

3 IN THE MATTER OF THE HEARING CALLED
4 BY THE OIL CONSERVATION DIVISION FOR
5 THE PURPOSE OF CONSIDERING:

6 APPLICATION OF MARSHALL & WINSTON,
7 INC. FOR A NONSTANDARD OIL SPACING
8 AND PRORATION UNIT AND AN UNORTHODOX
9 OIL WELL LOCATION, AND COMPULSORY
10 POOLING, LEA COUNTY, NEW MEXICO.

CASE NO. 14962

ORIGINAL

11 REPORTER'S TRANSCRIPT OF PROCEEDINGS
12 EXAMINER HEARING

13 BEFORE: DAVID K. BROOKS, CHIEF EXAMINER
14 RICHARD EZEANYIM, TECHNICAL EXAMINER
15 PHILLIP GOETZE, TECHNICAL EXAMINER

16 March 7, 2013

17 Santa Fe, New Mexico

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18 This matter came on for hearing before the
19 New Mexico Oil Conservation Division, David K. Brooks,
20 Chief Examiner, Richard Ezeanyim, Technical Examiner and
21 Phillip Goetze, Technical Examiner, on Thursday, March
22 7, 2013, at the New Mexico Energy, Minerals and Natural
23 Resources Department, 1220 South St. Francis Drive,
24 Porter Hall, Room 102, Santa Fe, New Mexico.

25 REPORTED BY: Mary C. Hankins, CCR, RPR
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APPEARANCES

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1 (9:35 a.m.)

2 EXAMINER BROOKS: Call Case Number 14962,
3 application of Marshall & Winston, Inc. for a
4 nonstandard oil spacing and proration unit and an
5 unorthodox oil well location, and compulsory pooling,
6 Lea County, New Mexico.

7 Call for appearances.

8 MR. BRUCE: Mr. Examiner, Jim Bruce of
9 Santa Fe representing the Applicant. I have two
10 witnesses.

11 MR. PADILLA: Mr. Examiner, Ernest L.
12 Padilla for Endurance, and I have no witnesses.

13 MR. FELDEWERT: Mr. Examiner, Michael
14 Feldewert with the law firm of Holland & Hart, appearing
15 on behalf of Yates Petroleum Corporation, and I also do
16 not have any witnesses.

17 EXAMINER BROOKS: Okay. Very good.

18 Would you ask your witnesses to stand,
19 identify themselves?

20 MR. MAY: Brent May.

21 MR. HAMMIT: Kevin Hammit.

22 EXAMINER BROOKS: Please swear the
23 witnesses.

24 (Mr. May and Mr. Hammit sworn.)

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KEVIN HAMMIT,

after having been first duly sworn under oath, was
questioned and testified as follows:

DIRECT EXAMINATION

BY MR. BRUCE:

Q. Will you please state your name and city of
residence?

A. My name is Kevin Hammit. I live in Midland,
Texas.

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

A. I'm employed by Marshall & Winston, Inc. I am
vice president of land.

Q. Have you previously testified before the Oil
Conservation Division?

A. Yes, I have.

Q. And were your credentials as an expert
petroleum landman accepted as a matter of record?

A. They were.

Q. And are you familiar with the land matters
involved in this application?

A. Yes, I am.

MR. BRUCE: Mr. Examiner, I tender
Mr. Hammit as an expert petroleum landman.

EXAMINER BROOKS: So qualified.

I'm sorry. Any objection from any of the

1 attorneys?

2 MR. PADILLA: No.

3 MR. FELDEWERT: No, Mr. Examiner.

4 EXAMINER BROOKS: So qualified.

5 Q. (BY MR. BRUCE) Mr. Hammit, could you identify
6 Exhibit 1 for the Examiner and describe what Marshall &
7 Winston seeks in this case?

8 A. That is a land plat of the area we are looking
9 to pool for a Bone Spring horizontal well. It is the
10 south half of Section 3. This is in Township 19 South,
11 Range 32 East. We are seeking an order for a
12 nonstandard well unit comprised of that south half of
13 Section 3, and we are looking to pool the nonstandard
14 unit as to the Bone Spring Formation.

15 Q. And what is the name of the well and where is
16 it located?

17 A. It is called the TJG Fed Com 3 Well #1. It's a
18 horizontal well with a surface location at 400 feet from
19 the south line and 330 feet from the east line, and a
20 terminus 400 feet from the south line and 330 feet from
21 the west line.

22 Q. And in what pool is this well located?

23 A. This well will be in the East Lusk Bone Spring
24 pool, which has 160-acre spacing, with rules saying that
25 the wells are to be located no closer than 660 feet to

1 the quarter section line. That's why we're asking for
2 320-acre well unit. The surface and bottom-hole
3 locations are unorthodox under the rules for the pool.
4 We ask for an unorthodox location to maximum the length
5 of the wellbore.

6 Q. What is the working interest ownership of the
7 well unit? And I refer you to Exhibit 2.

8 A. Exhibit 2 is the Exhibit A to our operating
9 agreement, and that is a listing of all of the parties
10 that will have a working interest -- have a working
11 interest in the well, in the unit.

12 Q. And insofar as the leases themselves, what
13 types of leases cover the well unit?

14 A. There are two federal leases comprising the
15 south half of Section 3, the southeast quarter, which is
16 one center lease from the southwest quarter -- 160 acres
17 to the 320-acre unit.

18 Q. And what is Exhibit 3?

19 A. This is a listing of the parties that we're
20 looking to pool. The exhibit gives a breakdown of the
21 contact -- or the actions taken in making contact with
22 the parties that have not committed to the well or we've
23 been unable to locate.

24 Q. And are Exhibit 4A through 4I copies of your
25 correspondence and notes regarding contact with the

1 parties or regarding trying to locate them?

2 A. Yes, they are.

3 Q. And without going into details, since there is
4 a lot of paper there, when did the first well proposal
5 first go out, and how often have you been in contact
6 with the interest owners since then?

7 A. Our first packet went out to all the working
8 interest owners on August 22nd of 2012. That packet was
9 sent return receipt, so we have documentation of the
10 receipt of those parties that we had addresses for --
11 good addresses for.

12 And then we have made three subsequent
13 contacts, again with return receipts attached. Those
14 went out in October, December of 2012, and then, again,
15 the last one in February of this year.

16 Q. And have there been telephone files [sic] or
17 e-mails with respect to the interest owners?

18 A. Yes. For each of these separate packets for
19 each of the parties that have not committed to
20 participating in the well, we have compiled contacts,
21 efforts that we've made in order to bring everybody into
22 the pool that wish to be involved.

23 Q. Now, there are several unlocatable parties.
24 Besides the Lea County records, what else did Marshall &
25 Winston do to try to locate these persons?

1 A. Well, without going into tremendous detail
2 about it, we used the county records, of course, as a
3 starting point. Then also, as a follow-up later on to
4 locate addresses or documentation to help identify these
5 people for us further, we have utilized Internet
6 services extensively in locating -- in attempting to
7 locate current addresses, current phone numbers; some
8 success, some not.

9 For those that we could not locate, of
10 course, we were not able to find them, we also followed
11 up with subsequent letters, sent return receipts to
12 addresses as best we could determine for the parties
13 that we were trying to locate, and those would all be
14 returned to us undeliverable.

15 Q. In your opinion, has Marshall & Winston made a
16 good-faith effort to obtain the voluntary joinder of
17 interest owners in the well or to locate all interest
18 owners?

19 A. I believe we have.

20 Q. Could you identify Exhibit 5 and discuss the
21 cost of the proposed well?

22 A. This, of course, is a well cost estimate, or
23 more commonly referred to as an Authority for
24 Expenditure, an AFE, and that encapsulates or covers our
25 dry-hole cost, located about midway down the sheet of

1 paper. And then at the bottom is a final cost and
2 anticipated cost for the well.

3 Q. And the anticipated cost is just over
4 \$6 million?

5 A. That is correct.

6 Q. Are these costs in line with the cost of other
7 horizontal wells drilled to this depth in this area of
8 New Mexico?

9 A. In line with what we have done previously and
10 in line with what other operators have done, yes, I
11 believe so.

12 Q. Do you request that Marshall & Winston be
13 appointed operator of the well?

14 A. Yes, we do.

15 Q. And do you have a recommendation for the
16 amounts which Marshall & Winston should be paid for
17 supervision and administrative expenses?

18 A. Yes. We have put it into our operator
19 agreement, requesting for a drilling well, that it be
20 \$6,500 a month, and for a producing well, \$650 per well.

21 Q. And are these amounts equivalent to those
22 normally charged by Marshall & Winston and other
23 operators in this area for wells of this depth?

24 A. From what we have learned, we believe it to be
25 on the low end of what would be charged for wells of

1 this type.

2 Q. And do you request that these rates be adjusted
3 periodically as provided by the COPAS accounting
4 procedures?

5 A. We would request that.

6 Q. And does Marshall & Winston request the maximum
7 of cost plus 200-percent risk charge against any
8 nonconsenting interest owners?

9 A. Yes, we do.

10 Q. And was notice of the hearing sent to the
11 locatable parties?

12 A. Yes, it was.

13 Q. And is that reflected in the Affidavit of
14 Notice submitted as Exhibit 6?

15 A. Yes, this is what that is.

16 Q. And was notice published as to the unlocatable
17 persons?

18 A. Yes, that was done, also.

19 Q. And that is in the Affidavit of Publication
20 submitted as Exhibit 7?

21 A. I believe that is correct, yes.

22 Q. And does Exhibit 8 list the offset either
23 operators or working interest owners to your proposed
24 well unit and the unorthodox location?

25 A. Yes, it does.

1 Q. And finally, was notice of the application sent
2 to the offsets?

3 A. It was sent to all those parties, yes.

4 Q. And is that Exhibit 9?

5 A. Yes, that is Exhibit 9.

6 Q. Were Exhibits 1 through 9 prepared by you or
7 compiled from company business records?

8 A. Yes, we put those together.

9 Q. And is the granting of this application in the
10 interest of conservation and the prevention of waste?

11 A. We believe it is, yes.

12 MR. BRUCE: Mr. Examiner, I move the
13 admission of Exhibits 1 through 9.

14 EXAMINER BROOKS: Any objections?

15 MR. FELDEWERT: No, Mr. Examiner.

16 MR. PADILLA: No.

17 EXAMINER BROOKS: Exhibits 1 through 9 are
18 admitted.

19 (Marshall & Winston Exhibit Numbers 1
20 through 9 were offered and admitted into
21 evidence.)

22 MR. BRUCE: Pass the witness.

23 EXAMINER BROOKS: Okay. Any preference as
24 to who is going first?

25 Mr. Feldewert?

1 MR. FELDEWERT: I'll go first.

2 CROSS-EXAMINATION

3 BY MR. FELDEWERT:

4 Q. Mr. Hammit, I'm looking at Exhibit Number 8,
5 your offset notice.

6 A. Yes.

7 Q. Now, where did you obtain your list of these
8 offsetting parties?

9 A. We had the assistance of our legal counsel in
10 locating those parties, identifying who had the offset
11 operations or offset ownership to these wells.

12 Q. Did you examine whether there were operators in
13 all of these offsetting quarter sections?

14 A. We would have reviewed the records to determine
15 who had ownership in these properties so that we could
16 contact the right people.

17 Q. I guess my question is: With respect to the
18 parties you have listed here, how many of these parties
19 are actually operators of offsetting Bone Spring spacing
20 units; do you know?

21 A. That, I cannot give you an answer to.

22 MR. BRUCE: I can say, Mr. Examiner, that
23 the only one I know of is COG Operating, to the north.

24 Q. (BY MR. FELDEWERT) So, Mr. Hammit, did you do
25 the work in terms of locating the offsetting parties?

1 A. I did not.

2 Q. Who did that work?

3 A. Legal counsel for us.

4 Q. Mr. Bruce?

5 A. Yes, sir.

6 Q. So you can't testify as to the process that he
7 went through to locate these offsetting parties?

8 A. No, sir, I cannot. I can trust that he is
9 well-steeped in these things and knows how to run title.

10 Q. And you can't tell us the extent to which these
11 offsetting parties are operators or lessees or mineral
12 owners?

13 A. By these records, it would look like that these
14 are all under lease, and these are the current leasehold
15 owners of all these offset tracts.

16 Q. But you can't testify to that?

17 A. I cannot testify that I did the work on it, no,
18 I cannot.

19 Q. Now, I'm looking at your 4I, and it's the
20 package of exhibits that involves Yates Petroleum
21 Corporation.

22 A. Okay.

23 Q. And I looked at this packet, and it appears
24 that you've sent correspondence to them by certified
25 mail, correct?

1 A. That is true.

2 Q. If I look at Exhibit Number 3 -- so keep this
3 aside and turn to Exhibit Number 3.

4 A. Yes.

5 Q. I'm sorry. How did you describe this exhibit?

6 A. A synopsis of attempts to contact parties that
7 would have -- that do have an interest in the south half
8 of Section 3.

9 Q. So it looks like you had some verbal contacts
10 with Endurance Properties?

11 A. That is correct.

12 Q. So in addition to sending just letters, you
13 undertook an effort to contact them by telephone?

14 A. We did not. They contacted us after receipt of
15 their packets in the mail, at some point in time.

16 Q. Then I look at "Kenneth L. Hewitt," and it
17 looks like -- did the company undertake efforts to
18 contact the interest of Mr. Hewitt?

19 A. We received contact back from an heir of
20 Mr. Hewitt. Mr. Hewitt, although the records did not
21 reflect it, was deceased. A daughter of his contacted
22 us back. We exchanged telephone calls. We exchanged
23 e-mails. She requested an offer to acquire their
24 interest. We made that offer. We never heard anything
25 back from her.

1 Q. So they contacted you?

2 A. That is correct.

3 Q. And with Mr. Johnson, it indicates here that
4 you undertook efforts to try to find a phone number?

5 A. We tried to locate him in any way we could,
6 either by address or by phone number. We also
7 utilized -- something I failed to mention before --
8 other parties that have interests -- leasehold interests
9 in the south half of Section 3 that might be
10 knowledgeable of some of these parties, including an
11 attorney out of Roswell named Don Petrich [phonetic].
12 We tried to run all the tracks we could possibly run in
13 attempting to locate these people that were, by the
14 records of Lea County, New Mexico, unlocatable.

15 Q. And if I look at the rest of your list with
16 respect to the parties, the return receipts were
17 actually received back to you?

18 A. That is correct.

19 Q. It doesn't appear to indicate that you
20 undertook any additional effort to contact after receipt
21 of the return receipts.

22 A. That is all that is required of us, that I know
23 of. If contact is made, there is no additional
24 responsibility for us to do more than that.

25 Q. So it's your testimony that if you send out a

1 well proposal to a company and it's received, that your
2 obligation ends, and you have no obligation to follow up
3 with them by telephone or e-mail to ascertain whether
4 they will be entering into a voluntary agreement?

5 A. I would certainly think it would be the
6 obligation of the party receiving a notification to
7 contact us back, which I asked repeatedly in my letters
8 having done it four times, each time being received by
9 those parties to contact me back with any questions, any
10 problems, any desire to participate in the well, any
11 desire not to participate in the well. We were wide
12 open; please contact us back.

13 Q. But you don't feel that you have any obligation
14 as the Applicant to pick up the telephone, if you
15 haven't heard back from them, and contact them to
16 ascertain what the status is of their decision-making
17 process or make any other effort to reach out and obtain
18 the voluntary agreement?

19 A. I'm not aware of any further obligation that we
20 have in having to do that.

21 Q. It indicates that the correspondence you sent
22 to Yates Petroleum -- the last letter was February 8th,
23 2013, if I'm looking at it correctly, Exhibit 4I.

24 A. Without having it right here in front of me,
25 that sounds right. We did make some contact or send the

1 last packet out -- or a last contact in February of this
2 year.

3 Q. Why don't you turn to Exhibit 4I and take a
4 look at the last page?

5 A. The very last page, the return receipt
6 notification?

7 Q. I'm sorry. Second-to-the-last page. Thank
8 you.

9 A. Yes.

10 Q. Now, I'm looking at this letter, and it says as
11 you move closer to getting the well commenced, you want
12 to clarify a point. And you say: "The well unit will
13 be the south half of Section 3, Township 19 South, Range
14 32 East...." This is a letter that you sent out on
15 February 8th.

16 A. Yes.

17 Q. Why did you have a need to clarify the location
18 of this particular well?

19 A. It has to do with -- since the rules for the
20 pool require 60 acres for a Bone Spring well, we wanted
21 to be perfectly clear that we were requesting a 320-acre
22 unit for the well.

23 Q. So that was not clear previously in your
24 correspondence with Yates Petroleum?

25 A. It was not addressed previously, although, in

1 our operating agreement, we did include all of the south
2 half as the covered lands under the operating agreement.

3 Q. So the first time Yates Petroleum had notice by
4 letter that you were proposing a south half spacing unit
5 for your well was on February 8th, 2013?

6 A. No, that would not be correct. They had
7 notification from the very first. It was an entire
8 south half unit that we were putting together under the
9 operating agreement. If there were any questions above
10 and beyond that, they were more than welcome to contact
11 us. If there was any disagreement on that, they would
12 have been more than welcome to contact us on that. We
13 did not receive any contact.

14 Q. I guess I'm confused. You said you want to
15 clarify a point, and then you describe the south half of
16 Section 3 as the spacing unit. What point were you
17 clarifying?

18 A. Because the field rules stipulate that it's 160
19 acres for a well to be drilled as a Bone Spring well in
20 the lands that we were wanting to drill the well in.

21 Q. But that's not what your letter says.

22 A. I read here -- it says: "The well unit will be
23 the south half of Section 3."

24 Q. That's the point that you're clarifying,
25 correct?

1 A. We just wanted to clarify to make perfectly
2 understood by all parties that that was to be the unit.

3 Q. Were you aware, Mr. Hammit, that the individual
4 within Yates who was responsible for this area had left
5 the company?

6 A. I had no idea.

7 Q. Perhaps if you had called Yates, one could
8 surmise that you would have been advised of that, and
9 you could have proceeded?

10 MR. BRUCE: I object here, Mr. Examiner.
11 That's speculating what Yates might tell him.

12 EXAMINER BROOKS: I believe that's a valid
13 objection. I'll sustain that objection.

14 Q. (BY MR. FELDEWERT) But in any event, you made
15 no effort to contact Yates by telephone to ensure that
16 this had been received by them, that it was under the
17 attention of someone within Yates and that they had an
18 effort or an opportunity to discuss with you the nature
19 of your proposal and your clarification on February 8th
20 that it was going to be the south half of Section 3?
21 You made no phone call, did you?

22 A. I did not.

23 Q. You had a telephone number for Yates; did you
24 not?

25 A. I do, but by the same token, they're very -- we

1 have a phone number attached to our letter, on our
2 letterhead. They could have contacted us very easily
3 with any questions. We did not receive any such
4 contact.

5 Q. Do you have any lease expiring in this south
6 half of Section 3?

7 A. These are HPD tracts. There is production in
8 the southwest quarter and in the southeast quarter.
9 Rather tenuous at this time, I think, for both tracts,
10 and that is part of the reason that we were trying to
11 move forward with this compulsory pooling hearing, to
12 preserve these leases and get the well drilled.

13 Q. When did you anticipate drilling a well?

14 A. We would slate it as quickly into our schedule
15 as soon as we got approval for this well to be drilled.

16 Q. So you don't have a schedule now under which
17 this well -- any drilling schedule?

18 A. No, it would not be, because -- since we do not
19 have approval for it, we have not scheduled it. We do
20 not have a time set for it.

21 Q. Can you tell us when you anticipate drilling
22 this well if you obtain approval?

23 A. It would be as soon as possible, with our
24 ability to obtain a drilling rig and get all the support
25 that we need to have in order to get the well drilled.

1 Q. Do you currently have a drilling schedule in
2 this area?

3 A. A drilling schedule?

4 Q. Uh-huh.

5 A. Well, we establish our own priorities. We're
6 not a large company, and we do not have to do a list,
7 1 to 25, of which wells we're going to drill, and it
8 does evolve. We would put this very high on the
9 priority list, again because of the precariousness of
10 the production out there. We do want to get a well
11 drilled. We've been working on this thing for well over
12 two years, and notifications went out in August of last
13 year. Circumstances have certainly not improved in
14 regards to production out there. It is certainly in the
15 best interest of Marshall & Winston and the other
16 parties to get a well drilled out there, and that's what
17 we're trying to do.

18 Q. Do you have a current drilling schedule?

19 A. Do we have a current --

20 Q. For any wells.

21 A. Yes. We have a well slotted to be drilled
22 within two or three miles of here, and the thought is to
23 drill the TJG Fed Com well immediately after that well.

24 Q. And when is that well scheduled to be drilled?

25 A. Around June 15th.

1 Q. June?

2 A. June 15th of this year.

3 Q. So you're drilling this well, conceptually,
4 after June?

5 A. That is correct.

6 Q. Have you had any discussion with any party
7 about your proposed overhead rates?

8 A. That has never been brought into question.

9 Q. When you say that you have learned that 6,500
10 and 650 is what's normally charged out there, what
11 effort did you undertake to obtain that knowledge?

12 A. We participate in a large number of wells,
13 ourselves, on Bone Spring wells. We take the results
14 from those, and we're more inclined to go towards the
15 low end of those rates. It is not our intent to make
16 money off of overhead rates on drilling, on production.
17 It is our intent to just be in line with what other
18 operators are doing.

19 Q. Have you participated in any wells with Yates
20 Petroleum?

21 A. I know we have participation with Yates as far
22 as a horizontal Bone Spring well. Right now, I cannot
23 recall one.

24 Q. Are you aware that their general operating
25 rates are 5,500 per month while drilling and 550 per

1 month while producing?

2 A. I would not have access to that information.

3 Q. Would you consider those rates to be
4 reasonable?

5 A. For Yates Petroleum, those might be reasonable,
6 yes.

7 Q. Are they reasonable for your company?

8 A. Well, in this case, it is not. We believe that
9 \$6,500 and \$650 is reasonable for us.

10 Q. And what's the basis for that?

11 A. Again, because of operations that we have with
12 other -- participation with other operators. We have
13 seen rates that have been around these dollar amounts or
14 higher, so we believe that these are not unfair rates to
15 be charging.

16 Q. But you have not had any discussion with Yates
17 yet about your proposed operating rates?

18 A. We would have welcomed a conversation on that,
19 but we have not been approached by Yates at any point in
20 time asking about those rates.

21 MR. FELDEWERT: Mr. Examiner, I'm going to
22 move at the end that the matter be continued on the
23 grounds that the Applicant has not engaged in good-faith
24 efforts to reach an agreement with Yates. They have
25 chosen simply to send out letters, and once they receive

1 the return receipts, their opinion is that they have
2 nothing further in terms of their application. I have
3 always understood that the good-faith efforts to reach
4 an agreement by the applicant include more than just
5 sending out a letter and receiving a return receipt.

6 EXAMINER BROOKS: Are you through with your
7 examination of the witness?

8 MR. FELDEWERT: I am.

9 EXAMINER BROOKS: Mr. Padilla?

10 CROSS-EXAMINATION

11 BY MR. PADILLA:

12 Q. Mr. Hammit, I'm looking through Exhibit 4A,
13 which are Endurance/Tritex's interests. Correct me if
14 I'm wrong, but those exhibits -- the information
15 contained in that just simply applies to land matters;
16 is that right?

17 EXAMINER BROOKS: Excuse me. What exhibit
18 are you on?

19 MR. PADILLA: 4A.

20 EXAMINER BROOKS: 4A?

21 MR. PADILLA: Yes.

22 EXAMINER BROOKS: Okay.

23 A. This packet that we compiled in regards to
24 Tritex/Endurance, yes, address land matters, things that
25 I was involved in. That's not to say that we did not

1 have contact with Endurance concerning operations --
2 drilling operations and completion operations in our
3 office later on.

4 Q. (BY MR. PADILLA) Is there anything in here that
5 addresses how the well would be completed and fracked
6 and things of that nature that would be determined by
7 mutual consent?

8 A. In this packet, 4A, it is not in there. These
9 address land matters, and they would have nothing to do
10 with operations.

11 Q. Did you bring any materials addressing other
12 factors concerning the drilling and completing of this
13 well?

14 A. Since we have not received any word from
15 Endurance since a meeting in our office on February 14th
16 of this year where all those matters were laid out in
17 tremendous detail to the parties that came in to visit
18 with us, no, we have not had any further contact with
19 them or provided any additional materials.

20 Q. Were you present at that meeting?

21 A. Yes, I was.

22 Q. And what was the general nature of the
23 discussions at that meeting?

24 A. Well, I thought the meeting was, you know --
25 everybody got along fine. You know, we welcomed them

1 into our office to discuss matters, and they brought up
2 several points in regards to drilling operations. There
3 was very little related to land matters -- or none,
4 actually.

5 Q. Would it be fair to say that they wanted a
6 larger frack on this well?

7 A. We got that indication from them, but we had no
8 further direct contact with them after the meeting in
9 our office.

10 Q. And you didn't call them back about their
11 proposal as to a larger frack; is that right?

12 A. We've been working on this for over two years,
13 and their contact was one month prior to this hearing.
14 We felt it would be their obligation, if there are any
15 questions in this matter, that they should address us.
16 And we were wide-open. We were very receptive and
17 willing to speak with someone on these matters, but we
18 had no further contact with them.

19 Q. As I understand it from your answers to
20 questions by Mr. Feldewert, you're not drilling this
21 well until sometime after June of this year, right?

22 A. That is correct.

23 Q. So why can't there be a discussion about
24 well-completion matters?

25 A. Because the date of the hearing was scheduled

1 for today. If there was a need for contact -- an
2 obligation for contact, it should have been done prior
3 to today, and we have not had such contact from the
4 Endurance people.

5 Q. Realistically, there has been no meeting of the
6 minds with respect to how you're going to drill this
7 well, right?

8 A. If there are still questions on the part of the
9 Endurance people, that would be correct, but we have no
10 such idea of that. If there were questions raised, if
11 they wanted to pursue them further, they could have
12 contacted us. We did not have such contact.

13 Q. How much of an interest do you have in the
14 well?

15 A. Are you talking about Marshall & Winston?

16 Q. Marshall & Winston.

17 A. I know it's -- I don't have --

18 Q. Roughly.

19 A. I think it's around 40 percent.

20 Q. And what's the Endurance interest?

21 A. Just short of 15 percent, 14 and change.

22 Q. Still a big interest?

23 A. It's a significant interest, no question.

24 Q. At that meeting, did you have a discussion
25 about using a sump pump in order to enhance production

1 to achieve an earlier payout?

2 A. You're talking to the landman. If that was
3 discussed, I do not recall it.

4 Q. Well, you were in the room, I take it, right?

5 A. That is correct.

6 Q. And the basis of the meeting, as I understand,
7 had to do not with land matters but with how this well
8 was going to be completed; isn't that right?

9 A. To be drilled and completed. If there were
10 questions on the part of Endurance, we were there to
11 answer those. And we had geologists present; we had a
12 drilling engineer present to discuss those matters.

13 Q. Is the completion of this well according to
14 what Marshall & Winston decides set in stone?

15 A. It was always open to discussion prior to the
16 hearing today. We would welcome any contact from any of
17 the parties. They did not make a decision to
18 participate in the well.

19 Q. Well, you've just testified that there is no
20 urgency as far as the land matters are concerned, and
21 you don't know when, after June, you're going to drill
22 this well; isn't that right?

23 A. With no rig currently scheduled, no, we do not
24 have a set time to drill the well. It's a sequential
25 thing. Upon completion of what we call the Laguna well,

1 then we'll move on to do this well, TJG.

2 MR. PADILLA: Mr. Examiner, I don't have
3 any further questions.

4 And I concur in Mr. Feldewert's motion that
5 this case ought to be continued to allow further
6 discussions concerning matters brought up in this motion
7 and matters with regard to completing and addressing the
8 issues involving this well.

9 EXAMINER BROOKS: You've concluded your
10 examination of this witness?

11 MR. PADILLA: Yes, I have.

12 CROSS-EXAMINATION

13 BY EXAMINER BROOKS:

14 Q. I want to go over the basic information,
15 because you went fairly rapidly on this.

16 A. Sure.

17 Q. This is in the East Lusk Bone Spring, you said?

18 A. That is correct.

19 Q. And is this a gas prospect?

20 A. It is not.

21 Q. It's 160-acre spacing well?

22 A. It would be under the established field rules.

23 Q. Yeah. Now, is this a gas pool, or is it an oil
24 pool?

25 A. It's Bone Spring, so I would assume it is an

1 oil pool.

2 MR. BRUCE: Mr. Examiner, it is an oil
3 pool.

4 EXAMINER BROOKS: Thank you.

5 That's unusual to have a 160-acre spacing
6 unit for an oil pool, but anyway.

7 Q. (BY EXAMINER BROOKS) And it provides for
8 660-acre setbacks, and you are asking for a nonstandard
9 location; is that correct?

10 A. That is correct.

11 Q. And that is -- surface location is 400 from
12 south and 330 from east?

13 A. That is right.

14 Q. And the bottom hole is 400 from south and 330
15 from west?

16 A. Yes.

17 Q. Where do you anticipate the beginning of the
18 completed interval would be?

19 A. The beginning of the completed interval?

20 Q. Yes.

21 A. I'm going to have to defer to our geologist on
22 that.

23 Q. Okay. That's reasonable.

24 EXAMINER BROOKS: I believe that is all my
25 questions at this point for this witness.

1 Mr. Ezeanyim?

2 CROSS-EXAMINATION

3 BY EXAMINER EZEANYIM:

4 Q. Well, let me follow up on what you just said
5 now and then make my point that I made. I'm not an
6 examiner today.

7 A. Sure.

8 Q. I'm just sitting here to listen to what's going
9 on, and maybe if there is any technical information or
10 some factual information, I might discuss it.

11 If I were the applicant -- I know the
12 Examiner went through that. When I'm not the examiner,
13 I don't have to read that docket. I just listen to you,
14 and whatever you say, I ask you questions.

15 A. Sure.

16 Q. So that goes to what I said the last two weeks
17 about -- you mentioned the Lusk Bone Spring. Okay? It
18 has special pool rules. You are not required to do
19 that, but I think it would be appreciated if you can
20 tell us what special pool rule, maybe the order number
21 that -- you know, specify those special pool rules, and
22 then tell us why, because when I read it -- if I look at
23 completed interval in our new statewide rule, it's
24 standard, but because it's a special pool rule, it has a
25 different setback requirement. So if you could put

1 it -- you are trying to give some information, I mean,
2 for us to approve this.

3 A. Sure.

4 Q. I would appreciate it if you would tell me:
5 This is in Bone Spring, has a special pool, the order
6 number, it requires 660-acre setback requirements. That
7 would cut down on my research on that. And then for me,
8 who do they look at? You understand? He (indicating)
9 is the Examiner. So we want that well on there to look
10 at. But if you put it in this docket, everybody will --
11 you know, it's easier for everybody. It's not that you
12 are supposed to do that -- I don't know whether you are
13 supposed to do it or not, but I would appreciate if you
14 could, you know, tell us what the special pool rule is,
15 what the setback requirements are, and why you are
16 unorthodox.

17 EXAMINER BROOKS: They told us what the
18 setbacks requirements were, but I believe Mr. Bruce has
19 the order number.

20 MR. BRUCE: The order number is R-4994.

21 EXAMINER EZEANYIM: What is the order
22 number? 49 --

23 MR. BRUCE: 4994.

24 EXAMINER EZEANYIM: That's the pool order.

25 Okay.

1 Well, anyway, like I said, you may not do
2 that. I mean, it takes a lot of work, because I have to
3 go back and look for East Lusk Bone, what is the number.
4 It takes me a long time to do that. Anyway, just in
5 passing, if you do it, then -- so the order number and
6 the rule and why you are nonstandard, and we look at the
7 completed interval.

8 What is the depth of this well?

9 MR. BRUCE: Mr. Examiner, I think the next
10 witness will have that, together with the data of the
11 drilling program.

12 Q. (BY EXAMINER EZEANYIM) Okay. Now, I have
13 listened to both parties. So Marshall & Winston would
14 be the operator. You want to be operator of this well,
15 right?

16 A. That is correct.

17 Q. Very good.

18 What do you define as good-faith effort,
19 because it may be different for me? We read all these
20 rules. Good-faith effort may be just doing nothing, is
21 a good-faith effort, or calling somebody on the phone or
22 writing a letter. From your perspective, what is a
23 good-faith effort under these circumstances?

24 A. My belief is that there are established rules
25 for what procedures are supposed to be followed in these

1 compulsory pooling hearings. And I believe that
2 notification of one time is required, and we did many
3 more times than that; sending notification by registered
4 mail to make sure it got into the right parties' hands,
5 to be handled in a proper way, of either wanting to
6 participate in the well or deferring and trying to -- by
7 contacting us and seeing if an arrangement, a deal could
8 be made for us to acquire their interest. We did not do
9 it just once. We did it four times.

10 For those parties that did not receive
11 notification, the ones that were unlocatable, then we
12 made efforts above and beyond to try and locate those
13 people, so they would be in the loop. And certainly
14 some parties that were not locatable the first
15 go-around, we did find and discuss the matter with them
16 as we located them, many of them participating in the
17 well.

18 So I think good faith is putting
19 notification in front of someone, asking for a response
20 whether they're interested or not, letting us know they
21 would like to either participate in the well or make
22 some other arrangement. There is a lot going on in the
23 oil business these days. We take these things very
24 seriously. We want to do right by other people, but we
25 also believe there are obligations on other parties to

1 respond, also, and if -- either procedurally what's been
2 established as the rules to handle these things or just
3 doing the right thing, calling us back. Hey, we're
4 wide-open; we're easy to find; you've got the letter in
5 front of you.

6 Q. Anyway, I'm not against you. I'm just
7 asking --

8 A. Oh, sure. It's a legitimate question.

9 Q. Yeah. Because good-faith effort is open to
10 interpretation. You know, like I said, what you said
11 may not be what I think it is, or it may not be what
12 somebody else thinks it is. But I'm asking what you're
13 thinking.

14 And I think, even if you are not going to
15 drill the well before June, you are not doing something
16 wrong, because I really want you to think ahead of time,
17 you know. You know, even if I want to drill it in one
18 year, sure. If we approve the order, we give you one
19 year to drill the well --

20 A. One month [sic]. Okay.

21 Q. -- so that we don't get these orders coming in
22 like, Well, I want it tomorrow. No, you can't have it
23 tomorrow because we are loaded; we don't have enough
24 manpower to deal with it.

25 A. Sure.

1 Q. So if you are planning ahead of time, you are
2 thinking you are going to do this, well, it's good to
3 plan ahead of time, coupled with good-faith effort. I
4 don't see anything wrong with it. I'm not making any
5 statement one way or the other, but I'm trying to settle
6 something that will be a win-win situation between you
7 and us.

8 Because I hate the way they come in here
9 and say, I want this order tomorrow. Then I have to
10 drop everything and do everything; otherwise, you are
11 going to lose the lease or something, or the rig, and I
12 don't want you guys to do that. So it's not really
13 something that may be counted against somebody because
14 they're looking ahead of time.

15 So I'm making all these comments just for
16 your information. It's not that it's going against
17 anybody in this case or, you know -- but anyway, the
18 Examiner will determine what, you know, is good faith or
19 not.

20 A. Sure.

21 EXAMINER BROOKS: You through?

22 EXAMINER EZEANYIM: Yes.

23 EXAMINER BROOKS: Well, I do have one more
24 question I thought of.

25 RE CROSS EXAMINATION

1 BY EXAMINER BROOKS:

2 Q. You said that you're presently scheduled to --
3 you want to get into this about June 15?

4 A. The well in front of this one would be June
5 15th, and I think it normally takes -- don't hold me to
6 this, again, because I'm not a drilling person -- 30 to
7 45 days to get a well drilled. And this one is
8 tentatively to be the well following that well on June
9 15th.

10 Q. So it's probably in mid-July, at the earliest?

11 A. That would sound correct.

12 Q. Now, how soon do you have to get this clarified
13 to keep that well on the schedule?

14 A. If we got an answer by the end of the week --
15 by next week, that would be fantastic. If it takes
16 longer, then that's fine.

17 Q. Well, I'm asking about the latest date that
18 would meet your requirements, not the earliest.

19 A. Well, I would say -- okay. Here we are in --
20 getting towards mid-March. So if we had notification or
21 a determination within a month's time, four weeks, that
22 would allow us plenty of time to get a scheduling
23 started, put together to slot this one.

24 Q. How about six weeks? Will that work?

25 A. Six weeks? Well, I'll tell you, we'll take

1 whatever we can get. Six weeks will be fine.

2 Q. Well, I'm sure you will, but I'm just trying to
3 see what will work.

4 A. Sure. We acquired this property a long time
5 ago. Again, the production on our southeast quarter,
6 where our leasehold is, is tenuous. We have nurtured
7 that well along to maintain production on it with the
8 anticipation of getting a well drilled on it. We have
9 been working on it such a long time that having it
10 extended another two weeks or three weeks is not a big
11 deal in the scheme of things. We would just look
12 forward to being able to go out there and have the
13 opportunity to perform.

14 EXAMINER BROOKS: Mr. Bruce, do you have
15 any follow-up of this witness?

16 MR. BRUCE: Yeah, a couple of questions.

17 REDIRECT EXAMINATION

18 BY MR. BRUCE:

19 Q. Mr. Hammit, I'm looking at your correspondence
20 with Endurance, or Tritex; this is the overall package.
21 And with all the packages, you sent out not only a well
22 proposal, but an AFE and JOA and a title opinion with
23 everything?

24 A. That is correct.

25 Q. You sent out all the land documents you had?

1 A. We did it on the very front end. I think it
2 might be a little unusual to include a title opinion,
3 but because of the circumstances, how cut up these
4 properties were, we wanted to put everything in front of
5 those parties to make an educated decision about the
6 circumstances out there. So we tried to do it the first
7 time.

8 Q. And I think you were here listening to
9 Mr. Feldewert who said that the operator should do more
10 than send out a letter and go to forced pooling. Did
11 you do more than that?

12 A. We did everything at our disposal in regards to
13 continued contact with parties. Knowing that packets
14 had been received, we did subsequent mail-outs for those
15 parties that contacted us back with any questions. We
16 always return our phone calls, always return e-mails.
17 We continue to do research for those parties that were
18 unlocatable. I think we did a more than ordinary effort
19 to get everybody located.

20 Q. And looking at -- Endurance, or Tritex, did
21 contact you; did they not?

22 A. Yes, they did.

23 Q. And this Exhibit 4A packet shows more than 20
24 contacts between the parties?

25 A. We spoke extensively with an attorney/layman.

1 I'm not sure exactly; a contact person that worked for
2 Endurance, and, yes, I had many, many conversations with
3 her by e-mail, by telephone, all leading up to a meeting
4 in our office on February 14th about our circumstances
5 or about the proposed well, and still with no decision
6 ultimately made with them signing an operating agreement
7 and an AFE.

8 Q. And Yates is a fairly substantial company; is
9 it not?

10 A. I think they're pretty large in the state of
11 New Mexico, yes.

12 Q. They have staff, to your knowledge, of
13 engineers, geologists, landmen?

14 A. I think they've been in business a long time,
15 and their resources are quite large.

16 Q. And yet they never contacted you?

17 A. We never got feedback from them even though
18 there was notification through the return receipts that
19 packets and letters had been received by them.

20 Q. Is it Marshall & Winston's obligation or job to
21 tell Yates which landmen should be assigned to this, so
22 they can call you back?

23 A. No, it would not be.

24 Q. And have you ever gotten a well proposal from
25 Endurance?

1 A. Well proposal? We have not.

2 Q. And when you send out -- you're talking about
3 the basics of the drilling of the well. Is it not
4 common that everybody sends out an AFE, and that
5 contains the basics of the well information, the
6 drilling of the well; does it not?

7 A. I believe it does, the general inclination or
8 the general parts of that and if there are any questions
9 above and beyond. Certainly that is why our staff was
10 ready, willing to receive phone calls or any contacts to
11 further elaborate on those if needed.

12 Q. The geologists, engineering at Marshall &
13 Winston wasn't averse to talking to the interest owners,
14 were they?

15 A. In the case of Endurance, we arranged a
16 meeting, had a meeting in our office, and everything was
17 laid out in great detail, with it being wide-open for
18 them to contact us later if there were any additional
19 questions.

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

22 EXAMINER BROOKS: Thank you.

23 Any recross?

24 MR. PADILLA: None from me.

25 MR. FELDEWERT: No, Mr. Examiner.

1 EXAMINER BROOKS: Very good. The witness
2 may stand down.

3 You may call your next witness.

4 BRENT A. MAY,
5 after having been previously sworn under oath, was
6 questioned and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. BRUCE:

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

11 A. Brent May, Midland, Texas.

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

13 A. Marshall & Winston. I'm a petroleum geologist.

14 Q. Have you previously testified before the
15 Division?

16 A. Yes, I have.

17 Q. And were your credentials accepted as a matter
18 of record?

19 A. Yes, they were.

20 Q. Are you familiar with the geology involved in
21 this application?

22 A. I am.

23 MR. BRUCE: Mr. Examiner, I tender Mr. May
24 as an expert petroleum geologist.

25 EXAMINER BROOKS: Any objections?

1 MR. FELDEWERT: No, Mr. Examiner.

2 MR. PADILLA: No.

3 EXAMINER BROOKS: So qualified.

4 Q. (BY MR. BRUCE) Mr. May, would you identify
5 Exhibit 10 for the Examiner and describe its contents?

6 A. This is a structure map, top of the sand marker
7 in the 2nd Bone Spring Sand. In the center, you'll see,
8 highlighted in yellow, the proposed proration unit of
9 south half of Section 3 of 19 South, 32 East. The
10 proposed well location, or the trace of the lateral, is
11 shown in red, the TJG Federal Com 3 #1H. I think it was
12 stated before, the surface location is 400 from the
13 south, 330 from the east. The bottom-hole location is
14 400 from the south, 300 from the west.

15 There is also a -- a green trace of -- I
16 think it's Exhibit 12, a cross section showing that A to
17 A prime that I will talk about later.

18 This is showing some general structure in
19 the area. It's a basically a general dip down to the
20 southeast from the northwest. In the vicinity of the
21 proposed location, there is a north-south trending nose,
22 with a location on the eastern flank of that nose. Also
23 to the east of the proposed location is a smaller
24 closure.

25 Q. To your knowledge, is there any immediate

1 offsetting Bone Spring production?

2 A. There is a producing well in the southeast
3 quarter currently. That's the Marshall & Winston T/JG
4 Federal Com 3 #2. That is a vertical well. It's an
5 older Morrow well that was recompleted later in the Bone
6 Spring -- in the 2nd Bone Spring Sand, in the upper part
7 of it. And that is the one that Mr. Hammit talked about
8 that is loosely holding the lease.

9 Q. But as offsetting the particular well unit,
10 this south half well unit, there hasn't been any Bone
11 Spring production in, say, the --

12 A. No, not currently. Not currently. In the
13 north half, COG has proposed a Bone Spring horizontal,
14 but they have not drilled it yet.

15 MR. BRUCE: I believe that went to hearing
16 two to four weeks ago, Mr. Examiner, the COG well.

17 EXAMINER BROOKS: I'm sorry?

18 MR. BRUCE: The offsetting COG well --

19 EXAMINER BROOKS: Yes. What did you say
20 about it?

21 MR. BRUCE: It was heard by the Division
22 two to four weeks ago.

23 EXAMINER BROOKS: Compulsory pooling
24 hearing?

25 MR. BRUCE: Yes, nonstandard --

1 EXAMINER BROOKS: Location. Very good.

2 EXAMINER EZEANYIM: Is that in the same
3 section?

4 MR. BRUCE: Same section.

5 THE WITNESS: Yes.

6 MR. BRUCE: North half-north half.

7 EXAMINER EZEANYIM: Oh, okay. North
8 half-north half.

9 You are in the south half?

10 A. Currently, yes. The south half-south half is
11 the current location, yes, that we're talking about for
12 our well.

13 EXAMINER BROOKS: Well, you're looking for
14 a south half unit, because a standard 160 --

15 A. Correct. Correct, but the location --

16 EXAMINER BROOKS: Yeah. It's all within
17 the south half.

18 A. The proration unit is the full south half that
19 we're asking for.

20 EXAMINER BROOKS: Continue.

21 Q. (BY MR. BRUCE) Anything else on that exhibit,
22 Mr. May?

23 A. That'll do it.

24 Q. Would you identify Exhibit 11 for the Examiner?

25 A. Exhibit 11 is a porosity map of the same area.

1 It's a porosity map on the 2nd Bone Spring Sand. Its
2 density or sonic porosity cutoff is about ten percent or
3 greater. Again, the proposed well is shown in red.

4 You can see that there is a north-south
5 trending porosity fix on this map. There is a thick
6 over on the very eastern side of the proposed proration
7 unit, and another thick -- a major thick to the west of
8 the proposed proration unit, with a smaller thick
9 running through somewhat the center of the proposed
10 location.

11 And this is the -- this is the -- this 2nd
12 Bone Spring Sand currently is what we're proposing to
13 land the horizontal in. That's our proposed interval
14 that we're looking for at this time.

15 Q. And what is Exhibit 12?

16 A. Exhibit 12 is a stratigraphic cross section
17 A prime. As I noted before, the trace of that cross
18 section is back on Exhibit 10, in green. It's basically
19 kind of a southwest and northeast cross section.
20 Starting on the left-hand side, it has the Nadel &
21 Gussman Sun McKay in Section 10-19-32, which is on more
22 of the southwest side. It runs up into Section 3 of
23 19-32, which is the TJG Federal 3 #2, which is the
24 vertical well I had mentioned earlier.

25 And on the northeast side is the Phillips

1 State 2 #1 in Section 2-19-32.

2 The Datum is hung on the marker within the
3 2nd Bone Spring Sand. I've also labeled the top and the
4 base of the 2nd Bone Spring Sand. And the well logs
5 shown are neutron density well logs. I've also
6 highlighted the projected target of the horizontal,
7 which is approximately a 2- to 300 feet thick interval
8 just above the Datum, and that's labeled with the red
9 projected target. It's an area that has a little bit
10 better porosity than the rest of the 2nd Bone Spring
11 Sand.

12 EXAMINER EZEANYIM: I can't read it.

13 A. I apologize for that. It's approximately on
14 the TJG Federal 3 #2, the center one. We were shooting
15 for approximately around 9,500 feet. It's a true
16 vertical depth.

17 Q. (BY MR. BRUCE) And in your opinion, will each
18 quarter-quarter section -- or in this instance, each
19 quarter section in the well unit, contribute more or
20 less equally to production?

21 A. I believe it will, more or less, yes.

22 Q. Can you identify Exhibit 13 and just briefly
23 discuss the plan of the drilling of the well? Will
24 there be a pilot hole?

25 A. Yes. This is the -- the drilling program or

1 the drilling plan. And, yes, currently we are proposing
2 to drill a pilot hole down through all of the Bone
3 Spring section, through the 1st, 2nd and 3rd Sands, and
4 even into the top of the upper part of the Wolfcamp.
5 And we will evaluate all three sands and the Wolfcamp
6 section, because there has been a little scattered
7 Wolfcamp production in the area, to see which zone would
8 be the best. We feel like, at this point in time,
9 looking at the area, the 2nd Sand would be the best, so
10 that's what we're shooting for. But we -- if we see
11 something better, then we will change that. If the 2nd
12 Sand looks like the best sand to go horizontal in, we
13 will then plug back. And then this drilling plan shows
14 that we will be kicking off the curve at about 9,000
15 feet true vertical depth, and land the curve at around
16 9,500 feet true vertical depth.

17 I believe the question was asked earlier in
18 the hearing how far out we would land the curve. And
19 looking at the drilling plan, it looked like we would be
20 approximately 230 feet out from the -- from the vertical
21 borehole. So if you add a 330-foot offset, it's going
22 to be about 560 feet from the section line.

23 Q. Were Exhibits 10 through 13 prepared by you or
24 compiled from company business records?

25 A. Yes.

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

4 A. Yes.

5 MR. BRUCE: Mr. Examiner, I'd move the
6 admission of Exhibits 10 through 13.

7 EXAMINER BROOKS: 10 through 13 are
8 admitted.

9 (Marshall & Winston Exhibit Numbers 10
10 through 13 were offered and admitted into
11 evidence.)

12 MR. BRUCE: Pass the witness.

13 MR. FELDEWERT: I have no questions.

14 EXAMINER BROOKS: Mr. Padilla?

15 MR. PADILLA: Yes, I do; I have questions.

16 EXAMINER BROOKS: Proceed.

17 CROSS-EXAMINATION

18 BY MR. PADILLA:

19 Q. Mr. May, does Exhibit 13 contain the frack
20 information?

21 A. No, it does not.

22 Q. Were you at the meeting with Endurance
23 Resources recently?

24 A. I was. Now, I will state that I was not at the
25 first of the meeting, but I came in partway through the

1 meeting, yes.

2 Q. What is your understanding of what was
3 discussed at that meeting?

4 A. They came in. They had some questions about
5 how we were going to do things, and we described as best
6 we could what we were going to do. It seemed like they
7 had some concerns about our completions, and we had a
8 difference of opinion there, which is nothing new in
9 this industry. And they said -- I think we have a
10 consulting completion engineer that one of the members
11 from Endurance knew, so he said he was going to contact
12 him. And as far as I know, he did, but I don't know the
13 results of that contact.

14 Q. How many wells did Marshall & Winston operate
15 in this area?

16 A. In this township and range, we don't operate
17 currently, but over in 19-33, we operate. I should take
18 that back, because we operate the TJG Federal #2, the
19 vertical well, so we do operate that well in this
20 township and range. And in 19-33, we have a Bone Spring
21 horizontal that we operate. In the immediate, that's
22 probably the extent of them right in that specific area.

23 Q. Is this proposed well a developmental well in
24 any sense of the -- in any sense?

25 A. There are some existing Bone Spring horizontals

1 to the west, over in Section 9 of 19-32; also over in
2 Section -- the west half-west half of Section 4 of the
3 same township; down in 15 and 16 in the same township.
4 But as far as I know, there are not any direct offsets
5 currently in the Bone Spring horizontal wells.

6 Q. Has Marshall & Winston participated in any of
7 those wells?

8 A. No. We acquired this acreage about two,
9 two-and-a-half years ago, and that got us into this
10 area.

11 Q. Has Marshall & Winston drilled any Bone Spring
12 wells?

13 A. Yes. Yes, we have.

14 Q. Where?

15 A. We have a well in 19-33 that I just mentioned,
16 in Section 35.

17 Q. How far away is that?

18 A. It's about -- approximately -- off the top of
19 my head, maybe seven or eight miles.

20 Q. Do you know what segment of the Bone Spring
21 those other wells are completed in?

22 A. In this general area?

23 Q. Yes.

24 A. Most of them are 2nd, and there are some also
25 in the 1st Bone Spring.

1 Q. Was that an issue of discussion with Endurance?

2 A. I think they asked if we were going to do a
3 pilot hole and look at everything, and we told them yes.
4 And it seems like -- I thought they were happy with
5 that.

6 Q. Was there a discussion as to the size of the
7 frack?

8 A. Oh, yes. They brought up -- they sounded like
9 they would like to see a larger frack than what we
10 normally put on our wells in the Bone Spring.

11 Q. That's a major issue, isn't it?

12 A. It sounded like, with them, yes. It sounded
13 like it.

14 Q. Is Marshall & Winston still open to discussing
15 the frack and completion of this well?

16 A. I would think we would be. But on the other
17 hand, they left the meeting and supposedly talked to our
18 consulting engineer, completion engineer, and we didn't
19 hear anything else until -- I guess it was yesterday.

20 Q. Do you know whether, in fact, there's been some
21 discussion with your consulting engineer?

22 A. All I know is that -- I heard that one of the
23 parties did call him, but that's all I can say, is that
24 I understand he was called. But that's all I know about
25 it.

1 MR. PADILLA: Nothing further,
2 Mr. Examiner.

3 CROSS-EXAMINATION
4 BY EXAMINER BROOKS:

5 Q. Well, first of all, just to clarify the record
6 here, when you talked about this other horizontal well
7 you drilled, you said in 19-33. You meant 19 South, 33
8 East?

9 A. Yes. I'm sorry (laughter).

10 Q. I was going to say, you were real pioneers if
11 you drilled it in 1933 (laughter).

12 A. Section 35, 19 South, 33 East.

13 Q. Okay. Where is the anticipated beginning and
14 completed interval in this well?

15 A. As far as in a horizontal?

16 Q. Yes. I would like to get footages. If you
17 haven't computed them, you can supplement.

18 A. According to the drilling plan, the end of the
19 curve would land about 560 feet from the east line. So
20 I'm assuming that if we liked what we saw through the
21 whole lateral, we would start there and go to the very
22 end of our lateral and complete the whole thing as far
23 as --

24 Q. You still expect to be 400 from the south?

25 A. Yes, sir. Yes, sir. That way it gives us a

1 little bit of leeway to stay away from that 330 line.

2 Q. Okay. Very good.

3 EXAMINER BROOKS: Mr. Ezeanyim?

4 CROSS-EXAMINATION

5 BY EXAMINER EZEANYIM:

6 Q. Yeah. On that question, not because I
7 calculated it, but you are at least 100 feet closer to
8 the boundary, according to the special pool rule, if you
9 are landing 560. That's what I gather from you at this
10 moment.

11 Is it going to be an open-hole completion?

12 A. No, sir. We will run casing and cement it.

13 Q. And you think it will start at 560. Okay.
14 That's okay. That's why you were asking for an
15 unorthodox location?

16 A. Yes, sir.

17 Q. Okay. Good.

18 Tell me about the well in the southeast
19 quarter of that section.

20 A. It's the -- on Exhibit 12, it's shown, the
21 center well on that exhibit, and that does show the Bone
22 Spring section. It is currently perfed in the very top
23 of the Bone Spring Sand. And from what I understand,
24 that zone has never been fracked. And I believe, off
25 the top of my head, it's currently producing five to ten

1 barrels a day.

2 Q. Was it completed in the Morrow?

3 A. It was originally drilled down to the Morrow.
4 I think there was a Morrow attempt.

5 Q. And then you brought back to the Bone Spring?

6 A. Marshall & Winston did not. That was all done
7 with a previous operator. When we acquired the well a
8 couple of years ago, it was already in that Bone Spring
9 zone.

10 Q. It's a vertical well?

11 A. Yes, sir. Yes, sir.

12 Q. What is -- it is in the southeast quarter.

13 What unit? Southeast quarter? What is that?

14 A. It would be in Unit K, or it would be the
15 northwest of the southeast.

16 Q. South-northwest quarter. Okay.

17 And then you testified that you want to
18 drill a pad up hole?

19 A. Yes, sir.

20 Q. That will be a UUP [sic]?

21 A. I'm sorry?

22 Q. That's going to be a UUP, because that's --

23 A. Oh. Yes, sir. Yes, sir. Yes, sir.

24 Q. So ideally, Rule Order Number 4994 already
25 provides for -- I mean, this is going to be an infill

1 well to that vertical well? Is that -- or what is going
2 on here? I haven't read -- I'm sorry I'm asking you,
3 because I -- you know, I didn't read that, but there
4 must be -- you know, it requires 320-acre -- with one
5 well and then infill, right?

6 A. Currently, it's that well, yes. It has the
7 proration unit in the southeast quarter, 160. So if I'm
8 thinking this right -- correctly, I'm assuming that this
9 would be an infill well, since there is already a
10 current one in the current pool.

11 Q. Well, anyway, why I'm asking this question is
12 because of the new rule we have to drill a horizontal
13 well that has no well density -- has no density there.
14 See what I mean?

15 A. Yes, sir.

16 Q. But I don't know -- if the rule says all
17 vertical well, one well and an infill, okay, you can
18 drill a horizontal well -- and drill a horizontal well.
19 We don't have any limit on how many horizontal wells you
20 can drill, but in accordance with that rule, since you
21 obviously -- but in accordance with that special pool
22 rule, you are limited to two wells.

23 MR. EZEANYIM: Is that correct; the special
24 pool rule trumps the special well rule, right? I'm
25 trying to understand.

1 EXAMINER BROOKS: Not for horizontal well
2 density.

3 EXAMINER EZEANYIM: Yeah, I know. There is
4 no limit on the number of wells.

5 EXAMINER BROOKS: Right, regardless of the
6 special pool rules.

7 EXAMINER EZEANYIM: Oh, okay. Regardless.
8 Okay. That's interesting.

9 EXAMINER BROOKS: You have more questions?

10 EXAMINER EZEANYIM: Yeah. Let me finish.
11 I want to get some information.

12 Q. (BY EXAMINER EZEANYIM) Tell me about the
13 porosity of these? Is it greater than ten percent?

14 A. Yes. There is -- and that's what my porosity
15 map, Exhibit 11, is. I did map on ten percent or
16 greater on density or sonic porosity.

17 Q. COG drilled the well in the north half. Is
18 that a horizontal well?

19 A. Yes, it is.

20 Q. And east-west?

21 A. Yes. I believe, yes -- no. They're drilling
22 from west to east, I believe.

23 Q. Yeah, it's the same thing, west to east.

24 A. Yes.

25 Q. I'm inclined to look at the location of the

1 well, because I don't want the wells to be
2 crisscrossing.

3 A. Right. Right. No, no, they're not.

4 Q. So east-west horizontal, west-east; it doesn't
5 matter.

6 A. Right. Same orientation as ours.

7 EXAMINER EZEANYIM: That's all I have.

8 EXAMINER BROOKS: Okay. I notice COG is
9 out there being real quiet. Have they joined in this
10 well?

11 THE WITNESS: As far as I know. I think
12 so.

13 EXAMINER BROOKS: Any redirect, Mr. Bruce?

14 MR. BRUCE: No redirect of this witness.

15 I would like to address --

16 EXAMINER BROOKS: No redirect, so there can
17 be no recross.

18 The witness may step down.

19 And does that conclude your witnesses'
20 testimony?

21 MR. BRUCE: Yes, it does.

22 EXAMINER BROOKS: Okay. This is now the
23 appropriate time to make the motion to switch [sic] that
24 Mr. Feldewert and Mr. Padilla previously indicated they
25 wanted to make, so if you wish to state your motions on

1 the record.

2 MR. FELDEWERT: Mr. Examiner, if I may
3 approach.

4 EXAMINER BROOKS: You may.

5 MR. FELDEWERT: I thought I had a copy of
6 this order, but I don't. It has my secret notes on it,
7 but it's Order R-13165, which was entered by the
8 Division, as they put, that qualify the requirements of
9 pooling. And if you look at that, Mr. Examiner, in
10 paragraph five, there are four separate independent
11 requirements.

12 The first requirement is that you submit a
13 well-proposal letter, which is what Mr. Bruce went
14 through on his witness redirect. Does that
15 well-proposal letter meet all the requirements set forth
16 in that order? In this case, their initial
17 well-proposal letter did. Okay? But that's just one
18 requirement. The other requirements in there are that
19 you send out an AFE, that you submit a joint operating
20 agreement to the parties if they request one; and then
21 there is a fourth and final separate standalone
22 requirement, paragraph 5B, that the parties enter into
23 good-faith efforts to reach an agreement.

24 This case presents that issue to you
25 squarely. Okay? Because it is an additional

1 requirement to sending out your well-proposal letter.
2 Your well-proposal letter does not satisfy the
3 good-faith effort to reach an agreement. There's an
4 additional requirement. And as you point out -- as the
5 Division points out in that order, you don't deal with
6 that issue at a pretrial motion. You deal with it based
7 on the factual record of a hearing, which is what we
8 have now.

9 If you look at Marshall & Winston's Exhibit
10 Number 3, their good-faith exhibit, when it comes to
11 Yates, their full and complete statement is: "All
12 correspondence have been received. Return receipt cards
13 have been signed and returned. No response to date."
14 In their mind, that satisfies the good-faith
15 requirement. We sent out a letter; we did a return
16 receipt, and then we just sit back and see if they call
17 us. Now, if that's okay, then you let us know, because
18 that's what we've got here. Okay?

19 But we know that they had a telephone
20 number, and we know that they didn't call. They didn't
21 send out any e-mails. They didn't attempt to have any
22 kind of meeting or discussion with Yates. They just
23 sent a letter to the same address, not to anybody in
24 particular, but to the Land Department. And in their
25 mind, if they get a return receipt back, that is

1 sufficient.

2 And in their last letter, which they sent
3 out on February 8th, which is less than 30 days ago --
4 no. A little more than 30 days ago, but not 30 days in
5 advance of filing their pooling application, they send
6 the same letter out to the Land Department, and they're
7 clarifying issues. They're clarifying the south half.
8 They recognize there is a problem with their well
9 proposal previously.

10 So what are the good-faith efforts? Is a
11 letter by regular mail -- or by registered mail, is that
12 enough? Can you just sit back and send those letters to
13 the same land department, not even give a specific
14 person? And does that satisfy the requirement in a
15 circumstance where, as they testified, there's a lot
16 going on out there? There are a lot of letters coming
17 into these clients [sic]. There are a lot of well
18 proposals coming in. These proposals change over time.
19 Is a letter just enough? Can you just get return
20 receipts? That's what you can tell us in this case, or
21 you can continue this for two weeks.

22 They're not intending to drill their well
23 until mid-July, at best. There's plenty of time for
24 real good-faith discussions to occur here. And you can
25 continue this case for two weeks so the parties can go

1 back, have a telephone call, have actual discussions
2 about the issues that are involved here, and have them
3 come back here in two weeks and report on those
4 discussions, because then we will have good-faith
5 efforts to reach an agreement. But I submit to you, up
6 to now, we have not. If it's okay to just send out
7 letters by registered mail and then just sit back and
8 wait for a telephone call, let us know, because that's
9 what happened here.

10 So we ask that this matter be continued for
11 two weeks, with instructions that the Applicant here,
12 who has the burden, contact the objecting parties, have
13 some discussions, and see if they can reach a voluntary
14 agreement.

15 EXAMINER BROOKS: Mr. Padilla?

16 MR. PADILLA: Mr. Examiner, I'm going to
17 echo Mr. Feldewert's motion from a slightly different
18 perspective.

19 Exhibit 5 is the AFE in this case. The
20 total cost of this well is slightly upwards of
21 \$6 million. My client is trying to get a bigger frack
22 in this well than proposed by the Applicant. That's
23 basically the issue between my client and the Applicant.

24 Mr. May is not an engineer.

25 I think at issue here is whether or not

1 their frack or what my client is proposing is better for
2 this area.

3 Mr. May's testimony indicates that they
4 have drilled a well nine miles away, a Morrow horizontal
5 well, to the Bone Spring. I don't think that it would
6 hurt to continue this case until there's further
7 discussion as to how to best complete this well to
8 maximize production and to prevent waste.

9 At the end of two weeks, if we can't reach
10 an agreement on the completion, then I think it would be
11 fruitful to come back here and put on an engineering
12 case as to which completion method is the best. But
13 since there is no urgency on the land, the testimony
14 here -- and I'm not quarreling about the correspondence.
15 The correspondence is there as far as -- as far as
16 Tritex and as far as Endurance is concerned. My clients
17 have adequate notice here.

18 But in terms of whether this AFE is set in
19 stone, there is certainly a material issue as to a
20 forced pooling case. So I think it's premature to come
21 here and say, Well, we're set for a hearing; we're here;
22 sorry about that; we gave you notice. And there has
23 been no bona fide discussions on how the money for this
24 well is going to be spent, and this is not -- this is
25 not chicken-feed money here. This is real money, and I

1 think that Marshall & Winston would agree with that.

2 So we ask for a continuance until such time
3 that we can have more discussions on the AFE itself and
4 on, essentially, the completion method for this well,
5 which is in dispute between my client and the Applicant.

6 EXAMINER BROOKS: I believe you also said
7 you are requesting a two-week continuance?

8 MR. PADILLA: I think that would work for
9 us. If we can't get it done in that time, then, you
10 know, I respect the fact that there are schedules and
11 things of that nature, so on. It's something that has
12 to be done. But in terms of simply saying, Well, we
13 gave you all the land work, and we have a copy of the
14 well proposal and all that sort of stuff, but when you
15 get into a good-faith efforts with regard to spending \$6
16 million, I think, you've got to sit back and decide how
17 that money is going to be spent the best way.

18 EXAMINER BROOKS: Okay.

19 Mr. Bruce? Response?

20 MR. BRUCE: Mr. Examiner, Marshall &
21 Winston objects to a continuance. This has been going
22 on now, from the first proposal letter, for seven
23 months. Seven months. I would guess most of the forced
24 pooling have come before the Division -- the first
25 letter is sent out about two months before the forced

1 pooling hearing.

2 And I'll address Mr. Padilla's concerns
3 first. If you're getting into fracking, that is subject
4 to negotiations between the parties, but when all is
5 said and done, that is the option of the operator and
6 its working interest partners. And at this point, other
7 than the unlocatable, somewhere around 75 percent -- 70,
8 75 percent of the working interest owners have agreed to
9 the procedures that Marshall & Winston has proposed.

10 Furthermore, I have never seen a hearing
11 where the Division hears what fracking program should be
12 used and makes that determination and puts it in a
13 order. If that's going to be Division practice, then I
14 think we're probably going to have to set aside probably
15 eight hours for every forced pooling hearing from here
16 on out. That is not what the OCD does in the pooling
17 orders. It does not set a fracking procedure.

18 Number one, as to the order Mr. Feldewert
19 cited, I don't have that in front of me. A couple of
20 years ago, there were a series of about three orders
21 setting out what -- and I could get those order numbers
22 for you; I just don't have them with me.

23 EXAMINER BROOKS: Well, did you get down
24 the order number that --

25 MR. BRUCE: Yeah, I did. There are a

1 couple of others.

2 EXAMINER BROOKS: Because I'm going to give
3 this back to Mr. Feldewert. I've got them. You go
4 ahead.

5 MR. BRUCE: And basically what the orders
6 say is, the basics of good faith are sending out a well
7 proposal and an AFE, and if a party requests a JOA, send
8 a JOA. Those are the basics. They've been the basics
9 for a number of years now. And in this instance,
10 Marshall & Winston -- let's just go with Yates -- sent
11 out the JOA. They didn't even ask Yates if they wanted
12 one. Sent out an AFE, tells its well proposal, and
13 gives a copy of the title opinion.

14 This is the first time in my 30 years at
15 the OCD I've heard that Yates is simply helpless to
16 consider these well proposals on its own.

17 And furthermore, insofar as sending
18 subsequent negotiations, you know, as Mr. Feldewert
19 said, if all you have to do is send a letter, fine, but
20 he's saying telephone calls are required. No, they're
21 not required by any of the orders, that order that
22 Mr. Feldewert submitted or any of the other orders.

23 There are five letters from Marshall &
24 Winston to Yates, and they didn't care enough to pick up
25 the phone and call or e-mail. It's not Marshall &

1 Winston's job to -- after sending out four letters, five
2 letters, to then pick up the phone after seven months
3 and say, Hey, do you guys want to join in the well?
4 Yates knows what the deal is. They know what's going
5 on. There have been seven months of negotiations
6 between the parties. And certainly looking at Exhibit
7 4A, which is the letters with Tritex or Endurance, it
8 shows that if a party had questions, Marshall & Winston
9 was willing to answer those questions and willing to
10 meet personally with representatives to discuss its
11 drilling of the well.

12 Frankly, this is one of the more complete
13 sets of good-faith negotiation documents I have seen in
14 putting forth a forced pooling hearing. There has been
15 enough time. We object to a continuance.

16 EXAMINER BROOKS: I believe Mr. Ezeanyim
17 has a question, so I'll let him ask that.

18 EXAMINER EZEANYIM: I wanted to make some
19 comments here from what I'm hearing. Furthermore, it's
20 good that I have him (indicating) here, because I'm not
21 an attorney; I don't know what you are talking about.
22 But I can talk about technical issues.

23 First of all, I asked this question about
24 it. What is the good-faith effort. We are going to go
25 back and visit that, because it appears to me that is

1 the crux of this matter. That is something we have to
2 deal with. Maybe we have to say, This is what you need
3 to do to meet the requirement of the good-faith effort.

4 Now, when it comes to Mr. Padilla's
5 argument, I think it is authentic. First of all, I want
6 to make a comment here about the fracking method.
7 Fracking method is not a part of a compulsory pooling
8 issue. We are not apprised to tell the operators what
9 fracking method they have to use. It came up in one
10 contested case that I was the examiner, and they were
11 telling me what type of fracking method they had to use,
12 and I shut it down. Whatever fracking method the
13 operator wants to use is up to them, unless it is really
14 essential that, you know, inducing waste. But I don't
15 think an operator would use a fracking method that would
16 induce waste. So in that case, we don't deal with
17 fracking method.

18 However, if it's an issue between a
19 protestor and the operator, then I can go back and tell
20 them which fracking method they have to use, and if they
21 can't, then let there be a hearing -- you know, set a
22 hearing, and we can decide that. You know, at that
23 point, we can do it, but not on the compulsory pooling
24 application or any other application.

25 If Corporation XYZ doesn't agree with ABC

1 on the type of fracking method to use and they can't
2 agree, one of them can -- yeah, we can hear it. That's
3 why we're here, but not as part of the compulsory
4 pooling. I wanted to make that statement before the
5 legal examiner makes the final decision, because it's
6 going to be his decision to make. So fracking method is
7 not to be the course in a compulsory pooling
8 application.

9 Now, we go back to the AFE, which, I think,
10 is a concern. If it's a concern in that case, we can
11 look at the AFE. If somebody is objecting to the cost
12 of the well, sure, we can deal with that, but not the
13 fracking. If one party says that the well costs too
14 much or something, I mean, there are rules, something
15 that is in the rule that the contestant can come up and
16 tell us that this amount of money is too much or too
17 small, and this is what I think it's going to be. Then
18 we will look at it as part of the hearing process.

19 So I wanted to make this comment before the
20 Legal Examiner, because I think it's all legal, but
21 we're not going to consider the fracking method in this
22 application, and we're not going to consider it unless
23 it's brought to the OCD as a case. Am I going to use to
24 deep [sic] water, you know, something like that? Then
25 we look at that. Those are technical issues. We can

1 deal with it on a separate issue, but not on a
2 compulsory pooling application. We're not going to be
3 dealing with it now. I want to make that
4 straightforward.

5 I want you to come here to tell us what
6 type of fracking method. If you don't know what type of
7 a fracking method, the rules will tell you. If you
8 don't know, you can ask us. We can tell you, but not
9 part of the compulsory pooling application. I don't
10 want to see that again being brought up as a part of --
11 I saw the operators. They know what fracking method
12 they are going to use.

13 So I want to make that -- I don't want you
14 to bring that up in the compulsory pooling application.
15 I want to have it as a separate hearing, on a different
16 docket, so we can hear that. We have the capacity to
17 hear what fracking method you are going to use and maybe
18 decide -- decide it for you. So I wanted to make that
19 before he makes his decision.

20 EXAMINER BROOKS: Anything you wish to be
21 heard in rebuttal?

22 MR. FELDEWERT: Only one thing,
23 Mr. Examiner. If you're going to have negotiations,
24 you've got to have discussions, and it's up to the
25 Applicant to engage or foster those discussions. I

1 mean, it's clear here all they did was send out a
2 letter, initially, and then some follow-up letters to
3 what they term -- what they've got in their letters is
4 "Yates Petroleum Corporation, Land Department," and then
5 they just sit back and wait for Yates to call them. If
6 that's enough, then you have an opportunity here to tell
7 us. But I know that there are operators out there who
8 are continuing to act on the assumption that that's not
9 enough, on the assumption that there is more of a
10 requirement to their obligations of good-faith efforts
11 than just sending out a letter to the land department of
12 a company and sitting back and waiting for them to call
13 you.

14 So I would suggest that what makes more
15 sense here, since we have the time, that you continue
16 this matter for two weeks, that you instruct Marshall &
17 Winston to call these objectives [sic], have a meeting,
18 sit down and discuss the issues and report back in two
19 weeks where things are.

20 EXAMINER BROOKS: Anything else,
21 Mr. Padilla?

22 MR. PADILLA: No. I think I've already
23 said enough. Thank you.

24 EXAMINER BROOKS: Very good. I'm going to
25 continue this case until the March 21st hearing, give

1 the parties a chance to engage in further -- I started
2 to say indulge -- engage in further good-faith efforts
3 to reach an agreement.

4 I will make this observation, however, with
5 all respect to what my colleague here has said, I do
6 believe that if an application -- counter-application
7 seeking operations were filed, under Division practice,
8 then operational plans might become a relevant issue.
9 To avoid any possible stretching of this, I would note
10 that the 30-day requirement -- the next hearing will be
11 28 days -- there are 28 days between -- 14 days between
12 hearings makes 28 days between two successive sets of
13 hearings. If there is going to be a counter-application
14 filed and if it's not filed before March the 19th, I
15 would be rather reluctant in that case to postpone the
16 hearing beyond May the 2nd. I might have to postpone it
17 that long if there is counter-application filed, because
18 there would have to be time to notice.

19 My guess is, there won't be a
20 counter-application filed. And I won't go any further
21 with that, but that's my guess. And hopefully the
22 parties will work out their differences.

23 And so with that, Case Number 14962 is
24 continued to the March 21st docket. This is a
25 continuance by the Examiner, so it won't count against

1 either party.

2 Thank you, gentlemen.

3 And, Mr. Feldewert, you may have your copy
4 back, and I'm much obliged to you bringing it up. I was
5 looking for that order, and I didn't have the order
6 number.

7 MR. FELDEWERT: Okay.

8 (Case Number 14962 concludes, 11:08 a.m.)

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I do hereby certify that the foregoing is
a complete record of the proceedings in
the Examiner hearing of Case No. 14962,
heard by me on 3-7-13.

David K. Borsh, Examiner
Oil Conservation Division

1 STATE OF NEW MEXICO
2 COUNTY OF BERNALILLO

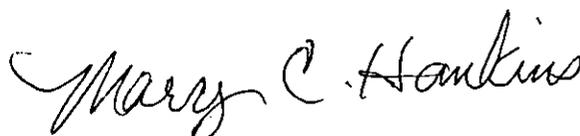
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CERTIFICATE OF COURT REPORTER

I, MARY C. HANKINS, New Mexico Certified Court Reporter No. 20, and Registered Professional Reporter, do hereby certify that I reported the foregoing proceedings in stenographic shorthand and that the foregoing pages are a true and correct transcript of those proceedings that were reduced to printed form by me to the best of my ability.

I FURTHER CERTIFY that the Reporter's Record of the proceedings truly and accurately reflects the exhibits, if any, offered by the respective parties.

I FURTHER CERTIFY that I am neither employed by nor related to any of the parties or attorneys in this case and that I have no interest in the final disposition of this case.



MARY C. HANKINS, CCR, RPR
Paul Baca Court Reporters
New Mexico CCR No. 20
Date of CCR Expiration: 12/31/2013