

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

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

ORIGINAL

APPLICATION OF MACK ENERGY CORPORATION Case No. 14763
FOR COMPULSORY POOLING, LEA COUNTY,
NEW MEXICO

REPORTER'S TRANSCRIPT OF PROCEEDINGS
COMMISSIONER HEARING

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BEFORE: DR. ROBERT BALCH, Acting Chairman
SCOTT DAWSON, Commissioner

September 13, 2012
Santa Fe, New Mexico

This matter came on for hearing before the New Mexico Oil Conservation Commission, DR. ROBERT BALCH, Acting Chairman, on Thursday, September 13, 2012, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South St. Francis Drive, Room 102, Santa Fe, New Mexico.

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ALSO PRESENT:

Florene Davidson, Commission Clerk

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1 ACTING CHAIRMAN BALCH: I guess we are in
2 session. I'm Robert Balch, the designee of the Secretary
3 of Energy. To my right is Scott Dawson, the designee of
4 the State Land Commissioner, and to his right is Florene
5 Davidson, Commission Clerk. To my left is Commission
6 Counsel.

7 We do the minutes first?

8 MR. BRANCARD: Yes.

9 ACTING CHAIRMAN BALCH: Have you had a
10 chance to read the minutes?

11 COMMISSIONER DAWSON: I have.

12 ACTING CHAIRMAN BALCH: I have, as well.
13 Do I have a motion to accept the minutes?

14 COMMISSIONER DAWSON: I will motion.

15 ACTING CHAIRMAN BALCH: I will second the
16 motion, and it is adopted. And I will sign in place of
17 Jami to adopt the minutes from the August 28th Commission
18 hearing.

19 COMMISSIONER DAWSON: Do you need to
20 announce the hearing number?

21 ACTING CHAIRMAN BALCH: Do I need to
22 announce the number?

23 MR. BRANCARD: No.

24 ACTING CHAIRMAN BALCH: I will transfer
25 them to the Commission Clerk.

1 On the docket today we have Case 14720, which
2 will be continued to the October 25th, 2012, Commission
3 meeting. We also have Case 14763, de novo application of
4 Mack Energy for compulsory pooling, Lea County, New
5 Mexico. I guess I'll ask for appearances.

6 MR. BRUCE: Mr. Chairman, Jim Bruce, of
7 Santa Fe, representing the applicant, in association with
8 Joel Carson, general counsel of Mack Energy Corporation.

9 MR. HALL: And Commissioners, my name is
10 Scott Hall, with the Montgomery & Andrews Law Firm, here
11 in Santa Fe, appearing on behalf of Siana Oil and Gas,
12 LLP, and Mr. Tom Ragsdale.

13 ACTING CHAIRMAN BALCH: Any other
14 appearances?

15 All right. Mr. Bruce, do you have an opening
16 statement?

17 MR. BRUCE: Very briefly, Commissioners.

18 OPENING STATEMENT

19 BY MR. BRUCE:

20 As I've said before, the Commissioners always
21 seem pretty good about reading the pre-hearing
22 statements, so you have a good idea of what's going on.

23 From Mack's standpoint, this is basically a
24 simple pooling case. There are undivided interests in a
25 well unit with no joint operating agreement. And since

1 Mr. Ragsdale hasn't signed an operating agreement, Mack
2 needs to force pool his interest into the subject well.

3 In force pooling, you need to look at a few
4 basic elements. Is there a joint operating agreement, a
5 voluntary agreement, between the parties? No, there
6 isn't.

7 Next, you look at whether the applicant, Mack
8 Energy, has made an effort to obtain the voluntary
9 joinder of Mr. Ragsdale, the only other working interest
10 owner in the well. Have they done that? Yes.

11 Next, the overall scope of the Division and
12 the Commission's authority is: Will pooling prevent
13 waste and protect correlative rights? In this case, Mack
14 has proposed a frack job that is reasonable and will
15 increase reserves, and this definitely prevents waste and
16 protects correlative rights.

17 Now, as I'm sure you're aware, the subject
18 well was drilled and then recompleted some time ago.
19 That doesn't matter, because the pooling statute,
20 70-2-17.C, expressly allows force pooling before or after
21 a well is drilled. So the fact that the recompletion
22 that was done on the well by Mack Energy and Mr. Ragsdale
23 in 2004 is irrelevant.

24 Now, the evidence will show that Mack has
25 satisfied the statutory requirements and Division policy

1 for force pooling. And Mack requests that you enter an
2 order force pooling Mr. Ragsdale into the well, as the
3 Oil Conservation Division did; awarding a risk or charge,
4 as did the Division; and establishing overhead rates.

5 Thank you.

6 ACTING CHAIRMAN BALCH: Mr. Hall?

7 OPENING STATEMENT

8 BY MR. HALL:

9 Commissioners, the burden today is on the
10 applicant, Mack Energy, to prove that it is entitled to a
11 compulsory pooling order in this case. And in order to
12 do that, it must show prerequisites. It must show first
13 that it acted in good faith in attempting to obtain the
14 voluntary participation of my client,
15 Mr. Ragsdale, in the well. We're here to challenge that.
16 We don't think they can make that showing today.

17 They must also establish -- this is under
18 recent guidance of orders issued by the Commission and
19 the Division. They must show that they acted with
20 diligence. We're here to challenge that, as well. We
21 don't think they can make that showing.

22 We are also here today to challenge Mack
23 Energy's request for a risk penalty on a re-entry for a
24 frack job in the limestone reef. We're going to
25 challenge the very advisability of doing that, whether

1 it's warranted at all and whether it's necessary to
2 preserve the lease or the well for production.

3 After that, we will turn to Mr. Ragsdale and
4 Siana's request for relief that we set forth in our
5 pleadings. And that is the request for relief that is
6 provided for in the second component of the compulsory
7 pooling statutes, Section 70-2-18, whereas in this case,
8 you have an operator that's failed to act diligently.
9 Diligence does come back into play in connection with our
10 request for relief, and we're going to ask the
11 Commission, if compulsory pooling relief is granted, that
12 you also provide that the operator render an accounting
13 to Mr. Ragsdale and pay him the proceeds that the
14 operator has been withholding for some time now without
15 deductions for charges and expenses.

16 That's what we think the statute says. We're
17 not asking you to interpret that statute. It is
18 unambiguous. It does not need interpretation. We're
19 simply asking that it be applied. And I will have more
20 to say about that request for relief in our concluding
21 statements.

22 ACTING CHAIRMAN BALCH: All right. Do we
23 have witnesses, Mr. Bruce?

24 MR. BRUCE: I have three witnesses,
25 Mr. Chairman.

1 MR. HALL: And I have one witness this
2 morning.

3 ACTING CHAIRMAN BALCH: You may introduce
4 your first witness.

5 MR. BRUCE: Staci Sanders.

6 ACTING CHAIRMAN BALCH: Please stand to be
7 sworn.

8 STACI SANDERS

9 Having been first duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. BRUCE:

12 Q. Will you please state your full name and city
13 of residence for the record?

14 A. Staci Sanders, Artesia, New Mexico.

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

16 A. I work for Mack Energy Corporation as a
17 landman.

18 Q. Have you previously testified before the full
19 Commission?

20 A. No, sir.

21 Q. Would you please describe your educational and
22 employment background for the Commissioners?

23 A. I went to New Mexico State for three and a
24 half years, stayed in business, and then I've worked for
25 Mack Energy since 1992, November of 1992, to the current

1 time.

2 Q. And have you always been in the Land
3 Department at Mack Energy?

4 A. Yes, I have.

5 Q. Did you start at the bottom and work your way
6 up?

7 A. I did.

8 Q. And does your area of responsibility at Mack
9 include this portion of Southeast New Mexico?

10 A. Yes.

11 Q. And are you familiar with the land matters
12 involved in this case?

13 A. Yes, I am.

14 MR. BRUCE: Mr. Chairman, I tender
15 Ms. Sanders as an expert petroleum landman

16 MR. HALL: No objection.

17 ACTING CHAIRMAN BALCH: She's admitted.

18 Q. (By Mr. Bruce) Ms. Sanders, could you
19 identify Exhibit 1 for the Commissioners and describe
20 what Mack seeks in this case?

21 A. It's a Midland map, and it shows Section 32 of
22 Township 1733. Mack Energy is seeking to pool all
23 mineral interests from the surface to the base of the Abo
24 underlying the southeast of the northwest quarter of
25 Section 32. The unit is dedicated to the Cockburn A

1 State Number 5 well, which is an existing well.

2 Q. And what is the status of the well?

3 A. The well was drilled in 1970 into the Morrow,
4 and Mack Energy became the operator in 2004. The well is
5 currently producing about 20 to 22 barrels of oil per day
6 from the Abo formation, and Mack Energy seeks to re-enter
7 the well and frack the Abo to increase production.

8 Q. Who do you seek to force pool?

9 A. Ragsdale.

10 Q. And what is his working interest in the well
11 unit?

12 A. 6.25 percent.

13 Q. And who owns the remaining 93.75 percent of
14 the working interest?

15 A. Mack-related entities, Chase Oil, et cetera.

16 Q. Now, this is a single tract. So all the
17 interests in the tract are undivided; are they not?

18 A. (Witness nods head.)

19 Q. Could you --

20 A. Yes. I'm sorry.

21 Q. Well, let's go through the timeline on the
22 well and review some exhibits. And first, let's start
23 off with Exhibit 2A. There's a 2 and a 2A, but I'd ask
24 you first to look at Exhibit 2A. What is that?

25 A. It's an Assignment and Bill of Sale from Oxy

1 USA to Siana Operating in 1998, where Siana acquired 100
2 percent from Oxy.

3 Q. By this assignment, did Siana acquire 100
4 percent of the working interest in the well?

5 A. Yes.

6 Q. And then what is Exhibit 2?

7 A. Exhibit 2 is the Assignment of Oil and Gas
8 Leases from Siana Operating to Caza Energy in May of
9 2004.

10 Q. This was six years after Siana had acquired
11 the interest; correct?

12 A. Yes.

13 Q. What is Exhibit 3?

14 A. Exhibit 3 is the assignment from Caza Energy,
15 LLC, to Tom Ragsdale and some Chase et als.

16 Q. And again, Mr. Ragsdale was assigned an
17 undivided 6.25 percent working interest?

18 A. Yes.

19 Q. Was there an additional assignment in Caza to
20 Mr. Ragsdale?

21 A. Yes. Prior to the assignment of his working
22 interest, we assigned an overriding royalty interest to
23 Mr. Ragsdale prior to this assignment.

24 Q. And next, Exhibit 3A. What is that?

25 A. It's an Assignment from Caza Energy, LLC, to

1 Chase Oil Corporation.

2 Q. And does Chase Oil Corporation still own an
3 interest in the well?

4 A. Yes.

5 Q. Okay. And what is Exhibit 4?

6 A. Exhibit 4 are the filings that Mack made with
7 the OCD regarding the change of operator. It's the APD,
8 the well plat, and the Authorization for Transportation
9 that was filed when we took over as operator.

10 Q. Now, this change -- the very first page, the
11 change of operator, was directly from Oxy to Mack. Why
12 is that?

13 A. Because there was never a change of operator
14 done from Oxy to Siana. So we had to go directly to Oxy
15 and do a change of operator from Oxy to Mack Energy.

16 Q. For six years, even though Siana Oil had owned
17 100 percent of the working interest in the well, they had
18 never changed operator from Oxy?

19 A. Correct.

20 Q. Looking at the well documents, the well was
21 completed -- recompleted in the Abo -- I'm looking for a
22 date here -- just within about a month after the
23 assignments were executed between Siana and Caza and Mr.
24 Ragsdale; is that correct?

25 A. Yes.

1 Q. So essentially since Mack became operator, the
2 well has been producing at all times?

3 A. Yes.

4 Q. Now, we, in our opening argument, talked about
5 a JOA. Is there a Joint Operating Agreement covering
6 this well unit?

7 A. No.

8 Q. We have submitted Exhibit 5 to the
9 Commissioners. What is this, and why did you obtain this
10 instrument, called an Operating Agreement?

11 A. We had acquired the property from
12 Mr. Ragsdale, and in the files, there was not an
13 operating agreement. And we began looking for one
14 because there was a mention to an operating agreement.

15 And we were all uncertain, and we finally
16 found a copy of what was called an operating agreement.
17 So when we found it in late 2010, we forwarded it to
18 Mr. Ragsdale, but we did not review it.

19 And we reviewed it when we started talking
20 about fracking the well to see what the terms were.
21 That's when we realized it was really an assignment or a
22 drill-to-earn type of agreement and not an operating
23 agreement.

24 Q. So it's not what people would see in an AAPL
25 Joint Operating Agreement, which governs the well's

1 operations?

2 A. No, it is not.

3 Q. But during that time, had Mack always thought
4 that there was an operating agreement in place?

5 A. Yes, we did.

6 Q. Because you said, I believe, there were
7 references to it in the various documents?

8 A. Yes.

9 Q. But you have never been able to locate a JOA
10 covering this well unit?

11 A. No.

12 Q. Let's start with the discussions regarding
13 fracking the well. What is Exhibit 6?

14 A. Exhibit 6 is our letter, with AFE attached,
15 that went to Mr. Ragsdale to frack the well.

16 Q. And subsequently were there any discussions
17 between personnel representing Mr. Ragsdale and personnel
18 representing Mack Energy?

19 A. Excuse me?

20 Q. Were there discussions, any subsequent
21 discussions, over the next month or two between --

22 A. Yes.

23 Q. Who conducted those on Mack's behalf?

24 A. Our engineer.

25 Q. Is he here today?

1 A. Yes.

2 Q. And will he discuss those?

3 A. Yes, he will.

4 Q. Next, what is Exhibit 7?

5 A. Exhibit 7 is just my handwritten notes from
6 telephone conversations. I just always keep phone call
7 logs when I talk to people.

8 Q. Now, in the first one, you say before
9 Thanksgiving you had a discussion with Tom Zabel. Did he
10 call you?

11 A. Yes, he did.

12 Q. And who did he say he represented?

13 A. Mr. Ragsdale.

14 Q. Is he an attorney, to the best of your
15 knowledge?

16 A. Yes, sir.

17 Q. In New Mexico or Texas or where?

18 A. Texas, I believe.

19 Q. So you had a discussion with him, and what did
20 he request you to do?

21 A. To send an OA to Mr. Ragsdale so we could get
22 something in place.

23 Q. We'll see in a moment that you did that;
24 correct?

25 A. Yes, I did.

1 Q. What about the follow-up conversations. What
2 did they -- just very briefly --

3 A. It was just regarding the OA, trying to see if
4 we could get something worked out. And this is my notes
5 where I called and left messages or conversations with
6 Mr. Ragsdale.

7 Q. Okay. And so there were several telephone
8 discussions?

9 A. Yes.

10 Q. What is Exhibit 8?

11 A. Exhibit 8 is when I forwarded the operating
12 agreement by letter to Mr. Ragsdale.

13 Q. Before the Division hearing, did you receive
14 any comments at all regarding the operating agreement
15 from Mr. Ragsdale?

16 A. No.

17 Q. And what is Exhibit 9?

18 A. Exhibit 9 is a follow-up letter in April of
19 2012 to Mr. Ragsdale regarding the operating agreement,
20 asking for any comments or suggestions.

21 Q. And did you ever receive any comments or
22 suggestions?

23 A. No, I did not.

24 Q. And then what is Exhibit 10?

25 A. Exhibit 10 is another follow-up letter to Mr.

1 Ragsdale regarding the operating agreement, asking for
2 comments or suggestions.

3 Q. I believe Mr. Ragsdale, in his exhibit
4 booklet, has the proposed JOA, does he not --

5 A. Yes.

6 Q. -- so the Commissioners can look at it?

7 But what penalties are set forth in that JOA?

8 A. The customary 300.

9 Q. And would that be equivalent to the cost plus
10 200 percent risk charge under the force pooling statutes?

11 A. Yes.

12 Q. In your opinion, has Mack Energy made a
13 good-faith effort to obtain the voluntary joinder of
14 Mr. Ragsdale in the well?

15 A. Yes.

16 Q. Do the other working interest owners in the
17 well plan on joining in the frack procedure?

18 A. Yes.

19 Q. And will an engineer discuss the AFE and the
20 cost of the proposed operation?

21 A. Yes.

22 Q. Do you request that Mack Energy be appointed
23 operator of the well?

24 A. Yes.

25 Q. And do you have a recommendation as to the

1 amounts which Mack should be paid for supervision and
2 administrative expenses?

3 A. We request that \$6,500 per month be allowed
4 for drilling a well, and \$650 a month be allowed for a
5 producing well.

6 Q. Are these amounts equivalent to those normally
7 charged by Mack and other operators in this area for
8 wells of this depth?

9 A. Yes.

10 Q. Do you request that these rates be adjusted
11 periodically, in accordance with the COPAS accounting
12 procedure?

13 A. Yes.

14 Q. Does Mack request the maximum cost plus 200
15 percent risk charge if Mr. Ragsdale goes nonconsent in
16 the re-entry and the fracking of the well?

17 A. Yes.

18 Q. Will your engineers discuss the risk charge
19 further?

20 A. Yes, they will.

21 Q. Now, you were here at the original hearing,
22 were you not, Ms. Sanders?

23 A. Yes, I was.

24 Q. And Mr. Ragsdale, if you look at the
25 transcript, said that he requested information from Mack

1 in the past, but wasn't provided that information. Let's
2 go into that a little bit. What is Exhibit 11?

3 A. It's in response to a subpoena that
4 Mr. Ragsdale had gotten from the Division, and it's a
5 letter to his attorney providing the materials which had
6 all been previously provided before.

7 Q. Let's go into this, and we'll briefly go into
8 a few exhibits. But you sent him -- down at the bottom,
9 you say you sent him the well file?

10 A. Um-hum.

11 Q. Had that previously been provided to him
12 before the subpoena?

13 A. Yes.

14 Q. The lease file, had that been previously
15 provided to him?

16 A. Yes.

17 Q. The division order file, had that been
18 previously provided to him?

19 A. Yes.

20 Q. And I think you mentioned this before. When
21 the well was acquired in 2004 by Caza, where did the
22 title information come from?

23 A. From the files we obtained from Mr. Ragsdale.

24 Q. So he had all those files from the beginning?

25 A. Yes.

1 Q. He also asked for copies of JIBs. Were JIBs
2 sent every month to Mr. Ragsdale from the inception of
3 the recompletion of the well?

4 A. Yes, they were.

5 Q. He asked for production information. Was that
6 information previously sent to Mr. Ragsdale?

7 A. Production information, I don't know if he
8 ever requested it before. But it was -- the information
9 appears on our checkstub.

10 Q. We'll get into that a little bit later.

11 A. Um-hum.

12 Q. But all of the payment stubs that were sent to
13 Mr. Ragsdale contained production information?

14 A. Yes.

15 Q. And pricing information?

16 A. Yes.

17 Q. And that would be the same with respect to
18 revenue; would it not?

19 A. Yes.

20 Q. So he had everything that he requested in the
21 subpoena?

22 A. Yes.

23 MR. HALL: Objection, no foundation for
24 that. I don't think it's been established that she knows
25 what the scope of the subpoena was. I point out that

1 among the things requested in the subpoena were oil
2 contracts.

3 Q. (By Mr. Bruce) Let's go into that. Are there
4 oil contracts?

5 A. There is not an oil contract, because Navajo
6 does not issue an oil contract. That's who the original
7 contract was with. And gas contracts, there were, and
8 they were in the file which we provided previously.
9 There was -- we had division orders with Navajo, and
10 that's your basic -- that's what they provide to you.

11 Q. Let's go into that, because I think some of
12 our additional information -- to show that this
13 information was provided, what is Exhibit 12?

14 A. Exhibit 12 is emails from our office between
15 either myself or SuAnne Greenwood and Bobbi Brice, of
16 Mr. Ragsdale's office.

17 Q. And what was sent as a result of these emails?

18 A. The files for the Cockburn A State Wells and
19 State CD Wells. All of the information that he had
20 requested, it was either electronically sent to him or by
21 mail. Some of these say that the emails did not go
22 through, so we would forward the information by mail.

23 Q. Was it forwarded to him?

24 A. Yes, it was.

25 Q. What is Exhibit 13?

1 A. Exhibit 13 is a letter where we provided some
2 of the same information again and the operating agreement
3 that was in -- that we had discovered.

4 Q. So you did provide him with AFEs over a year
5 ago regarding the subject well; correct?

6 A. Yes, all the AFEs that were in the file.

7 Q. And it references a gas contract. So you had
8 provided him with a gas contract?

9 A. Yes, I had.

10 Q. And then it says, "Operating Agreement." Is
11 that the Operating Agreement marked as Exhibit 5?

12 A. Yes.

13 Q. At that point, had you even reviewed that
14 agreement to see if it was, in fact, a normal joint
15 operating agreement?

16 A. No, we had not.

17 Q. But you forwarded it to him regardless?

18 A. Yes.

19 Q. And what is Exhibit 14?

20 A. In March of 2012, Mr. Ragsdale had someone
21 from his office contact us to obtain production
22 information. And I just asked them to send us an email
23 in writing so we had it for our records. And we'd be
24 glad to provide it, so we did so.

25 Q. Was Mr. Ragsdale also provided with copies of

1 the C-115s for the well?

2 A. Yes.

3 Q. And are those -- I think attached to this
4 email is the daily production data that Mr. Ragsdale had
5 requested; correct?

6 A. Yes.

7 Q. Are the last few pages copies of C-115s?

8 A. I think it's the information that goes on the
9 C-115. But yes -- it's not basically a copy of the
10 C-115, but yes.

11 Q. C-115s are submitted electronically, aren't
12 they?

13 A. Yes, they are.

14 Q. And finally, what is Exhibit 14A?

15 A. It is the most current email that went to
16 Mr. Ragsdale's office for the production information. We
17 continue to send it on a monthly basis since he asked for
18 it.

19 Q. Has Mack ever refused to provide information
20 to Mr. Ragsdale when he requested it?

21 A. No, we have not.

22 MR. BRUCE: I don't think my direct will
23 take too much longer, Commissioners. A lot of the rest
24 of the exhibits are what I, in a regular hearing,
25 wouldn't submit. But because of issues raised by

1 Mr. Ragsdale at the Division level, I just want to submit
2 these exhibits very briefly through Ms. Sanders.

3 Q. (By Mr. Bruce) What are Exhibits 15 and 16,
4 Ms. Sanders?

5 A. Fifteen is the Navajo division order, signed
6 by Mr. Ragsdale, for the Cockburn A State Number 5. And
7 16 is the Mack Energy division order signed by Mr.
8 Ragsdale.

9 Q. Did Navajo Refining disburse revenue on this
10 well for several years?

11 A. Yes, they did.

12 Q. And then Mack Energy took over disbursing
13 revenue; correct?

14 A. Yes.

15 Q. That's why there's two division orders?

16 A. Yes.

17 Q. And what is Exhibit 17?

18 A. This is a summary of the invoices billed and
19 the balance owed by Mr. Ragsdale for the Cockburn Well.

20 Q. Why was this prepared? What happened with
21 regard to JIBs and invoices in 2010?

22 A. Mr. Ragsdale quit paying his bills.

23 Q. And except for one month, has he not paid any
24 bills since October of 2010?

25 A. That's correct.

1 Q. And these are his share of the operating costs
2 on the well; correct?

3 A. That's right.

4 Q. What is Exhibit 18?

5 A. It is a check that Mr. Ragsdale sent to us.
6 It's just an example of the checks that we received from
7 him.

8 Q. Paying operating costs?

9 A. Yes, sir.

10 Q. And that's the only one you received since
11 October 2010?

12 A. Yes.

13 Q. What is Exhibit 19?

14 A. It is the revenue payments made to
15 Mr. Ragsdale.

16 Q. And this includes two wells; correct?

17 A. Yes, sir, it does.

18 Q. And just on the last page on these two wells,
19 what is the approximate amount that, as of a year ago or
20 so, had been paid to Mr. Ragsdale on these two wells?

21 A. \$344,028.72.

22 Q. And in looking at this -- well, ignore that
23 for a minute.

24 What are Exhibits 20A and 20B?

25 A. Just typical JIBs that were mailed to

1 Mr. Ragsdale on a monthly basis. This just shows what
2 they look like.

3 Q. Okay. So he was provided with these every
4 month?

5 A. Yes, sir.

6 Q. What are Exhibits 21A and 21B?

7 A. These are two examples of our checkstubs that
8 go to the owners. These are copies of the ones that went
9 to Mr. Ragsdale.

10 Q. And so together with the check, there is
11 information on the production and pricing from the
12 Cockburn A State Well Number 5; correct?

13 A. Yes.

14 Q. Finally, the final three exhibits for you.
15 Exhibit 22, what is that?

16 A. This is the letter from Mr. Ragsdale's lawyer,
17 Mr. Hall, regarding revenue in suspense.

18 Q. Since this will come up, Mack did place Mr.
19 Ragsdale's revenue in suspense?

20 A. Yes, we did.

21 Q. When was that done?

22 A. In 2011.

23 Q. And is that a result of his nonpayment of his
24 JIBs?

25 A. Yes.

1 Q. And what are Exhibits 23 and 24?

2 A. The first one is a response to the letter that
3 we just talked about from our counsel regarding the funds
4 in suspense, and a second one also.

5 Q. Are the funds still in suspense?

6 A. We actually released all but what he owes us
7 from suspense at the beginning of this week, because it
8 came up. We were getting ready for this hearing. We had
9 this on the back burner, had not looked on at it, did not
10 realize there was as much in suspense as there was, so we
11 released everything.

12 Q. Except for several thousand dollars?

13 A. Except for what he owes on his JIB, yes.

14 Q. Were Exhibits 1 through 24 prepared by you or
15 under your supervision or compiled from company business
16 records?

17 A. Yes.

18 Q. And in your opinion, is the granting of this
19 application in the interest of conservation and the
20 prevention of waste?

21 A. Yes.

22 MR. BRUCE: Mr. Commissioner, I move the
23 admission of Mack Exhibits 1 through 24.

24 ACTING CHAIRMAN BALCH: Any objection?

25 MR. HALL: No objection.

1 ACTING CHAIRMAN BALCH: They're so
2 admitted.

3 (Mack Exhibits 1 through 24 were admitted.)

4 MR. BRUCE: I pass the witness.

5 MR. BRANCARD: Just to note, on Exhibits
6 15 and 16, if you have them --

7 MR. HALL: The division orders?

8 MR. BRANCARD: Yeah. Where it says,
9 "Owner's tax ID/Social," is that your Social Security
10 number on there?

11 MR. RAGSDALE: Yes, that is.

12 MR. BRANCARD: Can we all agree to black
13 it out?

14 MR. BRUCE: Yes.

15 ACTING CHAIRMAN BALCH: Also, for
16 completeness, Mr. Bruce, I'm missing Exhibit 17.

17 MR. BRUCE: Let me give you my copy,
18 Mr. Chairman.

19 ACTING CHAIRMAN BALCH: Any
20 cross-examination?

21 MR. HALL: Yes.

22 CROSS-EXAMINATION

23 BY MR. HALL:

24 Q. Good morning, Ms. Sanders. We meet again.

25 A. Yes.

1 Q. Do me a favor and turn to your Exhibit 4,
2 please. In that exhibit is the C-102?

3 A. Yes.

4 Q. Can you tell us again when the C-102 was
5 changed to reflect the change of operator?

6 A. In May of 2004.

7 Q. If you look at Line Item Number 3, it asks
8 about the consolidation of interests. And that was left
9 blank; correct?

10 A. Yes, sir.

11 Q. In 2004, was Mack aware of the need to
12 consolidate the diverse ownership interest in the well?

13 A. Yes.

14 Q. When did it first undertake to try to
15 consolidate?

16 A. When we basically started getting ready to
17 frack the well, because we thought we were already
18 consolidated under an operating agreement.

19 Q. So that would have been about August of 2011?

20 A. Yes.

21 Q. I'll ask you a question about the application
22 that was filed in this case. I'll read a bit to you. It
23 says, "Applicant has in good faith sought to obtain the
24 voluntary joinder of all other mineral interest owners in
25 the acreage."

1 So the question is: Who are the other mineral
2 interest owners?

3 A. There are numerous internal.

4 Q. Who are they?

5 A. Employees at Mack Energy and the Chases
6 themselves, family members, Chase Oil Corporation and
7 Mr. Ragsdale.

8 Q. Can you tell us individual names? Well, let
9 me ask it this way: How many other interest owners are
10 there in the well?

11 A. I don't have that right in front of me. I
12 would guess -- I would be making a guess because it's all
13 employees, and it varies from well to well. Without
14 having a list in front of me, I don't think I can tell
15 you exactly who are -- I can tell you I am in it myself.

16 Q. If we look at the Joint Operating Agreement
17 that we discussed earlier today, is there a list of
18 interest owners and their ownership percentages there?

19 A. No.

20 Q. There is not?

21 A. No.

22 Q. I believe you told me at the earlier hearing
23 that you personally have an interest in this well;
24 correct?

25 A. Yes, sir, under a participation agreement

1 through our company. So we're not of record in the
2 county. It's through a participation program.

3 Q. Tell us how that works. Did you receive an
4 AFE for this frack job?

5 A. No.

6 Q. Were you ever offered the opportunity to go
7 under an operating agreement?

8 A. Under our participation agreement, we do not
9 sign operating agreements because it's all through a
10 participation agreement through our company.

11 Q. How about the other interest owners that are
12 not under the employee participation agreement?

13 A. The Chases -- once we have a JOA in place,
14 then we have them sign. That would be Robert Chase,
15 Ventana, Diakan and so forth, once we have something
16 that's agreed upon.

17 Q. Is it correct to say today that their
18 interests are not consolidated under an operating
19 agreement?

20 A. No, sir.

21 Q. It is not correct? Have they signed an
22 operating agreement?

23 A. I misunderstood your question. They have not
24 signed an operating agreement. They have not been
25 consolidated.

1 Q. Have those interest owners been presented
2 with an AFE?

3 A. No. They're internal. They're in house.
4 They know all the goings on and what Mack proposes.

5 Q. All right. Let's establish the timeline
6 correctly here. If we turn to your Exhibit 19, let's
7 talk about that a little bit. This is a summary of
8 revenue payments paid to Mr. Ragsdale; correct?

9 A. Yes, it is.

10 Q. If we turn to the last page, the last payment
11 was for August 2011 production?

12 A. Yes. On this statement, yes.

13 Q. I'm sorry?

14 A. On this statement, yes.

15 Q. There were no payments since August 2011;
16 correct?

17 A. There was one -- if you see the check, Exhibit
18 21B, it was for August. Yes, it's for August production,
19 but it was paid in September of 2011.

20 Q. So the Commission is clear on this, when we
21 look at Exhibit 19, these revenues are attributable to
22 both an overriding royalty interest and a working
23 interest owned by Mr. Ragsdale; correct?

24 A. Yes.

25 Q. And it's for production from two wells;

1 correct?

2 A. Yes.

3 Q. So the decision was made in August 2011 to
4 cease payments to Mr. Ragsdale for his working interests
5 and his overrides in both wells; is that accurate?

6 A. Yes.

7 Q. Now let's refer back to your Exhibit 6.
8 Exhibit 6 is your August 30, 2011, transmittal for the
9 AFE for the frack job; correct?

10 A. Yes.

11 Q. So the decision to AFE Mr. Ragsdale was made
12 after the decision to stop paying him; correct?

13 A. No.

14 Q. I believe you testified a moment ago that a
15 decision was made to stop paying him in August; is that
16 correct?

17 A. Yes.

18 Q. Was this before or after this?

19 A. I guess it's concurrently, yes. I don't think
20 they had one to do with the other.

21 Q. If we look at the letter, at the time Mack had
22 understood that the interests were not consolidated under
23 an operating agreement; correct?

24 A. Yes, sir.

25 Q. If you look at the last paragraph, it says,

1 "If you wish to join, please execute and return an AFE."

2 But does the proposal explain what you do if you don't
3 wish to join, if you wish to go nonconsent?

4 A. No, it doesn't.

5 Q. How does an interest owner go nonconsent under
6 a proposal like this?

7 MR. BRUCE: I would object because it asks
8 a legal question. And I would state that the case I
9 submitted to the Division, Bellet v. Grynberg, addresses
10 that very thing, how a co-tenant can go nonconsent in a
11 well. I would object to Ms. Sanders being required to
12 answer that question because she's not an attorney.

13 MR. HALL: She's been qualified as an
14 expert petroleum landman without objection from me. I
15 think she has the credentials and experience to answer
16 the question. She understands how AFEs and well
17 proposals work and how participation in wells works. I'm
18 really not interested much in the Bellet v. Grynberg
19 case. We're talking about procedures under the Oil and
20 Gas Act. I think this question is relevant to that.

21 ACTING CHAIRMAN BALCH: I'll allow it.

22 A. Under there, it does not offer -- it says here
23 if he has any questions, he can call our office. He's
24 never once called our office to object to the AFE or talk
25 to us about it. And when asked for a JOA, we forwarded

1 one to him for signature.

2 Q. (By Mr. Hall) And so the letter says, "Please
3 contact Lee Livingston"?

4 A. Um-hum. Yes, sir.

5 Q. Who's Lee Livingston?

6 A. He is our engineer.

7 Q. The engineer is going to answer the questions
8 about how you go nonconsent in a well?

9 A. No, sir. If there are questions, my name is
10 on here also. I felt like he could contact us. We've
11 always had a working relationship that Tom could call me,
12 and I've always tried to be forthcoming in anything that
13 I could.

14 Q. Okay. Ms. Sanders, can you explain to the
15 Commission, with no JOA in place, what was the
16 authorization for Mack Energy to place into suspense
17 Mr. Ragsdale's working interest revenues?

18 A. We placed his revenue in suspense for
19 nonpayment of his JIB.

20 Q. Under what authority?

21 MR. BRUCE: Again, I would object. I
22 think, once again, referring to the Bellet v. Grynberg
23 case, it says that the operator has an equitable lien on
24 the interest of a party who doesn't pay its bills.

25 And I would direct Ms. Sanders not to answer

1 the question because that is definitely a legal question.

2 MR. HALL: You can direct. But I think
3 it's a determination for the Commission to make, whether
4 she can answer.

5 ACTING CHAIRMAN BALCH: Is this within
6 your area of expertise?

7 THE WITNESS: No, sir, it's not.

8 Q. (By Mr. Hall) Who made the decision to
9 withhold payments to Mr. Ragsdale?

10 A. The owner of Mack Energy.

11 Q. Who is that?

12 A. Mack Chase.

13 Q. Did he instruct you to withhold payments?

14 A. Not me, personally.

15 Q. Who did he instruct?

16 A. The other landman in our office, Travis
17 Lanning.

18 Q. When was his instruction issued?

19 A. In August of 2011.

20 Q. And the instruction was also to suspend
21 revenues from the State CD Well?

22 A. Yes, sir.

23 Q. And the instruction was to suspend revenues
24 attributable to overriding royalty interests that
25 Mr. Ragsdale owned?

1 A. I knew about the working interest. I can't
2 say for certain I knew about the overrides. But yes,
3 sir, apparently so.

4 Q. In the course of formulating the proposal to
5 frack the well, were you involved in any discussion about
6 the need to frack the well?

7 A. No, I was not.

8 Q. Who made that decision?

9 A. Our engineer and geologist.

10 Q. When did they -- if you know, when did they
11 conceive of the idea to fracture the well?

12 A. I would say it was sometime in August,
13 whenever they came to me and told me they were going to
14 give me an AFE to send.

15 Q. You'll agree that the well has been and
16 continues to produce in paying quantities?

17 A. Yes.

18 Q. Is there any danger of lease termination due
19 to cessation of production?

20 A. No, sir.

21 Q. Is there, to your knowledge, any danger of
22 losing the well from any mechanical problems?

23 A. Not to my knowledge.

24 Q. Can you tell us what Mack's arrangements are
25 with Navajo Refinery for the sale of oil from the well?

1 A. We --

2 Q. What are the terms?

3 A. The terms, I couldn't -- I don't handle the
4 contracts for that type of thin for which there's not a
5 contract. We have been a long-standing customer of
6 Navajo. And we sell almost all of our oil to them, and
7 they're the purchaser. They send us a hundred percent
8 division order, which we sign. And, in turn, we
9 disburse.

10 Q. But in this case, you showed us an exhibit
11 which was an oil division order signed by Mr. Ragsdale?

12 A. Yes, sir.

13 Q. Does Mack Energy allow its nonoperating
14 working interest owners to sell their share of oil
15 directly to a purchaser?

16 A. If they request so of them, yes, sir.

17 Q. Let's look -- if you would turn to your
18 Exhibit Number 11, that's the June 13, 2012, transmittal
19 letter for the documents that were subpoenaed by the
20 Division at our request?

21 A. Yes, sir.

22 Q. I want to ask you some questions. Did you
23 have the opportunity to review the documents that you
24 sent to me?

25 A. I had our -- I have a tech in our office in

1 the Land Department. And we got all the files together,
2 and I had her -- everything was scanned, and then she
3 compiled a CD. So I did not review all the files
4 completely, no, sir.

5 Q. In your general capacity as landman, would you
6 have had the opportunity to review the division order
7 files?

8 A. Yes.

9 Q. And the files containing title opinions?

10 A. Yes.

11 Q. And so you reviewed the title opinions that
12 were available?

13 A. In the past, probably.

14 Q. In your review of those title opinions, are
15 you aware of any opinion setting forth an objection to
16 lack of good and marketable title in Mr. Ragsdale?

17 A. Not that I'm aware of.

18 Q. Are you aware of any curative requirements set
19 forth in any title opinion attributable to the interests
20 of Mr. Ragsdale?

21 A. No.

22 Q. Are you aware of any information in those
23 title opinions that calls into question the entitlement
24 of Mr. Ragsdale to payment of either his working interest
25 or overriding royalty interest revenues?

1 A. No.

2 Q. Has Mr. Ragsdale ever failed or refused to
3 execute a reasonable division order for production in
4 these wells?

5 A. No.

6 Q. Let's go back and talk about the timeline.
7 Both Mr. Bruce and I have been discussing with you the
8 sequence of events here. If you would turn to Exhibit
9 Number 8?

10 A. (Witness complies.)

11 Q. The date of that letter is when?

12 A. December 7th, 2011.

13 Q. This is a letter that transmitted the Joint
14 Operating Agreement for the first time to Mr. Ragsdale?

15 A. Yes, sir.

16 Q. And this was sent to him after the compulsory
17 pooling application had been filed on November 2nd;
18 correct?

19 A. Yes.

20 Q. You've discussed the various other interest
21 owners --

22 A. Yes, sir.

23 Q. -- owning working interests in the well?

24 Why is it that it's only Mr. Ragsdale that's
25 been asked to sign an AFE and a JOA?

1 A. As I explained before, we had a participation
2 agreement. And that is just -- it's one that's put forth
3 by Mack Energy when you're allowed to participate in
4 wells, and it sets forth all the guidelines.

5 We don't sign AFEs. Because if we're asked to
6 participate, either you say yes or no, and that's how we
7 participate. And then we pay our share of expenses. We
8 get a JIB, just like he does.

9 Q. So you would be paying your share of the JIB
10 for this frack job?

11 A. Yes.

12 Q. Have you indicated that you wish to
13 participate in the frack job?

14 A. Yes.

15 Q. Have you signed an AFE?

16 A. No.

17 Q. And if you wish to decline, how does that work
18 if you wish to go nonconsent?

19 A. Under our participation agreement, if we do
20 not, we just don't have an interest in the well and we
21 don't participate. And it's basically -- it's our --
22 it's just you don't participate. It's just a
23 participation agreement. It's internal.

24 MR. HALL: No further questions. Thank
25 you, Ms. Sanders.

1 ACTING CHAIRMAN BALCH: Commissioner
2 Dawson, do you have any questions?

3 EXAMINATION

4 BY COMMISSIONER DAWSON:

5 Q. Are there any other working interest owners in
6 the well that owe money from joint interest billings?

7 A. No.

8 Q. They're all paid up?

9 A. Yes.

10 COMMISSIONER DAWSON: That's the only
11 question I have.

12 ACTING CHAIRMAN BALCH: I have some
13 questions.

14 EXAMINATION

15 BY ACTING CHAIRMAN BALCH:

16 Q. At the time that you stopped paying
17 Mr. Ragsdale on the Cockburn Well, you also stopped
18 paying on the State CD Well?

19 A. Yes, sir.

20 Q. Did he also -- and the cause of that was not
21 paying his share of operating costs?

22 A. Yes, sir.

23 Q. Did he also not pay operating costs on the
24 State CD Well?

25 A. Yes.

1 Q. On your internal participation agreement,
2 correct me if I'm wrong, but it sounded like if you're
3 participating in a well and then you decide to go
4 nonconsent on a stimulation, then you lose your
5 participation?

6 A. Yes. There's not an assignment to us. So if
7 there had been, we would have to sign it back. But we
8 don't have an assignment, so you just don't have an
9 interest anymore.

10 ACTING CHAIRMAN BALCH: Those are my only
11 questions.

12 Do you have redirect?

13 MR. BRUCE: I have a couple of questions,
14 just to clarify.

15 REDIRECT EXAMINATION

16 BY MR. BRUCE:

17 Q. Again, with respect to the C-102 that was
18 submitted to the Division in 2004 regarding consolidation
19 of interests, again, at that time, people thought there
20 was an operating agreement; correct?

21 A. Yes, sir.

22 MR. HALL: I'm going to object. That's
23 contrary to her direct testimony to me. It's leading.

24 MR. BRUCE: But it is her testimony in a
25 question to me.

1 MR. HALL: First of all, he's leading.
2 Let the record speak for that. That's been asked and
3 answered.

4 ACTING CHAIRMAN BALCH: Would you care to
5 rephrase your question?

6 MR. BRUCE: I'll rephrase it.

7 Q. (By Mr. Bruce) Regarding the consolidation of
8 interest, what was Mack's knowledge regarding an
9 operating agreement in 2004?

10 A. From the files, we thought there was an
11 operating agreement.

12 Q. And therefore, there was no need at that time
13 to consolidate interests?

14 A. True.

15 MR. HALL: Again, I object. It's leading.
16 It contradicts her own testimony. It's improper.

17 MR. BRUCE: We'll move on, Mr. Chairman.

18 Q. (By Mr. Bruce) Getting back to one of the
19 final questions regarding consolidation of interests, as
20 you said, with respect to the internal people at Chase,
21 they're either in or out?

22 A. Yes, sir.

23 Q. And obviously if they're out, they don't need
24 to sign a JOA?

25 A. True.

1 Q. And if they're in, they're already covered by
2 their participation agreement?

3 A. Right.

4 Q. And again, of the other 93.75 percent of the
5 working interest owners, do you know of anyone who
6 doesn't plan on joining in the frack job?

7 A. There is not anyone else.

8 Q. If you look at -- regarding the decision to
9 suspend proceeds, would you look at your Exhibit 21B,
10 Ms. Sanders?

11 A. (Witness complies.)

12 Q. What is the date of that revenue statement?

13 A. The date is September the 29th of 2011.

14 Q. Is that the same date as the check that was
15 sent to Mr. Ragsdale?

16 A. Yes.

17 Q. So based on that, is it proper to say that a
18 decision to suspend runs was made after that date?

19 A. Yes.

20 Q. And so when you sent out your initial well
21 proposal to Mr. Ragsdale, the funds had not been placed
22 in suspense -- the revenues had not been placed in
23 suspense at that time, in August?

24 A. Right.

25 Q. Finally, at the time that the funds were

1 placed in suspense, Mr. Ragsdale had not paid his JIBs
2 for approximately what period of time?

3 A. Two years.

4 Q. Well, in October of 2011?

5 A. A year.

6 MR. BRUCE: Thank you. That's all I have.

7 MR. HALL: One question.

8 ACTING CHAIRMAN BALCH: Sure.

9 RE-CROSS-EXAMINATION

10 BY MR. HALL:

11 Q. Did you agree with the decision to place the
12 overriding royalty interest revenues into suspense?

13 A. Did I agree?

14 Q. Yes.

15 A. I had no part of that.

16 Q. Did you disagree with it?

17 A. I wasn't involved in placing it in suspense.

18 Q. All right. My question is: Did you agree
19 with it?

20 A. I really didn't know it was done until after
21 the fact, so I can't say that I agreed with it.

22 Q. Do you agree with it now?

23 A. No, sir.

24 MR. HALL: Okay. Nothing further.

25 ACTING CHAIRMAN BALCH: Your next witness?

1 MR. BRUCE: I call Mr. McCoy.

2 ACTING CHAIRMAN BALCH: Please stand to be
3 sworn.

4 MICHAEL McCOY

5 Having been first duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. BRUCE:

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

10 A. I'm Mike McCoy, and I live in Woodlands,
11 Texas.

12 Q. What is your occupation?

13 A. I'm a petroleum engineer.

14 Q. Who do you work for?

15 A. I work for Ely & Associates.

16 Q. What type of work does Ely & Associates do,
17 and what type of work do you do?

18 A. Ely & Associates is a hydraulic fracturing
19 consulting firm. We design hydraulic fracturing
20 treatments and stimulation treatments for wells. We also
21 have engineers that go out into the field and help
22 execute these treatments.

23 Q. Do you do this just in the Permian Basin, or
24 where do you do this?

25 A. We do it worldwide. Here in the continental

1 U.S. the Permian Basin, New Mexico, all over Texas, the
2 Gulf of Mexico. Basically all onshore areas of North
3 America.

4 Q. Is Ely & Associates the largest company doing
5 this type of work?

6 A. Yes, sir.

7 Q. Do you consider it, in your opinion, to be the
8 premier company in this field?

9 A. Yes, sir.

10 Q. And have you worked on frack designs and
11 stimulation in the Permian Basin?

12 A. Yes, I have.

13 Q. Let's take a step back. Where did you go to
14 college, where did you get your degree, and where have
15 you worked since you graduated from college?

16 A. I graduated from Texas A&M University in 1983
17 with a Bachelor's of Science Degree in Petroleum
18 Engineering.

19 In May of that year, I went to work for Getty
20 Oil Company. They subsequently were bought out by
21 Texaco. I was working as a drilling and production
22 engineer there.

23 In 1986, I went to work for Phillips
24 Petroleum, and I was a reservoir engineer for Phillips.
25 At Phillips, the reservoir engineers helped design the

1 stimulation treatments and also did the field execution
2 of the stimulation treatments.

3 In 1993, I went to work for MRSA Oil & Gas in
4 Copenhagen, Denmark, and I worked primarily in the North
5 Sea area. In 1996 to 2002, I went to their Middle
6 Eastern operations in Qatar, and I worked the reservoirs
7 in the Arabian Gulf areas as a production engineer and
8 well technologist.

9 Since 2002 I moved back to the States and been
10 with Ely & Associates. I'm currently one of the partners
11 in the firm.

12 Q. Are you a Registered Professional Engineer in
13 any state?

14 A. I'm a Registered Professional Engineer in the
15 State of Texas.

16 Q. With respect to the well which is the subject
17 of the case, did you prepare -- analyze the well and
18 prepare a frack design for this well?

19 A. Yes, I did.

20 MR. BRUCE: Mr. Chairman, I tender
21 Mr. McCoy as an expert petroleum engineer.

22 ACTING CHAIRMAN BALCH: Any objection?

23 MR. HALL: No objection.

24 ACTING CHAIRMAN BALCH: So admitted.

25 Q. (By Mr. Bruce) First of all, Mr. McCoy, has a

1 frack ever been performed on this well?

2 A. No.

3 Q. So could you tell us -- we submitted to the
4 Commissioners your exhibit marked Number 25. Could you
5 describe what this is and what you went into in designing
6 the frack for this well?

7 A. In this exhibit, it's two pages. On the first
8 page and on the upper part of the exhibit is a plot of
9 what the recommended frack design is. On the lower half
10 of the page, using that recommended frack, there's a
11 fracture prediction that's shown. It graphically shows
12 the profile of the frack and how large it is.

13 And on the final page it shows -- using the
14 information from the first two plots, it shows the
15 resulting production prediction. And these were all
16 generated using a fracture simulation model and
17 production model from Fracpro. The name of the software
18 is Fracpro PT.

19 Q. And what do you hope is achieved by the frack
20 with regard to an increase in producing rates?

21 A. Well, what we hope to do is increase the
22 production rate. And what the model output predicts and
23 what I think is a reasonable outcome is the production is
24 increased from the current level of 22, 23 barrels a day
25 up to a first-year average of about 60 barrels of oil per

1 day.

2 Q. In your opinion, is it reasonable to perform
3 this frack on this well?

4 A. Yes, it is.

5 Q. Will it increase recovery from this well?

6 A. Yes, it will.

7 Q. Do you have an estimate of the incremental
8 recovery as a result of the frack?

9 A. On the second page of the exhibit is the
10 production forecast that is generated from using the
11 inputted reservoir parameters and then the fracture that
12 would be generated.

13 And in this prediction, over eight years, it
14 shows a recovery of some 93,000 barrels. And I think
15 that's fairly close to what the reserves are. And we're
16 still at 20 barrels a day. If you continue that decline
17 out, I think there will be an additional production well
18 in excess of 10,000 barrels of additional reserves.

19 Q. So there will be some accelerated production
20 from the frack job?

21 A. Yes, and the majority of the production is
22 pulled forward in the first three years.

23 Q. But there will also be additional recovery
24 that you wouldn't get without the frack job?

25 A. Yes, sir.

1 Q. Now, are there -- do you think this -- you
2 testified it's reasonable to perform this operation on
3 the well. There are always some risks in any type of
4 operation on a well; is there not?

5 A. Yes.

6 Q. Could you itemize a few of those?

7 A. There's -- I think the main risk, there's a
8 mechanical risk to the well. There's always an issue --
9 whenever you enter a well to do some operations, there's
10 some degree of risk with that. We need to ensure that
11 the condition of the tubulars are well enough to perform
12 the treatment.

13 There's a risk that we may increase water
14 production from the well. We have some basic reservoir
15 information that essentially at the point of the
16 wellbore, with this frack, we'll be able to reach out
17 some 300 feet plus from the wellbore. So we're not sure
18 exactly what we're going to encounter. But we used the
19 data that we have to make the best estimate of that.
20 There's always a chance of increasing water production.

21 There's a risk of just the surface frack
22 equipment having a problem during the frack and we don't
23 get the treatment into the ground as designed. So it
24 could be that we pump some part of the treatment less
25 than the full treatment, and we won't get the full

1 production benefit, since we didn't get the full size of
2 the treatment in place.

3 Q. If that occurred, the last thing you said,
4 could you go back in and redo the frack?

5 A. Yes, sir.

6 Q. Despite these risks you mentioned, is it
7 reasonable to conduct this frack on this well?

8 A. Yes, sir.

9 Q. Was Exhibit 25 prepared by you?

10 A. Yes, sir it was.

11 MR. BRUCE: Mr. Chairman, I move the
12 admission of Exhibit 25.

13 MR. HALL: No objection.

14 ACTING CHAIRMAN BALCH: So admitted.

15 (Mack Exhibit 25 was admitted.)

16 MR. BRUCE: And I pass the witness.

17 CROSS-EXAMINATION

18 BY MR. HALL:

19 Q. Mr. McCoy, can you tell us what your
20 instructions were from Mack Energy?

21 A. I think the I receive by email the basic
22 reservoir and well data. And I think the instructions
23 were that they wanted to perform a frack job on this
24 well, and they wanted me to evaluate the frack job and
25 make a recommendation.

1 Q. Did they want you to make a recommendation
2 about whether the frack job should go forward or not?

3 A. I'm not sure if it specifically said that, but
4 that was part of my evaluation.

5 Q. And you said you utilized a simulator, Fracpro
6 PT?

7 A. Yes, sir.

8 Q. And can you tell us what the inputs were for
9 that program that you used?

10 A. First we described the well, what the casing
11 size is and the depth of the well. We described the
12 basic layers of the reservoir, the production interval in
13 the layers above and below. Those are things like
14 different rock characteristics.

15 The production interval, we described that by
16 what fluids are in the reservoir and the rock properties
17 along with that. And then we input a frack design, which
18 has the fluid volumes and the volumes of proppant and the
19 rate that we want to do the treatment. It's an iterative
20 process of going back and looking at different designs
21 and seeing what we think makes sense.

22 Q. In terms of the reservoir parameters for this
23 particular study, you say you analyzed the layers above
24 and below. Was that based on area well logs?

25 A. Yes.

1 Q. In what proximity to this well were those well
2 logs from; do you recall?

3 A. Specifically for this well, we had a log of
4 the interval that I looked at. And I don't remember
5 looking at the offset wells.

6 Q. We had at least one log that you took data
7 from that log, and those data were input into your
8 simulator? Is that the way it works?

9 A. Basically. We also had some core analysis,
10 and we had fluid properties from the production, what the
11 well produces. So those all went in, too.

12 Q. When we look at your Exhibit 25, the first
13 page of that, it shows the product, your fracture
14 prediction; is that accurate?

15 A. Which one of the plots are you looking at?

16 Q. Exhibit 25, the plot at the bottom. It says,
17 "Fracture prediction."

18 A. Yes.

19 Q. That is the product of running the simulator
20 using your data inputs; is that right?

21 A. Yes, sir.

22 Q. So this shows fracture horizontal and vertical
23 lengths?

24 A. Yes, sir.

25 Q. And it assumes -- correct me if I'm wrong. It

1 takes into consideration the spread of the perfs and the
2 wellbore?

3 A. Yes, sir.

4 Q. A minute ago you indicated that it's possible
5 that the fracture wings could extend out 300 feet, and
6 you wouldn't know what you had encountered?

7 A. Yes, sir.

8 Q. And is that horizontal distance?

9 A. Yes, sir.

10 Q. How about vertical?

11 A. Well, I'm not sure if I understand your
12 question.

13 But the frack, in the vertical sense, covers
14 the entire producing interval, which, on this lower plot,
15 is in yellow. So it's basically confined to that
16 interval, the yellow interval.

17 Q. So that yellow interval shows us the entire
18 vertical extent of the Abo formation?

19 A. That's what I considered as the gross
20 interval.

21 Q. It's based on your picks off the well log?

22 A. Yes, and also where the zone was perforated at
23 the time.

24 Q. How confident are you that the fractures will
25 remain contained within the zone?

1 A. In this case, I'm fairly confident.

2 Q. Tell us why.

3 A. The well was drilled, and this zone was put on
4 production, and the reservoir pressure has declined over
5 time. So one of the key things on the fracture growth is
6 the pressure at the various intervals.

7 Intervals above and below should be near
8 virgin pressure because they haven't been produced. In
9 the interval where the fracture grows has declined from
10 initial pressure -- I'm going off memory -- of something
11 like 2,500 psi down to about 1,000 psi in reservoir
12 pressure.

13 Q. Did you look at the well log to determine
14 whether or not there were any barriers separating the Abo
15 from the upper and lower formations, any shale barriers,
16 anything like that, that would contain the frack?

17 A. I don't remember any distinct barriers. The
18 primary barrier is going to be due to the pressure and
19 the resulting stress of overlying and underlying zones.

20 Q. You indicated that there was some risk that
21 you could encounter water, additional water volumes?

22 A. Yes.

23 Q. What effect will that have?

24 A. That will increase the operating costs of
25 producing that additional water.

1 Q. When you say, "additional water," are you
2 talking about water within the Abo or other formations?

3 A. I'm primarily talking about water within the
4 Abo. There wasn't any indication of oil/water contact
5 from the information I reviewed. But as you move away
6 from the well, things could happen.

7 Q. In the course of your analysis and
8 recommendation to Mack, did you take into consideration
9 the current producing rate of the well?

10 A. Yes.

11 Q. What's your opinion of the current producing
12 rate?

13 A. Well, in general, for this area, I would say
14 it's a good well. Production rates are fairly flat.
15 Now, when the well was put on production, there was an
16 initial decline. And I think the last year of production
17 has been 22, 23 barrels a day, on average.

18 Q. What risks to the current rate of production
19 would a frack job pose?

20 A. Well, in my analysis, we increase the rate of
21 production with a frack job.

22 Q. But you're not saying there are no risks posed
23 by the frack job; correct?

24 A. Correct. But you're asking specifically about
25 the oil rate?

1 Q. Yes.

2 A. Okay.

3 Q. Is there a risk -- does the risk exist that
4 the current rate of production, the current decline,
5 could be adversely affected by fracture recompletion?

6 A. Yes. There's risks to the well whenever -- as
7 I said before, whenever you go into a well, there's
8 mechanical risks going into it. So there are some risks
9 to the well.

10 Q. In your view, is the frack job necessary for
11 the preservation of the well?

12 A. I haven't done a full-life analysis of what
13 happens to the reserves at the end of the life of the
14 well. Production rate is fairly flat at 22, 23 barrels
15 per day, and I think it's a long-life type reservoir if
16 you look at it like that. I'm not sure what the average
17 lifetime of the well is.

18 But with the frack job, what should happen is
19 the oil production should be pull forward so that you can
20 recover that oil earlier and not risk it later in the
21 life of the well.

22 Q. So you would agree with me that the well is
23 producing at an efficient and economic rate currently?

24 A. It's at an economic rate.

25 Q. Is there -- do you have any information that

1 shows us that that current economic rate won't continue
2 for some time in the future?

3 A. There's no information to contradict that.

4 Q. Let's talk about frack jobs in Abo. It's
5 limestone; correct?

6 A. Yes, sir.

7 Q. Is a frack job preferable to an acid job to
8 improve production from limestone reservoirs like the Abo
9 as the first option?

10 A. It's hard to say from a generalized comment
11 like that. There are a lot of factors that go into how
12 we choose what the first stimulation should be. But
13 maybe another way to answer it is it's quite common to
14 fracture simulate carbonate formations, limestone
15 formations.

16 Q. Does an acid job pose less of a risk to
17 production than fracture recompletion?

18 A. There are some risks that are similar to just
19 re-entering the well or doing work on the well. The
20 pressures may be similar or close to the same magnitude
21 if there was an acid job initially performed on this
22 well.

23 Q. In the course of your analysis, did you look
24 for any analogs? Did you look at any other fracture
25 recompletions in other Abo producers in the area?

1 A. No.

2 Q. Do you know if there are any?

3 A. I'm not personally familiar with that, no.

4 Q. If the frack job is performed, are you
5 involved in the post-operation results? Do you analyze
6 those for Mack?

7 A. Well, in general, what Ely & Associates does
8 is we do that type of work, and I do that on a regular
9 basis. On this particular well, I haven't been asked to
10 do anything in the future.

11 Q. Do you agree that the prediction that you show
12 on Exhibit Number 25 is really speculative?

13 A. Well, I'd say it's based on sound engineering
14 principles and practices. We took the best data that we
15 had for the well and the reservoir, and we put that into
16 a numerical model that follows the laws of physics.

17 And the prediction at the end, it gets down to
18 that last page. Basically we're saying we're going to
19 put a frack job on the well and triple production in the
20 first year. I think that's very reasonable. I think
21 that fits common reservoir engineering principles of
22 improving skin on a well, which is a degree of
23 stimulation, from a small acid job to a frack job of this
24 size. We're talking about -- an increase of three, I
25 think is very reasonable.

1 MR. HALL: Thank you, Mr. McCoy. No
2 further questions.

3 ACTING CHAIRMAN BALCH: Mr. Dawson?

4 COMMISSIONER DAWSON: I have a question.

5 EXAMINATION

6 BY COMMISSIONER DAWSON:

7 Q. Do you feel that if a frack job was never
8 conducted on this well, that there would be a loss of
9 increment reserves on this well that could be produced in
10 the future?

11 A. Yes, sir.

12 COMMISSIONER DAWSON: No further
13 questions. Thank you.

14 ACTING CHAIRMAN BALCH: Mr. McCoy, thank
15 you for testifying today. I have a couple of questions.

16 EXAMINATION

17 BY ACTING CHAIRMAN BALCH:

18 Q. What's, in your estimation, the cost of this
19 frack job as proposed?

20 A. I didn't look at the costs of this. But I
21 would think it would be probably around a couple hundred,
22 \$300,000 for the frack job itself, although the prices
23 are changing almost daily in the frack industry.

24 Q. So about a third of the value of the
25 incremental recovery if you're going to recover 10,000

1 barrels at around \$80 a barrel?

2 A. Yes, sir.

3 Q. You indicated that you got a lot of your
4 reservoir data from logs on the well itself?

5 A. And sidewall core analysis.

6 Q. Is this an open or a casehole perforation?

7 A. It's a case hole. It's perforated two shorts,
8 I think, per foot of the interval.

9 Q. When was it drilled?

10 A. I don't remember the date of the drilling.

11 Q. I notice there was a first operating agreement
12 in 1960, so somewhere probably around 50 years old,
13 apparently.

14 What logs were collected initially, or were
15 there additional casing logs collected later on? What
16 logs did you look at?

17 A. I don't remember the logs -- the name of the
18 logs I looked at on this particular well. I did this
19 analysis months ago on it.

20 But what was key in my reservoir
21 characterization was the sidewall core analysis that we
22 had on it.

23 Q. Do you know when the sidewall was collected?
24 Presumably, when the well was drilled?

25 A. I'm sure it was when the well was drilled.

1 Q. Was a mass balance performed for the well?

2 A. Material balance on recovery?

3 Q. Right.

4 A. No.

5 Q. From your analysis of the logs, what were the
6 bounding layers? We have the Abo that's carbonate.
7 What's above it and below it?

8 A. The main thing I use as boundary is the
9 pressure of the interval. So the stress which is going
10 to contain the fracture is going to be highly dependent
11 on the pressure. It's going to be the most important
12 factor on this.

13 So the boundary layers -- the bounding stress
14 is built off the initial pressure minus what has been
15 pulled out of the well. So the 2,500 psi from initial
16 pressure down to a current estimate of about 1,000 psi.
17 So --

18 Q. My question really was what about the
19 lithology. Fracpro doesn't use lithology, it just uses
20 pressures?

21 A. It uses stresses.

22 Q. So that's implied from lithology?

23 A. Lithology and pressure.

24 Q. What's the lithology of the rock above this
25 particular interval?

1 A. I had similar-type formations above and below
2 as far as -- the rock characters are Young's modulus,
3 Poisson's ratio. That's what's inputted into the layers.
4 It's not necessarily whether it's a carbonate or a
5 sandstone or a shale. It's more the strength of those
6 layers and what kind of stress it has.

7 Q. So this is a productive carbonate interval
8 bounded by the carbonate intervals?

9 A. That's the way I had it modeled. For the
10 model, the bounding layers -- the most important part is
11 what the stress is in those layers and what the
12 mechanical properties show. What's in the model is
13 similar mechanical properties throughout this interval
14 with the main difference in the pressure, which results
15 in a different stress.

16 Q. On the diagram on the bottom of Exhibit 25,
17 across what interval were the sidewall data collected?

18 A. It was throughout this interval and above and
19 below the interval also.

20 Q. So you have lab measures, rock property values
21 from bounding layers and the producing interval?

22 A. Yes, sir. If I remember correctly, there's
23 intervals other than the Abo formation that were in that
24 dataset.

25 Q. And in your diagram on the bottom of Exhibit

1 25, where are the perforations in this well,
2 approximately?

3 A. The perforations are pretty much blanket
4 throughout this interval. In yellow, several hundred
5 feet of perforations, shot at two shots per foot.

6 Q. What is the height of this interval?

7 A. I think the gross interval here is, if I
8 remember correctly, about 260 feet.

9 Q. And you're proposing to do a fracture job
10 across the entire interval?

11 A. The entire interval is open. And I think the
12 way the frack will take off, it will start in the weakest
13 point within that interval and grow from that point
14 outward.

15 Q. So you're doing a number of stages?

16 A. There's one pumping operation. "Stages" mean
17 different things to -- I'm not trying to avoid your
18 question. What do you mean by, "stages."

19 Q. Where are you packing off to contain your
20 fracture fluid in the formation?

21 A. Where are we packing off?

22 Q. You're going to try to isolate an interval,
23 and you're going to put the fluid into the reservoir.
24 What is that interval?

25 A. The complete open interval of roughly 260 feet

1 is going to be open, and we'll stimulate that whole
2 interval at one time. At least that's the way the
3 analysis was run.

4 Q. Do you know what the current water cut is?

5 A. I think the water production right now is -- I
6 think it's 17, 18 barrels per day, and we're at 22, 23 on
7 the oil.

8 Q. My last question has to do with the prediction
9 of production on the second page of Exhibit 25. What
10 sort of error margins would you apply to the predicted
11 production chart?

12 A. I didn't.

13 Q. Does Fracpro give you an analysis of error or
14 a plus or minus range?

15 A. In a roundabout way it does, if we do a
16 sensitivity on the input analysis. But this prediction
17 was run just carrying the variables through from what the
18 design of the frack was on into the predictive case.

19 But I could have gone in and varied pressure
20 and permeability, and the oil properties would have been
21 the main things that impact the production rate.

22 Q. But you did not get into that exercise?

23 A. No.

24 Q. You've done an awful lot of these predictions;
25 right?

1 A. Right.

2 Q. Do you ever follow up and see how well they
3 compare to your prediction?

4 A. Yes, sir.

5 Q. In general, how well have they compared?

6 A. It's always a function of how good our data is
7 going in and how good we understood the reservoir. If
8 the data is exact, then we have a pretty good prediction.
9 Normally, the predictions are good. There's confidence
10 in the models, but they can always be off.

11 Q. Right. So in your personal experience, how
12 often do you hit the mark?

13 A. I would say if you're talking about the mark
14 within engineering accuracy, plus or minus 20 percent. I
15 think we're there well over half the time.

16 Q. And the other half of the time?

17 A. We can be off either because we didn't
18 understand the reservoir going in and the frack job
19 stimulation treatment didn't go as planned, or there's
20 some other factor that came into play.

21 ACTING CHAIRMAN BALCH: I have no further
22 questions.

23 Do you have redirect?

24 MR. BRUCE: I do not have any redirect,
25 Mr. Chairman.

1 I would point out that in Exhibit 4 there is
2 the completion report. And I would just point out that
3 the perforated interval is 8,644 feet down to 8,914 feet,
4 which corresponds with the witness's memory.

5 ACTING CHAIRMAN BALCH: Okay.

6 MR. BRUCE: One other thing with respect
7 to this witness. Mr. McCoy needs to get back to Houston,
8 and I would ask that he be excused so he can go catch a
9 plane.

10 MR. HALL: I have no objection.

11 ACTING CHAIRMAN BALCH: Then you may be
12 excused.

13 This may be a good time for a 10-minute break.

14 (A recess was taken.)

15 ACTING CHAIRMAN BALCH: I believe you have
16 one more witness?

17 MR. BRUCE: One more witness.

18 ACTING CHAIRMAN BALCH: Please stand to be
19 sworn.

20 LEE LIVINGSTON

21 Having been first duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. BRUCE:

24 Q. Please state your name for the record.

25 A. William Lee Livingston.

1 Q. Where do you reside?

2 A. Artesia, New Mexico.

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

4 A. I work for Mack Energy Corporation, and I'm
5 the current operations manager.

6 Q. Have you previously testified before the
7 Commission?

8 A. No.

9 Q. Summarize your educational and employment
10 background for the Commissioners.

11 A. I graduated in 2004 from New Mexico State
12 University with a degree in mechanical engineering. I
13 went to work for Mack Energy in 2002 part time. I went
14 to work for them full time in 2004. I worked as a pumper
15 for a year, a drilling and completion foreman for four
16 years, and the last four years I have worked as an
17 operations and reserve engineer.

18 Q. Does your area of responsibility at Mack
19 include the area included within this pooling
20 application?

21 A. Yes.

22 Q. Are you familiar with the engineering matters
23 related to this application?

24 A. Yes.

25 MR. BRUCE: Mr. Chairman, I tender

1 Mr. Livingston as an expert petroleum engineer.

2 MR. HALL: No objection.

3 ACTING CHAIRMAN BALCH: So admitted.

4 Q. (By Mr. Bruce) Before we get into the more
5 technical aspects, Mr. Livingston, did you personally
6 have contacts with representatives of Mr. Ragsdale after
7 the frack proposal was sent to him?

8 A. I did not, but I did with one of his
9 employees.

10 Q. Could you describe who that person was and
11 what your contacts consisted of?

12 A. Yes. I was contacted by Mr. Matt Dauffer
13 sometime in September. He called me, and had a few
14 questions on what we were planning on doing with the
15 well.

16 I kind of went over it with him, told him we
17 were going to frack and try to increase production, gave
18 a brief summary of what we were planning to do. At that
19 point, he stated that that sounded good. He'd try to get
20 with Mr. Ragsdale to get the AFE signed, and that was the
21 end of the conversation.

22 A few weeks went by, no word from Mr. Ragsdale
23 or Mr. Dauffer. That is when I contacted him again and
24 asked if the AFE had been signed. I was told it had not
25 been, but he would try to speak with Mr. Ragsdale that

1 afternoon.

2 Hoping to get the matter finished, I contacted
3 Mr. Dauffer again that morning and asked him -- we were
4 going to have some gentlemen in Midland, and if we could
5 stop by and pick up the AFE to make matters easier.

6 And at that point, I was informed that
7 Mr. Ragsdale needed more time to review the AFE and would
8 not be signing it at that time. There was no more
9 communication after that point, and that was probably in
10 October.

11 Q. October 2011?

12 A. Yes, sir.

13 Q. Did Mr. Dauffer ever question any of the AFE
14 costs?

15 A. No, not really. There was no issues in
16 regards to the AFE costs or the procedure.

17 Q. So with respect to the procedure, they really
18 didn't ask much, either?

19 A. No, sir. Just general questions. I thought I
20 had them answered. I felt like I did. There was no more
21 issues that I was aware of.

22 Q. Now, there was an AFE sent with the proposal
23 in August of 2011. Has a more recent AFE been prepared?

24 A. Correct.

25 Q. Is that marked as Exhibit 26?

1 A. It is.

2 Q. Could you go through that and discuss the
3 estimated costs of the procedure that you plan on doing?

4 A. This is your basic AFE for workover
5 recompletion. It's for \$298,000. This includes seven
6 days' worth of pooling unit time, all your fuel, all your
7 water, all your rentals. It goes from your frack tanks,
8 your packers, your tools. This also includes a casing
9 inspection log, an acid cleanup job and a frack job and
10 supervision.

11 Q. And I notice you say 298,000 plus dollars. It
12 looks like you included about a 10 percent contingency
13 fee --

14 A. That's correct.

15 Q. -- just in case?

16 A. That's correct.

17 Q. Based on 271,000; right?

18 A. Yes, sir.

19 Q. Just because some things happen that you can't
20 plan on?

21 A. That's correct.

22 Q. Is this AFE fair and reasonable?

23 A. It is, in my opinion. Mack Energy currently
24 updates all their pricing on a quarterly basis so we can
25 stay current with the market prices.

1 Q. Would this AFE be comparable with the costs of
2 similar frack jobs for wells of this depth in this area
3 of New Mexico?

4 A. Yes.

5 Q. What are Exhibits 27 and 28?

6 A. These are frack bids I got from two separate
7 companies. One is from Elite Well Services and one is
8 from Ultra Tech Frac. They came in at \$148,000. Elite
9 Well Services came in at \$144,000.

10 Q. So you personally asked for these estimates?

11 A. Correct.

12 Q. And both estimates are really just a couple
13 thousand bucks apart?

14 A. Correct. Very similar.

15 Q. So you have confidence in the cost of the
16 frack and the cost of your AFE?

17 A. Yes.

18 Q. Let's go to some questions that -- maybe
19 follow up on some questions that were asked of Mr. McCoy.
20 Mr. McCoy talked about logs on the well. When were those
21 acquired?

22 A. They were run in 2004, when we re-entered the
23 well.

24 Q. So they're all modern logs?

25 A. Correct.

1 Q. And the coring was done in 2004 also?

2 A. Yes.

3 Q. What about -- the other question is the
4 lithology. Have you reviewed the logs, and can you
5 discuss that with respect to zones above and below --

6 A. I have looked at the logs. Essentially what
7 you have above you is more Abo dolomite, a tighter
8 section. You've got about 560 feet before you get to the
9 top of the Abo reef. And below, you have a tighter and
10 shaley Abo section directly below the perforated
11 interval.

12 Q. In your opinion, is the perforated interval
13 well contained in the zone?

14 A. Yes.

15 Q. Let's talk about -- you listened to Mr. McCoy
16 testify; did you not?

17 A. Yes, sir.

18 Q. And he testified about accelerated recovery
19 and incremental recovery. Let's look at the accelerated
20 recovery. How would that benefit the working interest
21 owners in the well?

22 A. The life of the reserves right now are 30
23 years, the way the well is currently producing. If we
24 were to frack it, we would accelerate recovery to 10
25 years, which would probably give us an estimated

1 operating expense savings of around 400- to \$500,000 over
2 the life of the well.

3 Q. Besides just the incremental reserves which
4 Mr. McCoy talked about, there are substantial savings and
5 lower operating costs during the life of this well by
6 conducting the frack?

7 A. That's correct.

8 Q. In your opinion, will this frack pay out the
9 cost of the operation?

10 A. Yes. According to Mr. McCoy's data, this well
11 should pay out in probably around two months.

12 Q. Do you agree with Mr. McCoy that there are
13 always risks in re-entering a well?

14 A. Yes, I do.

15 Q. But do you think in this instance, because of
16 the incremental recovery, because of the reduced
17 operating costs, it's reasonable to take those risks to
18 perform the frack job on this well?

19 A. I do.

20 Q. In your opinion, is a cost plus 200 percent
21 risk charge appropriate if an interest owner goes
22 nonconsent in this well?

23 A. It is.

24 Q. Were Exhibits 26, 27 and 28 either prepared by
25 you or compiled from your records?

1 A. 26 was made by me. 27 and 28 were compiled
2 for me by another service company.

3 Q. In your opinion, is the granting of this
4 application in the interest of conservation and the
5 prevention of waste?

6 A. Yes.

7 MR. BRUCE: Mr. Chairman, I'd move the
8 admission of Exhibits 26, 27 and 28.

9 ACTING CHAIRMAN BALCH: Any objection?

10 MR. HALL: No objection.

11 ACTING CHAIRMAN BALCH: So admitted.

12 (Mack Exhibits 26, 27 and 28 were admitted.)

13 MR. BRUCE: And I pass the witness.

14 CROSS-EXAMINATION

15 BY MR. HALL:

16 Q. Mr. Livingston, let me ask you about your AFE,
17 Exhibit 26, and ask you to compare the costs reflected on
18 that one with the one that was originally sent to Mr.
19 Ragsdale about -- the original estimate was 234,000?

20 A. Yes, sir.

21 Q. To what do we attribute the difference?

22 A. This AFE, the first one, was written almost a
23 year ago. The industry has seen an increase in prices,
24 especially on the frack and pumping side. Your GOR,
25 material, which is your basic materials for your gel

1 system, has gone up, and your sand has gone up. The
2 higher the market, the higher prices.

3 Q. The equipment, for instance, the drilling
4 unit, the costs for which we assume are reflected in this
5 AFE; correct?

6 A. Correct.

7 Q. Is that owned by Mack Energy?

8 A. Which one?

9 Q. The pooling unit.

10 A. That is correct, yes, sir.

11 Q. What other equipment would be owned by Mack?

12 A. Some of the rentals will be owned by Mack,
13 such as the frack tanks, the reverse units.

14 Q. I'll ask you about your conversations with Mr.
15 Dauffer and the request to originally execute the AFE.
16 When you made that request with Mr. Dauffer in 2011, were
17 you aware that Mr. Ragsdale's revenues had been shut off?

18 A. I was not.

19 Q. Do you know if Mr. Dauffer knew that the
20 revenues had been shut off?

21 A. No, I don't believe so.

22 Q. When did you first become aware that
23 Mr. Ragsdale's revenues had been shut off?

24 A. About five days ago, when they decided to send
25 his check to him.

1 Q. Were you involved in the decision to send his
2 check?

3 A. No.

4 Q. Do you know if any costs were netted out of
5 that check?

6 A. I do not know.

7 Q. Do you know if Mack Energy had any
8 authorization to net costs out of that check?

9 A. I do not know.

10 Q. Let me ask you about the request for the 200
11 percent risk penalty. How can you justify asking for
12 cost plus 200 percent when this is not a new drill? The
13 risks are not the same, are they?

14 A. If the risks aren't the same, wouldn't you
15 want to join it?

16 Q. Say again.

17 A. If the risks aren't the same, would you not
18 want to join it? If there are low risks, correct --

19 Q. I agree with you.

20 A. -- you should join it.

21 Q. So the risks are not the same as a new drill;
22 is that correct?

23 A. That's correct.

24 Q. We don't have any geologic risks? We know the
25 geology is there; is that correct?

1 A. That's correct.

2 Q. We don't have any mechanical risks from
3 drilling and completing an initial well; correct?

4 A. You have mechanical risks any time you
5 re-enter a well.

6 Q. They're not the same as when you're drilling a
7 new well; do you agree?

8 A. No, I do not agree.

9 Q. Are they the same?

10 A. It depends on the condition of the well. I
11 have not gone out there and pooled it. I have not seen
12 the shape of the casing.

13 Q. In this well?

14 A. In this well. I don't know yet, until I can
15 get on the well and actually look at it and run a casing
16 inspection log.

17 Q. Do you agree that the frack job is really
18 speculative?

19 A. No, I do not.

20 Q. You sat through Mr. McCoy's testimony. He
21 said, in effect, that he has a 50 percent degree of
22 confidence in his analysis. Do you have any reason to
23 disagree with that?

24 A. I do not.

25 Q. Do you share the same degree of confidence?

1 We're looking at fifty-fifty.

2 A. No. I actually think there's a higher degree.
3 We have pretty good control in this well. We have good
4 information from the core data, the logs. We know what's
5 producing. We know where the pay is at. We know what's
6 above and below us.

7 Typically speaking, we're not putting a
8 thousand-foot frack on this, we're putting 300 foot. The
9 lithology should not change much. I think there's a
10 greater success rate than 50 percent.

11 Q. Did you look at any other examples in the area
12 of frack jobs performed on Abo wells?

13 A. There haven't been any frack jobs in that
14 area. Most of those wells around that area within a
15 three-mile radius are older wells, drilled in the '60s.
16 The initial completion was an acid job done to it, so
17 there was no data.

18 Q. In your opinion, were the acid stimulations
19 sufficient?

20 A. No, I don't think so. I think there's more
21 reserves in the well.

22 Q. Do you have any explanation for why fracture
23 jobs weren't performed on those other Abo analogs you
24 looked at?

25 A. Typically, fracture technology has grown in

1 the last 50 years. Sixty years ago, when the drilling
2 was going in, and if he could make a well with acid,
3 that's probably what he did. That doesn't mean a frack
4 job won't work on the well, though.

5 Q. Would it be more prudent to perform an acid
6 stimulation on this well prior to undertaking the risks
7 involved with fracture recompletion?

8 A. I actually would perform a very small acid
9 job. But mainly that would be for cleanup purposes, to
10 make sure perforations are open and we'll be able to
11 establish a fracture.

12 Q. So you do plan on doing that?

13 A. I do plan on doing a small acid job.

14 Q. Is that part of the fracture recompletion AFE?

15 A. It is in there, the cost, correct.

16 Q. Back to my question, though. Do you think it
17 would be more prudent to perform simply an acid
18 stimulation and wait for the results of that?

19 A. I do not.

20 Q. Okay. Why not?

21 A. Well, I think you're going to contact more
22 reservoir with a frack job. An acid job is very limited
23 in what they can reach. Acid expends, especially at that
24 depth, very quickly. And you're only contacting very
25 little reservoir, versus a frack job.

1 Q. Do you personally have any involvement in
2 performing or supervising a frack job in an Abo well?

3 A. I do. I will be out there on this job.

4 Q. Do you have any prior experience?

5 A. I've probably fracked over 500 wells in the
6 last 10 years.

7 Q. My question is: Do you have any experience
8 with Abo?

9 A. Yes, I do have experience with Abo.

10 Q. Fracture jobs?

11 A. Yes, sir, I do.

12 Q. And did you bring those results for us here
13 today to look at?

14 A. No, because they're not conclusive. It's not
15 in the same area.

16 Q. The results are inconclusive?

17 A. No. I misspoke. It doesn't pertain to this
18 particular well because I don't have any results of
19 offsetting data.

20 Q. Is, in your opinion, the fracture recompletion
21 necessary to preserve the well?

22 A. No.

23 Q. Is the fracture recompletion necessary to
24 reserve a lease?

25 A. No.

1 Q. Is there any risk of lease termination due to
2 imminent cessation of production?

3 A. No.

4 Q. Can the well and the lease be preserved
5 through production to the current completion?

6 A. It can.

7 Q. Do you own an interest in the well?

8 A. I do not.

9 Q. Do you have the opportunity to participate
10 under the employee participation plan?

11 A. No, I do not.

12 Q. So you've not been provided with an AFE --

13 A. I don't have an interest.

14 Q. -- other than your own?

15 Who came up with the idea to fracture this
16 well?

17 A. It was myself; our geologist, Matt Brewer; and
18 Charles Sadler; and Mack Chase.

19 Q. And when was that decision made?

20 A. Probably early August of 2011.

21 Q. And why did you select this well as a
22 candidate for fracture recompletion?

23 A. It looks like a good well to recomplete. We
24 know the reserves are there, and we think we can get more
25 by fracking it.

1 Q. Do you have plans to perform frack jobs on any
2 other Abo wells in the area?

3 A. If it works, I don't see why we wouldn't.

4 Q. Does Mack own and operate any other Abo
5 producers in the vicinity?

6 A. Yes. If I'm not mistaken, the State CD is an
7 Abo well, which is an offsetting lease. And there is a
8 P&A'd well on the Cockburn location, the Cockburn Number
9 1, that you could take a chance and re-enter.

10 Q. How would you characterize the current
11 production rate for the well?

12 A. Flat.

13 Q. Is that desirable?

14 A. It is.

15 Q. Are we placing that current flat production
16 rate at risk at all by a fracture recompletion?

17 A. I don't believe so, no.

18 Q. You have 50 percent confidence in that or 100
19 percent confidence?

20 A. I'd go 80.

21 MR. HALL: Okay. No further questions of
22 the witness.

23 ACTING CHAIRMAN BALCH: Mr. Dawson, do you
24 have any questions?

25

EXAMINATION

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BY COMMISSIONER DAWSON:

Q. On some of the other Abo wells that you have fracked before, I know they're not in the immediate area, but have you had pretty encouraging results with those?

A. Yes, sir, we have.

Q. Do you have an estimate of maybe incremental reserves? Is it like two-thirds more?

A. Typically, we frack wells right away. Very rarely do we put on just an acid job, unless we're making a tremendous amount of fluid. Typically, we will do an acid job, evaluate it, swab it, cutting so much oil and water. I'll say, "Let's put a frack job." That's the typical process.

Q. Do you have a saltwater disposal well nearby that you --

A. We have a --

Q. -- dispose of your water?

A. We do, yes, sir.

COMMISSIONER DAWSON: I don't have any further questions. Thank you.

ACTING CHAIRMAN BALCH: I just have a couple of questions.

1 EXAMINATION

2 BY ACTING CHAIRMAN BALCH:

3 Q. About how many analogous wells would you say
4 are in the area of that well?

5 A. About three.

6 Q. Three?

7 A. Yes, sir.

8 Q. Has there been calculated current recovery
9 factors for the Cockburn Well?

10 A. No, there has not.

11 Q. Does it necessarily affect the incremental
12 accepted by the Fracpro analysis?

13 A. That's correct.

14 Q. What's the cumulative to date on the Cockburn
15 Well?

16 A. I did not look at that before. I know what
17 the estimated recovery is, but I don't know the
18 cumulative to date.

19 Q. What is the UR?

20 A. It's 90,000 barrels.

21 Q. And so this would be adding another 10 percent
22 or so?

23 A. Yes, sir, 10 percent.

24 ACTING CHAIRMAN BALCH: That's all my
25 questions. Do you have redirect?

1 MR. BRUCE: I don't have any redirect.

2 MR. HALL: I have nothing further of this
3 witness.

4 ACTING CHAIRMAN BALCH: You have one?

5 MR. HALL: Yes. And I had an inquiry
6 about the Commission's plans for lunch.

7 ACTING CHAIRMAN BALCH: How long do you
8 think your witness will take?

9 MR. HALL: I think my direct will take
10 probably an hour. I'm never good at these predictions.
11 And there will be cross.

12 ACTING CHAIRMAN BALCH: We can always take
13 a break before the cross. I say we should start the
14 direct.

15 MR. HALL: Okay. May I take a quick break
16 to confer with my client?

17 ACTING CHAIRMAN BALCH: Sure.

18 (A recess was taken.)

19 ACTING CHAIRMAN BALCH: Do you have all of
20 your exhibits entered?

21 MR. BRUCE: I move the admission of
22 Exhibits 26, 27 and 28, which are Mr. Livingston's
23 exhibits. And then Exhibit 29 is simply the affidavit I
24 gave of notice of the Division hearing. I ask that that
25 be admitted.

1 ACTING CHAIRMAN BALCH: Any objection?

2 MR. HALL: Let me catch up. Twenty-six?

3 MR. BRUCE: The AFE.

4 MR. HALL: So we have the substantive AFE?

5 MR. BRUCE: Yeah. Twenty-seven and 28 are
6 the two fracking estimates, and then 29 is my affidavit
7 of notice from the original hearing.

8 MR. HALL: I have no objection to those.

9 ACTING CHAIRMAN BALCH: They are so
10 admitted.

11 (Mack Exhibit 29 was admitted.)

12 TOM RAGSDALE

13 Having been first duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. HALL:

16 Q. For the record, please state your name.

17 A. Tom Ragsdale.

18 Q. Mr. Ragsdale, where do you live, and what do
19 you do for a living?

20 A. I live in Midland, and I'm the president of
21 Siana Oil and Gas Company.

22 Q. You've not testified before this Commission
23 before. Would you give the Commissioners a summary of
24 your educational background and work experience?

25 A. I graduated from high school in Houston. Then

1 I went to Texas A&M and graduated with a petroleum
2 engineering degree. I went to work in South Louisiana in
3 the oilfields working on drilling rigs.

4 By the late '80s, I was working for a wholly
5 owned subsidiary IP Petroleum. And then I went to work
6 for Meridian Oil in Midland. And we drilled -- we
7 started our company and drilled our first well in '94,
8 and we've been operating properties ever since that time.

9 Q. Your company, Siana, is it an operator in both
10 Texas and New Mexico?

11 A. Yes, it is.

12 Q. You're familiar with the application that's
13 been filed on behalf of Mack Energy in this case?

14 A. Yes.

15 Q. You're familiar with the well that is the
16 subject of the application?

17 A. Yes, I am.

18 MR. HALL: At this point, Commissioners, I
19 would offer Mr. Ragsdale as an expert petroleum engineer.

20 ACTING CHAIRMAN BALCH: Any objection?

21 MR. BRUCE: No objection.

22 ACTING CHAIRMAN BALCH: He's so admitted.

23 Q. (By Mr. Hall) What I'd like you to do, if you
24 could provide the Commissioners with an overview of the
25 ownership history of the Cockburn Well and explain how

1 Siana obtained its interest in the well. You might start
2 by looking at your exhibit notebook and turning to
3 Exhibit Number 1. If you would identify that and just
4 explain it.

5 A. Exhibit 1 is an Assignment of Oil and Gas
6 Leases. And it's an assignment from Siana Operating to
7 Caza Energy, LLC.

8 To prior answer your question, I was attending
9 an auction in '98, and we bought a property. It was an
10 HBP property, and we bought the property.

11 And then in 2003, I became, you know, a friend
12 of Mack Chase's. He was drilling wells in the area. He
13 asked me to see a schematic on a deeper well out there,
14 which was the well in question, the Cockburn State Number
15 5. I took him the schematic. He was drilling in the
16 area. He drilled up to our lease line. Then he came to
17 us and said, "We'd like to make a deal with you. We'd
18 like to purchase your lease."

19 Q. So that led to the assignment which is Exhibit
20 Number 1?

21 A. Correct.

22 Q. What's the effective date of that?

23 A. Effective the 1st day of May 2004.

24 Q. And then let's look at Exhibit 2. Identify
25 and explain that to us.

1 A. That's the assignment of overriding royalty
2 interest.

3 Q. It's an assignment to you?

4 A. That's correct, from Caza Energy to myself.

5 Q. And is Caza Energy a Mack-owned entity?

6 A. I believe it is.

7 Q. Let's look at the next, Exhibit 3. Identify
8 that and tell us what it is.

9 A. That's the Assignment of Oil and Gas Leases
10 between Caza and the various other parties.

11 Q. So did it work that you assigned 100 percent
12 of your ownership to Caza, and they, in turn, reassigned
13 back to you the working interest we see in the override?

14 A. That's correct.

15 Q. And tell us, for the record, what your current
16 working interest ownership percentage is.

17 A. My working interest is a 16th or a 6.25
18 percent.

19 Q. And your override is reflected on the prior
20 Exhibit 2; is that right?

21 A. I believe it was.

22 Q. Let's talk about this well. Tell us about
23 your knowledge of the history of the well. Who first
24 drilled and operated the well?

25 A. My recollection is American Quasar drilled it

1 in 1976. It was a deeper test, a Morrow/Strawn/Atoka.
2 They set the surface. They drilled it to its objective,
3 and it was deemed noncommercial, so they plugged the
4 well.

5 Q. Was the leasehold the well was located on
6 owned by Oxy; do you recall?

7 A. When we bought it in 1998, yes, it was
8 leasehold acreage. And we purchased it from Oxy, yes,
9 sir.

10 Q. Let me ask you, are you aware of the Oil
11 Conservation Division's requirement that interests in a
12 spacing unit be consolidated?

13 A. Yes, sir.

14 Q. And when you acquired the lease, you acquired
15 100 percent of the ownership; is that correct?

16 A. That's correct.

17 Q. Let's look at Exhibit Number 4. Is that a
18 C-102 Form for the Cockburn Well?

19 A. I believe it is. My copy is faded. I
20 can't -- but I believe it's a C-102.

21 Q. It's an acreage dedication plat?

22 A. That's correct.

23 Q. And this particular form shows Mack Energy as
24 the operator; correct?

25 A. Yes, sir.

1 Q. And the form calls for information with
2 respect to consolidation of interest of Line Item 3?

3 A. Yes, it does.

4 Q. Is that completed?

5 A. No, sir, it's not completed.

6 Q. Currently is there any written agreement
7 formally dedicating your interest, your working interest
8 to the well?

9 A. No, sir.

10 Q. Before this compulsory pooling proceeding was
11 commenced and since the time Caza and Mack acquired the
12 rights to the well and their interests, has Mack Energy
13 made any effort to try to consolidate the interests of
14 the well?

15 A. No, sir.

16 Q. What consideration did you receive or did your
17 company receive when you made the assignment to Caza?
18 How did that --

19 A. Monetary?

20 Q. Yes. How did that deal work?

21 A. Mack said, "We'll give you 75-, \$100,000. And
22 I said, "We'll take the \$100,000." So they paid us
23 \$100,000 for the lease, and then we retained a small
24 override.

25 Q. So he gave you a choice between 75,000 and

1 100,000?

2 A. No, sir. It was in a conversation. He was
3 just throwing numbers down.

4 Q. But you selected the higher number?

5 A. Yes, sir.

6 Q. Explain how the 2004 re-entry was handled.
7 How did that arrangement work?

8 A. He and I just had our own conversations. And
9 I said, "Just keep my monies." And then I think I was
10 submitted an AFE. And so my costs were just netted
11 against the balance they owed me from the original sale.

12 Q. So you never received cash consideration?

13 A. No, sir. Correct. Not cash, correct.

14 Q. You received a credit?

15 A. Correct.

16 Q. And the lease overriding expenses were billed
17 against that credit?

18 A. Yes, sir, for a time. That's my recollection.

19 Q. You've heard prior testimony, and this is no
20 secret, but can you explain why you've not paid all your
21 share of expenses since your credit was depleted?

22 A. Two years ago, we were instructed by counsel
23 not to pay those billings. The primary reason that I
24 recall that we were instructed that was because there was
25 no basis for the overhead rates being charged because

1 there was no JOA in place.

2 Q. There was no formal operating agreement in
3 place?

4 A. Yes, sir, there was none.

5 Q. There was no authorization for the operator to
6 recover costs?

7 A. There was no basis for rates, that's correct.

8 Q. Let's look at what we've identified as Exhibit
9 5. Can you explain that? What is that?

10 A. It appears to be a revenue dec that shows my
11 interest in each of the wells and my interest being a
12 working interest and my interest as an overriding royalty
13 interest.

14 Q. Is this a summary of revenues attributable to
15 your interests in both of those wells that was provided
16 to us by Mack Energy?

17 A. Yes.

18 Q. And does Exhibit 5 also reflect revenues
19 attributable to both your working interest and override?

20 A. Yes, sir.

21 Q. And are these the amounts that have been
22 withheld from you?

23 A. Yes, sir.

24 Q. And if you look at the second page, what is
25 the total shown there?

1 A. The total on the second page, \$61,722.93.

2 Q. Does Mack Energy currently have any legal
3 agreement here authorizing them to withhold your
4 revenues?

5 A. No, sir.

6 Q. Have you authorized Mack Energy to net your
7 share of expenses from these revenues?

8 A. No, sir.

9 Q. I asked you -- we had some questions earlier
10 of Mack's witnesses about the oil revenues. Have you
11 previously requested information from Mack with respect
12 to the disposition of oil production from the well?

13 A. Yes. On numerous times, we asked them for
14 crude oil contracts.

15 Q. Were they ever delivered to you?

16 A. No, sir.

17 Q. Did you ever make an effort to set up direct
18 payments from the purchaser of crude oil to you?

19 A. Yes. We were told by Navajo it had to go
20 through the operator, Mack Energy. And we tried that,
21 and we were turned away by them.

22 Q. Let's look at Exhibit Number 6. We've seen
23 this before. But if you would identify it?

24 A. It's the AFE.

25 Q. Is this the transmittal letter for the AFE

1 dated August 30, 2011?

2 A. Yes, sir.

3 Q. And what date is this shown as having been
4 received by you?

5 A. September the 6th.

6 Q. When you received the AFE on that date, was
7 that the first time a frack job for this well had ever
8 been mentioned to you?

9 A. Yes, sir, it was.

10 Q. Was the AFE accompanied by any sort of
11 technical data?

12 A. No, sir.

13 Q. Did you understand -- let's look at the
14 transmittal for that. If you look at the last paragraph,
15 it indicates, "If you wish to join, execute and return."
16 What do you do if you wish to go nonconsent?

17 A. I do not know.

18 Q. After you received this AFE in September, what
19 was the next form of communication you received from Mack
20 Energy? Let's look at Exhibit 6. I'm sorry, let's look
21 at Exhibit 7.

22 A. I believe it was notice of the force pool
23 hearing.

24 Q. Now, let's turn to Exhibit Number 8. Do you
25 recognize that?

1 A. Yes, sir.

2 Q. What is that?

3 A. A proposed JOA.

4 Q. And what's the date of the transmittal letter
5 for that?

6 A. The date is December 7th, 2011.

7 Q. Before this time, had Mack Energy ever
8 proposed a form operating agreement for you to execute?

9 A. No, sir.

10 Q. And did Mack send this form of JOA to you in
11 December only after your Texas counsel asked them to?

12 A. Yes that's correct.

13 Q. Why haven't you executed this operating
14 agreement?

15 A. Due to advice of counsel and due to the
16 suspense of our funds, our revenues.

17 Q. Have you determined whether you would be
18 waiving any rights that you might have if you did execute
19 the JOA?

20 A. Yes. We believe we would be waiving rights.

21 Q. You have extensive familiarity and experience
22 with form joint operating agreements; is that correct?

23 A. Yes, sir.

24 Q. You know how they work?

25 A. Yes, sir.

1 Q. Let's look at some of the terms of this
2 particular JOA. If you look at the JOA itself and go to
3 Article V.4 on page 5, do you see that paragraph?

4 A. Custody of funds?

5 Q. Yes. How does that work?

6 A. The operator can hold your funds for various
7 reasons, can hold the funds of a nonoperator or a working
8 interest partner.

9 Q. Let's turn to Article VII B. Let's identify
10 on page 11, what is Article VII? What's the heading?
11 It's on page 11.

12 A. I'm not quite with you.

13 Q. Look at page 11.

14 A. Okay.

15 Q. And what is the heading for Article VII?

16 A. Oh, "Expenditure and Liability of Parties."

17 Q. And let's turn the page and look at Article
18 VII B. What is the heading for that provision?

19 A. "Liens and Security Interests."

20 Q. Based on your familiarity with operating
21 agreements, by executing this JOA would you be giving the
22 operator a lien on your interest?

23 A. Yes.

24 Q. And would that operate retroactively?

25 A. Yes.

1 Q. And would that have the effect of waiving your
2 rights?

3 A. Yes, sir, it would.

4 Q. And because you had a disagreement with the
5 operator, would that adversely affect your rights?

6 A. Yes, sir.

7 Q. Does that explain why you did not execute this
8 JOA?

9 A. That's the primary reason, yes, sir.

10 Q. Have you since offered to execute an operating
11 agreement with the operator?

12 A. Yes.

13 Q. And under what terms and conditions?

14 A. One of the terms is that they'd release our
15 funds. Another term, that it would be effective October
16 1st. It wouldn't be retroactive to this 2004 or so. And
17 there were various others. I don't recall them offhand.

18 Q. Did you wish to preserve your right to audits
19 and adjustments for prior periods?

20 A. Yes, we did.

21 Q. And today -- can you tell the Commission
22 today, do you still have a signed operating agreement
23 with the operator?

24 A. I'm sorry. We still do not was the question?

25 Q. Do you or not?

1 A. We do not have a signed operating agreement.

2 Q. Based on your experience in the industry, has
3 Mack Energy made a good-faith effort to obtain your
4 voluntary joinder and participation in the well?

5 A. No, sir.

6 Q. Has Mack Energy made a diligent effort to
7 consolidate the interests in this well?

8 A. No, sir.

9 Q. Are you asking the Commission to deny Mack
10 Energy's application for compulsory pooling for these
11 reasons?

12 A. Yes, sir.

13 Q. Any other explanation why?

14 A. It's a combination of the suspense of funds.
15 It's this proposed frack job without having a JOA or
16 without having any election -- nonconsent provisions, and
17 it's advice of counsel. It's various things.

18 Q. Are you asking the Commission to order the
19 operator to account and pay you for past production as if
20 the interest in the well had not been consolidated or
21 force pooled?

22 A. I'm sorry?

23 Q. Are you asking for the Commission to order
24 Mack to account and pay you without a deduction for
25 monthly lease operating expenses and overhead charges

1 prior to consolidation of the interest?

2 A. Yes, we are.

3 Q. Let's talk about the frack job itself. In
4 your opinion, has Mack Energy provided you with enough
5 information to evaluate the need for the procedure and to
6 justify the procedure and explain your terms for
7 participation?

8 A. No.

9 Q. And why is that your opinion?

10 A. We just -- there's no provision at this time
11 for a nonconsent. What are the penalties? And what
12 happens if you decide you -- if the risks are too great
13 and you do not want to participate? There's no provision
14 in place.

15 Q. Talk about Mack Energy's request to recover a
16 cost plus 200 percent risk penalty. Is that justified?

17 A. Now, that's a difficult question. That can be
18 debated. So it could be justified on one hand, and it
19 could not on the other hand.

20 Q. Is it in this case?

21 A. I don't think it is in this case.

22 Q. And why not?

23 A. The well is already producing, and it's --
24 that's a -- that penalty, the cost plus 200 percent, I
25 think, is just a -- it's a high penalty in this case, I

1 believe.

2 Q. Are the risks different for this proposal than
3 the risks attendant with a new drill?

4 A. Somewhat different, yes.

5 Q. Mechanical risks are different?

6 A. Mechanical risks, yes, they're a little bit
7 different than a new drill.

8 Q. Is there any geologic risk here?

9 A. Yes, there is.

10 Q. But we know that the geology is there. We
11 know the reservoir is there; is that right?

12 A. Correct. It's a producing -- it's a good
13 producing reservoir right now.

14 Q. Do you have experience in operating other Abo
15 formation wells?

16 A. Yes, we do.

17 Q. Let's look at Exhibit Number 9, and tell us
18 what this is.

19 A. It's a production data sheet.

20 Q. How current is this production data?

21 A. It goes through March of this year.

22 Q. What's the source of this data?

23 A. I believe it's a system call Go-Tech.

24 MR. HALL: And if I may approach the
25 witness? I'm out of order a little bit on exhibits.

1 ACTING CHAIRMAN BALCH: You may approach.

2 Q. (By Mr. Hall) Let's look at Exhibit 13. Can
3 you identify that for us?

4 A. It's another source of production data from
5 Drilling Info.

6 Q. Is it current?

7 A. I think it's current through May or June of
8 this year.

9 Q. And if you look at Exhibits 9 and 13, what
10 does this tell us about the well's current ability to
11 produce?

12 A. It's a very low declining well. It's got a
13 long life to it.

14 Q. Is that desirable?

15 A. It's very desirable in our business.

16 Q. Exhibit 13, does that show the cums for gas
17 and oil?

18 A. Yes, it does.

19 Q. What do these data tell us about likely
20 projected decline in EUR for the well?

21 A. The decline is relatively flat, so I call it a
22 minimum decline. I mean the well was potentialized at 39
23 barrels a day. And here we are, eight years later
24 making, 20, 22 barrels a day. So that's a very, very
25 mild decline. And I'd say today it looks like it's on a

1 probably 4 percent decline, 2 percent to 6 percent. It's
2 essentially a flat well.

3 As far as the EUR, I don't have that
4 projection in front of me. But that would just be an
5 engineer looking at the curve and running the economic
6 life of it.

7 Q. Let's explain the difference between the pages
8 on Exhibit 13. The second page, is that a logarithmic
9 scale?

10 A. Yes, it is.

11 Q. And the first page is linear?

12 A. Yes, that's correct.

13 Q. In your opinion, is the well currently
14 producing at an efficient and economic rate of
15 production?

16 A. Yes, sir.

17 Q. And will it continue to do so?

18 A. By all prediction and by this current curve,
19 it surely will.

20 Q. You don't want to disturb this curve, do you?

21 A. No, sir.

22 Q. In your opinion, is the frack job that's been
23 proposed speculative?

24 A. Yes, it is.

25 Q. And is it necessary to preserve the well or

1 the lease?

2 A. No, it's not.

3 Q. To your knowledge, is there any threat of
4 lease termination due to cessation of production?

5 A. Not to my knowledge.

6 Q. And can the well efficiently and economically
7 recover all the reserves, all recoverable reserves,
8 through the current completion?

9 A. Over time, I would say so. The well actually
10 didn't have the largest acid job on it, but it would
11 probably need another -- some type of stimulation job, an
12 acid job in the future, to recover its full potential of
13 reserves.

14 Q. Is the performance of a fracture recompletion
15 preferable to an acid stimulation for this well?

16 A. The performance? I would say no in this case,
17 due to the reservoir.

18 Q. What are the risks that the fracture
19 completion poses to the well?

20 A. It poses numerous risks. There's mechanical
21 risks. And you can frack out of zone, you can frack
22 upwards, you can frack downwards, you can frack in the
23 water. And the Abo is a reef, and it does contain water.

24 And the acid jobs have been successful in the
25 past, and I don't know of any Abo wells in this area that

1 have ever been fracked. So I look at it as kind of a
2 trial well, sort of a guinea pig.

3 Q. Did you have your engineering staff evaluate
4 the proposed fracture recompletion?

5 A. Yes, sir.

6 Q. And what was your staff's advice?

7 A. They wouldn't do it.

8 Q. Who did you talk to?

9 A. Matt Dauffer.

10 Q. What did he look at, specifically? What were
11 his problems with it?

12 MR. BRUCE: I would object. This is
13 hearsay. You're asking the opinion of a third party.

14 ACTING CHAIRMAN BALCH: I believe
15 Mr. Dauffer is going to be a witness later on.

16 MR. HALL: Let me explain that we had
17 Mr. Livingston testify about Mr. Dauffer's testimony. It
18 was hearsay, and without objection. And they've opened
19 the door to this line of questioning.

20 MR. BRUCE: That is an admission by a
21 party, an opponent, and that is admissible under the
22 hearsay rule. This is asking a third party that we don't
23 have the chance to cross-examine the opinion that --
24 Mr. Ragsdale is going to give Mr. Dauffer's opinion, his
25 engineer's opinion. And I don't have a chance to

1 cross-examine him, and it's hearsay.

2 MR. HALL: We don't follow the rules of
3 evidence here. The only guidance for the Commission is
4 that it must find that the testimony is competent.
5 That's all the rules say. So we can ask him what
6 Mr. Dauffer said, weather he agrees with the
7 recommendations of his own staff. He can tell us why or
8 why not.

9 ACTING CHAIRMAN BALCH: You may answer the
10 question. Answer the question to the best of your
11 ability.

12 THE WITNESS: I'm sorry?

13 Q. (By Mr. Hall) What was Mr. Dauffer's
14 recommendation?

15 A. If he were in the well, when I asked him, he
16 would not participate. He did not agree with the frack
17 job.

18 Q. Why not?

19 A. He looked at the logs and said there was
20 minimum barriers above the well, the zone of interest,
21 and there were little to no barriers below. So he looked
22 closely at the IP. The well IP'd at 39 barrels a day and
23 300 barrels of water a day. And today we've got about a
24 50 percent cut. It's making 22 oil and 18, 22 water.

25 And he was just fearful of water. And he

1 said, "Below us, with little or no barriers, it could
2 frack as much as 250 feet out of zone."

3 Q. Let me have you turn to Mack's Exhibit 25.
4 You were present today when the sponsor of this exhibit,
5 Mr. McCoy, testified?

6 A. Yes, sir.

7 Q. Do you agree with his prediction for the
8 fracture performance?

9 A. No, sir.

10 Q. Why not?

11 A. It's a 270-foot gross interval zone. I
12 believe there's 82 holes in it. He did testify, when
13 asked where would the frack go, it's going to go the path
14 of least resistance.

15 As far as your direct question, this model,
16 it's just a computer model that somebody was paid to plug
17 the data in and it turns out a model. That's why -- I've
18 been involved in numerous frack jobs. Most of those guys
19 will actually tell that you the data is just a computer
20 program model.

21 Q. Consulting companies like that do not
22 guarantee their results, do they?

23 A. No, sir, they do not.

24 Q. Do you agree with Mr. McCoy's assessment that
25 we ought to have 50 percent confidence in his prediction?

1 A. That's a difficult question. 25 percent
2 confidence, 50, 77? I think he was just making that
3 comment. Do I agree with the 50 percent? That's just a
4 ballpark number.

5 So I think he came up with his number offhand
6 when asked. And I don't agree with the 50 percent
7 being -- I would be much more confident in the numbers if
8 there were some offset models, if there were some before
9 and after results in this area. And that's the one thing
10 we have not seen.

11 Q. Did your staff look at analogs in the area?

12 A. They did. Mr. Dauffer -- we looked at it.
13 All the offset wells have been treated with 8,000 to
14 12,000 gallons of acid. One of the wells had been
15 treated with 15,000 gallons of acid. This particular
16 well was treated with 5,000 gallons of acid. He didn't
17 see any wells in the area or in the field that have been
18 fracture treated.

19 Q. So it's not a common practice of operators in
20 this vicinity to fracture stimulate Abo --

21 A. I would call it highly uncommon.

22 Q. In your opinion, are you being asked to bear
23 unnecessary risks?

24 A. Yes.

25 Q. Let me ask you about certain of the exhibits.

1 With the exception of Exhibit Number 5, which was
2 subpoenaed information provided by Mack Energy, were the
3 remainder of Exhibits 1, 2, 3, 4, 6, 7, 8, 9 and 13
4 produced from your company's records or from publicly
5 available sources?

6 A. I'm sorry, the numbers again?

7 Q. One, 2, 3, 4, 6, 7, 8, 9 and 13. Did all of
8 those come from company records or from public sources
9 such as Go-Tech?

10 A. Company records.

11 Q. And public sources, as well?

12 A. Yes.

13 MR. HALL: I move the admission of those
14 exhibits, and I also move admission of Exhibit 5, which
15 was produced to us by Mack Energy. That concludes my
16 direct examination of Mr. Ragsdale.

17 ACTING CHAIRMAN BALCH: Any objection?

18 MR. BRUCE: No objection.

19 ACTING CHAIRMAN BALCH: Those exhibits are
20 accepted.

21 How long for your cross-examination,
22 Mr. Bruce?

23 (Siana Exhibits 1 through 9 and Exhibit 13 were admitted)

24 MR. BRUCE: I would guess less than a half
25 hour. More like 20 minutes. I don't know if you want me

1 to do that now or after lunch.

2 ACTING CHAIRMAN BALCH: I have no
3 preference. If you think you can be done quickly, we can
4 move the hearing along.

5 MR. BRUCE: I would prefer that myself.

6 ACTING CHAIRMAN BALCH: All right.

7 CROSS-EXAMINATION

8 BY MR. BRUCE:

9 Q. One thing, the Exhibit 5 that was produced
10 pursuant to a subpoena, you were aware that Mr. Hall had
11 obtained a subpoena on your behalf; were you not?

12 A. Yes.

13 Q. And did you -- without telling about contacts
14 between you and Mr. Hall, did you review that subpoena to
15 make sure that he was asking for all pertinent data?

16 A. I believe I glanced over it.

17 Q. And other than Exhibit 5, none of that data
18 that was produced as a result of the subpoena is in your
19 exhibit booklet; right?

20 A. I can't say yes or no, honestly, until I look
21 at what was produced and see what's in here.

22 Q. You just stated that all of these documents,
23 other than Exhibit 5, came from your records; did you
24 not?

25 A. I did.

1 Q. When you acquired it, was it your opinion --
2 and I think everybody agrees -- that Oxy was a 100
3 percent owner, and Siana acquired 100 percent of the
4 working interest in this tract?

5 A. Yes.

6 Q. You acquired it -- Siana acquired it. What is
7 your position with Siana?

8 A. I'm the president.

9 Q. You acquired it in 1998. Why didn't you file
10 a Change of Operator form with the Division in '98?

11 A. It was an HBP lease. We were not conducting
12 any operations. There was no need to.

13 Q. You don't think there's any Division
14 requirement to put yourself as operator of a well that
15 you own?

16 A. I don't recall what took place back then.
17 That was back in 1998.

18 Q. Now -- and I don't remember the exact figures,
19 and you can correct me. But when the well was
20 recompleted in 2004, you had about -- I forget what you
21 said -- 25,000 or \$33,000 in the project?

22 A. Correct.

23 Q. And has that amount paid out?

24 A. Yes.

25 Q. Has it paid out a number of times?

1 A. Yes. I'd say it was spent. That money was
2 spent. I think there were three well re-entries
3 conducted, is my recollection. So that money was spent.

4 Q. And you don't dispute -- I forget what exhibit
5 number it was that Ms. Sanders presented -- that as of
6 last year, on these couple of wells, you received
7 \$350,000 or so?

8 A. I don't recall that particular one that said
9 350 or if it's in this exhibits. I don't recall.

10 Q. It's not in your exhibits.

11 MR. BRUCE: I'm sorry, Mr. Chairman. I
12 gave my copy to the court reporter.

13 Q. (By Mr. Bruce) I'll hand you what was marked
14 Mack Exhibit 19, which is payments made to you on two
15 wells. Do you have any -- do you disagree that you were
16 paid those amounts?

17 A. I don't have any reason to disagree, but --

18 Q. That's fine. Thank you.

19 Now, with respect to the well proposal that
20 was sent in August, you received it in September 2011?

21 A. I believe that's correct.

22 Q. Siana is an operating company; correct?

23 A. Yes.

24 Q. And I think you said that you have been
25 involved in many frack jobs?

1 A. Yes.

2 Q. So you knew what type of questions to ask Mack
3 or, in particular, Mr. Livingston, about the proposed
4 frack job. Did you ever call him and ask?

5 A. I did not. Mr. Dauffer did.

6 Q. And did you listen to Mr. Livingston's
7 testimony?

8 A. Yes.

9 Q. And did you hear him say that Mr. Dauffer
10 never asked anything about the procedure or the AFE, just
11 a few marginal questions?

12 A. I don't remember his exact response.

13 Q. But you could have picked up the phone and
14 asked him?

15 A. Sure.

16 Q. You never did?

17 A. No.

18 Q. So Mack never refused to give you any well
19 data?

20 A. No.

21 Q. What more were they supposed to do, other than
22 send you the well proposal and follow up and try to get
23 you to sign the AFE?

24 A. We were much more concerned with the election,
25 the nonconsent portion of it.

1 Q. Let's get into that. Let's assume that Mack
2 Energy wanted to drill an offset well on this 40 acres, a
3 new well. Let's ignore this case for a moment.

4 The first thing they would do would be to send
5 you a well proposal with an AFE, correct, for a new well?

6 A. I suspect so.

7 Q. And with no JOA in place, what would you do?
8 There's no nonconsent provision, right, without a JOA?
9 Assume this was a new lease, a new well. What are you
10 supposed to do?

11 A. With my revenues in suspense, I wouldn't do
12 anything.

13 Q. Let's say -- forget revenues in suspense.
14 Let's say this was a new 40-acre lease. Mack wanted to
15 drill a new Abo well. They send you a well proposal, no
16 JOA in place. There is no nonconsent election under
17 that, correct, under your reasoning?

18 A. Without a JOA, there's nothing in place.

19 Q. And if you wouldn't sign a JOA, they have a
20 right to go force pool you; correct?

21 MR. HALL: I object to that. It calls for
22 a legal conclusion.

23 MR. BRUCE: I would ask that he be
24 required to answer it, just like Ms. Sanders had to do,
25 because he has said there's no way to consider a

1 nonconsent for this well. It's the same type of deal for
2 a new well without a JOA.

3 ACTING CHAIRMAN BALCH: Do you have an
4 opinion?

5 MR. BRANCARD: We're getting into
6 hypothetical questions here. Try to focus on this case.

7 Q. (By Mr. Bruce) But they could certainly do
8 that, even today, ignore what you view as the suspense
9 and everything else? They could propose a new well today
10 to you, and there would not be a nonconsent provision for
11 you on the AFE?

12 A. You're asking me?

13 Q. I'm asking you.

14 A. I don't know the answer.

15 Q. Now, with respect to the proposed JOA, you
16 have never commented on that, have you?

17 A. On the proposed JOA?

18 Q. On the proposed JOA.

19 A. The attorneys have. Not me, no, sir.

20 Q. They have never sent anything to Mack, have
21 they?

22 A. I believe they did a couple of days ago.

23 Q. They have never asked for any modifications in
24 the JOA, have they?

25 A. Like I say, I believe that's what the letter

1 they sent -- that Mr. Hall sent a couple of days ago.

2 Q. Did Mr. Hall prepare that letter?

3 MR. HALL: You know, that -- objection,
4 privilege.

5 MR. BRUCE: I'm not asking -- I'm just
6 asking if Mr. Hall prepared that letter.

7 MR. HALL: I can't allow a waiver of
8 privilege. I can't do that.

9 MR. BRANCARD: I don't know the relevance
10 of it, either, for that matter.

11 Q. (By Mr. Bruce) But if you look at your
12 exhibit booklet, Exhibit 8, and go to page 17A of the
13 JOA, Article XVI, Article XVI is -- with a basic JOA --
14 you've reviewed operating agreements before, haven't you?

15 A. A long time ago.

16 Q. Article XVI allows other provisions. These
17 are provisions that the parties want in an agreement that
18 aren't part of the boilerplate; is it not?

19 A. Yes, it is.

20 Q. And couldn't you have requested provisions in
21 there regarding the suspended funds?

22 A. To answer your question, I suspect you could.

23 Q. So that there would be no waiver of rights, as
24 far as you see?

25 A. Again, I'm going to say I'm not a land expert

1 or a JOA expert any longer. But I suspect you could.
2 You could request that. You can probably request
3 whatever you want to request.

4 Q. Because a JOA is a voluntary agreement?

5 A. That's correct.

6 Q. Subject to negotiation?

7 A. That's correct.

8 Q. Can you show me anywhere in writing where,
9 since 2004, you ever requested a JOA from Mack Energy?

10 A. Can I show you in writing? No, sir, I cannot.

11 Q. Under this JOA, there's a requested penalty of
12 300 percent. Is that a normal penalty under a JOA?

13 A. Yes, sir.

14 MR. BRUCE: Just a few more, Mr. Chairman.

15 Q. (By Mr. Bruce) Regarding the suspension of
16 funds, you stopped paying before Mack Energy suspended
17 the funds; correct?

18 A. Yes, sir.

19 Q. Suspended payment, excuse me, to be more
20 correct.

21 Now, I think -- referring to your Exhibit 9, I
22 think you testified that it's a flat decline, a fairly
23 flat decline on this?

24 A. Yes, sir, I did.

25 Q. But there has been a decline over the years.

1 It looks like, over the last few years, it's gone from
2 700 barrels a month down to below 600?

3 A. I see December was 709, January was 606,
4 February was 562 and March was 602. I see that. It just
5 fluctuated. I mean the well could be down. It
6 fluctuates.

7 Q. But it is declining?

8 A. I'd say very little decline.

9 Q. Just one more question. Did you ever prepare
10 a JOA for this well and submit it to Mack Energy?

11 A. No, sir.

12 MR. BRUCE: That's all I have,
13 Mr. Chairman.

14 ACTING CHAIRMAN BALCH: Mr. Dawson?

15 COMMISSIONER DAWSON: One question.

16 EXAMINATION

17 BY COMMISSIONER DAWSON:

18 Q. On this Exhibit 9 in your folder, on the
19 Go-Tech Onguard single well results production data, this
20 only goes up to March of 2012. Do you know what it did
21 for the last three or four months? Because I'm sure it's
22 produced, and it's not indicated on this form. Do you
23 have any idea what it's produced in the last three or
24 four months?

25 A. It's been flat. In July, it made 695 oil, 609

1 on the gas, and 527 on the water. That's the latest
2 report that we've received from Mack Energy.

3 Q. So you would think that April's, May's and
4 June's data would be fairly similar to that 600- to
5 700-barrel range, maybe?

6 A. Yes, sir, I'd assume that.

7 Q. And you say you operate several Abo wells?

8 A. In the Monument area, yes, sir.

9 Q. Have you ever fracked any of those wells?

10 A. No, sir.

11 COMMISSIONER DAWSON: I have no further
12 questions. Thank you.

13 ACTING CHAIRMAN BALCH: Just a couple of
14 questions.

15 EXAMINATION

16 BY ACTING CHAIRMAN BALCH:

17 Q. You may recall that Mr. Livingston testified
18 to 90,000 EUR on the well. That's what I wrote down.
19 What would your estimate of EUR be on the well?

20 A. The well's already cumed 82,000 barrels. If
21 it goes out for another 20, 30 years, you could double
22 that. I do believe, to help the answer, most of the
23 wells in the area cumed 200- to 300,000 barrels, the ones
24 that have been acidized with the 8- to 15,000 gallons of
25 acid. That's what we came up with in our study.

1 Q. 200 to --

2 A. 200,000 to 300,000.

3 Q. With just acid?

4 A. Yes, sir. But they're long life, though. I
5 mean it takes quite a number of years to get there.

6 Q. Twenty-five, 30 years?

7 A. I can't recall the actual -- it's probably
8 like 20 to 40 years.

9 Q. If you had a JOA in place, would you have
10 approved the AFE?

11 A. No, sir, I'd nonconsent. If it was a fair
12 penalty, I'd nonconsent. Actually, I wouldn't want the
13 well fracked because I think there's a very good chance
14 of that water. It's a reef, and I think it's uncommon to
15 frack these Abo wells. I haven't seen any data on before
16 and after.

17 ACTING CHAIRMAN BALCH: Those are my
18 questions. Do you have any redirect?

19 MR. HALL: No more questions of this
20 witness.

21 ACTING CHAIRMAN BALCH: Then the witness
22 may be excused.

23 I think we will adjourn for an hour and 15
24 minutes.

25 MR. HALL: That concludes our case.

1 ACTING CHAIRMAN BALCH: All right. Then
2 we will adjourn for an hour and 15 minutes, until 1:15,
3 at which point we'll take closing statements, I believe.

4 (A lunch recess was taken.)

5 ACTING CHAIRMAN BALCH: We are reconvening
6 around 1:20 p.m.

7 At this point we are taking closing
8 statements.

9 MR. BRUCE: I would ask Mr. Hall, since
10 he's the de novo applicant, to go first.

11 MR. HALL: I'd be glad to do that.

12 CLOSING STATEMENT

13 BY MR. HALL:

14 I'll talk to you about the case that the
15 applicant is bringing before you today, Mack Energy
16 Corporation, and that is what they portray as a generic
17 compulsory pooling case. So they're obliged to present
18 evidence to you on several matters that the Commission
19 must make affirmative findings on. You also cannot grant
20 the compulsory pooling request.

21 And one of those that's developed throughout
22 the years, it's not found in the compulsory pooling
23 statutes, but the Commission and the Division has
24 required for the past 30-plus years an applicant to
25 demonstrate that it was acting in good faith and made a

1 good-faith effort to secure the pooled party's voluntary
2 participation in the well. And we challenged that today.
3 I think we presented proof to you that there was an
4 absence of good faith here.

5 For other reasons outside of this particular
6 well, the relationship between this operator and this
7 nonoperator, it's not a good one. It's not working. But
8 I would submit to you that but for that relationship and
9 its flaws, the production revenues would not have been
10 placed in suspense, and I don't think we would have seen
11 this sudden imminent proposal to do a fracture
12 recompletion on a well that's been producing at a steady,
13 flat rate of decline for a long time. We question the
14 applicant's good faith.

15 The other finding that the Commission must
16 make is that the applicant acted in diligence -- with
17 diligence in consolidating interests in the well. There
18 is no question that both the compulsory pooling statutes,
19 70-2-17 and 70-2-18, impose an affirmative duty on the
20 operator to consolidate interests.

21 Here we have a highly-experienced operator,
22 Mack Energy. They know how the rules work here in New
23 Mexico. They knew from the start that there were diverse
24 ownership interests in this well. After going from 100
25 percent, it went to undivided interests in this well

1 beginning in 2004. They were aware of their right under
2 statute to consolidate interests. They didn't do it
3 until there was a disagreement over other matters.

4 How do they go about that? They suspend the
5 other nonoperator's revenues, cut them off, including
6 overriding royalty interest revenues and including
7 revenues generated by another well that's not the subject
8 of the application. That indicates an absence of good
9 faith.

10 And they waited until 2011 to propose any
11 participation at all. It first comes in the form of an
12 AFE, no other explanation, no technical detail, and the
13 nonoperator is put in a position where he tries to
14 evaluate the advisability of doing the fracture job. But
15 he can't do it, so he's left to do that on his own.

16 After the AFE, the next thing that comes in
17 the mail is a compulsory pooling application in November.
18 And it was only after the matter was set for hearing that
19 Texas counsel appeared on behalf of Mr. Ragsdale, and
20 only on request of Texas counsel did Mack Energy
21 Corporation deliver a form joint operating agreement.

22 But I think that the evidence, the testimony,
23 demonstrated today that it was done with the idea of
24 placing the nonoperator in a position where he would have
25 to waive rights with respect to the revenues that had

1 been unfairly withheld from him.

2 It created an environment of what I think is
3 economic coercion. "Take my deal or leave it, or we
4 force pool you. And we're not going to tell you what the
5 deal is until maybe after the fact. We're going to send
6 you a proforma operating agreement after the fact."
7 That's not good faith. We don't think you can make a
8 finding of good faith under these circumstances.

9 Diligence. I provided you, if you look in
10 your exhibit notebooks, copies of the applicable statute.
11 And it's under Exhibit Tab 10, and that is the statute
12 that provides guidance for your actions here today. We,
13 as attorneys, do our best to try to present factual
14 evidence to you and then help you apply the law to those
15 facts.

16 This is the compulsory pooling statute that
17 applies here today. This is the statute that establishes
18 the duty -- unquestionable duty for an operator to
19 consolidate interests.

20 I agree with Mr. Bruce's earlier statement
21 today that yes, an operator is free to force pool after a
22 well is drilled. That's correct. But the question is:
23 When does a duty to consolidate interests actually
24 accrue? The statutes don't directly answer that. But I
25 think if the duty is on the books, I think the duty

1 accrues immediately.

2 The Commission and the Division have had the
3 opportunity to speak to that obligation recently. And if
4 you would turn to the order that's under Exhibit Tab 11,
5 this is a copy of Order Number R-13547. There was a
6 question raised in that case about the failure of an
7 operator to force pool after having drilled two CO2 wells
8 up in the Bravo Delaware area.

9 The nonoperator challenged the absence of
10 consolidation and the absence of force pooling. And the
11 order says, "Yes, even a nonoperator can make this
12 happen." So that's what happened there. There was an
13 application to force pool brought by the nonoperator.

14 If you look through that order, on page 3, I
15 have highlighted a finding in there which explains that
16 the statute I've directed you to, 70-2-18, poses an
17 affirmative duty of an operator to consolidate interests.
18 The question has always been, "When does that duty
19 accrue?" And this order answers that question on the
20 next page.

21 If you look at Conclusion Paragraph 3, we now
22 know that it's the policy of this agency that interests
23 be consolidated prior to production. So I expect you
24 will see, with more and more frequency in the future,
25 compulsory pooling orders that address an operator's

1 diligence where that question has been raised.

2 We raise it in this case. And we don't think
3 that, under these circumstances, you can make any finding
4 that Mack Energy operated with diligence. And we think
5 that precludes the Commission's ability to grant
6 compulsory pooling relief.

7 The other issue that's precipitated by Mack's
8 application is the fracture recompletion itself, whether
9 it's advisable, whether it's warranted. There are
10 substantial disputes about that. And even the
11 applicant's own expert consulting witnesses said it's not
12 a sure thing. It may be a fifty-fifty proposition that
13 this operation is successful, even based on his own
14 computer module.

15 We presented evidence through Mr. Ragsdale
16 that refutes the need for a frack job and shows that this
17 is a well that's been producing presumably royalties to
18 the State of New Mexico as well for some time, with a
19 very steady, flat rate of decline.

20 Why do we want to change that? Why is that in
21 the State's interest? Why is that in the nonoperator's
22 interest, to impose what we believe is unnecessary risk
23 to that production? And the evidence shows that the
24 current completion is more than adequate to efficiently
25 and economically recover most of the producible reserves.

1 That brings us to the request for relief that
2 we've asked the Commission to afford Mr. Ragsdale and
3 Siana under these particular circumstances. We've heard
4 much about the rights of the parties, as co-tenants in
5 the well, to some theoretical equitable lien, equitable
6 right to suspend revenues. I just disagree with that.
7 There is no equitable lien in New Mexico either statutory
8 or by contract. But that doesn't matter here.

9 If you want to make arguments of equity, you
10 go to an Article III court to make them. This is the Oil
11 Conservation Commission. We don't do equity. We do the
12 Oil and Gas Act, period.

13 So what's the direction to the Oil Commission
14 under circumstances like this, where a party has not been
15 diligent in consolidating interests and comes to you,
16 asking for relief and the relief is opposed? I think
17 under circumstances like this, if you turn back to the
18 statute we highlighted for you, it is again Section
19 70-2-18, it tells you what you must do.

20 Where an operator does not act with diligence
21 and purports to operate a well for years and years,
22 doesn't bother to consolidate interest by force pooling
23 or otherwise, there are consequences in New Mexico for
24 that. And they are set forth in Section 70-2-18.B, which
25 we've highlighted for you there.

1 And that subsection says, in essence, where an
2 operator fails to act with diligence, then he has no
3 authority to recover operating expenses or overhead from
4 the force-pooled interest. And so the other
5 nonoperator's interests who have not been consolidated is
6 entitled to be paid for his interests as if they were
7 never force pooled, in the absence of any authority to
8 recover those costs.

9 That's not an interpretation. This statute is
10 not ambiguous. We aren't asking the Commission to
11 construe it. We're asking the Commission to apply it in
12 this particular circumstance.

13 So what we're asking the Commission to do is
14 ultimately provide to Mr. Ragsdale and Siana relief in
15 the form of accounting; have Mack Energy deliver a full
16 and complete accounting for costs, expenses, overhead
17 charges from 2004 to the present; and then make payment
18 for all the revenues, overriding royalty interest
19 revenues, working interest revenues and revenues
20 attributable to the other well payable to Mr. Ragsdale,
21 without deductions for those expenses up to whatever
22 point the interests may, in fact, be consolidated.

23 If there is a question about the Commission's
24 authority to afford relief like that, we think that
25 question was answered some time ago. Ms. Bailey would

1 remember this case.

2 But if I may approach the Commission?

3 ACTING CHAIRMAN BALCH: You may approach.

4 MR. HALL: I've provided the Commission
5 with copies of Order Number R-1960-B. Both Mr. Bruce and
6 I participated in that case. And I'm sorry, I don't have
7 another copy, Jim.

8 But that case, in effect, provided that an
9 operator could come to the Commission, or a party could
10 come to the Commission, and ask for accounting-type
11 relief. And that's the exact kind of relief that was
12 afforded to Energen Resources in that case.

13 They were allowed to render an accounting to a
14 nonoperating interest owner who had a production
15 imbalance, but he had refused to allow the operator to
16 market gas on his behalf or market on his own. That was
17 creating a problem. So in effect, what the Commission
18 did in that case was allow for the rendition of an
19 accounting and payment to the interest owner with
20 interest. They specifically allowed interest in that
21 case.

22 So there is some precedent for the form of
23 relief that we're asking the Commission to afford
24 Mr. Ragsdale and Siana Oil and Gas in this case.

25 With that, I'll pause right now and see if the

1 Commission has any questions of me with respect to the
2 operation of the statute or Mr. Bruce's arguments about
3 the statute he submitted in his prehearing statement.

4 ACTING CHAIRMAN BALCH: Do you have any
5 questions, Commissioner Dawson?

6 COMMISSIONER DAWSON: I don't have any
7 questions

8 ACTING CHAIRMAN BALCH: I have none, as
9 well.

10 MR. HALL: I will comment to you that we
11 can anticipate Mr. Bruce to argue that what we're asking
12 would be a misapplication of 70-2-18. And what he'll say
13 is, "No. This only applies in the case where there is an
14 owner of a tract within a proration unit that has not
15 been joined. Then you must pay the owner of that tract
16 as if the interests were not joined the full 100 percent
17 with interest."

18 I think the statute does provide for that sort
19 of relief in that circumstance, but it provides for more
20 than that. If you look to the title of this statute
21 itself, you have to read the statute as a whole. You
22 cannot read selective provisions to the disregard of
23 others.

24 The title itself addresses when there is
25 undivided mineral ownership within a spacing unit. If

1 you look at the third line of subparagraph A, it says --
2 well, starting on line 2, "If two or more separately
3 owned tracks of land are embraced within a spacing or
4 proration unit," as Mr. Bruce will advocate. It also
5 says, "or where there are owners of royalty interests or
6 undivided interests in oil and gas or minerals which are
7 separately owned in the spacing unit or any combination
8 thereof," this is the relief -- this is the authority for
9 the Commission to provide for the recovery of revenues,
10 and it prohibits the operator from recovering past
11 expenses and overhead.

12 I think there are policy reasons for that. I
13 think our Oil and Gas Act purposefully encourages the
14 consolidation of interests. It has a requirement. And
15 it's been refined by the recent Reliant Exploration order
16 that I've provided you that says, "This is what diligence
17 means. You have to do all of this before there's
18 production." We know that's going to be the rule in New
19 Mexico going forward.

20 And where that does not happen, here are the
21 consequences. This is not an interpretation by the
22 Commission. This is what the legislature tells us to do.
23 That's what we're asking for.

24 ACTING CHAIRMAN BALCH: Do you have a
25 closing statement?

1 MR. BRUCE: Yes, sir.

2 CLOSING STATEMENT

3 BY MR. BRUCE:

4 First of all, accounting isn't the issue.
5 Mack has always given Mr. Ragsdale all the information he
6 has ever asked for. And all he has to do is call and ask
7 for the data. That's been proven over and over and over
8 again in 2008, 2011, 2012. Mack has given him data every
9 time he's asked for it.

10 Now, with respect to -- and I forgot the order
11 number. R -- is it 1920?

12 MR. HALL: 1960-B.

13 MR. BRUCE: 1960-B. Mr. Hall and I were
14 both involved in that case, that ordered an accounting.
15 That's not an issue. I would point out one significant
16 difference.

17 That was where there was a pooling order from
18 about 45 years ago. And the operator, Energen, refused
19 to pay the nonoperator, my client, on the production runs
20 and said, "Sorry. Once the well plays out, once it goes
21 dry in 40 years, then we can have a settling of accounts
22 between us."

23 I think that was pretty unfair by a large
24 operator in the state to take against a single person.
25 So those cases -- that case is not really on point here.

1 The second thing to get out of the way is the
2 suspension of funds. Mr. Hall says the Commission
3 doesn't do equity. I submitted some statutes, Exhibit B,
4 which is 70-2-17, does. In its heading, it talks about
5 equitable allocation of allowable production pooling and
6 spacing. So there are elements of equity before the
7 Commission.

8 But regardless, regarding the suspension of
9 funds, I agree with Mr. Hall. That is an issue for a
10 District Court, not for this Commission, to decide.

11 I would merely point out that for seven years,
12 Mr. Ragsdale gladly accepted all the funds that were his
13 share of funds that were from production from the well.
14 And then before that time, he simply stopped paying his
15 revenues. He was taking a free ride. He was getting his
16 for nothing. Is Mack supposed to continue along that
17 line for years and years and years? I don't think so.

18 Now, in his closing, Mr. Hall made some
19 statements about matters that weren't in evidence, and he
20 also claims that Mack did not act in good faith. I won't
21 get into good faith or bad faith on behalf of
22 Mr. Ragsdale, but I will point out a few things.

23 First of all, his positions -- his two main
24 positions in this case are contradictory. First he says,
25 "There's no JOA in place, and there should be one." But

1 he won't comment on one. He won't sign one. So Mack's
2 only recourse is to force pool.

3 Then he says, "Nope. You've got to deny force
4 pooling." What is Mack supposed to do? And in fact,
5 he's actively preventing any form of agreement from being
6 put into effect.

7 Now, let's talk about the good faith efforts.
8 I point out that again, as Ms. Sanders testified, Mack
9 didn't know there wasn't a JOA until August of 2011.
10 You're talking about diligence? Within a couple of
11 months, we filed for a force pooling.

12 Now, again, Mr. Ragsdale himself never asked
13 for a JOA for seven years. He apparently didn't think
14 there was a JOA in effect. He never told Mack that. He
15 never asked for one from Mack. He never proposed one
16 from Mack. He's acting like the aggrieved party when,
17 you know, he invested \$33,000 in a prospect that has paid
18 out 10 times that much. He gladly accepted the revenue.

19 I will agree with Mr. Hall that it's not in
20 evidence that there are some other conflicts between the
21 parties. But really, that's neither here nor there when
22 it comes to the good-faith efforts of the parties. Since
23 there is no JOA, and since Mr. Ragsdale won't sign a JOA,
24 Mack needs a pooling order to satisfy Mr. Ragsdale's
25 complaints.

1 And I point out that 70-2-17.C states that the
2 Division or Commission shall pool, not may pool, shall
3 pool, a well unit if there is no voluntary agreement, and
4 that's what the Commission should do.

5 Now, as to good faith, the pertinent order
6 talking about what should be done before a pooling is
7 granted is set forth -- I didn't submit it to the
8 Commission, but it's Order Number R-13165.

9 What it says is that, "A pooling applicant
10 should send to a working interest owner a proposal, with
11 an AFE, at least 30 days before the filing of a pooling
12 application." That was done by Mack. It also states
13 that, "A JOA need not be sent with the proposal, although
14 one should be promptly furnished upon request." Mack did
15 that.

16 Mr. Zabel, who is Mr. Ragsdale's Texas
17 attorney, asked for one about Thanksgiving. And within
18 two weeks, Mack had sent Mr. Ragsdale a JOA, I repeat
19 myself, but he never responded to it.

20 So after the JOA -- after the well proposal
21 was sent, Lee Livingston, Mack's engineer, had telephone
22 discussions, not one, not two, but three with
23 Mr. Dauffer, of Siana, representing Mr. Ragsdale. He
24 never asked any substantive questions about the AFE or
25 the frack procedure at all.

1 Mr. Ragsdale himself testified that he had
2 extensive frack experience and knew what questions to
3 ask. He never asked. He never called Mr. Livingston.
4 He never had Mr. Dauffer call Mr. Livingston to ask any
5 substantial questions.

6 He also got up and testified that Mr. Dauffer
7 got the data and checked things out on his own. What
8 else -- and then Mack sent the JOA. What else was Mack
9 supposed to do? They never received any response to
10 their proposals.

11 I would point out that negotiation is a
12 two-way street. You can't just have one party proposing
13 and the other one sitting on its hands. What else was
14 Mack supposed to do? Mack has followed Division policies
15 on pooling and has satisfied those requirements.

16 The other contradictory position is that
17 Mr. Ragsdale says it's a very risky procedure, but there
18 should be no risk charge. Again, very contradictory.
19 The only way to harmonize his contradictory positions is
20 to enter a pooling order and assess a risk charge.

21 Now, as to risk for re-entry, life is not risk
22 free. But Mack's engineers testified that this is a
23 reasonable proposal. We believe it will increase
24 reserves on the well, and there will be substantial
25 benefits from the frack procedure. And I would point out

1 that Mack's engineers were here to be cross-examined.
2 Mr. Ragsdale's statements regarding Mr. Dauffer's alleged
3 statement should be given the weight they are worth.

4 As I stated in my opening, the main job of the
5 Commission is to prevent waste. And Mack's witnesses
6 testified that waste will be prevented in two ways:
7 There will be incremental recovery of over 10,000 barrels
8 of oil. And because of accelerated recovery, the working
9 interest owners will save some \$400,000 in operating
10 costs. Definitely, that protects the correlative rights
11 of the parties and it prevents waste.

12 And I think just one final comment, which is
13 looking at -- and I would just -- by the way, I don't
14 find diligence in any of the pooling statutes, and I
15 think that is on a case-by-case basis. I would point out
16 that in the case Mr. Hall submitted as Exhibit 11, the
17 difference in that case is that Oxy USA, the operator in
18 the well, had never sought pooling itself. That is
19 totally opposite of what we are here with today, because
20 the operator, Mack, is seeking pooling.

21 I would also point out that if you look at
22 Mr. Hall's Exhibit 10, 70-2-18, which I also submitted to
23 the Commission, Mr. Hall made the argument that
24 Mr. Ragsdale should be entitled either to the amount the
25 interest would be entitled to if pooling had occurred or

1 the amount to which each interest owner is entitled, in
2 the absence of pooling. But it also states in line 1
3 that this only occurs if the operator fails to apply for
4 an order of the Division for pooling the lands dedicated
5 to the spacing unit.

6 I would also point out that in subsection A
7 above, "The pooling order is effective from the first
8 production of the well" -- that's about in the middle of
9 that paragraph. So when an operator fails to get a JOA
10 or force pool, yes, there may be some validity to what
11 Mr. Hall argues. But here, the operator is force
12 pooling.

13 It began the force pooling procedure within a
14 couple of months after it found out that there was no
15 JOA. And the pooling agreement, under statute, must be
16 effective as of the date of first production. Therefore,
17 that pooling order will set forth -- will pool the
18 interests, will set a risk penalty, and will establish
19 overhead rates from date of first production.

20 And therefore, Mack submits that this claim
21 that Mr. Ragsdale doesn't have to pay operating costs
22 must fail, whether it's under the pooling statute or it's
23 under under the Bellet v. Grynberg case, which is the
24 applicable Supreme Court precedent. We'd ask that the
25 Commission enter its order pooling the acreage and

1 assessing a 200 percent penalty. Thank you.

2 ACTING CHAIRMAN BALCH: At this time, I
3 believe we'll go into closed session, during which time
4 we will only discuss Case 14763, the application of Mack
5 Energy for compulsory pooling, Lea County, New Mexico.

6 MR. BRANCARD: Can we get a motion?

7 COMMISSIONER DAWSON: I will motion.

8 ACTING CHAIRMAN BALCH: I will second the
9 motion. All in favor?

10 And we will now go into closed session.

11 (Whereupon the Commission went into executive session.)

12 ACTING CHAIRMAN BALCH: Do we have a
13 motion to come back into open session?

14 COMMISSIONER DAWSON: I will motion.

15 ACTING CHAIRMAN BALCH: I will second.

16 All in favor?

17 MR. BRANCARD: For the record, the only
18 matters discussed in closed session were matters related
19 to this case --

20 ACTING CHAIRMAN BALCH: -- Case 14763,
21 the application of Mack Energy Corporation for compulsory
22 pooling, Lea County, New Mexico.

23 All right. Our findings are that we grant the
24 application for compulsory pooling and deny the motion to
25 dismiss the application. We found that the conditions

1 set forth in the Division order are reasonable and the
2 evidence supports the Division's decision.

3 So we would like findings and conclusions in
4 two weeks. And we will draft a new order that will
5 essentially mirror the Division order, with some
6 modifications as to how we get to that point. If an
7 agreement is found to be made before that order is
8 drafted similar to the language in the Division order,
9 then the order will no longer be in place.

10 MR. BRUCE: Thank you.

11 ACTING CHAIRMAN BALCH: Motion to adjourn?

12 COMMISSIONER DAWSON: I will motion.

13 ACTING CHAIRMAN BALCH: I will second.

14 All in favor? So we are adjourned.

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REPORTER'S CERTIFICATE

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I, JACQUELINE R. LUJAN, New Mexico CCR #91, DO
HEREBY CERTIFY that on September 13, 2012, proceedings in
the above captioned case were taken before me and that I
did report in stenographic shorthand the proceedings set
forth herein, and the foregoing pages are a true and
correct transcription to the best of my ability.

I FURTHER CERTIFY that I am neither employed by
nor related to nor contracted with any of the parties or
attorneys in this case and that I have no interest
whatsoever in the final disposition of this case in any
court.

WITNESS MY HAND this 25th day of September,
2012.


Jacqueline R. Lujan, CCR #91
Expires 12/31/2012