examination by Examiner Stogner	53
Further Examination by Mr. Bruce	57
<u>RICHARD E. FOPPIANO</u> (Engineer)	
Direct Examination by Mr. Carr	58
Cross-Examination by Mr. Bruce	65
Examination by Examiner Stogner	68

(Continued...)

TOM BROWN, INC., WITNESSES:

BRENT ROBERTSON (Landman)

Direct Examination by Mr. Bruce	76
Cross-Examination by Mr. Carr	87
Redirect Examination by Mr. Bruce	95
Examination by Examiner Stogner	95
Further Examination by Mr. Bruce	105

LEONARD W. WOOD (Geologist)

Direct Examination by Mr. Bruce	107
Cross-Examination by Mr. Carr	118
Redirect Examination by Mr. Bruce	126
Examination by Examiner Stogner	127

RUSSELL L. MATHIS (Engineer)

Direct Examination by Mr. Bruce	129
Cross-Examination by Mr. Carr	133

CLOSING STATEMENTS:

By Mr. Bruce	137
By Mr. Carr	141

REPORTER'S CERTIFICATE

146

* * *

E X H I B I T S

Applicant's	Identified	Admitted
Exhibit 1	15	32
Exhibit 2	17	32
Exhibit 3	17	32
Exhibit 4	18	32
Exhibit 5	19	32
Exhibit 6	22	32
Exhibit 7	24	32
Exhibit 8	25	32
Exhibit 9	28	32
Exhibit 10	43	51
Exhibit 11	48	51
Exhibit 12	49	51
Exhibit 13	50	51
Exhibit 14	59	65
Exhibit 15	60	65
Exhibit 16	63	65
Exhibit 17	63	65

* * *

Tom Brown, Inc.	Identified	Admitted
Exhibit 1	78	87
Exhibit 2	80	87
Exhibit 3	81	87
Exhibit 4	108	118
Exhibit 5	113	118
Exhibit 6	113	118
Exhibit 7	116	118
Exhibit 8	130	133
Exhibit 9	105	107

* * *

A P P E A R A N C E S

FOR THE DIVISION:

GAIL MacQUESTEN
Deputy General Counsel
Energy, Minerals and Natural Resources Department
1220 South St. Francis Drive
Santa Fe, New Mexico 87505

FOR THE APPLICANT:

HOLLAND & HART, L.L.P., and CAMPBELL & CARR
110 N. Guadalupe, Suite 1
P.O. Box 2208
Santa Fe, New Mexico 87504-2208
By: WILLIAM F. CARR

FOR TOM BROWN, INC.:

JAMES G. BRUCE
Attorney at Law
P.O. Box 1056
Santa Fe, New Mexico 87504

* * *

1 WHEREUPON, the following proceedings were had at
2 10:53 a.m.:

3 EXAMINER STOGNER: Hearing will come to order.
4 Call next case, Number 13,226. This is the Application of
5 OXY USA WTP Limited Partnership for rescission of the
6 approval of an application for permit to drill and for
7 compulsory pooling, Eddy County, New Mexico.

8 At this time I'll call for appearances.

9 MR. CARR: May it please the Examiner, my name is
10 William F. Carr with the Santa Fe office of Holland and
11 Hart, L.L.P. We represent OXY USA WTP Limited Partnership
12 in this case, and I have three witnesses.

13 EXAMINER STOGNER: Other appearances?

14 MR. BRUCE: Mr. Examiner, Jim Bruce of Santa Fe,
15 representing Tom Brown, Inc. I am asking to swear in four
16 people, although I doubt I will have that many actual live
17 witnesses.

18 EXAMINER STOGNER: Any other appearances?

19 MS. MacQUESTEN: Mr. Examiner, my name is Gail
20 MacQuesten. I'm the attorney for the Oil Conservation
21 Division. I'm here with Jane Prouty. Ms. Prouty is
22 available to testify if any questions arise concerning the
23 Conservation Division's electronic filing system.

24 EXAMINER STOGNER: Are there any opening
25 statements at this time?

1 MR. CARR: I have an opening statement.

2 EXAMINER STOGNER: Before we go any further, I'm
3 going to take a 10-minute recess, and I want to see the
4 counsels, all three counsels, out here.

5 (Thereupon, a recess was taken at 10:55 a.m.)

6 (The following proceedings had at 10:56 a.m.)

7 EXAMINER STOGNER: Go back on the record. I
8 believe I was about to ask about opening statements at this
9 time. Mr. Carr, you have one?

10 MR. CARR: Yes, I do, Mr. Stogner.

11 You're going to hear a lot today in this case
12 about applications for permit to drill and who got to the
13 OCD first and things of that nature. But I want you to
14 know at the outset that at the core of this case we believe
15 there is a serious correlative-rights issue.

16 We believe if Tom Brown is allowed to drill the
17 well it is proposing to drill in the south half of Section
18 15, as it proposes, OXY, other working interest owners and
19 the royalty owners will lose their opportunity to receive
20 their just and equitable share of the reserves in the
21 Morrow formation under their land. We believe it will work
22 a reduction in their interest of approximately 50 percent.

23 You're going to hear a lot about the race to the
24 OCD, because it really is an outgrowth of what appears to
25 be a recent trend where the Division seems to make

1 decisions and development plans seem to be based on who
2 gets in the door first, not the underlying science. And if
3 that becomes a trend around here, I can tell you that in my
4 opinion there will be a decreasing need for an OCD. There
5 certainly would be no need for me. I still believe that
6 this is a forum where if you have a correlative-rights
7 problem you can bring it to the Division and you can have a
8 decision made based on the relevant facts as they relate to
9 the geology and the reservoir engineering that we have at
10 that time on the reservoir.

11 We're here today, I guess, to ask the Division to
12 decide how Section 15 should be developed and not just
13 abdicate that decision to Tom Brown, Inc. You're going to
14 be asked to determine if, in fact, what Tom Brown is doing
15 is a prudent development practice or plan, or if what it
16 really is is just a step into an irregular development
17 pattern that could result in the drilling of unnecessary
18 wells and impair the rights of the parties.

19 We're looking at an area where they propose to
20 drill deep gas on laydown units, but we all know that deep
21 gas has already been developed on standup units in this
22 area. We have an area where any operator who drills to the
23 Morrow in an area where there is good Wolfcamp production,
24 as we will show, knows that the Wolfcamp is also an
25 important objective in any well.

1 Tom Brown last week, however, filed pleadings
2 with this Division saying that the Wolfcamp wasn't
3 important. We think it is. They said their interest was
4 in the Morrow, that the shallow rights were owned by
5 Nearburg. However, Nearburg said something else.

6 And we're going to ask you to decide if what we
7 have here is a party trying to use the rules in a way
8 that's going to impair the rights of others, because our
9 concern is that what is happening is, Tom Brown is
10 attempting to drill under the color of an approved APD, at
11 the same time property rights will be violated. Those
12 rights are our correlative rights in the production under
13 our land.

14 Since this case presents a correlative-rights
15 issue, we're going to start there. We'll first call our
16 geologist who's going to show the impact of laydown units
17 on our rights in Morrow production. If a Wolfcamp well is
18 drilled, he will show each spacing unit would have to be
19 reoriented, because the southeast quarter can't be included
20 in a south-half unit; it's already dedicated to an east-
21 half unit.

22 We're then going to call our land witness. Our
23 land witness is simply going to review what OXY has done to
24 try and get their acreage developed. We'll show you there
25 was a title check run, that they proposed the well, that

1 they ordered the title opinion. They got no response from
2 Tom Brown. Instead, Tom Brown went out and got from the
3 Division an approved APD. They proceeded with their
4 drilling plans, they never responded to OXY.

5 And when OXY discovered that Tom Brown was
6 drilling a well in a position where they had to file the
7 Application they filed when they did -- because had they
8 not done that, they wouldn't even have had a chance to come
9 to hearing before the well was being drilled, and their
10 opportunity to be heard was lost.

11 We're then going to call our third witness, Mr.
12 Foppiano, who's going to look at files show concerning the
13 approval of the Tom Brown APD. Our APD was filed and was
14 approved by the Division, and then we received at a later
15 date a denial where our APD and the approval language that
16 we had was simply blocked out with what appears to be a
17 black Magic Marker. We'll show that Tom Brown's
18 application was incorrect, it was incomplete, and probably
19 should not have been approved when there was a complete
20 application before the Division that already had been
21 approved.

22 You know, Mr. Stogner, if the Division's going to
23 say that the person who's the first one in the door is the
24 one who gets the APD, and that APD will lock out other
25 interest owners for a full year, delaying their plans to

1 develop, this case presents a circumstance where at least
2 the Division can tell us what an operator is required to
3 file to get that APD. And at the conclusion of our
4 testimony we will ask the Division to do what we think the
5 statute requires it to do, and that's act to protect the
6 correlative rights of OXY and the other working and royalty
7 owners in Section 15.

8 EXAMINER STOGNER: Mr. Bruce?

9 MR. BRUCE: I'll be very brief, Mr. Examiner.

10 Regarding the correlative-rights issues, our
11 evidence shows that there are no impairment of correlative-
12 rights issues in this matter. Our geologists and other
13 data will show that with respect to the Morrow, although
14 the southwest quarter of Section 15 is the best place to
15 drill a first well in this section, there is potential in
16 the entire section, and therefore OXY is not being squeezed
17 out of anything.

18 With respect to this being a race to the OCD, Mr.
19 Carr and I have been involved in several cases now
20 involving this issue, and I agree there should be no race
21 to the OCD. But the fact of the matter is, Tom Brown has
22 been active in this area, has other wells, they have been
23 looking at this particular half-section of land for quite
24 some time with a laydown unit, and that activity long
25 predates OXY's well proposal to Tom Brown.

1 Again, we believe the Wolfcamp is irrelevant to
2 this proposal because the fact of the matter is that when
3 Tom Brown was looking at drilling this well, they were
4 doing it simply on the Morrow and the Strawn, potentially
5 the Atoka. And therefore, in putting forth their internal
6 well proposal determining the economics, the Wolfcamp had
7 absolutely no relevance to the well proposal.

8 Yes, there may be conflicting well units in the
9 Wolfcamp as opposed to the Morrow. That's not uncommon.
10 And the fact of the matter is, there would be no harm to
11 OXY. If a Wolfcamp unit was formed in a west-half unit,
12 they would in essence probably have a free look at the logs
13 on the Wolfcamp. I fail to see how they are going to be
14 harmed by this.

15 Again, Tom Brown has been looking at drilling
16 this well for quite some time. It owns 100 percent of the
17 south-half unit, it has an APD. It should be allowed to
18 move forward, and OXY's case should be dismissed.

19 Thank you.

20 EXAMINER STOGNER: Mr. Carr, how do you first
21 proceed to proceed in this matter today?

22 MR. CARR: The way we would propose to proceed
23 is, we'd call Mr. Doty to review the geology, to show that
24 there is a valid correlative-rights issue here, because
25 that's the problem we're trying to address.

1 Then we'd like to have the land witness show you
2 how we got to this point, and then finally we would like to
3 discuss what the records show on the permit Application we
4 filed and how that lines up timewise with the application
5 filed by Tom Brown, the Forni Number 2.

6 EXAMINER STOGNER: Okay, you may proceed.

7 MR. CARR: Our first witness will be Robert Doty.

8 EXAMINER STOGNER: I'm going to have at this time
9 all four of Tom Brown's witnesses, all three of OXY's
10 witness and Ms. MacQuesten's Division witness please stand
11 to be sworn at this time. Hold it, this means you, Ms.
12 Prouty.

13 (Thereupon, the witnesses were sworn.)

14 EXAMINER STOGNER: Mr. Carr?

15 ROBERT L. DOTY,

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

18 DIRECT EXAMINATION

19 BY MR. CARR:

20 Q. Would you state your name for the record, please?

21 A. My name is Robert Doty.

22 Q. Mr. Doty, by whom are you employed?

23 A. OXY USA.

24 Q. And what is your current position with OXY?

25 A. I'm a petroleum geologist.

1 Q. Have you previously testified before this
2 Division and had your credentials as an expert in petroleum
3 geology accepted and made a matter of record?

4 A. Yes, sir.

5 Q. Are you familiar with the Application filed in
6 this case on behalf of OXY?

7 A. Yes, sir.

8 Q. Have you made a geological study of the area that
9 is the subject of this Application?

10 A. Yes, sir.

11 Q. Are you prepared to present the results of your
12 work to Mr. Stogner?

13 A. Yes, sir.

14 MR. CARR: Are the witness's qualifications
15 acceptable?

16 EXAMINER STOGNER: Any objection?

17 MR. BRUCE: No objection.

18 EXAMINER STOGNER: So qualified.

19 Q. (By Mr. Carr) Mr. Doty, would you briefly
20 summarize what it is that OXY seeks in this case?

21 A. OXY seeks a force pooling of the west half of
22 Section 15 for all deep gas units spaced on 320-acre
23 spacing, and also OXY seeks that the APD approved for Tom
24 Brown be rescinded for their location, the Forni Number 2.

25 Q. What rules govern the development of deep gas

1 reserves in Section 15?

2 A. State Rule 104.

3 Q. 320-acre spacing?

4 A. Yes, sir.

5 Q. 660-foot setbacks?

6 A. Yes, sir.

7 Q. Pre-approved infill well on the 160, not
8 including the -- containing the original well; is that
9 correct?

10 A. Yes, that's correct.

11 Q. Let's go to what has been marked for
12 identification as OXY Exhibit Number 1. Could you identify
13 this and review it for the Examiner?

14 A. Yes, sir. Mr. Examiner, this is a plat that
15 shows the status of the wells and then the pools within a
16 nine-section study area surrounding Section 15. There are
17 nine different pool designations in this study area. Three
18 of them are in the Morrow, one up to the Delaware.

19 Also located in Section is, the west half of 15
20 is the OXY-proposed Redemption Number 1 spacing unit with
21 our location in the southwest southwest corner. The east
22 half of Section 15 is an existing spacing unit for the Tom
23 Brown Forni Number 1 Wolfcamp completion.

24 We are proposing the Redemption Number 1 in the
25 southwest southwest as a west-half standup. The east half

1 is dedicated to the Forni Number 1. Tom Brown has proposed
2 their Forni Number 2 as a south-half laydown at the same
3 location as our Redemption Number 1, and they have also
4 proposed their Forni Number 3 in the northwest quarter, and
5 a little dot there up in the northwest quarter, which is
6 also as a north-half laydown, and both of these contrary to
7 the pattern established by the Forni Number 1 in the east
8 half.

9 Q. Mr. Doty, if you go to Section 21, in the
10 northeast quarter of that section there is a Morrow well?

11 A. Yes, sir. Northeast northeast of Section 21 is
12 the Marbob Walterthon Number 1. That is a very strong
13 well. It was completed in 2001. It's made in excess of 2
14 BCF and it's still flowing close to 3 million a day.
15 That's the well that has extended the productive zone a
16 little bit to the southeast and has made the west half of
17 Section 15 prospective for the Morrow.

18 Q. In the northwest of Section 22 is a wellspot with
19 Devon's Grandi Number 2 under it. What is the status of
20 that well?

21 A. That well is currently drilling. I don't know
22 what depth it's at. That's proposed as a Morrow.

23 Q. In your opinion, what are the primary producing
24 objectives in Section 15?

25 A. The primary producing objective currently is the

1 Wolfcamp in the Forni Number 1. The prospective is -- both
2 Wolfcamp and Morrow are prospective both as dual primary
3 objectives. The Strawn is prospective as a secondary
4 objective, and the Atoka as probably a tertiary objective.

5 Q. I'd like to have you first address the geology in
6 the Morrow formation, but I think before we go into the
7 details of the reservoir itself we should look at the
8 general ownership in the area set out on OXY Exhibit Number
9 2. Would you refer to that, please, and review it for Mr.
10 Stogner?

11 A. Yes, sir. Mr. Examiner, Exhibit 2 is a lease
12 ownership map that shows OXY's leasehold present in the
13 northwest quarter of Section 15, along with our proposed
14 west-half spacing unit. The east half of 15 are two
15 separate fee leases controlled by Tom Brown, pooled for
16 their Forni Number 1 well, and our lease consists of two
17 separate leases. We have about 125 -- 90 percent of 125
18 acres in that northwest corner.

19 The geology will indicate that the east half of
20 Section 15 is non-prospective for the Morrow and that Tom
21 Brown's plan, both for their Forni Number 2 and their Forni
22 Number 3, will deny OXY our opportunity to recover our fair
23 share of the reserves under our lease.

24 Q. Let's go to OXY Exhibit Number 3. Would you
25 identify this and then explain what this is and why you

1 prepared this map?

2 A. Yes, sir. This is an isopach map from the lower
3 Strawn to the lower Morrow. Structure on the Morrow is a
4 key element to the control of production for the Morrow in
5 this specific area. There are several wells that did not
6 penetrate the Morrow, but they did penetrate the lower
7 Strawn.

8 I made this isopach for the purpose of seeing if
9 I could utilize the data from the lower Strawn perforations
10 to accurately extrapolate additional data for the lower
11 Morrow, and indeed the isopach from that interval is fairly
12 regular, and all this -- all the purpose of this is to
13 indicate that I was able to use this map, this thickness
14 map, from the lower Strawn to the lower Morrow, to
15 extrapolate and estimate lower Morrow structure picks,
16 specifically for the Forni Number 1 well in 15 and also for
17 the well in the west half of 15.

18 So we have a paucity of lower Morrow
19 penetrations. I made an isopach and said, Hey, this
20 thickness is fairly consistent, I can use that lower Morrow
21 marker to extrapolate and estimate a lower -- I'm sorry,
22 the lower Strawn marker, to extrapolate a lower Morrow
23 pick.

24 Q. All right, let's go to your next exhibit, Exhibit
25 Number 4, the lower Morrow structure map.

1 A. Mr. Examiner, if I can kind of orient you on some
2 of the data here, if you look at the title block there's a
3 number that's highlighted in orange. That is cum Morrow
4 production to date in million cubic feet, so that 2379 will
5 be around 2.3 BCF.

6 The number highlighted in yellow is current rate
7 in the Morrow in MCF, so that's 2800 MCF a day.

8 And then I have the subsea elevation and the
9 thickness of the specific sand that's the main producing
10 sand in that Marbob Waltherthon well.

11 What I've done is, I've contoured the lower
12 Morrow structure, and I've isopached that specific lower
13 Morrow sand. And then I've extrapolated based off of test
14 information where that sand has tested wet and where it has
15 proven productive.

16 Q. And this exhibit shows you that the -- your
17 interpretation of the productive Morrow sands is, in fact,
18 in the west half of Section 15?

19 A. Yes, sir, it's based off of test data that we can
20 elaborate with the cross-section. And I've colored -- The
21 blue area colored on the map is the area that is wet in the
22 lower Morrow sand, and the orange area is prospective in
23 the lower Morrow sand.

24 Q. Let's go to the Morrow cross-section, A-A', which
25 is marked Exhibit 5.

1 A. Yes, sir.

2 Q. Would you review that, please?

3 A. Mr. Examiner, the line of cross-section occurs on
4 the southwest corner of the map. It's not really well
5 highlighted, but the first well on the left-hand side is
6 the Marbob CCAP State Number 2 in the southeast of Section
7 16. It then proceeds to the south to the big well, the
8 Marbob Walterthon, and then farther south in 21 to the
9 Strata Walker Number 1, and then over to the east in
10 Section 22 to the Westbrook Grandi Number 1.

11 The area here just to the west of this mapped
12 area, in fact, including Section 16 and on to the west, is
13 the major north-south-trending Carlsbad trend, very large
14 Morrow-producing trend that goes for miles, all the way
15 down to Whites City to the south and way up to the north.
16 And in this local area that trend is limited to the east by
17 structure. The sands get wet as you cross a subsea
18 elevation on the lower Morrow of around 8675, and this
19 cross-section reveals that.

20 The first well, on the CCAP State Number 2, is
21 basically out of the main Morrow pay. There's some thin
22 Morrow pay that will make subeconomic, marginally economic
23 type of volumes. It's cum'd 271 million. It's not going
24 to be a good well.

25 The next well on the cross-section is that

1 Walterthon, and you can see I've colored -- the two orange
2 zones are the perforated intervals in that well. The one
3 about in the middle of the cross-section, that is the main
4 sand, that's the main producing sand for this entire area,
5 and that's the sand that reflects the isopach map.

6 As you go to the south to the Walker, that
7 Walterthon sand is also present. Those zones in the lower
8 Morrow were all tested. They swabbed -- They did flow some
9 gas and swabbed some water after an acid job. The zones
10 were then frac'd, and I don't have -- and then that zone
11 was abandoned. I don't have the completion data, but my
12 presumption is that they tested wet after the frac job,
13 based on the presence of water after the acid job. A cast-
14 iron bridge plug was then set in that well, and they
15 perforated the middle Morrow and made about a B out of that
16 well right there, in the middle Morrow sand.

17 The last well on the cross-section is the well in
18 22, downdip. The lower Morrow sands tested wet, as did the
19 middle Morrow sands.

20 There's one other well I'd like to point out
21 that's not on the cross-section. It's up in the northeast
22 corner of the map in Section 11, the Western Bass Number 1.
23 That well had very thick lower Morrow sands and was not
24 tested, but it was wet and a test was not attempted due to
25 the appearance on the logs.

1 So basically that main Carlsbad trend, it has an
2 end to the east, and this is it.

3 There are Morrow-producing wells to the east of
4 that line that are subeconomic, marginal wells, from
5 thinner middle Morrow sands. For example, there's a well
6 in the east half of 14 that's made 24 million cubic feet.
7 There's a well in the southeast quarter of 22 that's made
8 310 million cubic feet. All these are marginally economic
9 Morrow completions.

10 But the main producing sand, and the sand that
11 we're going after, that all of us are going after from this
12 Walterthon, it goes downdip and wet on the east half of 15.

13 Q. Do you have EUR estimates for Morrow wells in
14 this area?

15 A. Yes, sir, that would be Exhibit 6.

16 Q. Would you review that, please?

17 A. Mr. Examiner, Exhibit 6 shows all the Morrow
18 wells in this nine-section study area. The first column is
19 just their name and so forth and their location. But I've
20 also captured their cumulative gas, the current rate, and
21 then I've calculated EUR as based off of decline curve
22 analysis.

23 If you were to look down at the bottom of that
24 first well column where it says "Morrow Mean", I've
25 calculated the mean reserves, or mean EURs for that package

1 of wells, this bundle of wells. It's around 1.3 BCF, that
2 1280 number.

3 Based off of this, I feel like this is a
4 reasonable risk number for what might be expected to occur
5 in a geologically favorable location in the west half of
6 Section 15, and I've also given you a range of the high
7 side. High side would be if the Marbob Walterthon could be
8 repeated twice, and that's a high of 5.2 BCF.

9 So in my opinion, a well drilled in the
10 geologically favorable area in the west half of 15, any
11 well drilled, either the southwest or the northwest
12 quarter, would have a Morrow EUR range of between 1.2 and
13 5.2 BCF.

14 If you can look down in the center where it says
15 "Recoverable Morrow Reserves under W/2, Section 15", two
16 wells are permitted in the west half of 15 under Rule 104.
17 I would expect the same sort of reserve potential, so that
18 is gross reserves for the entire west half of 15 of 2.5 to
19 10.5 BCF.

20 I see no opportunity for recoverable reserves in
21 the east half of 15. The next line is OXY's gross working
22 interest Morrow reserves. Under OXY's development proposal
23 our fair share of the reserves, opportunity to recover the
24 reserves in the west half of Section 15, would be between
25 .9 BCF to 3.7 BCF, is the range.

1 Under the Tom Brown proposal, Tom Brown is
2 proposing to pool our productive Morrow leasehold in the
3 northwest quarter with their nonproductive in the northeast
4 quarter. We would have a reserve potential of about half a
5 B to 1.8 B.

6 So in the box quantifies the net loss to OXY and
7 its royalty owners, by this proposal, of around half a B to
8 1.8 BCF. That's the range.

9 Q. The issue here is that with the laydown unit,
10 your interest in the north half is really cut in half
11 because half the spacing unit is not going to contribute
12 reserves; is that --

13 A. That's right.

14 Q. -- where we are on this?

15 A. Yes, sir.

16 Q. Does that, in your opinion, impair your
17 correlative rights?

18 A. Absolutely.

19 Q. And the correlative rights of your royalty
20 owners?

21 A. Yes, sir.

22 Q. Let's look at the Wolfcamp formation, Mr. Doty.
23 Let's start by looking at your Exhibit Number 7.

24 A. Mr. Examiner, Exhibit Number 7 shows the Wolfcamp
25 productive area colored in blue. If I might also orient

1 you with the legend, on the legend there's a couple of
2 numbers that are colored yellow. The top number is the cum
3 Wolfcamp gas. On the legend it has 2093; that's 2 BCF.
4 And on the bottom number is the cum Wolfcamp oil. These
5 Wolfcamp wells are quite rich, so that particular well is
6 79,000 barrel of oil.

7 And the Wolfcamp is distributed in an overall
8 shelf-edge trend that continues off to the northeast, and
9 it's in my opinion potentially productive in all of Section
10 15. The cross-section might help us.

11 Q. Okay, let's go ^{M.S.} to the cross-section. The trace
12 is on Exhibit Number 7, the cross-section on Exhibit 8.

13 A. Mr. Examiner, Exhibit 8 is cross-section B-B',
14 marked in orange on the plat, and it shows the nature of
15 the Wolfcamp producing zone in this area. The well to the
16 east, on the right-hand side, is the Western Bass Number 1.
17 It's way up in Section 11. That's been a very good well.
18 It's produced about a B and a half from the Wolfcamp, along
19 with almost 80,000 barrels, and it's produced from a series
20 of little scattered, thin porosity zones in the upper part
21 of the Wolfcamp, and that's fairly typical. There's a
22 number of wells that produce from that sort of section.

23 The next well down is the Tom Brown Forni Number
24 1, the east-half dedication in Section 15. That's really
25 the best well in the area. It's produced over 2 BCF and

1 almost 80,000 barrels. It too has that scattered low
2 porosity Wolfcamp in the upper part, but it also has an
3 extra zone in the lower part, and that extra zone may or
4 may not have made a difference on why it's recovered
5 additional reserves. I really don't know.

6 The next well on the cross-section is the
7 Nearburg Sueno 15 Number 1. This well was drilled in the
8 early 1990s, originally as a Morrow test -- they were never
9 able to get down to the Morrow -- and it was completed as a
10 Wolfcamp well. They did get down to the lower Strawn.
11 It's been a modest producer. It's now plugged. It made 57
12 million cubic feet of gas and 3000 barrels of oil.

13 What I have here on this cross-section is a
14 cased-hole log. It had pretty severe drilling problems
15 through the Wolfcamp. They took a big kick and at the same
16 time had lost circulation above them, so it appears that
17 they broke down the shallow zones and they were cycling
18 through losing circulation and kicking, that kind of
19 drilling problems.

20 It did manage to get down to the Strawn, could
21 not run open-hole logs. In fact, when they had finally got
22 pipe on bottom they circulated out a 60-foot flare. So it
23 -- in all likelihood, the poor performance of that well
24 relates more to -- or difficult completion and drilling
25 problems they had, it's unlikely that they had a decent

1 cement job, it's unlikely they were able to get an adequate
2 stimulation, and with just a cased-hole log we're really
3 unable to identify pay in those thin zones.

4 I feel like that that modest Wolfcamp completion
5 in the west half of 15 is not indicative of the potential
6 in the west half of 15. I think the 60-foot flare is
7 indicative of the potential in the west half of 15. The
8 drilling problems really relates to the cause of why it was
9 such a modest completion.

10 The last well on the cross-section is that same
11 Marbob Walterthon Number 1. If you recall, that's the well
12 that has the big, thick lower Morrow zone currently
13 producing. It also has pay behind pipe in the Wolfcamp.
14 That zone that's colored in orange down around 9900 feet is
15 the same lower Wolfcamp zone that's present in that big
16 Forni well to the east. And in fact, that same zone in the
17 well to the north, the CCAP State Number 2, Marbob had a
18 kick in that well when they drilled that well.

19 So my point in showing you this is that we do
20 believe that the entire Section 15 is potentially
21 productive for the Wolfcamp, and a development pattern
22 that's irregular relative to the established pattern may
23 lead to the drilling of unnecessary wells. It may also
24 delay the production of Wolfcamp volumes in the west half
25 that potentially could be then drained by the Forni well in

1 the east half, and --

2 Q. Let's go to Exhibit Number 9, and let's look at
3 the EUR information on the Wolfcamp that you made a study
4 of.

5 A. Yes, sir. This is a similar -- Mr. Examiner, a
6 similar study where I went ahead and I looked at all the
7 Wolfcamp wells in this nine-section area and calculated
8 EURs and calculated a mean reserve for Wolfcamp, and the
9 mean is around 589 million cubic feet and 23,000 barrels.
10 The high would be that Forni well, and I've estimated a
11 range of expectation between the mean of 589 and the high
12 of 2.4 B. So half a B to 2.4 B reserve potential would be
13 expected for a well drilled anywhere in the west half of
14 15, and also 23,000 to 96,000 barrels.

15 Q. Can you summarize the conclusions you've reached
16 from your study of the Wolfcamp production or potential for
17 production in Section 15?

18 A. The Wolfcamp is a genuine viable primary,
19 objective in the west half of 15. Given the existing
20 spacing unit, laying down Morrow patterns that will
21 conflict with that spacing unit will delay the development
22 of these reserves, may result in the drilling of
23 unnecessary wells, and may delay drilling competitive wells
24 to the 100-percent Tom Brown well to the east.

25 Q. Mr. East, you've been involved in the drilling of

1 additional wells, other wells in this general area?

2 A. Yes.

3 Q. When you're drilling a Morrow well, is it safe to
4 characterize that as a high-risk well?

5 A. Yes, yes.

6 Q. If you're drilling a well in this area and
7 incurring those costs going to the Morrow, wouldn't you
8 want to have the Wolfcamp as a secondary objective?

9 A. That and the Strawn, yes.

10 Q. Especially where the best well in the area is a
11 Wolfcamp well on the same section?

12 A. Yes, sir.

13 Q. Does the OXY proposal afford you an opportunity
14 to drill and complete in all of these zones?

15 A. Yes, it does.

16 Q. How does this proposal differ from Tom Brown's?

17 A. Tom Brown's proposal appears to only afford you
18 the right -- the ability to produce from the Morrow. I'm
19 not sure where the Strawn fits in here. That's another
20 confusing issue, because that's something that could be
21 commingled easily with the Wolfcamp, and --

22 Q. Does it contemplate a Wolfcamp completion?

23 A. No.

24 Q. How would that impact other owners in the area in
25 the area, in terms of trying to develop that resource?

1 A. Well, we would have possibly the need of drilling
2 additional wells for the Wolfcamp or the Strawn. It would
3 certainly delay any development of that reserves that may
4 compete with the existing well on the east half, and --

5 Q. The third horizon out here is the Strawn?

6 A. Yes.

7 Q. And is there Strawn production in this immediate
8 area?

9 A. Yes, there is. Mr. Examiner, I don't have a
10 Strawn map for you. I do have the Exhibit 1, which does
11 show the Strawn completions in this area.

12 The green dots on that Exhibit 1 are the Strawn
13 completions. There's a strawn well just, oh, less than a
14 mile from our Redemption well to the west, the Marbob CCAP
15 State Number 1. It's made over a B in the Strawn. There's
16 another well just to the south in 21 that's made half a B.
17 Down in 22 and 23 a well made half a B, another well made
18 2.7 B. So the Strawn is the genuine viable secondary in
19 this area.

20 Q. Is it possible you could even dually complete the
21 Strawn and the Wolfcamp in the area?

22 A. Yes, there are about 500 feet of shale in
23 between. That would be definitely possible.

24 Q. In your opinion, does the Tom Brown, Inc.,
25 proposal create an ineffective, irregular development

1 pattern in this acreage?

2 A. Yes, it does.

3 Q. Their well would not allow the development of all
4 horizons?

5 A. That's correct.

6 Q. And yours does?

7 A. Yes.

8 Q. If the section is developed with laydown units in
9 the Morrow, what impact does that have on your correlative
10 rights?

11 A. Our productive leasehold is pooled with
12 nonproductive leasehold in the north half. Tom Brown has
13 already proposed that well to us. They proposed a west-
14 half development of the Morrow by virtue of two laydown
15 units, a north-half and a south-half. And clearly half of
16 our reserves will be lost.

17 Q. If in the Tom Brown well location, in fact, there
18 is no Morrow zone or it's wet, and there is a completion in
19 the Wolfcamp, what would the spacing unit be for that
20 Wolfcamp well?

21 A. The only one available, the west half, unless
22 they were to apply for some other nonstandard spacing unit.

23 Q. The southeast quarter is already dedicated in the
24 Wolfcamp --

25 A. Yes.

1 Q. -- is that right?

2 A. Yes.

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

5 A. Yes, sir.

6 MR. CARR: May it please the Examiner, at this
7 time we'd move the admission into evidence of OXY Exhibits
8 1 through 9.

9 EXAMINER STOGNER: Any objections? .

10 MR. BRUCE: No objection.

11 EXAMINER STOGNER: Exhibits 1 through 9 will be
12 admitted into evidence.

13 MR. CARR: And that concludes my examination of
14 Mr. Doty.

15 EXAMINER STOGNER: Thank you, Mr. Carr.

16 Mr. Bruce, your witness.

17 CROSS-EXAMINATION

18 BY MR. BRUCE:

19 Q. Mr. Doty, in looking at your maps that cover a
20 nine-section area, what -- does OXY have any other wells,
21 Morrow wells in this township, 22-27?

22 A. Yes, sir.

23 Q. And were those drilled recently?

24 A. To the northeast we drilled our Honolulu well
25 last year. We're currently drilling a well the next

1 township up, it's a couple of miles north, our CDMA Number
2 2 is currently being drilled. We have several wells we've
3 drilled in the past, just to the west.

4 Q. That second well you mentioned, what section is
5 that in? It's in 21-27, is it not?

6 A. Yeah, 29, Section 29.

7 Q. Section 29. Is that offsetting a well that Tom
8 Brown recently completed?

9 A. I'm not sure. I'm not sure who operates that.
10 There's a big well down there. I'm not sure if it's Tom
11 Brown or Marbob.

12 Q. Is that what piqued your interest in drilling in
13 Section 29, because it was a big well?

14 A. No, we really had our CDMA Number 1 -- we had
15 reserves remaining in that well, and we lost the wellbore
16 due to mechanical failure and we had to -- you know, it's
17 one of those areas that have town lots, and it was either
18 those leases were never going to come back together again
19 or we had to drill a replacement well.

20 Q. In looking at your Exhibit 4, Mr. Doty -- and I
21 just want to make sure. Over in Section 11 you mentioned
22 the Western Bass Well Number 1 a couple of times.

23 A. Yes, sir.

24 Q. And you have it here shown as being wet. But
25 when you were discussing that, you said that that well did

1 not make it to the Morrow, did you not?

2 A. No, that well penetrated the Morrow. It had a
3 very thick section in the lower Morrow.

4 Q. Okay, perhaps I misunderstood you when you were
5 talking about the Wolfcamp production. You said it did not
6 penetrate the Morrow.

7 A. It was completed in the Wolfcamp, the Morrow is
8 wet.

9 Q. Now, when you did your little -- I guess you're
10 calling it your correlative rights Exhibit Number 6, this
11 is based upon you having two Walterthon-type wells in the
12 west half of Section 15; is that correct?

13 A. No, sir, the range will be from the mean of the
14 entire wells in the nine-section study area -- that's the
15 1.2 BCF or 1.3 BCF. I have a Morrow EUR range of 1280 to
16 5256. So the 1280 constitutes the mean of the 13 wells or
17 so in the entire nine-section area. And the 5256 is my
18 estimate of the EUR for the Walterthon well.

19 So I am testifying that I feel like the range of
20 loss of reserves for OXY would be the 452, which would be
21 the equivalent of the mean case, all the way to the 1.8,
22 which would be the equivalent of the Walterthon case. I've
23 given you a range.

24 Q. What's the name of your proposed well?

25 A. The OXY Redemption Number 1.

1 Q. Where did you get that name?

2 A. I can't remember.

3 Q. You don't know if you're redeeming anything
4 there?

5 A. I think it had to do with the naming of a bull.

6 Q. Just a couple more questions, and on your
7 Wolfcamp map, Mr. Doty.

8 A. Yes, sir.

9 Q. You're showing essentially all of Section 15 as
10 productive in the Wolfcamp?

11 A. Yes, sir.

12 Q. So really, looking at that, there's no
13 correlative-rights issues, insofar as laydown or standup
14 units, because the entire section is productive?

15 A. Sir?

16 Q. There's no correlative-rights issue with respect
17 to orientation of a well unit, because the entire section
18 is productive in the Wolfcamp?

19 A. In the Wolfcamp?

20 Q. Yeah.

21 A. Yes, sir.

22 Q. Okay.

23 A. The correlative-rights issue is in the Morrow.

24 Q. Okay. Okay, and you did say that really you have
25 two primary objectives, the Wolfcamp and then what you

1 refer to as the Walterthon sand?

2 A. Yes, sir.

3 Q. I guess my question is, if the Wolfcamp is so
4 important, how come you haven't force-pooled the Wolfcamp
5 working interest owners in this Application?

6 A. Well, what we did, Mr. Bruce, was, we staked our
7 location for the OXY redemption. And we ran a records
8 check, and based on the information we had, we proposed the
9 well to the owners that we understood at the time, which
10 was Tom Brown, Cactus and Saguaro. We had an approved APD
11 for our well, and then our APD was rescinded in favor of
12 the Tom Brown APD.

13 Based on the information we had at the time we
14 filed our Application for force pooling, understanding that
15 we had all the interest owners noted in our Application of
16 all zones, we felt like -- we did have a title opinion
17 ordered. We had a title opinion ordered previously, we did
18 not have that title opinion in. And we had -- we felt like
19 the correlative-rights issue was sufficiently important
20 that for us to wait for the title opinion to be in after
21 our APD was rescinded, that we would lose those rights in
22 the Morrow, that our correlative-rights issue -- that Tom
23 Brown would spud the well, we would not have an arguable
24 case before this Division on the correlative-rights issue
25 for the Morrow.

1 We later learned that there was additional owners
2 in the Wolfcamp zone, which included Nearburg and other
3 Nearburg investors, and we later were advised that those
4 rights would -- either have been or will be conveyed to Tom
5 Brown. And that's where we stand.

6 Q. You were aware that the -- what is it, the --
7 excuse me, the Sueno 15 Well Number 1 was a Nearburg well,
8 was it not?

9 A. Yes, sir. Yes, sir.

10 Q. And that tested the Wolfcamp, did it not?

11 A. Yes, sir.

12 Q. And you still didn't notify Nearburg?

13 A. At the time we made our Application, we notified
14 everyone that we knew at the time.

15 Q. And still didn't notify Nearburg?

16 A. We notified everyone we knew at the time.

17 MR. BRUCE: That's all I have, Mr. Examiner.

18 EXAMINER STOGNER: Mr. Carr, any redirect?

19 REDIRECT EXAMINATION

20 BY MR. CARR:

21 Q. The people, Mr. Doty, you notified were those
22 that you had gotten from the person who did your title
23 check?

24 A. Yes, sir.

25 Q. And while you were waiting for -- If you'd waited

1 for the title opinion, you couldn't have gotten to hearing
2 until the Tom Brown well had drilled; isn't that right?

3 A. That's exactly right, yeah.

4 Q. And although you'd sent proposals to Tom Brown
5 and pursued this with them, there was absolutely no
6 response from Tom Brown whatsoever?

7 A. No, sir.

8 Q. You didn't learn that they were drilling the well
9 until you discovered that when your APD was canceled and
10 theirs was approved; isn't that right?

11 A. Yes, correct.

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

13 EXAMINATION

14 BY EXAMINER STOGNER:

15 Q. Mr. Doty, in the senior well, the Nearburg well
16 in Unit E --

17 A. Yes, sir.

18 Q. -- what was the dedicated acreage to that well?

19 A. West half of 15.

20 Q. And did it have production? I believe -- Would
21 that be on Exhibit 9?

22 A. Yes, sir, it produced from the Wolfcamp. It was
23 later plugged back for a Delaware well, and it's now
24 plugged. Exhibit 1 --

25 Q. Did it go to the Morrow?

1 A. No, sir. It was permitted to the Morrow, due to
2 the drilling problems and the kick in the Wolfcamp they got
3 as far as the lower Strawn.

4 Q. And again, what was the drilling problems? What
5 happened?

6 A. They took a kick in the Morrow and --

7 MR. CARR: In the Morrow?

8 THE WITNESS: No, I'm sorry, they didn't ever
9 penetrate the Morrow. They took a kick in the Wolfcamp,
10 and they had the mud up to control the Wolfcamp, and in so
11 doing they broke down the shallower Bone Springs, so they
12 were using circulation in the Bone Spring while they were
13 kicking in the Morrow. And that's a delicate balance act
14 that you're lucky if you can get the well to TD and get out
15 without snubbing.

16 The same thing happened to Marbob over in the
17 CCAP, the State Number 1, on 16. They had a snub-in
18 casing. They took -- their kick was in the Strawn.

19 Q. (By Examiner Stogner) Which one is that well?

20 A. That's in Section 16 down in the southwest
21 quarter. That well also didn't penetrate the Morrow, and
22 it took a kick in the Strawn, broke down the Bone Spring,
23 and they had to snub in their casing.

24 Q. So is that well currently producing from the
25 Strawn, and when did that happen?

1 A. That was back around 2000 or so. That was kind
2 of a famous well, if you remember. It hit the Carlsbad
3 newspaper. They had a big flare and a bunch of the
4 residents were really concerned, and -- based on that
5 Marbob changed their casing program, which we would also
6 do.

7 Q. What's the current rate on that well in the
8 Strawn?

9 A. Not much. It did make about 900 million, but
10 currently it's not making much. I don't know specifically,
11 but --

12 Q. Okay, what can you tell me about the location on
13 that Nearburg well?

14 A. It was an NSL, and -- Let me see. It was
15 initially an NSL that was denied because they were like 330
16 off the line. They then re-filed their NSL, and I believe
17 the -- I'm not sure, Mr. Foppiano can probably answer it
18 better than I can, but I believe it was NSL because of the
19 interior quarter quarter. It was back in the early 1990s,
20 so I believe they were -- They were 660 off the line, but
21 they were right on the centerline, so it must have been NSL
22 by virtue of being too close to the interior quarter
23 quarter.

24 Q. Okay. With that, is there still potential
25 Wolfcamp production in the northwest quarter?

1 A. Absolutely. That well did not condemn the
2 Wolfcamp. They didn't stand a chance with that well, as
3 far as getting a good Wolfcamp completion.

4 Q. And it's your understanding that the east half in
5 the Wolfcamp is currently dedicated to the Tom Brown Forni
6 Well Number 1?

7 A. Yes, sir.

8 Q. Now, there has been some mention by you on the
9 potential -- on the Tom Brown well up in the northwest.

10 A. Yes, sir.

11 EXAMINER STOGNER: Now, there -- I may be getting
12 ahead of myself here. I want to strike that question till
13 the rest of the questions...

14 I have no other questions of the geology witness
15 at this time.

16 Any other questions?

17 MR. CARR: (Shakes head)

18 EXAMINER STOGNER: You may be excused at this
19 time.

20 Just for timing sake, trying to eat lunch around
21 here around 12 o'clock is always horrendous. I propose
22 that we go on at least till 12:30 or 12:45 before we break
23 for lunch, but it is my intent to break for lunch.

24 (Off the record)

25 MR. CARR: At this time we would call Doug

1 Hurlbut.

2 EXAMINER STOGNER: Mr. Carr, will you be
3 referring to any of the previous exhibits with this
4 witness?

5 MR. CARR: I don't believe so.

6 EXAMINER STOGNER: You may proceed, Mr. Carr.

7 DOUGLAS W. HURLBUT,

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

10 DIRECT EXAMINATION

11 BY MR. CARR:

12 Q. Would you state your name for the record?

13 A. Douglas W. Hurlbut.

14 Q. Mr. Hurlbut, where do you reside?

15 A. In Midland, Texas.

16 Q. By whom are you employed?

17 A. Well, I'm self-employed, but I'm contract with
18 OXY.

19 Q. Have you previously testified before this
20 Division?

21 A. Yes, I have.

22 Q. At the time of that testimony, were your
23 credentials as an expert in petroleum land matters accepted
24 and made a matter of record?

25 A. Yes, they were.

1 Q. Are you familiar with the Application filed in
2 this matter on behalf of OXY?

3 A. Yes, I am.

4 Q. Are you familiar with the status of the lands and
5 the area which is the subject of this case?

6 A. Yes, I am.

7 MR. CARR: Are the witness's qualifications
8 acceptable?

9 EXAMINER STOGNER: Any objection?

10 MR. BRUCE: No objection.

11 EXAMINER STOGNER: So qualified.

12 Q. (By Mr. Carr) Mr. Hurlbut, let's go to OXY
13 Exhibit Number 10, the timeline, and I would ask you to
14 first explain to us what you did when you determined you
15 needed to develop this acreage.

16 A. Well, when I first learned I needed to develop
17 this acreage, I proceeded to send out my joint operating
18 agreement to the party who I thought was the owner at the
19 time, with my AFE and our proposal letter.

20 Q. And that was the January 15th letter that went to
21 Tom Brown, Inc., Cactus and Saguaro; is that right?

22 A. That's correct.

23 Q. Prior to that time, had you arranged to have the
24 location staked?

25 A. Yes, we did.

1 Q. And before you sent the letter to Tom Brown,
2 Saguaro and Cactus, did you order a search be made of the
3 records to determine who the owners were?

4 A. Yes, I did.

5 Q. And who did you contact?

6 A. I contacted a guy by the name of Don Turman.

7 Q. And Mr. Turman advised you what?

8 A. He advised me that it appeared that the owner was
9 Tom Brown.

10 Q. Now, when you go forward with the proposed
11 development of a spacing unit, do you rely on a record
12 search?

13 A. In some cases, yes, we do.

14 Q. In this case did you rely on the record search or
15 go beyond that?

16 A. I relied upon the record search.

17 Q. At the same time you were doing that, did you
18 also arrange to have a title opinion prepared?

19 A. I was in the process of trying to obtain the data
20 so I could get an opinion put together.

21 Q. When did you order the title opinion?

22 A. That was on January 21st, from Bill Burford at
23 the Hinkle firm.

24 Q. So at the time that you sent the offer out, you
25 sent it to people that had been identified in the title

1 search, and then you had ordered a title opinion; is
2 that --

3 A. Well, yeah, that's correct.

4 Q. On February the 10th it shows that OXY filed its
5 compulsory pooling Application; is that correct?

6 A. Correct.

7 Q. When we filed that Application, had you received
8 the title opinion?

9 A. No, I had not.

10 Q. Why did you proceed at that time? Why did OXY
11 proceed with the compulsory pooling Application?

12 A. Well, because we had heard that our permit had
13 been denied and that Tom Brown's had been okayed to drill,
14 and we were wanting to make a statement, basically.

15 Q. Were you concerned that the well would be
16 drilled?

17 A. Yes, we were.

18 Q. Did you send notice of your compulsory pooling
19 Application to Tom Brown, Inc.?

20 A. Yes, we did.

21 Q. And when was that sent?

22 A. That was sent on February 12th.

23 Q. So on the 15th of January you had sent a well
24 proposal with an AFE and a JOA; is that correct?

25 A. Correct.

1 Q. You revised the AFE and sent a revised AFE on
2 January the 20th?

3 A. Right.

4 Q. You filed a compulsory pooling Application on
5 February the 10th?

6 A. Correct.

7 Q. You notified them of that Application on February
8 the 12th?

9 A. Right.

10 Q. When did Tom Brown first respond to you?

11 A. On March the 1st, which was on Monday of this
12 week.

13 Q. And what happened then?

14 A. They called us on the phone, or Brent had called
15 and said that he would like to discuss this matter with us.

16 Q. Did you meet with OXY?

17 A. Yes. David Evans, with OXY, and I called up
18 Brent and told him we'd be right down.

19 Q. And what did you learn in that meeting?

20 A. Well, what we learned in the meeting was, at that
21 point in time, that Nearburg may own an interest, but it
22 was news to me.

23 Q. The title search did not identify the Nearburg
24 interest to you, did they?

25 A. No, it did not.

1 Q. And you did not notify Nearburg?

2 A. No, I did not.

3 Q. You did not send them a well proposal?

4 A. No, I did not.

5 Q. You did not know their interest?

6 A. No, I did not.

7 Q. What did you do when you heard they might have an
8 interest?

9 A. Well, after we had the meeting with Tom Brown I
10 came back to the office and I immediately got on the phone
11 and called Duke Roush with Nearburg to ask him some
12 questions about their ownership.

13 Q. Did you talk with Mr. Shelton at Nearburg?

14 A. We ended up going over there, David Evans and I
15 ended up going over there. They asked us to come over, we
16 went over there, went in the conference room, and Mr.
17 Shelton then came in at that point and instructed us that
18 they had, you know, worked to deal with Tom Brown and that
19 that interest was owned by Tom Brown.

20 Q. At this point in time the pooling Application
21 before the Division is seeking an order pooling the
22 interest of what interest owner?

23 A. Tom Brown.

24 Q. Only Tom Brown?

25 A. Only Tom Brown.

1 Q. No one else has been notified?

2 A. Well, except for Saguaro and Cactus.

3 Q. Have they committed their interest --

4 A. Yes, they have.

5 Q. -- to the well?

6 So what percent of the working interest would be

7 pooled if your Application is granted?

8 A. Well, we've got 39 percent committed right now.

9 Q. And so you're pooling the remainder?

10 A. 61 percent, right.

11 Q. And is that what you believe is Tom Brown?

12 A. That's -- Yes.

13 Q. Either now or when agreements are signed?

14 A. Or -- Yeah.

15 Q. What is Exhibit Number 11?

16 A. That's my January 15th, 2004, proposal letter to
17 whom I believe to be the parties involved, sent to Cactus
18 Energy, Inc.; Saguaro Resources, Inc.; and Tom Brown, Inc.

19 Q. Does it also include the revised AFE that you
20 later submitted?

21 A. Yes, it does, it includes the revised AFE that I
22 sent later, and also the operating agreement, our standard
23 form of operating agreement to be utilized for drilling of
24 wells in Eddy County.

25 Q. Do the last -- the last documents in this

1 exhibit, the approved AFEs from Saguaro and Cactus?

2 A. I believe that's correct.

3 Q. In your opinion, have you done what you
4 reasonably could do to identify and obtain the interest
5 owners in this acreage within the time frame you had to
6 work?

7 A. Yes.

8 Q. Has OXY drilled other deep gas wells in the area?

9 A. Oh, yes, we have.

10 Q. If we'd look now at Exhibit Number 12, would you
11 identify that, please?

12 A. I believe that that is the AFE, which was the
13 revised AFE that I later sent out.

14 Q. Could you review what the costs are as set forth
15 in that AFE?

16 A. A producing well is \$1.448 million, and a dryhole
17 cost is \$872,000.

18 Q. Are these costs in line with the costs actually
19 incurred by OXY in drilling other --

20 A. Yes, they are.

21 Q. -- deep gas wells in southeast New Mexico?

22 A. Yes, they are.

23 Q. Does the joint operating agreement that is
24 included in Exhibit 11 contain the COPAS accounting
25 procedures for joint operations?

1 A. Yes, it does.

2 Q. Do those procedures provide for periodic
3 adjustments and overhead and administrative costs?

4 A. Yes, they do.

5 Q. Does OXY request that the overhead and
6 administrative costs set by any order that results from
7 this hearing be adjusted in accordance with these COPAS
8 procedures?

9 A. Yes, they do.

10 Q. Have you made an estimate of the overhead and
11 administrative costs to be incurred while drilling this
12 well and while producing it if it is successful?

13 A. Well, we've -- our COPAS \$5500, \$5500 for
14 producing well rates and -- I mean drilling well rates, and
15 \$550 a month producing well rates.

16 Q. How do these compare to the Ernst and Young
17 figures for wells at this depth?

18 A. It's in the mean average.

19 Q. Does OXY request that if these lands are pooled
20 and OXY is designated operator, that the 200-percent charge
21 for risk assumed by OXY and authorized by statute be
22 imposed on the Tom Brown interest if it does not elect to
23 -- if they do not elect to participate?

24 A. That's correct, yes.

25 Q. Is Exhibit Number 13 an affidavit confirming that

1 notice of today's hearing was provided to Tom Brown, Inc.,
2 in accordance with the rules of the Division?

3 A. Yes, it is.

4 Q. Does OXY USA Limited Partnership request that the
5 west half be pooled and it be designated operator of that
6 acreage and the Redemption Number 1 well?

7 A. Yes.

8 Q. Were Exhibits 10 through 13 prepared by you or
9 compiled by you and can you testify as to their accuracy?

10 A. Yes.

11 MR. CARR: At this time, Mr. Stogner, we'd move
12 the admission into evidence of OXY Exhibits 10 through 13.

13 MR. BRUCE: No objection, Mr. Examiner.

14 EXAMINER STOGNER: Exhibits 10 through 13 will be
15 admitted into evidence.

16 MR. CARR: And that concludes my direct
17 examination of Mr. Hurlbut.

18 EXAMINER STOGNER: Thank you, Mr. Carr.

19 Mr. Bruce, your witness.

20 CROSS-EXAMINATION

21 BY MR. BRUCE:

22 Q. Just a few questions. You mentioned the other
23 two partners in your well, Cactus and Saguaro.

24 A. Yes.

25 Q. Do they own any other interest -- Is their

1 ownership under the same acreage as OXY's acreage?

2 A. Yes, it is.

3 Q. They don't own any other interests in Section 15?

4 A. Not that I'm aware of.

5 Q. Okay. Looking at your Exhibit 10, Mr. Hurlbut --

6 A. Which exhibit?

7 Q. Exhibit 10, the timeline. -- you sent the
8 proposal on the same day you ordered a record search from
9 Mr. Turman?

10 A. Yes, I did. What I did, I contacted him early in
11 the morning, and he went down and -- he was available and
12 he went down to Caprock Title and performed that record
13 search, came back up and advised me at that point, and I
14 was able to get that OA -- I was working on the OA and all
15 that stuff, and I was able to finalize that and get it in
16 the mail on the same day.

17 Q. And again, who did you find out -- when did you
18 find out there were other interest owners, other than Tom
19 Brown?

20 A. On March the 1st, when I talked to Brent
21 Robertson.

22 Q. From Tom Brown?

23 A. Yes, that's correct.

24 Q. Now, after your proposal letter was sent, did you
25 ever call Tom Brown?

1 A. Not that I remember, I don't believe so.

2 Q. Did --

3 A. I don't believe -- I didn't -- I don't remember
4 talking to Tom Brown -- I never called and talked to Tom
5 Brown until they called me on that, on March the --

6 Q. March 1st?

7 A. -- 1st. I believe that's correct, yes.

8 Q. Okay.

9 A. I don't know, I make a lot of phone calls and
10 talk to a lot of people to get a lot of wells drilled, but
11 I think that's correct. I don't remember ever talking to
12 them. Because the only other time I had met Brent was, we
13 had lunch together several months ago.

14 MR. BRUCE: That's all I have, Mr. Examiner.

15 EXAMINER STOGNER: Any redirect?

16 MR. CARR: No redirect.

17 EXAMINATION

18 BY MR. STOGNER:

19 Q. I'd like for you, Mr. Hurlbut, to go over the
20 royalty here. I want to make sure I have the royalty
21 interest --

22 A. Okay.

23 Q. -- since that's a part of my endeavor here, is to
24 make sure that the royalty interests are protected.

25 A. Okay.

1 Q. Are you familiar with that Exhibit Number 2? Did
2 you help the earlier --

3 A. Yes.

4 Q. Okay, because this is more of a land -- I'm going
5 to refer to Exhibit Number 2 because it's nice and
6 colorful, and perhaps you can help me here.

7 A. Well, I actually put that together.

8 Q. Okay, let's look at the yellow OXY acreage.

9 A. 125.5 acres.

10 Q. And is that one lease or two leases?

11 A. Well, there's actually two leases in there.

12 Q. Two leases.

13 A. A party owns 100 percent of the east half,
14 northwest, I think it is -- owns 50 percent of the east
15 half, northwest, and 100 percent of the remaining acreage.
16 And then the other party owns the other undivided half of
17 the east half, northwest.

18 Q. Okay. I'm just looking at that yellow acreage
19 here.

20 A. Okay, right.

21 Q. Okay. Who owns -- Who is the royalty interest
22 owner under the east half of the northwest quarter?

23 A. The royalty owner? I don't have a clue. Well,
24 all I know is, based upon my map there is a 160-acre lease
25 in the northeast quarter that's a Bindel, B-i-n-d-e-l, and

1 the southeast quarter is the Forni lease, I believe. But I
2 don't have any -- You know, I don't have a title opinion to
3 tell me that.

4 Q. Okay. Well, I'm going to refer, then, to -- oh,
5 what page is that? On your Exhibit Number 11, the model
6 form operating agreement --

7 A. Uh-huh.

8 Q. -- and about the middle of it -- Exhibit A,
9 subpart 4, Oil and Gas Lease Subject to this Agreement.

10 A. Yes.

11 Q. Okay, will this tell me who are the royalty
12 owners? I'm concerned about the royalty owners --

13 A. I know that you -- I know that you are. To me,
14 this is going to tell me who the lessors of the -- you
15 know, who has the right to execute an oil and gas lease.
16 As far as who the royalty owners are, exactly, I'm not
17 sure. You know, I --

18 Q. When would that be determined? Because you'd
19 have to pay if there's a west-half dedication, and --

20 A. Well, at the time that we drill a well and we
21 make a well there, our normal procedure is at that point
22 and that time to -- or title opinion --

23 Q. Okay.

24 A. -- rendered by the attorney usually who's done
25 our drilling opinions, and that ascertains the exact

1 ownership of the parties in and to all the horizons.

2 Q. But you wouldn't know until that time?

3 A. No, I wouldn't. I mean, it could be that those
4 people who are listed as the lessors on those leases, they
5 could be the -- you know, they could be the royalty owners.
6 I'm sure that they are to some degree, I just know the
7 breakdown of that.

8 Q. But there is no unleased royalty interest out
9 there in the west half, is there?

10 A. Not that I'm aware of, no.

11 Q. But you're --

12 A. Everything is leased. I mean, we weren't trying
13 to force pool any mineral owners. It's not a -- You know,
14 I think it's all leased.

15 Q. Now, did you have any -- I'm referring to Exhibit
16 Number 10. Were you involved in the staking of the well on
17 January 13th?

18 A. I was not involved in the actual staking of the
19 well, no, I was not.

20 Q. Okay, so --

21 A. We actually have a regulatory department that
22 handles that.

23 Q. When were you notified by OXY to work on this
24 project?

25 A. I'm not sure of the exact date.

1 Q. Was it before the staking or after the staking?

2 A. It was probably before the staking to start
3 working on it. I've kind of known -- I've known about it
4 for some time, there was a possibility we were going to
5 drill a well, just kind of in a preliminary stage, waiting
6 to -- information to be developed.

7 EXAMINER STOGNER: No other questions of this
8 witness at this time.

9 Any others?

10 MR. BRUCE: One question.

11 FURTHER EXAMINATION

12 BY MR. BRUCE:

13 Q. Did you acquire your interest from Cactus Energy?

14 A. What, the -- Yes, we did by an assignment, but we
15 really have worked a deal with Cactus long ago, back when
16 -- we basically acquired the leases, we paid for the
17 leases. We have an arrangement with them.

18 Q. Okay, that's fine. I'm just looking at -- When
19 was that, though?

20 A. Back in 2001, we bought the leases.

21 MR. BRUCE: That's all I have, Mr. Examiner.

22 EXAMINER STOGNER: Okay, any other questions?

23 MR. CARR: No questions.

24 EXAMINER STOGNER: You may be excused.

25 Mr. Carr?

1 MR. CARR: At this time we call Mr. Foppiano.

2 EXAMINER STOGNER: You may continue.

3 RICHARD E. FOPPIANO,

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

6 DIRECT EXAMINATION

7 BY MR. CARR:

8 Q. State your name for the record, please.

9 A. My name is Richard E. Foppiano.

10 Q. Where do you reside?

11 A. Houston, Texas.

12 Q. By whom are you employed?

13 A. I'm employed by OXY.

14 Q. And what is your position with OXY?

15 A. My position is regulatory team leader.

16 Q. Have you previously testified before this
17 Division?

18 A. Yes, I have.

19 Q. At the time of that testimony have your
20 credentials been accepted both as an expert in petroleum
21 engineering and in regulatory matters?

22 A. Yes, they have.

23 Q. Are you familiar with the Application filed in
24 this case on behalf of OXY?

25 A. Yes, I am.

1 Q. Are you familiar with the status of recent
2 filings made by OXY and Tom Brown concerning the
3 development of their oil and gas interests in Section 15 --

4 A. Yes, I am.

5 Q. -- the subject of this Application?

6 A. Yes, I am.

7 MR. CARR: Are the witness's qualifications
8 acceptable?

9 MR. BRUCE: No objection.

10 EXAMINER STOGNER: So qualified.

11 Q. (By Mr. Carr) Mr. Foppiano, have you prepared
12 exhibits for presentation today?

13 A. I have.

14 Q. And do these exhibits go to the portion of the
15 case in which OXY is seeking rescission of the Division's
16 approval of Tom Brown's APD and the -- also you're seeking
17 a re-approval of OXY's APD?

18 A. Yes, they do.

19 Q. Let's go to what's been marked OXY Exhibit Number
20 15. Would you identify -- I'm sorry, 14. Would you
21 identify that, please?

22 A. Exhibit Number 14 is a copy of the C-101 and the
23 C-102 that was based on the filing that we made for the OXY
24 Redemption Number 1, and I just want to call the Examiner's
25 attention to the filing date for the Redemption Number 1

1 APD, was, as you can see in the lower left, dated 1-23-04.
2 And this particular copy actually evidences that our APD
3 was approved by the Division, actually the District Office,
4 on the 28th of 2004 [sic], and you can see it highlighted
5 there under approval date.

6 And flipping the page over to the C-102, you can
7 see that the C-102 was certified by the surveyor on the
8 19th of January, 2004, and our location was staked on the
9 13th of January, 2004. And then of course we certified it
10 on the 23rd of January, 2004.

11 Q. It shows it was received by the OCD on the 26th?

12 A. Correct.

13 Q. And it was approved by the OCD on the 28th?

14 A. That's correct.

15 Q. The Application you filed was complete and
16 accurate?

17 A. That's correct.

18 Q. Let's go to what has been marked as OXY Exhibit

19 15. What is this?

20 A. OXY Exhibit 15 is a copy of the approval
21 documents obtained from the OCD's website on the Tom Brown
22 40 Number 2, and page 1 is the document that is obtained
23 showing the C-101 information off the website. And as you
24 can see, I've highlighted the Tom Brown, Inc., Forni Number
25 2 well. This is the APD for that well.

1 Flipping the page to the next page, you can see
2 that it was approved by the Division on the 30th of
3 January, 2004.

4 And then turning the page once more to the C-102,
5 which I think is going to get to the heart of the matter
6 real quickly here, the C-102 that was filed online is, as I
7 understand it, supposed to be a representation of what the
8 C-102 that is filled out by the surveyor. And in this
9 particular case you'll note that it was certified by the
10 operator, electronically signed by Brian Franks, which I
11 presume to be a representative of Tom Brown, and it's dated
12 1-21-2004. And then they represented that the surveyor
13 certified it and surveyed it, and you can see that
14 information there, and they show that it was surveyed for
15 Tom Brown on the 13th of January, 2004.

16 Now, if you'll flip back to the yellow tab in
17 this package, which is actually a C-102 that is submitted
18 with the H₂S plan, you'll see the C-102 that was provided
19 to Tom Brown by John West Surveying Company, and I've
20 highlighted on that the actual survey certification
21 information that the surveyor did actually certify to. And
22 you'll note that the surveyor said that the location was
23 certified -- or the location was surveyed on the 21st of
24 January, not the 13th, which coincidentally was the date
25 that we staked the location. And then you'll note that the

1 surveyor didn't certify it until the 22nd of January, which
2 is one day after Tom Brown filed their APD.

3 And that's the crux of the issue that we believe
4 provides justification to argue that their APD package,
5 when it was filed, was improperly prepared and actually
6 prepared in violation of the rules, and so to the extent
7 there is a race to the District Office to get an APD, and
8 our APD was denied because theirs was filed ahead of time,
9 we think that it should be an APD that is properly prepared
10 and filed, and not one that is just filed based on
11 inaccurate information.

12 Q. Tom Brown's APD was approved because it was the
13 first one filed?

14 A. That is correct.

15 Q. And when you look at this, there are errors in
16 what was filed?

17 A. Errors and important inaccuracies about -- under
18 the certification, yes.

19 Q. And if this application had been filed after the
20 proper certifications and plats and surveys had been
21 obtained, there would be no reason to pull down the OXY
22 APD?

23 A. If they had been able to properly file an APD, it
24 would have depended on when they got it filed and, based on
25 when ours was filed, whether or not they won the race or

1 not. But clearly they were ahead of us because they
2 improperly filed an APD.

3 Q. You were kicked out because of the date it was
4 filed, not because of what they'd filed?

5 A. Correct.

6 Q. Let's go to Exhibit Number 16. What is this?

7 A. Exhibit Number 16 is the communication that we
8 received from the District Office, advising us that our APD
9 is being returned as denied, and the reason that is given
10 there is because they had determined that Tom Brown had
11 submitted an APD prior to our submittal. And that was the
12 APD package that we just looked at, that we believe is
13 faulty.

14 Q. And page 2 of this exhibit?

15 A. Yes, page 2 of the exhibit actually shows the APD
16 that was one of the prior exhibits that I showed, with the
17 API number blocked out and the approvals blocked out,
18 indicating that it -- what once was approved is no longer
19 approved.

20 Q. Let's go to Exhibit 17. What is Exhibit 17?

21 A. Exhibit 17 is -- just shows Rule 1102.B, which we
22 think has an impact on what should be filed here. And we
23 believe the intent of these electronic filings, paper
24 filings, whatever you make, is that the representations on
25 the C-101 and the C-102 should be the same and that they

1 should be based on the surveyor's information that is
2 provided to the operator.

3 And in fact, in a reading of this Rule, that's
4 exactly what we believe it says. The first part of it
5 talks about the C-101. Rule 1101.B says that it shall be
6 accompanied by a Form C-102. And then Rule 1102.B actually
7 speaks to how the C-102 should be completed.

8 And I'll read it. It says, "All information
9 required on the C-102 shall be filled out and certified by
10 the operator of the well except the well location on the
11 plat." And it says, "This is to be plotted from the outer
12 boundaries of the section and certified by a professional
13 surveyor, registered in the State of New Mexico, or
14 surveyor approved by the Division."

15 And we contend that the C-102 that Tom Brown
16 filed, they did not have a C-102 provided to them by a
17 surveyor as the information shows, when they filed their
18 APD, which led to them putting inaccurate information on
19 the certification. And so we think the OCD should rescind
20 the approval of Tom Brown's APD and approve OXY's APD as
21 properly filed.

22 Q. Mr. Foppiano, if the approval of an APD precludes
23 other operators in the spacing unit from developing their
24 acreage for as much as a year, is it your testimony that
25 before an APD is approved like that, the APD must be

1 complete and correct?

2 A. That's our testimony. If the race to the
3 District Office with an APD is so important as what we see
4 here, because our development plans were shut down by this,
5 then we believe it ought to be based on one that is
6 properly filed and certified.

7 Q. Were Exhibits 14 through 17 compiled by you from
8 company and OCD records and rules?

9 A. And oil well records, information, yes.

10 MR. CARR: At this time, Mr. Stogner, we move the
11 admission into evidence of OXY Exhibits 14 through 17.

12 EXAMINER STOGNER: Any objections?

13 MR. BRUCE: I have no objection.

14 EXAMINER STOGNER: 14 through 17 will be admitted
15 into evidence at this time.

16 MR. CARR: And that concludes my direct
17 examination of Mr. Foppiano.

18 EXAMINER STOGNER: Thank you, Mr. Carr.

19 Mr. Bruce, your witness.

20 CROSS-EXAMINATION

21 BY MR. BRUCE:

22 Q. Mr. Foppiano, again, OXY's APD was dated January
23 23rd of this year?

24 A. Correct.

25 Q. And it was received by the OCD on January 26th?

1 A. That is correct.

2 Q. So even looking at your tabbed page of Tom
3 Brown's survey, they had gotten that January 22nd, they
4 still could have filed before OXY, could they have not?

5 A. Well, actually at the top of the page I believe
6 it shows when they did probably receive it, they got it by
7 fax, and it was the next day on the 23rd, so...

8 Q. They still could have filed before the 26th?

9 A. Could have, but didn't.

10 Q. They could have, and everything would have been
11 fine according to you?

12 A. If they did, but they didn't. They also, I might
13 point out, did not attempt to correct the C-102 that they
14 had filed, once they had this information.

15 Q. You don't dispute that the site was surveyed, was
16 it? Do you?

17 A. We surveyed it.

18 Q. You don't dispute that it was surveyed?

19 A. (No response)

20 Q. Looking at your Exhibit 17, Mr. Foppiano --

21 A. Yes.

22 Q. -- look at Rule 1102.A. I'd ask you to read that
23 just to yourself, and then I'll ask you some questions.

24 A. Okay.

25 Q. If I can summarize, it says the C-102 is a dual-

1 purpose form. The form is used to show the exact location
2 of the well. Do both your and Tom Brown's C-102 show an
3 accurate location?

4 A. I believe ours does.

5 Q. You don't have any idea about Tom Brown's?

6 A. I've not investigated as to where Tom Brown's
7 stake is in the ground, versus what the survey plat says.

8 Q. And then it says it's also used to show the
9 ownership and status of each lease. I noticed -- In my
10 review of C-102s lately, I've noticed that most people
11 don't do that. Does OXY show that?

12 A. Probably not.

13 Q. Okay, so yours wouldn't be proper either?

14 A. The information that is shown on there is true
15 and correct, and to the extent that that information is not
16 on there --

17 Q. It doesn't show ownership in the status of each
18 lease contained within the dedicated acreage on OXY's
19 C-102, does it?

20 A. That is correct, it doesn't show that. Neither
21 does Tom Brown's.

22 Q. So OXY's C-102 is not fully filled out?

23 A. That's correct, according to Rule 1102.A it does
24 not contain all the information that it says -- Rule 1102.A
25 shows that it should contain.

1 Q. Okay.

2 A. But I might point out it was approved by the
3 Division. And if that information was required at the
4 District Office, and to the extent it was not shown, it was
5 approved.

6 Q. Okay, and so was Tom Brown's --

7 A. Tom Brown's --

8 Q. -- approved by the District Office?

9 A. -- based on inaccurate and misrepresentations of
10 when it was surveyed. There's a big difference between
11 data not being shown and data being misrepresented on the
12 form.

13 Q. Is a week's time frame material to you, Mr. --

14 A. In this case, several days were material to us.

15 Q. And they still could have filed it before OXY,
16 corrected and filed it?

17 A. Could have.

18 MR. BRUCE: That's all I have, Mr. Examiner.

19 EXAMINER STOGNER: Any redirect?

20 MR. CARR: No redirect.

21 EXAMINER STOGNER: Questions of any other
22 attorneys in the room of this witness?

23 EXAMINATION

24 BY EXAMINER STOGNER:

25 Q. Mr. Foppiano, looking at page 2 of Exhibit Number

1 14 and the --

2 A. Exhibit Number 14?

3 Q. Yeah, your Exhibit 14.

4 A. Oh, I'm sorry, okay.

5 Q. Page 2, this is the C-102.

6 A. Yes, sir.

7 Q. And the last block of information to be either
8 numerical or letters, right down there, "Bottom Hole
9 Location"?

10 A. Yes, sir.

11 Q. And then down below that you have dedicated
12 acreage, 320.

13 A. Yes, sir.

14 Q. "Joint or Infill", and the letter N shows up.
15 What does that mean?

16 A. I do not know.

17 Q. Okay. Look on the left-hand side of the
18 document. You have the API number, 30-015, right?

19 A. Yes, sir.

20 Q. And then you go down to the OGRID number, see
21 that right below it?

22 A. Yes, sir.

23 Q. And then you go down to the unit letter, M, as in
24 Michael.

25 A. Yes, sir.

1 Q. And then go down to the next -- the block after
2 that, or the second block after that, "Dedicated Acres",
3 320?

4 A. Yes, sir.

5 Q. And then immediately to the right there it says
6 "Joint or Infill"?

7 A. Yes, sir.

8 Q. And there's a letter N. What does that denote?

9 A. That was the answer I gave you before, was that
10 -- and maybe I misinterpreted your first question, but I do
11 not know right now. I --

12 Q. Oh, I thought you said you didn't see it, I'm
13 sorry.

14 A. Oh, no, I'm sorry. Sorry.

15 Q. Okay.

16 A. No, I just do not know the answer to your
17 question. You have me curious. I'll go find out.

18 Q. Okay, in referring to Exhibit Number 15, now,
19 this is a fairly large document. Let me get straight on
20 the procedures here, as you understand them.

21 A. Yes, sir.

22 Q. The first two pages are the electronically filed
23 APD and C-102; is that correct?

24 A. Yes, sir, as I understand it, this entire package
25 is what would be obtained if you logged onto the OCD online

1 and went to the Tom Brown Forni Number 2 APD package
2 approval, and you can print the whole thing, H₂S plan, the
3 whole nine yards.

4 Q. Okay, that's what I was getting at. Now, the
5 first four pages -- I'm sorry, the -- the first four pages
6 look like what would be filed electronically, but the
7 remaining of the document looks like it's a Xerox copy of a
8 contingency plan.

9 A. Yes, sir.

10 Q. Now when would this actually be filed with the
11 District Office?

12 A. In our case, we file the H₂S contingency plan
13 when we determine it needs to be filed. We file it with
14 the entire package of C-101 and C-102. So our submittal
15 contained the H₂S plan with the C-101 and C-102.

16 As we understand this, this H₂S plan was filed
17 subsequent to Tom Brown's filing of their C-101 and C-102
18 on line. This was sent in later on. And as you can see,
19 it's stamped received January 29th.

20 Q. So that would lead you to believe that that was
21 mailed?

22 A. Yes, sir.

23 Q. And the C-102, which you have a yellow Stickee
24 denoting that --

25 A. Yes, sir.

1 Q. -- it looks like the barest minimum of
2 information. It's not the exact information that was filed
3 on the electronical form is put on here; is that what you
4 are looking at? Like the API number, the pool code, pool
5 name? It's just the property name and the operator; is
6 that correct?

7 A. Yes, sir.

8 Q. Is that what you're saying?

9 A. I view this to be just a copy of what John West
10 Surveying sent Tom Brown.

11 Q. Okay, the information said to them that the
12 surveyor would be required to provide --

13 A. Correct, sir.

14 Q. -- and then they would then -- "they" being the
15 operator, would then put in the rest of the information?

16 A. Yes, sir. And my understanding is, if this would
17 have been filed with a paper APD package then the operator
18 would have filled the rest of the information out and
19 certified it under the operator certification, just like we
20 did.

21 Q. Okay. Now, in referring to your Exhibit Number
22 16, I just -- I have a Xerox copy of your APD. That's
23 OXY's APD --

24 A. Yes, sir.

25 Q. -- and you show that to be blacked out. Now,

1 where is the original paper form that was actually filed
2 and returned to OXY? Do you have that?

3 A. I have that in my files of what we actually sent
4 in that has no OCD markings on that. I just didn't feel
5 that it was -- I needed it as an exhibit, but we'd be happy
6 to supply it.

7 Q. Well, what I'm getting at, was it actually marked
8 out or highlighted?

9 A. In terms of what we filed?

10 Q. Yes. Because you've denoted on your testimony
11 that if I refer back to the C-101, that the Division
12 Office, District Office, blacked out certain information.

13 A. Yes, sir.

14 Q. Was that actually blacked out, or was it
15 highlighted, and which -- whenever it was Xeroxed, it comes
16 out as being a black mark?

17 A. I believe it was blacked out, Mr. Examiner. This
18 is an exact copy of what was returned to us by the District
19 Office, with the cover letter and our APD attached. And
20 speculating, but I gather the reason why they've blocked
21 the APD number was because they didn't want -- they wanted
22 to show that there was no APD -- I'm sorry, API number
23 assigned to this well anymore.

24 Q. What happens when I go to the website or any
25 other -- yeah, the website, the OCD website, and put that

1 old number in there? What do you get?

2 A. I do not know.

3 Q. Okay. Now, your Exhibit Number 17 is a copy of
4 the OCD Rules as they appear on the website, or where is
5 this from?

6 A. I believe we pulled this down from the website.

7 Q. Okay. Now, help me understand some stuff here,
8 because I -- you're familiar with the filing more so than I
9 am, because I'm obligated by law not to be drilling wells
10 in the State of New Mexico. On an electronic format, is
11 there certain instructions about how to fill out and what
12 is to be filled out, follow what you show here, in your
13 experience?

14 A. Mr. Examiner, I've actually gone and tried to
15 find, to see if there were specific instructions related to
16 how to fill the C-102 out that were even in the same vein
17 as Rule 1102.B, and I could not find any. There are
18 instructions about how to navigate through the package and
19 everything, navigate through the website, but none that
20 says this is how you fill out a C-102 online, relating to
21 how -- that the information needs to be exactly what is on
22 the surveyor's C-102.

23 Q. Okay. Now, they're dedicating the south half.
24 Is there any question on that?

25 A. None, that's what their filing shows.

1 Q. Okay, and you are showing the west-half
2 dedication?

3 A. Our Redemption well, yes, sir, is a west-half
4 standup spacing unit.

5 Q. Okay. Now, that is yours that you filed -- When
6 I say "yours", OXY's, I should say, filed. That was just
7 for one zone on both the C-101 and C-102; is that correct?

8 A. Yes, sir.

9 Q. Okay, now -- But as far as the compulsory
10 pooling, what I have to deal with today --

11 A. Yes, sir.

12 Q. -- is for everything spaced on 320; is this
13 correct?

14 A. That is correct, sir.

15 Q. As far as all the zone that are spaced on 320
16 that you're applying -- that OXY is applying for today, is
17 that acreage in any of those formations, any of the west
18 half, currently dedicated to any other well in Section 15?
19 Is Section 15 -- The west half of Section 15, is it open,
20 in your opinion, for any of the deep gas spacing?

21 A. Yes, sir, that is my belief.

22 Q. So there's no argument or no problem with
23 overlapping of acreage or anything such as that existing
24 production?

25 A. With existing production, no, sir. Our

1 development plan contemplates harmony with the east-half
2 spacing units established through the Forni Number 1.

3 EXAMINER STOGNER: Okay. Any other questions of
4 this witness?

5 MR. CARR: No questions.

6 EXAMINER STOGNER: You may be excused.

7 Mr. Bruce, what's your plans at this point?

8 MR. BRUCE: I've got -- My first witness is a
9 landman. We could -- You mentioned 12:45. We could put my
10 landman on.

11 EXAMINER STOGNER: Let's go ahead and put your
12 landman on, and then we will evaluate the time after that.

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

16 EXAMINATION

17 BY MR. BRUCE:

18 Q. Would you please state your name and city of
19 residence for the record?

20 A. Brent Robertson, Midland, Texas.

21 Q. Who do you work for and in what capacity?

22 A. I work for Tom Brown, Inc., as a senior petroleum
23 landman.

24 Q. Have you previously testified before the
25 Division?

1 A. No, sir, I have not.

2 Q. Would you summarize your educational and
3 employment background for the Examiner?

4 A. I graduated in 1982 from Oklahoma State
5 University with a BS in business, major in marketing. I
6 worked for 21 years in the oil and gas business as a
7 landman for several different companies, most recently with
8 Matador Petroleum and Tom Brown, Inc., since 2001.

9 Q. Tom Brown, Inc., acquired Matador?

10 A. That would be correct.

11 Q. Okay. Does your area of responsibility at Tom
12 Brown include this part of southeast New Mexico?

13 A. Yes, sir, it does.

14 Q. And are you familiar with the land matters
15 involved in this matter?

16 A. Yes, I am.

17 MR. BRUCE: Mr. Examiner, I'd tender Mr.
18 Robertson as an expert petroleum landman.

19 MR. CARR: No objection.

20 EXAMINER STOGNER: Mr. Robertson is so qualified.

21 Q. (By Mr. Bruce) Now before we get to your first
22 exhibit, Mr. Robertson, first off, OXY had been looking at
23 drilling a well here, or been in discussions about drilling
24 a well for some time before January, 2004, had it not?

25 A. I'm not sure about OXY. I know Tom Brown --

1 Q. Excuse me.

2 A. -- has been.

3 (Laughter)

4 Q. Maybe I do need lunch, Mr. Examiner. But Tom
5 Brown had been looking for a number of months?

6 A. That's correct, yes.

7 Q. And under those scenarios, was a south-half unit
8 always contemplated?

9 A. We always contemplated a south-half unit for our
10 location.

11 Q. Okay. Let's move to your first exhibit, Exhibit
12 1. First off, what does this exhibit contain?

13 A. Well, this exhibit basically demonstrates that
14 Tom Brown, Inc., and actually Matador Petroleum, back in
15 July of 2003, had entered into discussions to create a
16 working interest unit consisting of the south half of
17 Section 15 and the north half of Section 22.

18 Q. Okay. Now, the chronology of this, it starts at
19 the bottom and works up; is that correct?

20 A. That's correct.

21 Q. Okay, so just to get it started, what was the
22 first contact out here, in the last page of this exhibit?

23 A. Yes, the first contact was back in July, on
24 specifically July 31st, 2003. I believe Ken Gray actually
25 called me before the letter was sent, so it would be

1 towards the end of July, 2003, when we began discussions
2 with Devon.

3 Right about that particular period in time was
4 the occurrence of the merger between Tom Brown and Matador
5 Petroleum. We discussed this issue with Devon for several
6 months. In the end, we elected not to form a working
7 interest unit. We were hung up on certain details of the
8 negotiations.

9 Devon then subsequently, in September, contacted
10 us for a farmout, an option farmout of our south half of
11 Section 15 acreage, which we declined to enter into. We
12 had been studying the area since that point in time. To
13 make a long story short, we were close to coming to an
14 agreement with Devon in the latter part of December, 2003,
15 early part of January, however we were again unable to
16 negotiate a favorable agreement between the parties and
17 cease negotiations.

18 Q. Okay. But during that time again, all of the
19 discussions involved the south half of Section 15?

20 A. That's correct.

21 Q. And you mentioned one thing, the merger with Tom
22 Brown. Approximately when was that?

23 A. That occurred -- I believe the closing date on
24 the merger was June the 27th of 2003.

25 Q. Did that entail a little disruption or slowdown

1 in work on this area because of the merger and putting the
2 two companies together?

3 A. Absolutely, people were being transferred,
4 relocated, let go, et cetera. So yes, there was some
5 disruption.

6 Q. Okay. Now the final -- the top page of this is
7 some internal e-mails dated January 9th. But by then had
8 it been decided to go ahead by Tom Brown and drill this
9 well?

10 A. That would be correct. We on January the 9th
11 placed this well on our drill schedule. The rig that we
12 are currently drilling a well in Section 5, just to the
13 north -- just to the northwest, it will be finished, TD of
14 the well, probably this weekend, and we had planned to move
15 that particular drilling rig to our location to drill the
16 Forni Number 2 well.

17 Q. What is Exhibit Number 2, Mr. Robertson?

18 A. Exhibit Number 2 is a photocopy of our internal
19 drilling schedule for a Morrow program. The Mead Number 5
20 well is the well we're currently drilling, and as you can
21 see, we have slotted the Forni Number 2 to be drilled
22 immediately following the Mead with that same drilling. I
23 believe -- it's hard to see, but it's Patterson Rig Number
24 76.

25 Q. And that shows the Forni Number 2, which is the

1 well we're here about today?

2 A. That's correct.

3 Q. When was this drilling schedule prepared?

4 A. This drilling schedule is a work in progress,
5 actually, but the actual preparation date of this
6 particular drill schedule would be January the 9th.

7 Q. So again, both your final e-mail and the drilling
8 schedule predate any proposal by OXY?

9 A. That's correct.

10 Q. So you weren't moving forward with this just to
11 spite OXY; you had your own internal plans?

12 A. Yes, that would be correct.

13 Q. Okay. Now, we're going to move on to your final
14 exhibit, Exhibit Number 3, but this area of Carlsbad, south
15 Carlsbad, it is a -- is it a fairly active area right now?

16 A. It's a very active area. Currently there's seven
17 drilling rigs, currently working in the Morrow or deep gas
18 play out in this area that's fairly close in to our
19 acreage. So it is a very active area.

20 Q. Okay. Now, why don't you just identify Exhibit 3
21 for the Examiner very briefly, and then we can go into some
22 of the wells out here?

23 A. Okay. This Exhibit 3 the existing acreage
24 dedications for Morrow, Atoka, Strawn and/or Wolfcamp
25 units. The Morrow units are depicted in the red outline,

1 and the Atoka, Strawn and/or Wolfcamp units are depicted in
2 the blue outline.

3 I will note also that the map depicts overlapping
4 Atoka, Strawn and Wolfcamp units with Morrow units. For
5 instance in Section 22, the west half of Section 22 is a
6 standup Wolfcamp unit, the south half of Section 22 is a
7 laydown Morrow unit, the north half of Section 22 is a
8 laydown Morrow unit, and there is overlap in the west half
9 of Section 22.

10 Q. Okay. So -- And also, looking at the Morrow,
11 there are both a number of standup units and a number of
12 laydown units?

13 A. That's correct, there's no established pattern,
14 laydown versus standup, in my opinion, on this.

15 Q. There's no fixed orientation?

16 A. There's no fixed orientation in this area.

17 Q. We're here today for Section 15, and you've put
18 on here some working interest ownership, but --

19 A. That would be correct. Also, I should point out,
20 the dark yellow acreage is a hundred percent Tom Brown,
21 Inc., acreage, with the exception of the southwest quarter
22 of 15 where our rights currently are limited to depths
23 below 10,710 feet.

24 Q. Okay. So as to depths below that, Tom Brown does
25 own 100 percent working interest in a south-half well unit?

1 A. That's correct.

2 Q. But Tom Brown also does own some leasehold up in
3 the northwest quarter; is that correct?

4 A. That's correct. It's approximately 34 1/2 acres,
5 I believe.

6 Q. Okay, so that would -- In the west half, Tom
7 Brown owns something like 60 percent of the well?

8 A. A little bit over 60 percent.

9 Q. And now, the pale yellow indicates Tom Brown
10 interest?

11 A. Yes, it indicates Tom Brown interest that we do
12 not control 100 percent, we don't own 100 percent of that
13 acreage.

14 Q. Okay.

15 A. And it varies from section to section.

16 Q. Okay. Let's -- Although they're not all sited on
17 here, let's mention a few of the wells, and I think
18 there'll be a later exhibit that will show some of these
19 well locations. But since this is a bigger scale map than
20 the map OXY presented, does Tom Brown have any other
21 existing or drilling wells on this plat? And if so,
22 identify them by section.

23 A. Okay. Yes, we do. We're currently drilling the
24 Mead Number 5 well, which is located in the east half of
25 Section 5.

1 Q. And that one is --

2 A. That's the well that our drilling rig that we
3 currently have slotted to drill our Forni Number 2 location
4 is working.

5 Q. Okay.

6 A. We have a well proposal in front of us submitted
7 by Marbob, and actually in Section 10, on the east half of
8 Section 10, it's a Morrow well proposal, to be drilled, I
9 believe, in the southeast quarter of Section 10. Marbob is
10 currently drilling their Milky Way Fee Number 2 well, I
11 believe, in Section 4 -- I think that's right -- which is a
12 Morrow test well as well.

13 Q. Okay. So Marbob's drilling up in Section 4, and
14 they've got a proposal for you in Section 10, which is
15 what, just to the north of the east half of Section 15?

16 A. That's correct.

17 Q. Okay. Does Tom Brown also have a well up in
18 Section 4 or 3?

19 A. Tom Brown has an interest in the wells drilled in
20 Section 4 and Section 3. That's depicted in the red-type
21 -- Matador had farmed out or delivered term assignments in
22 certain situations to Marbob. Basically the terms are, we
23 retain an override with the option to convert it to a
24 working interest after payout. Where we have the black
25 typed text, it indicates what our working interest is in

1 that particular unit.

2 Q. Okay. Tom Brown might not be the operator, but
3 it is involved in the drilling of these wells?

4 A. That's correct.

5 Q. So there are several wells out here that Tom
6 Brown has drilled or is involved in drilling or plans to
7 drill?

8 A. That's correct.

9 Q. Now, up in the next township to the north,
10 there's also Tom Brown acreage, and I believe Mr. Doty said
11 that OXY was drilling a well or would soon commence a well
12 up there. Is that on acreage in this plat, or is it
13 further north?

14 A. Actually, it is on acreage on this map. In
15 Section 32, which is the northern offset to Section 5, we
16 actually approached OXY for some kind of a participation or
17 farmout of that particular acreage. Tom Brown, Inc., does
18 not own any deep rights up in Section 32, or 33 or 34 for
19 that matter. But we have had a talk with OXY about the
20 possibility of obtaining an interest in Section 32. That's
21 the lunch that Mr. Hurlbut mentioned where he first met me.
22 It was actually about two weeks before we got the well
23 proposal for their west-half unit Redemption well.

24 Q. Okay.

25 A. So it was pretty quickly after the luncheon that

1 we got the well proposal.

2 Q. Okay. Now, in looking at drilling your well, did
3 Tom Brown have title work done on Section 15?

4 A. Yes, we did. We performed a title takeoff in
5 late December or early January, and the results of that
6 takeoff indicated that in Section 15 Tom Brown, Inc., owns
7 100 percent of the east half of Section 15. In the
8 southwest quarter and the southwest of the northwest
9 quarter of 15 we own from 10,710 feet and deeper, and the
10 people that owned from the surface to 10,710 on that
11 particular acreage were Nearburg and their internal
12 parties, along with a couple of other non-Nearburg-related
13 entities.

14 Q. Okay. But the Nearburg and other non-related
15 people who own -- what, they own Wolfcamp rights too, don't
16 they?

17 A. That's my understanding, that the Wolfcamp is
18 covered at 10,710 feet.

19 Q. But they did show up in your title report?

20 A. Yes, they did.

21 Q. Okay. Were Exhibits 1 through 3 prepared by you
22 or under your supervision or compiled from company business
23 records, Mr. Robertson?

24 A. Yes, they were.

25 Q. And in your opinion, is the denial of OXY's

1 Application in the interests of conservation and the
2 prevention of waste?

3 A. Yes, it is.

4 MR. BRUCE: Mr. Examiner, I'd move the admission
5 of OXY Exhibits 1 through 3.

6 THE WITNESS: Tom Brown exhibits.

7 MR. BRUCE: Tom Brown Exhibits 1 through 3.

8 EXAMINER STOGNER: Tom Brown Exhibits --

9 MR. BRUCE: Thank you, Mr. Examiner.

10 EXAMINER STOGNER: -- 1, 2 and 3 will be admitted
11 into evidence at this time.

12 Your witness.

13 MR. CARR: Thank you, Mr. Stogner.

14 CROSS-EXAMINATION

15 BY MR. CARR:

16 Q. Mr. Robertson, you're the landman with Tom Brown
17 who's responsible for the land issues related to the
18 development of Section 15; is that right?

19 A. Yes, sir.

20 Q. And if we look at your Exhibit 1, the purposes of
21 this exhibit is to show that Tom Brown has been looking at
22 and developing plans for a south-half unit for some period
23 of time; isn't that right?

24 A. That's correct.

25 Q. If we look at it, it goes all the way back to

1 July of last year, and it runs through January the 9th of
2 this year?

3 A. Correct.

4 Q. If I look at this, we have a number of proposals
5 from Devon, and it's fair to say that after you went back
6 and forth with Devon, you decided not to form a unit with
7 Devon, and not to do a deal with Devon; is that correct?

8 A. That's correct, we elected not to agree to the
9 terms that were on the table.

10 Q. The top e-mail is from Dave Thomas. Who is Mr.
11 Thomas?

12 A. Dave Thomas is our exploration manager for the
13 southern -- actually southern region of Tom Brown, Inc., in
14 the Midland office. He's also our corporate exploration
15 manager.

16 Q. He's the person who would make the call on
17 whether or not you're going to drill a well out here; is
18 that correct to say?

19 A. He's one of the persons that would make the call.

20 Q. If I look at the e-mails that you have, the top
21 e-mail here --

22 A. Uh-huh.

23 Q. -- and I guess the one at the top is the last
24 one, but the one in the middle of the page, if we get right
25 down the end of the text, it says, "I indicated...we would

1 likely not do this deal." That means not do a deal with
2 Devon, right?

3 A. That's correct.

4 Q. And then on the same day it's another e-mail from
5 Dave Thomas, and it reads, "Sounds as if we need to watch
6 them down and be prepared to build location if they have
7 positive results."

8 Is that the last internal document you have on
9 that?

10 A. I believe that's correct.

11 Q. And it was because of this decision that you
12 actually scheduled a rig to drill this well?

13 A. This communication, as well as a team meeting
14 with all of the team peers, yes.

15 Q. Putting it on this schedule is really how you
16 would get prepared to build the location and go; isn't that
17 right?

18 A. That's correct, sir.

19 Q. The message from Mr. Thomas says you need to
20 watch them and be ready to build, but it says if they have
21 positive results?

22 A. That's correct.

23 Q. Putting this well on a drilling schedule wouldn't
24 commit you to drill if, in fact, Devon drilled a dryhole
25 offsetting you to the south; isn't that right?

1 A. Not necessarily. If Devon did not have positive
2 results, that does not mean that we would preclude the
3 drilling of our well.

4 Q. Did you initiate any of these discussions with
5 Devon, or were they from Devon?

6 A. Mostly from Devon. I responded to them. We
7 bandied back and forth different proposals, but Devon did
8 initiate the initial discussions back in July.

9 Q. And so really, your initial discussions
10 concerning the development of the south half were initiated
11 by Devon in an offset well?

12 A. That's correct.

13 Q. And the last correspondence says that you're
14 prepared to drill a location if they have positive results;
15 isn't that it?

16 A. That's what the e-mail says, that's correct.

17 Q. And you're not committed to do it if they don't?

18 A. We have the flexibility to either drill the well
19 or not drill the well. However, I would state that the
20 drilling rig is currently contracted to drill this location
21 the first week of March.

22 Q. And if you don't drill it then, you'll have to
23 move it -- don't drill this one, you'll have to move it to
24 some other location, right?

25 A. Either that or release the rig or pay standby

1 charges, that's correct, sir.

2 Q. If I look at your Exhibit 3 -- and you've shown
3 some overlapping spacing units on this exhibit --

4 A. Uh-huh.

5 Q. -- you don't have a situation, however, where the
6 spacing units overlap in the same formation?

7 A. No, sir.

8 Q. And you would agree with me that if you drilled a
9 well that was successful in the Wolfcamp, in the southwest
10 of 15, that you couldn't have a Wolfcamp unit; that's
11 already gone; isn't that right?

12 A. We would not be able to establish a south-half
13 Wolfcamp unit.

14 Q. Now, do you know the status of the ownership in
15 the northwest quarter of Section 15?

16 A. Yes, according to my title opinion, yes.

17 Q. Okay. And in that area you don't own any
18 interest in the portion of the northwest quarter that is
19 not shaded yellow? That's Cactus, OXY and others?

20 A. That's correct.

21 Q. Do you know if they have different royalties up
22 there?

23 A. I believe there are different royalty owners,
24 that's correct.

25 Q. Royalty owners that don't share in any of the

1 other development in this section?

2 A. That would be correct.

3 Q. Okay. Now, if we look at the west half, the
4 lease that we've been talking about where you only have
5 rights below 10,710 feet --

6 A. Okay.

7 Q. -- that's all the southwest quarter, correct?

8 A. Yes, sir.

9 Q. And then it's, I guess, southwest of northwest.
10 It's the area shaded yellow on Exhibit 3?

11 A. Basically. There's a river that runs in through
12 there that's a 34.5-acre tract, but we can refer to it as
13 the southwest of the northwest quarter.

14 Q. You have been talking with Nearburg about
15 acquiring this interest, have you not?

16 A. When he showed up on our title takeoff in early
17 January, that's correct.

18 Q. And you've been talking with Mr. Shelton about
19 that?

20 A. Yes, sir.

21 Q. And you have really reached an agreement, have
22 you not, to acquire these?

23 A. In principle we've reached an agreement.

24 Q. And what you're doing is preparing a document?

25 A. That's correct.

1 Q. And when we say Nearburg, we mean Nearburg and
2 Branex and the Nearburg group?

3 A. Nearburg and their internal investors, yes.

4 Q. Now, you indicated -- And so that's the group
5 you're trying to acquire their interest?

6 A. Correct.

7 Q. Are there other interest owners, did you say, who
8 you are not talking to at this time?

9 A. There is two other interest owners. There's
10 Branex, and I forget the other one. And I have not spoken
11 to them.

12 Q. Branex is one of the non-Nearburg-group members?

13 A. That's my understanding.

14 Q. And one other?

15 A. And one other.

16 Q. Now, if you acquire the Nearburg interests, do
17 you have any time-frame that you set on that deal?

18 A. There is a time frame involved.

19 Q. And how soon do you have to close that?

20 A. Within basically 10 working days.

21 Q. And if you close that deal within 10 working
22 days, then you would have Wolfcamp rights?

23 A. Not necessarily. There are some options that
24 they could choose, but we ultimately would end up with a
25 portion -- at a minimum, a portion of their Wolfcamp

1 rights.

2 Q. So you would have some Wolfcamp rights, though --

3 A. That's correct.

4 Q. -- in the southwest if you close this deal within
5 10 days?

6 A. Yes, sir.

7 Q. And then you could drill a well in the Wolfcamp?
8 You could complete there if you found it?

9 A. I suppose we could.

10 Q. When we look at the spacing units in Section 15,
11 we show overlapping units?

12 A. That's correct.

13 Q. And what we have there is, we have your two
14 laydown Morrow units; is that right?

15 A. Yes, sir.

16 Q. And is your spacing in the north half at this
17 time confined to the Morrow?

18 A. Yes, sir.

19 Q. And so you're not even looking at developing the
20 Wolfcamp reserves up there?

21 A. I believe that's probably a question better
22 suited for our geologist.

23 Q. Okay, that's --

24 A. I don't know.

25 MR. CARR: That's all I have, thank you.

1 EXAMINER STOGNER: Any redirect?

2 MR. BRUCE: Just one question, I forgot to ask
3 you this.

4 REDIRECT EXAMINATION

5 BY MR. BRUCE:

6 Q. In Section 15, Mr. Robertson, you've previously
7 testified that in the east half Tom Brown was 100-percent
8 working interest owner?

9 A. Yes, sir, that's correct.

10 Q. Are the royalty owners in the northeast quarter
11 of Section 15 different than the royalty owners in the
12 southeast quarter of Section 15?

13 A. Yes, they are different.

14 MR. BRUCE: Okay, thank you.

15 EXAMINATION

16 BY EXAMINER STOGNER:

17 Q. Okay, Mr. Robertson, I'm going to now refer to
18 Exhibit Number 3, your Exhibit Number 3 -- that's the Tom
19 Brown Exhibit Number 3 -- and down in Section 22, are those
20 existing spacing units producing both the laydown Wolfcamp
21 and the standup Morrow in Section 22 as depicted?

22 A. Actually, they're standup Wolfcamps and laydown
23 Morrows.

24 Q. Okay, yeah, you're right. Okay, well, anyway --
25 Okay.

1 A. But as far as I know, they're producing.

2 Q. They are producing. Now, are those Tom Brown-
3 operated wells, or whose operations?

4 A. No, they're not Tom Brown-operated wells. Tom
5 Brown does not own any acreage in Section 22. I believe
6 the north half of 22, Mr. Examiner, is operated by Devon
7 Energy, and I believe the south half of Section 22 is
8 operated by Merit Energy.

9 Q. Okay. Why would one develop deep production,
10 deep gas production, with one layer being a standup and the
11 other layer being a laydown?

12 A. Typically, I believe that in New Mexico it's not
13 uncommon to have ownership that's severed as to different
14 depths, and my initial response would be that one party did
15 not own all depths. The ownership would be different
16 between horizons.

17 Q. So who drilled the Forni Number 1?

18 A. The Forni Number 1 was drilled by Unocal.

19 Q. Okay, so that was something that Matador and Tom
20 Brown inherited; is that correct?

21 A. That's correct.

22 Q. Now, it's not depicted in here, whenever I look
23 at the west half of Section 15, for an Atoka, Strawn and
24 Wolfcamp unit.

25 A. That's correct. The west half of 15 initially

1 was dedicated to the Nearburg Sueno well, which was the
2 well discussed by the OXY witnesses earlier. And I believe
3 the west half of 15 was the acreage dedicated to their
4 Sueno -- the Nearburg Sueno well, which is plugged.

5 Q. So would that be the proposed dedication for a
6 Wolfcamp completion in Tom Brown's proposed Forni Number 2?

7 A. That would be the only available spacing unit for
8 the Wolfcamp.

9 Q. Now, let's talk about the -- I'm referring now to
10 Exhibit Number 2. The Forni Number 3 is shown on your
11 exhibit here.

12 A. Yes.

13 Q. When would that well have been put on the
14 drilling schedule?

15 A. We put the Forni Number 3 on the drill schedule
16 subsequent to placing the Forni Number 2 well on the drill
17 schedule by a few days. I don't recall exactly how many
18 days that was.

19 Q. And has an APD been filed, or would that be under
20 your jurisdiction or part of your group, to file an APD?

21 A. No, sir, the land department at Tom Brown, Inc.,
22 does not file the APDs. However, I believe that it has
23 been filed, and I believe it has been approved.

24 Q. Okay. And as far as -- the land department would
25 be responsible for getting the interests to agree or

1 getting a communitization agreement together?

2 A. Yes, sir.

3 Q. Has that begun?

4 A. I believe it has.

5 Q. Okay, and where does that stand?

6 A. We have proposed the well to the various working
7 interest owners in the north half of 15, including OXY,
8 including Cactus, including Saguaro. The proposal went
9 out, I believe, mid-part of February, and we've sent them
10 an AFE -- a cost estimate to drill the well. We haven't
11 had any response, obviously, from OXY, et al., at this
12 point.

13 So it's been less than 30 days -- well, actually
14 -- yeah, it's been less than 30 days since they've received
15 our well proposal. That's the current status.

16 Q. So that would have been a proposed stand-alone
17 Morrow only?

18 A. We proposed it as a Morrow test, yes, sir.

19 Q. And the other zones were not mentioned, or a
20 proposed laydown north-half dedication to any of the other
21 deep zones were not covered in that agreement?

22 A. In the well proposal, no, sir.

23 Q. Or in the negotiations with the other interest
24 owners on how the section is to be developed?

25 A. We indicated that we would dedicate the north

1 half of Section 15 to our Morrow well proposal.

2 Q. But that was all that went?

3 A. Yes, sir.

4 Q. Is that normal with Tom Brown, is to look at one
5 zone at a time, whenever there is a multiple -- proposed
6 multiple -- or in an area that has multiple completions
7 possible?

8 A. Well, when we send our well proposals out, we
9 typically propose the well to the deepest objective that we
10 expect to encounter in the wellbore. It doesn't
11 necessarily preclude the idea that there may be other zones
12 besides the Morrow that would be prospective, but we
13 typically propose our wells to the deepest expected
14 objective interval.

15 Q. And then work from there as far as the well-
16 location placement and ownership negotiation?

17 A. Yes, sir.

18 Q. Isn't that a little reckless, maybe, perhaps, as
19 far as the well locations go?

20 A. I don't think it's necessarily reckless. What we
21 were planning for is success down in the south half of
22 Section 15.

23 Q. Where is the Forni Number 3 proposed to be
24 drilled?

25 A. It's proposed to be drilled in the northwest

1 quarter of Section 15.

2 Q. Do you have a footage on it?

3 A. I believe it's 660 from the west and 660 from the
4 southern unit boundary line. So it would be on the -- in
5 the southwest of the northwest quarter of 15.

6 Q. And who proposed that location? Would that come
7 out of the geology department?

8 A. Yes, sir.

9 Q. So that witness will be the one to testify why
10 that wellspot would be -- or at least could tell us why the
11 well was spotted there; is that correct?

12 MR. WOOD: Yes, sir.

13 Q. (By Examiner Stogner) Are you familiar with the
14 royalty interest out there in all of Section 15?

15 A. Fairly familiar, yes, sir.

16 Q. Okay, what's -- When I look at the northeast,
17 that appears to be one lease; is that your...

18 A. The northeast quarter and the -- is -- No, it's
19 not one lease, there's two separate leases.

20 Q. Two leases. Divided or undivided?

21 A. They are, I believe, divided,

22 Q. Divided, okay. How about the south half of
23 Section 15? One lease, two lease, multiple lease?

24 A. The south half of Section 15 involves one lease.

25 Q. One lease. And who is the royalty interest on

1 that lease?

2 A. The royalty interest owners on that south half
3 are the Forni family.

4 Q. The Forni family.

5 A. There's more than one of them, but --

6 Q. Okay.

7 A. -- all subject to the same lease.

8 Q. How about the two leases up in the northeast
9 quarter? Who would that be?

10 A. The northeast quarter of Section 15, I believe,
11 is the Ginanni lease, and the southeast of 15 is the Forni
12 lease. I'm sorry, I may not have answered --

13 Q. Okay, I'm looking at the northeast quarter.

14 A. Okay, the northeast quarter would be the Ginanni
15 family.

16 Q. The Ginanni family. And is that one lease or two
17 leases?

18 A. That's one lease.

19 Q. One lease, okay.

20 A. Yes, sir.

21 Q. Okay. Now, it gets a little weird over there in
22 the northwest quarter, doesn't it?

23 A. Yes, sir --

24 Q. Okay --

25 A. -- at's a little different

1 Q. -- and you say there's two divided leases?

2 A. That's correct.

3 Q. Now, does part of that Forni lease in the south
4 half extend up into that area?

5 A. Yes, sir.

6 Q. Okay. So is that one of the two leases that
7 you're referring to?

8 A. Yes, sir.

9 Q. Okay, and how about the remainder of the
10 northwest quarter?

11 A. Yeah, the remainder of the northwest quarter is
12 under lease -- initially it was under lease to Cactus
13 Energy, 100 percent, according to my title takeoff that I
14 received in late December, early January. When we received
15 our drilling opinion covering Section 15, that particular
16 acreage had been -- 90 percent of the Cactus interest had
17 been assigned to OXY. So when our drilling opinion came
18 out, OXY is in there for 90 percent of that acreage, and
19 Cactus and Saguario are the other 10 percent.

20 MR. BRUCE: Mr. Examiner, which quarter section
21 are you asking?

22 EXAMINER STOGNER: Okay, I'm looking at the
23 northwest quarter.

24 MR. BRUCE: Okay.

25 Q. (By Examiner Stogner) And when I'm looking at

1 the OXY Exhibit Number 2, that's the yellow portion. And I
2 understand --

3 MR. BRUCE: Thank you, Mr. Examiner.

4 Q. (By Examiner Stogner) -- that is two leases, or
5 is it one lease?

6 A. It's two separate leases.

7 Q. Two separate leases, okay. And I'm more
8 interested right now in the fee royalty under this. Like I
9 said, I'm interested -- I've got to protect these guys, so
10 I'm trying to identify who they are.

11 A. I understand.

12 Q. So I have a Ginanni, and who is the other royalty
13 interest? Or is there a group name or a family name?

14 A. The Ginanni interest is in the northeast quarter
15 of Section 15, and that would be -- the Ginanni lease
16 basically covers the northeast quarter of Section 15 only.

17 EXAMINER STOGNER: Okay, because I'm showing from
18 the OXY exhibit a Bindel. Am I the only one concerned
19 about the royalty interest here? It doesn't seem like Tom
20 Brown is, nor does it seem like OXY. Am I missing
21 something?

22 MR. BRUCE: No, Mr. Examiner, I'm just trying to
23 make sure, because of the --

24 EXAMINER STOGNER: Well, I'll tell you what we're
25 going to do. I'll tell you what, why don't we do this?

1 I'm going to take a lunch break here, and we'll reconvene
2 here at 15 after 2:00, and why don't you two get together
3 and identify the royalty interest underlying Section 15?
4 You've got two capable landmen, you've got a regulatory
5 specialist with your group, and you have the other people.
6 I'm sure with that brainstorm and the brain trust you can
7 identify who the royalty interest is.

8 So far I haven't gotten anybody concerned about
9 the royalty interest here, other than me. That concerns me
10 a little bit. And we have OXY talking about correlative
11 rights. Seem to be a little bit greedy, don't you? I can
12 understand that, but we've got to take a look at the
13 royalty interest. What goes along kind of comes along. If
14 this was state and federal acreage, we would sure know who
15 they were, and we would know how they -- I'm quite
16 surprised that none of your landmen can tell me. I really
17 am.

18 MR. BRUCE: We really will inform you, Mr.
19 Examiner.

20 EXAMINER STOGNER: I'm really disappointed in --
21 So get your two people together, and I'm sure that will be
22 the first thing that you two can identify for me, who those
23 royalty interests under all of 15 and, if need be, how that
24 line separates these. Because whatever decision comes out
25 is going to affect the royalty interest. That's very

1 important to protect the royalty interest, correlative
2 rights here. I'm very interested in that.

3 With that, we'll reconvene at 2:15. Thank you

4 (Thereupon, a recess was taken at 1:10 p.m.)

5 (The following proceedings had at 2:15 p.m.)

6 EXAMINER STOGNER: This hearing will come to
7 order. It's 2:15. Do you know who your royalty interest
8 is?

9 MR. BRUCE: Mr. Examiner, I hand you what's been
10 marked Tom Brown Exhibit 9. I've already passed it by Mr.
11 Carr. And if I could ask a few introductory questions of
12 Mr. Robertson and then pass him over to you, or to Mr.
13 Carr.

14 EXAMINER STOGNER: Do you have a copy of this,
15 Mr. Carr?

16 MR. CARR: Yes, I do.

17 EXAMINER STOGNER: Okay. Mr. Bruce?

18 FURTHER EXAMINATION

19 BY MR. BRUCE:

20 Q. Mr. Robertson, what is Exhibit 9?

21 A. Exhibit A here depicts --

22 Q. It's actually marked Exhibit 9.

23 A. Oh, Exhibit 9, I'm sorry. Exhibit 9. This map
24 depicts the royalty ownership under Section 15.

25 Q. Okay.

1 A. Tract Number 1, which is the northeast quarter of
2 Section 15, is owned by the Bindel family. They are the
3 royalty owners.

4 Q. Is there just one lease?

5 A. Just one lease.

6 Q. Okay.

7 A. Tract 2 is the northwest of the northwest, plus
8 4.5 acres, and that is one lease, and the Ginanni family
9 are the royalty owners.

10 The east half of the northwest quarter, depicted
11 as Tract 3, is one lease covered with two lessors, Ellison
12 and Ginanni.

13 Tract 4, which is the south half of 15 and the
14 southwest of the northwest, less the 4.5-acre tract, is all
15 one lease and is the Forni family.

16 Q. Was this exhibit prepared by you or under your
17 supervision, Mr. Robertson?

18 A. Yes.

19 MR. BRUCE: Mr. Examiner, I'd move the admission
20 of Exhibit 9.

21 EXAMINER STOGNER: Any objection?

22 MR. CARR: No.

23 EXAMINER STOGNER: Any --

24 MR. CARR: No questions.

25 EXAMINER STOGNER: Exhibit 9 of Tom Brown, Inc.,

1 will be admitted into evidence at this time. And thank you
2 very much, gentlemen. I appreciate that. Now, where were
3 we?

4 MR. BRUCE: You were cross-examining Mr.
5 Robertson. I have no further questions of him.

6 EXAMINER STOGNER: Are there any other questions
7 of Mr. Robertson?

8 MR. CARR: No.

9 EXAMINER STOGNER: I believe this satisfies my
10 needs, so you may be excused.

11 THE WITNESS: Thank you.

12 EXAMINER STOGNER: Mr. Bruce?

13 MR. BRUCE: Call our geologist to the stand.

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

17 DIRECT EXAMINATION

18 BY MR. BRUCE:

19 Q. Would you please state your name for the record?

20 A. Leonard Wayne Wood.

21 Q. Where do you reside?

22 A. Midland, Texas.

23 Q. Who do you work for, and in what capacity?

24 A. Tom Brown, Incorporated. I'm a staff
25 geoscientist for our southeast New Mexico team.

1 Q. Have you previously testified before the
2 Division?

3 A. No, I have not.

4 Q. Would you summarize for the Examiner your
5 educational and employment background?

6 A. I received a bachelor of science in biology and
7 geology from Midwestern State University in Wichita Falls
8 in 1999, received a master's of geoscience degree from
9 Texas Tech University in December of 2001, worked for
10 Matador and/or Tom Brown since that time.

11 Q. Does your area of responsibility at Tom Brown
12 include this portion of southeast New Mexico?

13 A. Yes, it does.

14 Q. And are you familiar with the geological matters
15 involved in this Application?

16 MR. BRUCE: Mr. Examiner, I'd tender Mr. Wood as
17 an expert petroleum geologist.

18 EXAMINER STOGNER: Any objections?

19 MR. CARR: No. objection.

20 EXAMINER STOGNER: Mr. Wood is so qualified.

21 Q. (By Mr. Bruce) Mr. Wood, let's move on to your
22 exhibits. Let's start with your Exhibit 4. Could you --
23 There's a lot of data on here, but could you go through it
24 relatively slowly so -- and explain the code to the
25 Examiner?

1 A. Yes, I can. Mr. Examiner, this is a cumulative
2 deep production map for our Forni prospect area, covering
3 the majority of Township 22-27 in Eddy County, New Mexico.
4 The bubbles indicate cumulative production from the
5 Wolfcamp, Strawn, Atoka and Morrow formations. The
6 production cum to date is in the southeast of each bubble,
7 in MCF equivalent. Morrow production is in red, Strawn is
8 in orange, Atoka is in green and Wolfcamp is in purple.

9 Q. Now, the Morrow production is scattered
10 throughout this township, is it not?

11 A. Yes, it is.

12 Q. And just the way -- From this, you can't really
13 see a Morrow trend, can you, as far as the orientation --

14 A. I cannot.

15 Q. What about the Wolfcamp and the Strawn? Is there
16 some trend there?

17 A. This map clearly depicts a northeast-southwest
18 trend on the Wolfcamp bubbles shown in purple, which is
19 consistent with the depositional environment that the
20 Wolfcamp was deposited in. If we took a larger map the
21 trend would continue, I believe. Also the Strawn would
22 have -- in the larger view, would show -- which is orange
23 on this map, would show a general northeast-southwest trend
24 parallel to the Wolfcamp and Strawn shelf edge.

25 Q. Okay. Now, in the Morrow -- and I think one of

1 the witnesses has already testified to this, but there is
2 no Morrow penetration in section 15; is that correct?

3 A. That is correct.

4 Q. Okay. And again, the yellow does show Tom Brown
5 acreage, partial or whole, in this township?

6 A. Correct, Mr. Robertson covered that with the
7 yellow. Dark yellow is 100-percent TBI, and the light
8 yellow is some reduced interest, not depicting depth
9 ownership, for Tom Brown, Incorporated.

10 Q. Okay. Now let's discuss some of the development
11 in this pool. First looking at Section 21, the well in the
12 north -- most northeast-located well in Section 21, is that
13 the Marbob well that everybody's been talking about?

14 A. Yes, sir, that is the Walterthon Fee Number 1.

15 Q. Okay. And then immediately to the east, Devon
16 Energy is drilling a well. I think -- It's hard to read,
17 but it's the Grandi Number 1 well --

18 A. Number 2.

19 Q. -- in the northwest? And the Number 2?

20 A. I should have removed that township. I apologize
21 for that.

22 Q. Okay.

23 A. It should be Tuesday, March the 2nd, they were at
24 a measured depth of 11,570 feet.

25 Q. Would that be in the Morrow, roughly?

1 A. Almost through it, they're probably TD'd by now.

2 Q. Okay. There's also one in the south half of 22,
3 a proposed well, the Henry Number 3.

4 A. That is a completed well. To my recollection it
5 tested the Morrow, but it's been completed in the Strawn.
6 It's making approximately 200 MCF a day.

7 Some of these -- Mr. Examiner, some of the wells
8 that don't have colored bubbles have been completed, but
9 the production that we subscribe to hasn't been updated in
10 our system.

11 Q. Okay, now let's move to the north. There's been
12 some talk about wells in the north half of Section 4.
13 Those are Marbob-operated; is that correct?

14 A. Section 4 of 22-27?

15 Q. Yes.

16 A. Marbob operates the Mounds Federal Number 1.

17 Q. Okay, and then wells have been drilled or are
18 planned also in Section 5?

19 A. Tom Brown, Inc., drilled and completed a well in
20 the northeast quarter of Section 5, Township 22-27, as our
21 Mead Number 4 well. We have since drilled an offset in the
22 southeast quarter, the Mead Number 5, which we are
23 currently drilling ahead at 11,510 feet in the Morrow.

24 Q. Okay. And then immediately to the north in
25 Section 32, is that the OXY well that's been permitted at

1 least?

2 A. I haven't seen a permit, but I know from
3 communications that Brent -- I apologize, I don't remember
4 who went to the meeting with Brent, but we have approached
5 OXY about a potential location there, or possibly getting
6 into that location.

7 Q. Okay, and OXY may have plans on that acreage?

8 A. I believe they do.

9 Q. Okay. Then a little further to the east in
10 Section 3, there's a Marbob Nutrageous Federal Number 1?

11 A. Yes, sir.

12 Q. What is the status of that well?

13 A. It is producing from the Morrow. Mr. Examiner,
14 this is a well that, in the production data that I get
15 monthly, hasn't been updated, but it -- I believe it is
16 making --

17 Q. But it has been completed?

18 A. -- it's making, I think, between a million and
19 1.5 million a day.

20 Q. Okay. And then finally down in Section 10, in
21 the east half of Section 10 there are two Marbob wells.
22 What are those?

23 A. The Marbob Butterfinger Federal Number 1 and the
24 Butterfinger Fee Number 2. The Butterfinger Federal Number
25 1 is currently active and making 1.9 million cubic feet of

1 gas a day. The Marbob Butterfinger Fee Number 2 Tom Brown
2 has a 2-percent interest in, and they're currently drilling
3 ahead in the Strawn.

4 Q. And those wells were all drilled or drilled to a
5 depth sufficient, all the ones that have been drilled to
6 date or are planned, are sufficient to test the entire
7 Morrow interval?

8 A. That is correct.

9 Q. Okay. Do you have anything further on this
10 exhibit, Mr. Wood?

11 A. I do not.

12 Q. Okay. What does your Exhibit 5 depict?

13 A. I'd like to show Tom Brown Exhibit 5 and Exhibit
14 6 at the same time.

15 Q. Okay.

16 A. This map is a net sand map for what I've
17 interpreted as the Morrow -- or called the Morrow C4 sand.
18 The top of the lower Morrow, or the Morrow C, is labeled.
19 It's capped by a large marine shale, and then I also have
20 labeled other units in the lower Morrow that are
21 prospective. I've focused on the lower Morrow C4. This
22 type log is of the Marbob Walterthon Fee Number 1, which
23 was perforated in the C4 sand.

24 Q. To the best of your knowledge, what you talk
25 about as the C4 sand, is that what Mr. Doty was talking

1 about when he talked about the Walterthon sand?

2 A. Yes, to my knowledge it was.

3 Q. What does this map show you insofar as the
4 orientation of the C4 reservoir and potential locations in
5 Section 15.

6 A. From my work in the area, the general trend for
7 the lower Morrow is a fluvial system, trending to the
8 southeast from the northwest source area. I've interpreted
9 -- This is a fluvial sand, and the log signature confirms
10 that it's a sharp base, blocky, fines upwards, at the top
11 classic fluvial or point bar deposit.

12 Q. Now, in looking at your Exhibit 5, do you believe
13 there's a reasonable well location in the southwest of the
14 southwest to test the C4 sand?

15 A. I do.

16 Q. Does it also appear, based on your mapping, that
17 the C4 sand reservoir, at least the better part of it, does
18 not extend much outside of the southwest quarter of Section
19 15?

20 A. That is my interpretation.

21 Q. Now, you may get some questions. There is
22 another proposed -- The Forni Number 3 well proposed in the
23 northwest quarter of Section 15, that's the well that's
24 proposed by Tom Brown, is it not?

25 A. Yes.

1 Q. Now, before that well is drilled, will there be
2 additional well data in this immediate area?

3 A. Yes, in our -- I'm sorry, what was the question?

4 Q. Will there be -- By the time that well needs to
5 be drilled, will there be additional well information in
6 the well?

7 A. That well being the Forni Number 3?

8 Q. The Forni Number 3.

9 A. Yes. The Forni Number 2 was permitted as a
10 laydown Morrow unit, which I believe puts us in the best
11 position for the C4 sand.

12 There are also data we gathered from the Forni 2,
13 which our Morrow program -- we run the standard suite of
14 logs plus imaging logs that provide dip data for
15 orientations of sands, as well as take pressure tests for
16 depletions.

17 We will also be getting information from the
18 Marbob Butterfinger Fee Number 2 that we currently have an
19 interest in, in the southeast of Section 10. That will
20 provide us with a better picture for the north half of 15.

21 Q. Okay. And you would not be entitled to any
22 information on the Devon well, would you?

23 A. No, we would not.

24 Q. Now, one thing that was brought up is, in the
25 lower Morrow is water. Do you have an opinion as to

1 whether or not wells in Section 15, lower Morrow wells,
2 would be watered out?

3 A. The lower Morrow in this region is a
4 stratigraphic trap. There is a structural component, but I
5 think the main driver is reservoir development. Where you
6 have poorly developed sands and perforate them, you make
7 more water. But in well-developed sands, water -- great
8 reservoir, good reservoir water is not, in my opinion, the
9 main concern.

10 Q. Okay. So what you're looking more for is
11 reservoir development, and you're not so concerned about --

12 A. Correct.

13 Q. -- the water at that point?

14 A. Correct. There is a water component, but
15 reservoir quality, I think, dictates production.

16 Q. Okay. Well, you've said that in its wells out
17 here Tom Brown does run a standard suite of logs. What is
18 Exhibit 7?

19 A. Mr. Examiner, Exhibit 7 is from our Mead Number 4
20 in the northeast of Section 5. This is a well we ran an
21 imaging log on. I'd like to point out that the depth shown
22 on the log is a true vertical depth, TVD. And the depth
23 shown on the sands to the left is in measured depth, so
24 there's going to be a discrepancy. My software
25 automatically corrects for deviation.

1 I took the data that is shown on the left. The
2 annotation on the left is from interpretation done by a
3 service company that we ran our imaging log through. I'd
4 like to show the variability and orientation in Morrow
5 sands.

6 Q. Does -- And I think I asked you this yesterday.
7 These orientation logs, what are they called? FMI?

8 A. They're imaging logs. They vary by service
9 company. Schlumberger's is called an FMI or formation
10 micro-imager. Halliburton's is called an EMI, which is the
11 one we run.

12 Q. Okay. So on your EMI logs, does that help tell
13 you the orientation of the reservoir around the wellbore?

14 A. Yes, I believe so. It tells you the direction
15 that the sands are headed. I think the more of these which
16 -- We have a very active drilling program scheduled for
17 this year, and this is slated on all our Morrow wells to
18 give us a better picture of Morrow sand orientation.

19 Q. Does this log from the Mead well give you
20 confidence in the orientation that you've depicted on
21 Exhibit 5?

22 A. For the most part. I believe that -- yes, the
23 general interpretation -- I should point out that the
24 environment of deposition for the sands is interpreted by a
25 service company representative, not by me. But the

1 orientations are very believable. Again, we're two miles
2 north, so there could be, and there is, variability between
3 these readings. But in general, I believe the lower Morrow
4 has a northwest-southeast trend.

5 Q. Okay. Were Exhibits 4 through 7 prepared by you
6 or under your supervision or compiled from company business
7 records?

8 A. Yes, they were.

9 Q. And in your opinion, is the denial of OXY's
10 Application in the interests of conservation and the
11 prevention of waste?

12 A. Yes, it is.

13 MR. BRUCE: Mr. Examiner, I'd move the admission
14 of Tom Brown Exhibits 4 through 7.

15 EXAMINER STOGNER: Any objection?

16 MR. CARR: No objection.

17 EXAMINER STOGNER: Exhibits 4 through 7 will be
18 admitted into evidence at this time.

19 Mr. Carr, your witness.

20 CROSS-EXAMINATION

21 BY MR. CARR:

22 Q. Mr. Wood, if we go to Exhibit Number 7, this is
23 the log on the well up in Section 5, right?

24 A. Yes, sir.

25 Q. You indicated that was a couple of miles away.

1 Q. It gave you a general indication of their
2 northwest-to-southeast-trending sands, correct, in Section
3 5? Is that right?

4 A. Yes, sir.

5 Q. When we take this log and try and apply the
6 information from this log down into 15, by the time we get
7 to 15 you've already turned the channel and are going
8 either straight north-south or slightly northeast-
9 southwest; isn't that correct?

10 A. The C-4 sand that I have mapped is an interval,
11 so it's probably multiple channel.

12 Q. So this gives us an indication in Section 5; it
13 may or may not tell us what's in 15?

14 A. It aided my interpretation, yes, sir.

15 Q. All right. Now, when we look at your Exhibit
16 Number 5, you understand that the concern that OXY has is
17 that the east half of Section 15 is not going to contribute
18 reserves to Morrow wells in the west half of this section?
19 Do you understand that's our argument?

20 A. My map is only depicting the C4 sand.

21 Q. Okay. Do you have an opinion as to whether or
22 not the Morrow was productive in the east half of this
23 section?

24 A. I believe it is.

25 Q. Okay. Now, if we look at your map on the C4

1 sand, what you've indicated is, you're really trying to
2 find good sand developed -- well-developed sands; isn't
3 that correct? Isn't that what you testified?

4 A. Yes, sir.

5 Q. Let me hand you what was OXY Exhibit Number 5,
6 the Morrow cross-section in this case. If we look at this
7 interval and we look at the Walker Number 1 well down in
8 the southeast of Section 21 --

9 A. Yes, sir.

10 Q. -- that's an area that you've shown has well-
11 developed sands, is it not?

12 A. Yes, sir.

13 Q. If we look at the log on this well, which is the
14 second from the right on the cross-section, it shows the
15 C-4 sand as having tested wet; isn't that right?

16 A. I don't recall the sundry report.

17 Q. But this log shows it's wet, does it not?

18 A. Mr. Doty has said it tested wet.

19 Q. If we go up the hole we see there's a plug in the
20 well and the gas perforations are uphole; isn't that right?

21 A. That's correct.

22 Q. It doesn't show this zone being produced?

23 A. That's right.

24 Q. If we go to the next well to the right in Section
25 22, the Grandi Number 1 well, that's again a well -- based

1 on your interpretation is in well-developed sands; isn't
2 that correct?

3 Q. That's correct.

4 Q. And on the log that was offered as Exhibit Number
5 5 we also -- in the cross-section that was offered as OXY
6 Exhibit 5, we also have a log for that well, do we not?

7 A. Yes, sir, we do.

8 Q. And it shows that that well also tested wet in
9 that sand?

10 A. Yes, sir, it has poorly developed --

11 Q. You didn't prepare a structure map on the Morrow,
12 did you?

13 A. No, but I can provide one.

14 Q. But if --

15 A. No, sir, I did not bring one. I did not want to
16 admit one to evidence.

17 Q. You would agree that structure does play some
18 role here, does it not?

19 A. It is a factor.

20 Q. If we move from Section 5 where we've gotten data
21 from you, down into the area which is the subject of this
22 case, you would agree that the formation drops off as we
23 move south and east across the area?

24 A. Yes, we do dip southeast into the Basin.

25 Q. And before Section 15, the east half, could

1 produce out of the Morrow, it would need to at least not be
2 wet; isn't that fair to say?

3 A. Can you repeat the question?

4 Q. I mean, if the east half of 15 is wet, as shown
5 on Mr. Doty's Exhibit Number 4, it's not going to
6 contribute, is it?

7 A. We don't have any log data in the east half of 15
8 or the west half of 14.

9 Q. Now, when you as a geologist assist your company
10 in determining where you're going to drill wells in a
11 section, you don't just look at the Morrow or the C4; you
12 look at everything, don't you?

13 A. I pick out several deep horizons. Southeast New
14 Mexico has multiple producing zones. I do not have time to
15 map them all, so I pick what I feel are the main
16 contributing zones. There's a lot of serendipity in the
17 production out here.

18 Q. Were you the geologist involved in picking well
19 locations in Section 15?

20 A. Yes, I was.

21 Q. Did you also consider the Wolfcamp?

22 A. I have looked at it. I haven't considered a lot
23 of mapping.

24 Q. There is a well in the Wolfcamp, the Forni Number
25 1, that's operated by you on the standup east-half unit;

1 isn't that right?

2 A. Yes, sir, that's correct.

3 Q. Is it possible that that well could be draining
4 Wolfcamp reserves from those tracks in the northwest
5 quarter that are not owned by Tom Brown?

6 A. The Forni Number 1 has a significant thickness of
7 Wolfcamp developed. I do not think it's draining the
8 northwest quarter.

9 Q. Okay. You haven't evaluated that as a possible
10 secondary objective in these wells if you acquire the
11 interest from Nearburg within 10 days?

12 A. I currently have no rights in the Wolfcamp. My
13 main objective was the Morrow B and C.

14 Q. I know you have no rights, but your landman has
15 indicated you cut a deal trying to acquire those rights.
16 You didn't look at the Wolfcamp in trying to acquire those
17 rights?

18 A. Again, I shoot for lower targets, deeper targets.
19 I'm not sure, the Wolfcamp is pretty variable. The
20 Wolfcamp is -- in this part of the Basin or on the slope is
21 detrital, highly variable. The Sueno log production tests,
22 we had a cased-hole log production test, showed it to be
23 poor reservoir. It had a 60-foot flare, did it not?

24 A. That is not uncommon in the Wolfcamp, to
25 encounter a -- In fact, our well that we are currently

1 drilling, our Mead Number 5, took a huge kick in the
2 Wolfcamp. We mudded up to a comparable mud weight that was
3 seen in the Sueno 15-1. That influx of gas has since
4 dissipated.

5 Q. Have you mapped the Wolfcamp?

6 A. I have not.

7 Q. Do you know what the Wolfcamp, in your opinion --
8 Do you have a geologic opinion on the depositional
9 environment of the Wolfcamp in Section 15?

10 A. I do.

11 Q. And what is that?

12 A. I think it's detrital, carbonate detritus.

13 Q. Do you think it's present in cross-section 15?

14 A. Is the reservoir -- Is the Wolfcamp present, or
15 is well-developed reservoir present?

16 Q. Well, well-developed reservoir may mean various
17 things, but you have the best well in the area, the best
18 Wolfcamp well in the area, in the east half of the section,
19 correct?

20 A. Correct.

21 Q. Are you trying to -- Would you tell us that you
22 believe that reservoir is limited to the east half of the
23 section?

24 A. That -- I haven't mapped it extensively. I'm not
25 sure what is in the northwest quarter.

1 Q. All right. Now, in terms of the Morrow formation
2 in Section 15, you indicated, I believe -- and correct me
3 if I'm wrong -- that the Morrow was present across Section
4 15 and that the west -- that the wells that are proposed in
5 the west half would drain reserves from the entire section
6 in the Morrow interval. Is that what you were saying?

7 A. The question is, would a well in the west half --

8 Q. Are there Morrow reserves across the section that
9 can be produced on laydown units from wells in the west
10 half of the spacing unit?

11 A. Yes.

12 Q. You disagree with us that the east half is not
13 going to contribute reserves; is that fair to say?

14 A. Again, there are no deep penetrations in Section
15 15 or the west half of 14 either.

16 Q. I'm just asking you for your opinion. You've
17 studied it, and I want to know. Do you think the east half
18 is -- Do you disagree with us that the east half will not
19 contribute?

20 A. I disagree. I believe it will --

21 Q. You've been the geologist involved in picking the
22 well locations for this section, correct?

23 A. I have.

24 Q. And you've put two wells 660 feet from the west
25 line or as close to the west line as you can get; isn't

1 that right?

2 A. Yes, sir.

3 MR. CARR: Thank you, that's all I have.

4 EXAMINER STOGNER: Redirect?

5 MR. BRUCE: Just a couple of questions.

6 REDIRECT EXAMINATION

7 BY MR. BRUCE:

8 Q. Mr. Wood -- and perhaps it shows up best on your
9 first exhibit, Exhibit Number 4, to the north and to the
10 northeast of Section 15 -- I should say to the east and
11 northeast of Section 15, there is very little Morrow
12 development at this point, is there?

13 A. That is correct.

14 Q. And just as an exploration geologist, is it more
15 prudent to remain closer to the established production?

16 A. The Forni Number 3 was permitted to plan if the
17 Forni Number 2 was successful.

18 Q. And you will shortly be getting data from just
19 the quarter section immediately north of the east half of
20 Section 15, which will give you more data, which should
21 show what the Morrow is like closer to Section 15?

22 A. Yes, I'll have a better idea from the
23 Butterfinger well what might be in the northeast of Section
24 15.

25 MR. BRUCE: Thank you. That's all, Mr. Examiner.

EXAMINATION

1
2 BY EXAMINER STOGNER:

3 Q. Is it your opinion that the Forni Number 2
4 proposed well would have some Wolfcamp production
5 attributed to it at its location?

6 A. Mr. Examiner, I'm not -- I haven't extensively
7 looked at all of the Wolfcamp wells, but the wells -- the
8 reservoir development between the Forni 1 and the Sueno
9 well is significant. The Wolfcamp and the rock -- the
10 reservoir rock this was deposited -- or the environment of
11 deposition this was deposited in is highly variable. But I
12 think the Sueno test was valid. I don't think it was a
13 poor completion, I think it showed poor reservoir. And I
14 think -- We could stumble into something, but I don't think
15 it's a main -- it's a secondary target. Primary target
16 would be the Morrow, then the Strawn, and the Atoka would
17 be a third target. I'm sorry, the Wolfcamp would be a
18 third target. Strawn and the Morrow are main objectives.

19 Q. Well, I'm curious what -- how would the Strawn --
20 the Strawn is present in the Forni Number 2, and it's
21 decided to complete there. Do you know what the
22 orientation of the acreage would be?

23 A. For a Strawn unit?

24 Q. Yes.

25 A. I believe it would be a laydown.

1 Q. Laydown. How about a Wolfcamp?

2 A. There is currently a Wolfcamp standup in the east
3 half of 15.

4 Q. Yeah.

5 A. So it would be a -- The Wolfcamp, if found in the
6 Forni Number 2, would have to be a standup.

7 Q. On the Forni Number 3, the proposed location
8 there, wouldn't that be a better location to drill back to
9 the south than to the east? You said that was primarily a
10 Morrow also?

11 A. For the Forni Number 3?

12 Q. Yeah.

13 A. The map I have shown is only one sand. There are
14 probably 12 to 13 reservoir-quality sands in the Carlsbad
15 South Field area.

16 Q. Okay, so you're basing that location on some
17 other Morrow?

18 A. I believe it's prospective for the middle and
19 lower Morrow.

20 EXAMINER STOGNER: Any other questions of this
21 witness?

22 MR. BRUCE: I have no further questions.

23 MR. CARR: No questions.

24 EXAMINER STOGNER: You may be excused.

25 Mr. Bruce?

1 MR. BRUCE: Our final witness, Mr. Examiner.

2 RUSSELL L. MATHIS,

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

5 DIRECT EXAMINATION

6 BY MR. BRUCE:

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

9 A. My name is Russell L. Mathis, I live in Midland,
10 Texas.

11 Q. Who do you work for?

12 A. I work for Tom Brown, Incorporated.

13 Q. What's your job with Tom Brown?

14 A. I'm currently the reservoir engineer for Tom
15 Brown and the team leader.

16 Q. Have you previously testified before the
17 Division?

18 A. No, I have not.

19 Q. Would you summarize your educational and
20 employment background?

21 A. I graduated from Texas Tech in 1980 with a
22 business degree, with an emphasis in management. As
23 everybody with a business degree back then, when I
24 graduated I went to work as a drilling and production
25 foreman for Unocal for three years, and then for Fasken for

1 two. I went back to school to pursue my engineering degree
2 in 1986 at Texas Tech. In 1989 I received my master's in
3 petroleum engineering.

4 I went to work for Phillips down in the Gulf
5 Coast for five years. I went to work for Matador, worked
6 for Matador for nine years as production manager, and came
7 over to Tom Brown in the merger.

8 Q. Does your area of responsibility at Tom Brown
9 include southeast New Mexico?

10 A. Yes, it does.

11 Q. And are you familiar with the reservoir matters
12 related to this case?

13 A. Yes, I am.

14 MR. BRUCE: Mr. Examiner, I tender Mr. Mathis as
15 an expert reservoir engineer.

16 EXAMINER STOGNER: Mr. Mathis is so qualified if
17 there's no objection.

18 MR. CARR: No objection.

19 Q. (By Mr. Bruce) Mr. Mathis, I've handed you just
20 one exhibit, Exhibit 8. Could you identify that and tell
21 the Examiner what that is.

22 A. Sure. Most of the focus today has been
23 discussing the C4 sand in the Walterthon. That's really
24 what got everybody excited in this area. So rather than
25 doing a statistical analysis on what the C4 potential was,

1 I put together an engineering report, basically a very
2 simple P/Z plot, which is page 2 of the exhibit. And page
3 1 is the backup to the P/Z plot.

4 And without going through a whole lot of diatribe
5 and the explanation of all these formulas, suffice it to
6 say, from my standpoint, that the bottom-line reserve
7 calculations for this well, in the C4 only, based on the
8 P/Z plot that we've done, will yield -- the C4 will yield
9 4.2 BCF.

10 And my calculations also show, which I've shown
11 here, how I came to those final numbers. If you back into
12 the acreage that would be contributing that 4.2 BCF, that
13 calculates to be 129.5 acres. And since there's already
14 2.8 BCF that has come from the C4 zone in the Walterthon
15 well, that leaves 1.4 BCF remaining for the Walterthon and
16 our Forni Number 2.

17 Q. So in other words, the C4 reservoir here -- Well,
18 Morrow reservoirs are lenticular, come and go, do they not?

19 A. Sure. As Lenny had mentioned, and as shows in
20 his maps, if you look at the trend coming from the
21 northwest to the southeast, as it comes down in there,
22 there's certain spots in there where it's productive and
23 there's certain spots where it's not productive.

24 Q. Okay.

25 A. The folks at Marbob were fortunate that they

1 found a productive interval within the lower Morrow at that
2 particular location.

3 Q. And if this area you show, 129.5 acres, you know,
4 plus or minus even 20, 30, 50 acres, would you then expect
5 the C4 reservoir to extend into the northwest quarter of
6 Section 15?

7 A. Absolutely not.

8 Q. A question came up about a dual completion in the
9 Wolfcamp and Morrow. Is that possible?

10 A. It's possible, but I wouldn't recommend it. The
11 Morrow is going to be lower pressured than the Wolfcamp is,
12 as Mr. Doty had attested to, and we see that very often the
13 reservoir pressure in the Wolfcamp is severely
14 overpressured and the Wolfcamp is generally normally
15 pressured. And although it's possible, it would be a
16 costly completion. It would be bearing some unfair risk, I
17 think, if you try to make a dual out of it.

18 Q. Okay. One final question. Have you reviewed Tom
19 Brown's application for permit to drill?

20 A. Yes.

21 Q. And is the -- the surveyed location 660 feet from
22 the south and west lines, is that Tom Brown's location?

23 A. Yes.

24 Q. To the best of your knowledge, is the APD that
25 was filed accurate?

1 A. Yes.

2 Q. Was Exhibit 8 prepared by you or under your
3 supervision, Mr. Mathis?

4 A. I prepared this exhibit.

5 Q. And in your opinion is the denial of OXY's
6 Application in the interests of conservation and the
7 prevention of waste?

8 A. Yes, I do.

9 MR. BRUCE: Mr. Examiner, I'd move the admission
10 of Tom Brown Exhibit 8.

11 EXAMINER STOGNER: Any objection?

12 MR. CARR: No objection.

13 EXAMINER STOGNER: Exhibit Number 8 is admitted
14 into evidence.

15 Mr. Carr, your witness.

16 CROSS-EXAMINATION

17 BY MR. CARR:

18 Q. When you're involved in planning or proposing a
19 well internally to your company, would you agree with me
20 that it would be better to have all possible objectives
21 available to you --

22 A. Sure.

23 Q. -- to make a successful well?

24 When we look at the data that you provided on the
25 Walterthon well, that's a pretty good well, is it not?

1 A. Yes, it is.

2 Q. It's caused everybody to take a new look at this
3 immediate area?

4 A. Uh-huh.

5 Q. Is it fair to say that your testimony was that no
6 matter how good it is, that well in the Morrow is not going
7 to drain the northwest quarter? Is that what you said?

8 A. Yes, that's correct.

9 Q. Do you believe that a well at that location would
10 drain the southeast quarter?

11 A. I believe that the acreage is going to be
12 contained in a southerly direction. And since we feel like
13 the original take point was to the southwest, that our best
14 shot at finding good reservoir quality is going to be in an
15 east-west trend.

16 If you look at some of the wells out there you'll
17 find that, as Lenny had mentioned, it's very stratigraphic
18 in nature. The Grandi Number 2 had definitely encountered
19 the sand, but it was not reservoir quality.

20 I would disagree with some comments made earlier.
21 I don't think it's because it was wet. I think it's
22 because it had poor reservoir quality.

23 With that in mind, from an engineering
24 standpoint, I look at this as an opportunity to exploit our
25 reserves at the safest location where I think those

1 reserves reside, which is in the south half.

2 Q. Do you believe that the reserves -- there will
3 not be contribution from the east half, or do you believe
4 the east half is also going to contribute reserves to
5 Morrow --

6 A. Relative to the C4, I could develop a scenario
7 where only a portion of the south half would be
8 contributing. But it could go over into the southeast
9 quarter.

10 Q. So what you're saying is, you need to drill your
11 well, the Forni Number 2, at the location you have
12 proposed? That's the optimum location?

13 A. I believe it is.

14 Q. And you could drill that well on a south-half
15 unit or on a west-half unit; is that not true?

16 A. In order to exploit the reserves, that would not
17 be true.

18 Q. In order to exploit the royalty owners in the
19 northwest quarter you could do it either way, couldn't you?

20 A. Well, I don't know. I'd have to think about the
21 -- I think from the standpoint of what will the northwest
22 quarter lose if the reservoir doesn't go there to start
23 with.

24 Q. And that's your interpretation?

25 A. Yes.

1 Q. And your interpretation is the interpretation
2 that is leaving the interest owners in the northwest
3 quarter with half of what they'd get if they had a west-
4 half unit; isn't that right?

5 A. Well, I don't think it's quite so grim, because I
6 think there would be an opportunity to drill in the north
7 half, and that's the reason we have proposed a north-half
8 laydown.

9 Q. But the well is as far to the west as you can get
10 it?

11 A. No, it's not as far to the west as --

12 Q. It's 660 from the west line.

13 A. Is that what the west -- Okay. I'm sorry, you're
14 right, we had to move that because of topography.

15 Q. But it is as far to the west as you can get, and
16 it is a well you're not going to drill until after there's
17 other development and you can re-evaluate the location?

18 A. We have that on our drilling schedule, as you see
19 there, and it does afford us the opportunity to evaluate
20 the additional wells that would contribute additional
21 information.

22 Q. And at this time you have an APD, correct?

23 A. Yes.

24 Q. And that would preclude someone else from going
25 ahead with that well now?

1 A. I would hope so.

2 MR. CARR: That's all I have, thank you.

3 EXAMINER STOGNER: Any redirect?

4 MR. BRUCE: No, sir.

5 EXAMINER STOGNER: I have no questions of this
6 witness. You may be excused.

7 Mr. Carr -- I mean, I'm sorry, Mr. Bruce.

8 MR. BRUCE: That concludes my presentation.

9 EXAMINER STOGNER: Do you have anything further
10 to present, Mr. Carr? Would you like to call one of your
11 witnesses?

12 MR. CARR: No, I have a very brief closing if
13 you'll let me.

14 EXAMINER STOGNER: Closing. Just a sec.

15 Ms. MacQuesten, I believe you have a witness. Do
16 you see any need to present any testimony at this time?

17 MS. MacQUESTEN: No, I don't, Mr. Examiner.

18 EXAMINER STOGNER: Thank you. Then in that case,
19 do you have a closing statement?

20 MR. BRUCE: Yes, and under Mr. Carr's rules I
21 must go first, so...

22 MR. CARR: It's the only rule I've ever announced
23 that he honors.

24 EXAMINER STOGNER: Mr. Bruce?

25 MR. BRUCE: There are several issues here, and I

1 will also try to be brief.

2 Tom Brown's position is, it's been looking at
3 drilling this well with the south-half unit for quite some
4 time. Pursuant to its plans, it obtained an APD for a
5 south-half unit in which it owns a hundred percent of the
6 Strawn, Atoka and Morrow rights, and it has always been
7 willing and able to drill that well, solely looking at the
8 Strawn and the Morrow.

9 Now, there's been an issue raised about the
10 validity of Tom Brown's Form C-102, but it states that it
11 has a dual purpose. It's used to show the ownership and
12 status of each lease contained within the dedicated
13 acreage. That's really irrelevant as to Tom Brown's APD,
14 because they own a hundred percent of the south half as to
15 the Morrow, which is what the well is permitted for. It's
16 also used to show the exact location of the well.

17 There's no question that the location of the well
18 is accurate. If there was any miscue as to dates, et
19 cetera, to me that is exceedingly minor and I don't think
20 it's material to this case.

21 Another thing that's immaterial, we believe, is
22 the Wolfcamp. As I said, Tom Brown is willing to drill its
23 well without Wolfcamp rights. Furthermore, Mr. Doty stated
24 that the Wolfcamp in all of Section 15 should be productive
25 or potentially productive, and therefore correlative rights

1 is not an issue.

2 I'd also point out, if the Wolfcamp was so
3 important, why did OXY wait so long to start its title work
4 and to this day has not yet contacted all of the Wolfcamp
5 ownership regarding its proposal.

6 And if Tom Brown does succeed in this case,
7 drills its well, at some point OXY will get to look at
8 those well logs at no cost to OXY. It gets a free look. I
9 fail to see how OXY is harmed by that.

10 Tom Brown has the legal right to drill pursuant
11 to its 100-percent ownership, and it should be allowed to
12 do so.

13 Now, on traditional force-pooling matters, Tom
14 Brown really is not seeking to force pool, obviously, and
15 it has for the most part ignored those matters. We looked
16 at the AFE that was presented. There's no squabble over
17 that.

18 I would point out, however, once again, OXY is
19 here to you today on force pooling. It sent one letter to
20 one interest owner, and it never even followed up with any
21 phone calls. It wasn't until Tom Brown called OXY to
22 discuss the matter that there was even a phone call between
23 the parties. OXY states that Tom Brown never responded.
24 Well, it did, but certainly there was never any follow-up
25 with OXY. I question whether the good faith effort to

1 obtain the joinder of the parties in this OXY Application
2 has been met by OXY.

3 As to correlative rights, I think there's two
4 things to look at. Even if you look at OXY's Morrow map,
5 it does show some of the northeast quarter of Section 15 to
6 be productive, yet its proposal will squeeze out the entire
7 northeast quarter from any wells drilled, at least in the
8 immediate future.

9 Furthermore, based upon our engineering data, the
10 main reservoir that they're looking at doesn't extend into
11 the northwest quarter of Section 15 where OXY is. The
12 reserves in the main Morrow zone are on the Forni lease,
13 and that's the way the well should be drilled, 100 percent
14 dedicated to the Forni lease.

15 Now, during the -- what has been affectionately
16 termed by the Division the Yates-Nearburg wars a number of
17 years ago, there was a section of land in the Indian Basin-
18 Upper Penn Associated Pool, which is spaced on 320 acres,
19 where Nearburg owned the north half and Yates owned the
20 south half. Nearburg filed a compulsory pooling like OXY,
21 seeking a west-half standup unit.

22 Yates' position was simply, we have a half
23 section, let us -- leave us alone. And that's what the
24 Division did. They denied Nearburg's pooling application,
25 let Yates go drill its wells. And we think that's what you

1 should do here.

2 We ask that OXY's Application be denied because
3 of our drilling plans, and I will mention those -- two
4 words I know you hate to hear, which is "expedited
5 approval", but at the very least I would ask that -- if you
6 would like us to submit a proposed order, I would request
7 permission to do so.

8 Thank you, Mr. Examiner.

9 EXAMINER STOGNER: Well, it's not the word
10 "expedited", it's just the number of people, the number of
11 times, when everything I get --

12 MR. BRUCE: We recognize that.

13 EXAMINER STOGNER: Okay, thanks.

14 MR. BRUCE: And I'm sure Mr. Carr does too.

15 EXAMINER STOGNER: Yeah, along with all the other
16 people.

17 Mr. Carr?

18 MR. CARR: Mr. Stogner. I'd ask you to take out
19 OXY Exhibit 6, if you would, for the purpose of my closing.

20 EXAMINER STOGNER: Exhibit 6.

21 MR. CARR: Uh-huh.

22 EXAMINER STOGNER: I have Exhibit 6. Sorry it
23 wasn't in an expeditious manner.

24 MR. CARR: Mr. Stogner, we're here today because
25 Tom Brown has a proposal, a proposal to develop the various

1 horizons in Section 15 orienting the spacing units so some
2 are laydown, some are standup, they overlap. I don't know
3 if you call it reckless, I don't know if you call it
4 irregular, but we're here because it creates problems for
5 interest owners in the section, because while they play the
6 standup-laydown game, they stand it up and lay it down
7 every time to carve somebody else out.

8 I want you to look at Exhibit Number 6. Before
9 the break there was some talk about not being greedy. But
10 you know, OXY's interest is in the identical lands as the
11 royalty owners in the northwest quarter that are going to
12 be left out. And if you look at the bottom of this
13 exhibit, it identifies the loss to OXY and to royalty
14 owners with a laydown Morrow unit in the north half. It
15 isn't greedy. We're all in this the same. We're trying to
16 defend ourselves in a game where our correlative rights are
17 being denied.

18 We're here because of a race to the OCD. And I
19 submit to you it isn't a race to drill, because they're
20 planning to drill, as they state in their own Exhibit
21 Number 1, if Devon makes a good well. We're here because
22 of a race to get a permit, and they got the permit to keep
23 us out. And it is a game that comes from recent OCD orders
24 which say, if you get in the door first you can keep other
25 people out.

1 They stand up before you and say, Well, we've
2 been looking for some time. Look at Exhibit 1, Mr.
3 Stogner. They've been looking. Devon keeps saying, Let's
4 do something, and they've been rejecting it, waiting for
5 Devon to drill, and then they may or may not drill,
6 depending on what the Devon well turns up. And this race
7 impairs our correlative rights.

8 And it requires more, if you're going to act to
9 protect correlative rights, than just looking at ownership.
10 Here you have to look at the geology. The geology, the
11 technical data, controls.

12 And we are harmed because in the Morrow, with
13 laydown units, our interest in the northwest quarter is
14 diluted as shown on Exhibit 6 by 50 percent. The royalty
15 owners' interest is diluted by 50 percent.

16 And while they want to stand here and tell you
17 the Morrow is great across the entire section, if you look
18 at Exhibit 5 they're finding great sand development in two
19 wells in this interval that, when you look at our Morrow --
20 the logs on our Morrow cross-section, you'll see those
21 great sands may be developed, but they are wet and will not
22 produce.

23 What they are proposing impairs our correlative
24 rights. And when you start stacking these units in
25 different ways -- I'm not saying you can't, I'm saying you

1 shouldn't -- when it impairs correlative rights and when --
2 it may result in the drilling of an unnecessary well.

3 And the thing that makes this so ridiculous is,
4 it's always being done at a time when standard units are
5 available, standard units are available that are supported
6 by geology.

7 A well could be drilled in the west half where
8 all zones in the well could be dedicated to the well. All
9 people who pay their share of the well can share in all
10 formations, and all people who own a share of the reserves
11 will get their just and equitable share of the reserves.

12 And by statute, I submit that's what this
13 Division is instructed to do. We're here because of a
14 problem created by Tom Brown. This mess was not required
15 unless we're trying somehow to dilute the interests of
16 other people in this section. We wouldn't be here if the
17 plan was not irregular but regular, was prudent, not
18 reckless, and if standup units were being proposed, and if
19 the parties would respond to a well proposal and talk to
20 us.

21 We ask you to rescind their permit and to pool
22 the lands on the west half so the people who own in the
23 west half have their correlative rights protected.

24 EXAMINER STOGNER: Anything further in Case
25 13,226 at this time?

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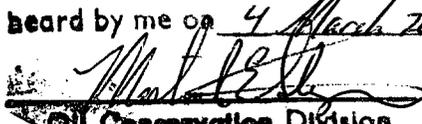
MR. BRUCE: No, sir.

EXAMINER STOGNER: This matter will be taken under advisement. I request from both counsels to provide me a rough draft.

With that, then, today's hearing is adjourned.

(Thereupon, these proceedings were concluded at 3:15 p.m.)

* * *

I do hereby certify that the foregoing is a complete record of the proceedings in the Examiner hearing of Case No. 13226 heard by me on 4 March 2004
 Examiner
Conservation Division

CERTIFICATE OF REPORTER

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

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

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

WITNESS MY HAND AND SEAL March 8th, 2004.



STEVEN T. BRENNER
CCR No. 7

My commission expires: October 16th, 2006