

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

6 APPLICATION OF CIMAREX ENERGY COMPANY
7 OF COLORADO TO REINSTATE INJECTION
8 AUTHORITY, EDDY COUNTY, NEW MEXICO.

CASE NO. 14994

COPY

9 REPORTER'S TRANSCRIPT OF PROCEEDINGS

10 EXAMINER HEARING

11 August 19, 2013

12 Santa Fe, New Mexico

13
14 BEFORE: RICHARD EZEANYIM, CHIEF EXAMINER
15 DAVID K. BROOKS, LEGAL EXAMINER
16
17

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

25 REPORTED BY: Mary C. Hankins, CCR, RPR
New Mexico CCR #20
Paul Baca Professional Court Reporters
500 4th Street, Northwest, Suite 105
Albuquerque, New Mexico 87102

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APPEARANCES

FOR APPLICANT CIMAREX ENERGY COMPANY OF COLORADO:

JAMES G. BRUCE, ESQ.
Post Office Box 1056
Santa Fe, New Mexico 87504
(505) 982-2043
jamesbruc@aol.com

FOR GEORGE ROSS RANCH, L.L.C.:

W. T. MARTIN, ESQ.
MARTIN, DUGAN & MARTIN
509 West Pierce Street
Carlsbad, New Mexico 88221
(575) 887-3528
lanemartinlaw@yahoo.com

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1 (9:03 a.m.)

2 EXAMINER EZEANYIM: Good morning,
3 everybody. This hearing will come to order at this
4 point, and we're going to go into the docket. This is a
5 special docket hearing. We normally conduct our
6 hearings on Thursdays, but because this case is
7 contested, we moved it to, obviously, today, August
8 19th.

9 So today is Monday, August 19th. It's 9:00
10 a.m. in the morning, and we have one case on the docket,
11 and the docket number is Docket Number 28-13 that we're
12 going to hear today. We're going to start, and
13 hopefully we are going to finish today. I will call for
14 the docket and call for appearances and see what we have
15 before we -- see what we can do to make sure we conclude
16 this case today.

17 At this point, I call Case Number 14994.
18 This is the application of Cimarex Energy Company of
19 Colorado to reinstate injection authority, Eddy County,
20 New Mexico.

21 Call for appearances.

22 MR. BRUCE: Mr. Examiner, Jim Bruce of
23 Santa Fe representing the Applicant. I have three
24 witnesses.

25 EXAMINER EZEANYIM: Any other appearances?

1 MR. MARTIN: W. T. Martin, Tom Martin,
2 Martin, Doogan & Martin of Carlsbad, and I represent
3 Ross Ranch. And I have one witness today.

4 EXAMINER EZEANYIM: Any other appearances?
5 How do we want to proceed? I think the
6 Examiners would like to listen to pre-comment, you know.
7 What do you call that in legal terms?

8 EXAMINER BROOKS: Opening statements.

9 MR. BRUCE: Opening statements.

10 EXAMINER EZEANYIM: Opening statements, so
11 that we know what's going on. The opening statement
12 should address the nature of contention and see whether
13 I'm going to continue it, because I think I would like
14 to have this case concluded today, if you don't mind.

15 MR. BRUCE: We're -- opposing counsel and I
16 are pretty darn sure that it'll be concluded, hopefully
17 this morning, perhaps.

18 MR. MARTIN: I would think we could be
19 through by noon.

20 EXAMINER EZEANYIM: Okay. Very good. That
21 would be wonderful. Very good.

22 Now, the first thing we should do is, for
23 all the people who are going to be witnesses today will
24 stand, you know, state their name. And if you have your
25 card, give your card to the court reporter so she can

1 get your name appropriately. State your name carefully
2 and be sworn, please.

3 MR. PEARCY: David Percy, geologist,
4 Cimarex.

5 MR. DOWDLE: Nash Dowdle, landman for
6 Cimarex.

7 MR. GENGLER: Scott Gengler, petroleum
8 engineer for Cimarex.

9 MR. MEYER: David Meyer with Ross Ranch.

10 EXAMINER EZEANYIM: Swear them in.

11 (Witnesses sworn.)

12 EXAMINER EZEANYIM: Okay. Start with your
13 opening statement.

14 EXAMINER BROOKS: Did you call for
15 appearances?

16 EXAMINER EZEANYIM: Yeah.

17 OPENING STATEMENT

18 MR. BRUCE: Mr. Examiner, I'm going to be
19 pretty brief. I'm sure as the hearing proceeds, I'll
20 have more comments or at the end of the hearing.

21 EXAMINER EZEANYIM: Before you proceed,
22 Counselor -- I hope I'm not putting anybody on their
23 pedestal [sic]. I wanted the Examiner to hear an
24 opening statement. Do you have an opening statement, or
25 you don't?

1 MR. BRUCE: A very brief one. A very brief
2 one.

3 EXAMINER EZEANYIM: Mr. Martin, do you have
4 an opening statement?

5 MR. MARTIN: I do.

6 EXAMINER EZEANYIM: Oh, okay. So I'm not
7 doing something that's out of the ordinary?

8 MR. MARTIN: No.

9 EXAMINER EZEANYIM: Okay. Go ahead.

10 MR. BRUCE: Mr. Examiner, Cimarex is the
11 operator of the Amoco Federal Well #1 located 1,665 feet
12 from the north line and 330 feet from the east line in
13 Unit I of Section 27, Township 26 South, Range 29 East,
14 Eddy County.

15 That well was a disposal well. In 1989,
16 Mallon Oil Company obtained SWD-380 to convert the Amoco
17 Federal #1 into a saltwater disposal well. There has
18 been a hearing on this well, in Case 14888, where Ross
19 Ranch sought to revoke Order SWD-380, and that was done
20 in Order R-13699, the order was rescinded because Ross
21 Ranch -- or, actually, Ross Ranch's predecessors in
22 interest did not receive certified-mail notice of the
23 SWD -- administrative SWD application per the
24 requirements of a C-108.

25 Cimarex is here today seeking to reinstate

1 the injection authority. We think we would show that
2 through the C-108 and other data, Cimarex has satisfied
3 all of the Division's injection well requirements.

4 We will further -- again, the file -- I was
5 not provided a copy of it until not too long ago. There
6 is a letter that the BLM sent raising certain
7 objections. We will address those in the course of
8 testimony. I'd rather not put words into the mouths of
9 my witnesses, but we will address those.

10 We also think it's proper, since the well
11 had injected for 23 years without problems, that the
12 reinstated injection authority be made retroactive back
13 to 1989, and we will again address in our testimony.

14 And that's all I have at this point,
15 Mr. Examiner.

16 EXAMINER EZEANYIM: Thank you, Counselor.

17 Mr. Martin?

18 MR. MARTIN: Thank you.

19 OPENING STATEMENT

20 MR. MARTIN: Ross Ranch is objecting to
21 this application to reinstate this particular injection
22 well and particularly objecting to it being reinstated
23 retroactively.

24 If I may, I will refer you to the order
25 that was entered in the prior case rescinding the

1 authority, or the order on SWD-380 and, in particular,
2 in the order portion, subpart three. The Division said:
3 This order is without prejudice to the rider [sic] of
4 the Respondent who filed application to reinstate
5 injection authority for the subject well as a new
6 application, accompanied by new Form C-108, with no risk
7 to the parties to whom notice of a new injection
8 application was required.

9 It is our position that that particular
10 order as entered orders and contemplates that this
11 particular -- an application and a new application
12 cannot be treated as a reinstatement and certainly
13 cannot be treated on a retroactive basis.

14 I have also filed a motion, which you-all
15 should have, relating to this particular issue, and I
16 can either point these out now or at closing. But I
17 think the most important part of this is, if you look at
18 case law across the United States, when you have a
19 situation where an order is reversed by an appellate
20 court -- I'll use, in this instance, "withdrawn." But
21 most of the time you deal with reversals by appellate
22 courts. A reversal absolutely overthrows or vacates or
23 annuls or renders that prior order or judgment void.
24 And if I may quote from a treatise that I thought had
25 particular good language, CJS, it says: "A void"

1 order -- "court order is a complete nullity and of no
2 force and effect. A void order is not acceptable on
3 ratification or confirmation. A void order may not
4 change the status of a case, and an order which is a
5 nullity and void confers no rights. Proceedings based
6 on a void order are themselves invalid."

7 Now, you-all have this in the record. I
8 have cited other authority, including United States
9 Supreme Court authority on this particular concept.

10 Very simply, when this particular SWD-380
11 order was revoked, you had a situation where that thing
12 became a nullity. It was as though nothing had ever
13 transpired. I would submit to you and we will argue
14 that as a matter of law, even if there is a decision
15 made to allow injection into this well, which we oppose,
16 it cannot as a matter of law be made retroactive back to
17 1989.

18 Now, other issues involved in this matter:
19 A great deal of the data that is being relied upon in
20 this application is data back at the 1988, 1989 time
21 period. Not all, certainly, because I've seen some
22 things that they have submitted, but a great deal.

23 I would submit to you that it is wholly
24 inappropriate to allow an authorization for an injection
25 well based on data that is 23 years old, and there is

1 not current data.

2 Also, if you look in the record, the BLM
3 has, in fact, sent you a letter objecting to the
4 issuance of an authorization for this particular well.
5 The BLM has given you some of the reasons why the BLM
6 objects. To date, BLM has not changed its position, as
7 far as we know, on that subject.

8 I submit that it is inappropriate for the
9 OCD to go forward and issue an authorization when, in
10 fact, the BLM is objecting and has set forth criteria as
11 to why they are objecting.

12 Also, there is other data and information
13 that clearly shows that this particular application
14 should be denied. If Cimarex wants to proceed with a
15 new application on the new form, then it needs to come
16 forward with new, current and adequate data and not
17 rely, in whole or in part, on 23-year-old data. I will
18 stop -- oh, I'm sorry. I did leave one thing out.

19 There is another interesting aspect to
20 this. Because this order was void and we have this new
21 application, I submit to you that the Surface Owners
22 Protection Act now comes into play, and there has been
23 absolutely no effort on the part of Cimarex to comply
24 with the Surface Owners Protection Act. Until there is
25 some attempt that complies with the Surface Owners

1 Protection Act, that is another reason that this
2 application should not go forward. My client has never
3 been contacted with any proposal in relation to the
4 Surface Owners Protection Act. I'm sure there will be
5 argument that is inapplicable. We can argue that out.
6 We can even brief it, if necessary, but if you look at
7 the scope and breadth of the Surface Owners Protection
8 Act, it is my position that it picks this situation up,
9 and it has to be dealt with, which it has not been dealt
10 with.

11 The other issue is, there are numerous
12 water wells within the area of this particular injection
13 well -- proposed injection well, and, again, there has
14 not been data provided as to all of those wells. And I
15 believe you will not hear any data today with reference
16 to those wells, the condition of water in those wells,
17 and, again, that would be a reason to not proceed
18 further and deny this particular application.

19 I have also submitted to you in the
20 exhibits some federal materials. One of them is the --
21 what they call the Gold Book. If you go to page 38 of
22 the Gold Book, you will see that it discusses disposal,
23 and then it refers you to BLM Onshore Order Number 7,
24 which I have likewise included. And I submit to you
25 that there has been no attempt to comply with those

1 particular requirements. That has not, per se, been
2 listed in the BLM letter, but there is no -- there has
3 been no attempt to comply with that.

4 And with this particular well, we do have
5 the BLM involved, and you cannot ignore and not take
6 into account the position of the BLM in relation to this
7 particular injection well.

8 EXAMINER BROOKS: Is this well on Federal
9 Mineral Estate?

10 MR. MARTIN: Some of it. It's sitting on
11 private land, but it affects Federal Mineral Estate.

12 EXAMINER BROOKS: But it is not in the
13 Federal Mineral Estate?

14 MR. MARTIN: It is not. It's right on the
15 edge.

16 MR. BRUCE: It is on Federal Mineral --

17 MR. MARTIN: It's on private. It's on
18 federal minerals, but it's on private surface.

19 EXAMINER BROOKS: Oh, okay.

20 MR. MARTIN: I didn't say that very well.
21 Yes, it's federal minerals, so we cannot ignore the BLM
22 in this process.

23 EXAMINER BROOKS: Okay.

24 MR. MARTIN: That's my opening statement.

25 Thank you.

1 EXAMINER EZEANYIM: Do you have any
2 comment? I have some comments.

3 EXAMINER BROOKS: Well, I'm not sure I need
4 to make comments at this point. I could remark that I
5 don't think -- because I believe we probably do not have
6 jurisdiction to determine the applicability of the
7 Surface Owners Protection Act, I would think that as far
8 as this tribunal is concerned, that's essentially a
9 nonissue, not that it's not something that couldn't be
10 raised in an appropriate tribunal. That's a preliminary
11 opinion without having heard any arguments that counsel
12 addressed to that issue.

13 MR. BRUCE: I would simply say,
14 Mr. Examiner, that that is an agreement between -- a
15 private agreement between a surface owner and an
16 operator, oil and gas operator, but it does not -- so if
17 there is any issue about that, that's between these
18 parties, and if there is a squabble over it, it's in
19 district court.

20 EXAMINER BROOKS: Well, that would be my
21 thinking on the subject.

22 MR. BRUCE: And our position -- go ahead.

23 EXAMINER BROOKS: If the surface owner
24 contends that something cannot be done, even though it's
25 authorized by the OCD, because they haven't complied

1 with the Surface Owners Protection Act, I would think
2 that the remedy would be to take that to district court.

3 MR. BRUCE: And it's Cimarex's position
4 that there is -- there is an exclusion in the Surface
5 Owners Protection Act for agreements in place, and since
6 this well has been out there for somewhere around 30
7 years now, we believe that the Surface Owners Protection
8 Act does not apply. But, again, I don't want to really
9 argue that because we just think it's a district court
10 action.

11 EXAMINER BROOKS: That would be my thinking
12 without having any briefing on the subject.

13 EXAMINER EZEANYIM: Anyway, thank you very
14 much, gentlemen.

15 I'm the Examiner today, and I'm not here as
16 an attorney, so I don't understand what you're saying.
17 I'm here to collect the technical and engineering facts,
18 to make decisions on those facts, and I have an
19 honorable judge here to help me with the legal matters.

20 EXAMINER BROOKS: Formerly honorable.

21 (Laughter.)

22 EXAMINER EZEANYIM: But I'm not -- I can
23 reason, and this is why I tell you I can reason even
24 though I'm not an attorney. First of all, I don't want
25 something that would go to the district court to be

1 brought here, because I'm lacking the resources to be
2 able to deal with this on an everyday basis. If I waste
3 all this time and then hear all these cases, you go back
4 to district court. You see the waste? I hate waste.

5 I know, Mr. Martin, you haven't appeared
6 here before, but all these people, they know I don't
7 like hearings to go a whole week, and then it goes back
8 to district court. All that time is gone. I should
9 have used that time more effectively doing something
10 else.

11 Okay. Now, I heard what the two of you
12 said, and I'm confused, but I can reason. One thing I
13 wanted to say here is, when you are saying -- when
14 Counsel was saying, We want this to be retroactive to
15 1989, and you are saying, No, it can't be made
16 retroactive to 1989, I'm not interested. My interest
17 is, is this injection well viable? So whether it's
18 retroactive to 1989 or not, is it something that will go
19 to district court -- which I don't know why you guys are
20 asking me not to do 1989 or do 1989. I mean, you said
21 it cannot be made retroactive to 1989. Okay. Suppose
22 I -- am I impairing the correlative rights of somebody
23 if I make it retroactive to 1989, or if I do the
24 opposite, am I impairing corrective rights?

25 Remember, my job here is to prevent waste

1 and protect correlative rights, your correlative rights.
2 I'm not an attorney, but I think you understand where
3 I'm going, because this will help us facilitate -- you
4 can understand the legal ramifications. I can't. But
5 from what you told me now, I want to find out why --
6 suppose I say, Okay, it's not going to be retroactive to
7 1989, or, I'm going to make it retroactive to 1989. So
8 that's what I don't understand. And then it will be a
9 burden of contention in this hearing.

10 Why we are here is, is there any
11 negotiation? Let's try to see what is pertinent to an
12 administrative hearing of this nature. This is not a
13 district court. Okay? That's one thing.

14 Then you mentioned BLM. BLM will make an
15 objection, but they never appear here to stand up on
16 their objections. And it's very, very absent [sic] to
17 me. If you are objecting to something, you need to
18 appear and say why you are objecting. You don't just
19 write -- anybody can write and go to New York and have
20 fun; then I'll be struggling with it. We listen to
21 whatever is said. Unfortunately, they don't appear to
22 tell us why they are objecting. Remember what I said
23 before. We want to collect the technical facts and make
24 a decision that will affect [sic] everybody. And we are
25 going to consider everybody's rights equally. I'm not

1 working for Smith or for Ross Ranch or for even Mobil.
2 I work for the State of New Mexico, make sure that
3 everything is done right, and that's why we are here. I
4 don't want anything that will go to district court be
5 brought here because I'm not a judge. That's one point.

6 So going back to BLM. BLM never shows up.
7 We consider everything they tell us, but OCD has the
8 authority to write the order. They have the
9 authority -- they have the power to say, Oh, we can't
10 even comply with that, because that's BLM. So if we
11 write an order that is material to them, they have the
12 right to say, Well, I didn't do whatever they wanted to
13 do with the operator.

14 So because they don't come here to convince
15 me what they are doing or do, I will look at this in the
16 technical aspect, but I'm not here to bolster their
17 outlook on why this should not happen. They sit back
18 and then allow me -- I mean, that's not right. If I
19 start doing that, I am not doing my job, just listening
20 to whatever they say. Their modus operandi might be
21 different from ours, because we are the State, and
22 BLM -- and they have different operations -- operating
23 standards.

24 So we don't want to lay too much on BLM,
25 even though it has some pertinence to what we are

1 talking about.

2 So with this, I want to steer clear of
3 anything that will go to district court to be said here.
4 If I see it, I will cut you off from there, and we'll go
5 to the real issue that is before us today, like you told
6 me. And that's why I had required you guys to tell me
7 about this case in opening statements, so I can make
8 these comments.

9 What I want to do now is go back to the
10 facts of why this should not be reinstated and why it
11 should be reinstated. That's all the Examiners want to
12 hear, unless the Legal Examiner has any other thing to
13 say, but that's all I have. I don't want to argue
14 district court arguments in an administrative hearing.

15 MR. BRUCE: And, Mr. Examiner, I don't plan
16 to. That's why I'd like to get going with the evidence.

17 MR. MARTIN: May I make one response,
18 please?

19 EXAMINER EZEANYIM: Sure.

20 MR. MARTIN: Thank you.

21 We have an obligation to properly make a
22 record in a case, and it is our position that the issues
23 I raised in the opening statement are relative to what
24 can or cannot be put into an order relating to this
25 particular application. It is true that some of that is

1 legal argument, but I submit to you that that legal
2 argument and law cannot be ignored in relation to this
3 particular issue.

4 It is also critically important that we
5 make a record and we make a proper record because the
6 process that is involved here, should we disagree with
7 the ultimate decision, goes up on a record. If we have
8 not made a proper record, then we have not preserved our
9 position. Therefore, I respectfully disagree. We have
10 to present our legal arguments, as well as factual
11 arguments, at this hearing.

12 EXAMINER BROOKS: Well, of course, I would
13 respectfully point out that people -- trial lawyers are
14 very alert to making a record, but our setting is
15 somewhat different in that regard from where we normally
16 find ourselves in court or even before an administrative
17 agency because we're in a hearing context where a
18 de novo appeal is allowed. If either of you does not
19 like the result of this hearing, your remedy is to
20 request a de novo review by the full Commission, and at
21 that time, you will have the opportunity to present
22 anything that the Commission chooses to allow you to
23 present.

24 And the record that will go to district
25 court, if this case ever goes to district court, will be

1 the record of the Commission hearing, not the record of
2 this hearing. Records of the examiner hearings are
3 usually not even included in what is certified to the
4 district court.

5 However, I don't think Mr. Ezeanyim or I
6 want to preclude you from making any legal argument. If
7 you offer evidence that's not relevant to what we see as
8 the issues before us, we may sustain an objection, if
9 there is one, to that evidence, but we're not going to
10 decline to allow you to make any legal argument you wish
11 to make.

12 EXAMINER EZEANYIM: Mr. Martin, that's not
13 my intent. I'm sorry if you misunderstood me. You have
14 the right to say -- that's why it's a hearing, you know.
15 You have the right to say whatever you want to. I mean,
16 I didn't say, Well, you can't -- no. You've got to
17 protect -- you have to work for your client. You have
18 to be ambitious to work for your client. I never want
19 to exclude you from saying anything that might be
20 beneficial to you, but I'm just trying to make sure we
21 exclude anything that is not really necessary. Because
22 even though I'm not an attorney, like I said, I can --
23 you are going from what your rights are in this
24 administrative hearing. That's all I'm saying.

25 EXAMINER BROOKS: Yeah. The difference --

1 I would add, the difference that we may make, because
2 it's an Examiner Hearing rather than a judicial
3 proceeding, is that if we exclude evidence, we may not
4 be -- we may be inclined not to make a Bill of
5 Exception, because I don't see the point that a Bill of
6 Exception would serve when this proceeding -- a review
7 of this proceeding is going to be done de novo and we'll
8 will have the opportunity to present whatever evidence
9 or reject to the Commission if you take this case to the
10 Commission.

11 EXAMINER EZEANYIM: In legal terms, please
12 what is Gold Book? Gold Book was mentioned. I'm not
13 familiar with that.

14 EXAMINER BROOKS: Well, the Gold Book is a
15 book that is prepared by the BLM that has to do with
16 surface usage --

17 EXAMINER EZEANYIM: Oh, okay.

18 EXAMINER BROOKS -- by oil and gas
19 operators. I think just about anybody can use this BLM
20 service, although I'm not familiar with its provisions.

21 EXAMINER EZEANYIM: Okay. It was
22 mentioned, but I'm not familiar with that.

23 Okay. Very good. Now I think I have heard
24 everything, and we can proceed.

25

1 NASH DOWDLE,
2 after having been previously sworn under oath, was
3 questioned and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. BRUCE:

6 Q. Please state your name and city of residence
7 for the record.

8 A. Nash Dowdle, Midland, Texas.

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

10 A. Cimarex Energy, as a landman.

11 Q. Have you previously testified before the
12 Divison?

13 A. Yes, sir.

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

16 A. Yes, sir.

17 Q. And are you familiar with the land matters
18 involved in this case?

19 A. Yes, sir.

20 MR. BRUCE: Mr. Examiner, I tender
21 Mr. Dowdle as an expert petroleum landman.

22 MR. MARTIN: No objection.

23 EXAMINER EZEANYIM: Mr.. Dowdle is so
24 qualified.

25 Q. (BY MR. BRUCE) Mr. Dowdle, could you identify

1 Exhibit 1 for the Examiner and briefly describe its
2 contents?

3 A. This shows two things here. The red outline is
4 the Ross Ranch surface area, and the other area that's
5 green and hash marks shows the federal lease with our
6 wells on it.

7 Q. Now, there are certain -- the green area is the
8 federal lease. What does the yellow cross-hatching
9 indicate?

10 A. That just shows the proration units that are
11 allowable to those producing wells.

12 Q. And those are operated by Cimarex?

13 A. Correct.

14 Q. Now, let's take a -- well, let's move on to
15 Exhibit -- oh, and this also -- in the lower, right
16 portion of the designated Ross Ranch, it says federal --
17 "Amoco Federal #1 SWD well." Is that the saltwater
18 disposal well we're here about today?

19 A. Yes, sir, it is.

20 Q. And insofar as disposal into that well, is it
21 only Cimarex wells from this lease that are contributing
22 to disposal at that well?

23 A. That's correct.

24 Q. So it's only on lease water?

25 A. Correct.

1 Q. What is Exhibit 2?

2 A. Exhibit 2 is the Serial Register Page that
3 shows a history of the lease that's involved with the
4 Amoco federal lease.

5 Q. Highlighted is some acreage. What does the
6 highlighted acreage indicate?

7 A. It indicates the areas that we actually operate
8 and have wells on.

9 Q. Now, when you say "we," Cimarex Energy Company
10 of Colorado is the operator, correct?

11 A. Correct.

12 Q. Do they operate on behalf of another entity?

13 A. No.

14 Q. No, no. I mean, who owns -- who is the actual
15 owner of the lease? Which company?

16 A. That would be -- well, if you look at the
17 lessee, it's Occidental Permian.

18 Q. No, no, Mr. Dowdle.

19 A. Sorry.

20 Q. Who owns the -- let's move to Exhibit 3.

21 EXAMINER EZEANYIM: No, it would still be
22 Number 2.

23 Q. (BY MR. BRUCE) Well, let's move to Exhibit 3
24 briefly. What is Exhibit 3?

25 A. Exhibit 3 is an assignment of bill of sale from

1 Mallon Oil Company to Magnum Hunter.

2 Q. Now, the SWD order was originally obtained by
3 Mallon Oil Company?

4 A. Correct.

5 Q. And they assigned their interest in this
6 particular federal lease and other leases to Magnum
7 Hunter by this assignment, correct?

8 A. Yes, sir.

9 Q. And what year was that assignment executed?

10 A. That was in 2005.

11 Q. Does Magnum Hunter Production, Inc. still own
12 the leasehold?

13 A. Yes, they do, as far as --

14 Q. And Cimarex operates on their behalf?

15 A. That's correct.

16 Q. So Cimarex operates on behalf of Magnum Hunter?

17 A. Yes, sir. That's correct.

18 Q. And, again, looking at page 4 of the
19 assignment, when was this assignment effective?

20 A. It was effective the first day of July -- it
21 was executed and effective the first day of July 2001.

22 Q. Now -- so Magnum Hunter -- Exhibit 2, the
23 Serial Register Page from the federal government, in
24 that federal lease, Magnum Hunter still owns the
25 leasehold interest --

1 A. Correct.

2 Q. -- that we're concerned about today?

3 A. That's correct.

4 Q. That's all I was getting at on that one.

5 Now, when did Cimarex Energy Company come
6 into being?

7 A. 2002.

8 Q. Did Cimarex Energy Company later acquire Magnum
9 Hunter Production, Inc.?

10 A. Yes, sir.

11 Q. In what year?

12 A. 2005.

13 Q. So Mallon Oil Company operated this lease for a
14 period of time, and then it was purchased by Magnum
15 Hunter Production?

16 A. Correct.

17 Q. And Magnum Hunter Production was separate from
18 Cimarex for several years thereafter?

19 A. Yes, sir. That's correct.

20 Q. So it's a sister company of Cimarex or a
21 subsidiary?

22 A. It's a wholly owned subsidiary.

23 Q. And Magnum Hunter independently operated the
24 wells now operated by Cimarex for several years?

25 A. Correct.

1 Q. Mr. Dowdle, there have been some comments here
2 about water wells. What is Exhibit 4?

3 A. Exhibit 4 shows the wells on the Ross Ranch, as
4 well as the water wells that I found in the State
5 Engineer's Office records.

6 Q. Did you prepare this plat to show the location
7 of all the freshwater wells in this immediate area?

8 A. I did, yes, sir.

9 Q. Off to the east of the SWD well, you have a BLM
10 Sample Well identified. Was a water sample taken from
11 that well?

12 A. Yes, sir.

13 Q. And will our engineer discuss that water
14 sample?

15 A. Yes, sir.

16 Q. The wells on the Ross Ranch, did Cimarex
17 request permission to take water samples from those
18 wells?

19 A. Yes, we did.

20 Q. Were you able to take water samples from those
21 wells?

22 A. We were not.

23 Q. Why is that?

24 A. I understand, from our recollection, that Ross
25 Ranch denied us -- did not allow us to get those

1 samples.

2 Q. They requested that you not take any samples
3 from those wells?

4 A. That's correct.

5 Q. Next, what is Exhibit 5?

6 A. Exhibit 5 is our actual picture of the SWD in
7 question.

8 Q. And the well does have an assignment as
9 required by OCD rules; does it not?

10 A. Yes, sir.

11 Q. It looks like there is a Cimarex Energy Company
12 tag on that -- name tag on that, but it looks like it's
13 over the name of Mallon Oil Company?

14 A. Correct.

15 Q. So that sign has been out there for quite some
16 time?

17 A. Yes, it has.

18 Q. Now, looking at this, off to the left, there is
19 a windmill. What is that?

20 A. That's the windmill that we have the sample
21 from.

22 Q. That's the -- it's on federal land, and you
23 took a sample from that --

24 A. Correct.

25 Q. -- or Cimarex did?

1 A. Correct.

2 Q. And did Cimarex notify the BLM and request
3 their permission to take a sample from that well?

4 A. Yes, we did.

5 Q. Were you personally involved in that?

6 A. Yes, I was.

7 Q. Next, what is Exhibit -- let's take a step
8 back. When Cimarex buys properties, do they generally
9 take possession of the well files from prior operators?

10 A. Yes, they do.

11 Q. And did you check those well files to see if
12 there was any information regarding an agreement with
13 the surface owner regarding use of the surface for this
14 well?

15 A. I did.

16 Q. And what is Exhibit 6?

17 A. Exhibit 6 just notifies that Worth Petroleum,
18 who was the initial -- that drilled the actual first
19 well, the Amoco Fed well, that they -- it just states to
20 the Bureau of Land Management that they did indeed
21 contact Ross Ranch at that time.

22 Q. And did you check the records to determine what
23 parties -- what interest owners should be notified of
24 the C-108 in this application? What parties should be
25 notified of this application? Did you check the records

1 of the offset operators, et cetera?

2 A. At that time, in 1983?

3 Q. No, no, no, no. I'm talking --

4 A. Yes, I did. I'm sorry.

5 Q. I'm talking about this spring.

6 A. Correct, I did.

7 Q. And is Exhibit 7 a listing of all offset
8 operators and surface owners in the area of review --

9 A. Yes, sir, it is.

10 Q. -- of the SWD well?

11 A. Correct.

12 MR. BRUCE: And, Mr. Examiner, Exhibit 8 is
13 simply my Affidavit of Notice of the -- a previous
14 notice was sent out, but since this was set for a
15 special hearing, we sent out notice of the special
16 hearing date, and that is Exhibit 8. And all of the
17 offsets did receive actual notice.

18 Q. (BY MR. BRUCE) Mr. Dowdle, were Exhibits 1
19 through 7 prepared by you or under your supervision?

20 A. Yes, sir, they were.

21 Q. Was Exhibit 6 obtained from the business files
22 maintained by Cimarex?

23 A. Yes, sir, it was.

24 Q. And in your opinion, is the granting of this
25 application in the interest of conservation and the

1 prevention of waste?

2 A. Yes.

3 MR. BRUCE: Mr. Examiner, I'd move the
4 admission of Exhibits 1 through 8.

5 EXAMINER EZEANYIM: No objection? Any
6 objection?

7 MR. MARTIN: No objection.

8 EXAMINER EZEANYIM: Exhibits 1 through 8
9 will be admitted.

10 (Cimarex Energy Company of Colorado Exhibit
11 Numbers 1 through 8 were offered and
12 admitted into evidence.)

13 MR. BRUCE: Pass the witness.

14 EXAMINER EZEANYIM: Mr. Martin?

15 MR. MARTIN: Thank you.

16 CROSS-EXAMINATION

17 BY MR. MARTIN:

18 Q. Mr. Dowdle, you made a statement at the
19 beginning of your testimony that all of the water that
20 has gone into this particular disposal well has come
21 from wells that Cimarex is operating. Do you recall
22 that testimony?

23 A. Yes, sir.

24 Q. Are you saying that is a correct statement for
25 the past 23 or 24 years?

1 A. I can't say that for sure, but I believe so
2 from what I've found.

3 Q. You do not have personal, firsthand knowledge
4 as to what has been put in that well and from what
5 source, do you?

6 A. I just know from the last -- operated it's been
7 water.

8 Q. Have you personally been out at that well site
9 and monitored on a daily basis sources of the water
10 coming into that well?

11 A. No, sir, I have not.

12 Q. You are relying, then, upon what someone else
13 has told you; is that correct?

14 A. Yes, sir.

15 Q. There does not even exist records, does there,
16 Mr. Dowdle, that would reflect all of the sources of
17 water coming into that well, is there?

18 A. I'm not sure.

19 Q. So the testimony you gave is simply hearsay and
20 your opinion, isn't it?

21 A. I do know that at one point we did shut down
22 all the wells and try to figure out where the water was
23 coming from, and no offset lease water was coming into
24 the area [sic], from what I understand from our
25 engineers.

1 Q. But my question, sir, was: You cannot sit here
2 today and say -- the opinion you have given is purely
3 your opinion without any -- without any -- without any
4 direct basis, and it's hearsay, isn't it?

5 A. It's -- I guess so, yes, sir.

6 Q. Do you not think it would be important to know
7 all of the sources of water that have gone into that
8 well?

9 A. Yes, sir.

10 Q. Do you not think that would have some direct
11 impact on whether or not this application should or
12 should not be granted, if there are sources of water
13 going into that well other than Cimarex?

14 A. I believe so, yes.

15 Q. Exhibit Number 5, which was the photograph --

16 A. Yes, sir.

17 Q. -- you referred to a windmill that would be
18 over in the -- not quite upper, left-hand side, but
19 center, left-hand side of the photograph. You indicated
20 that was the well on BLM land from which a water sample
21 was taken.

22 A. Yes, sir.

23 Q. Do you know the depth of that particular
24 windmill well?

25 A. No, sir, I don't.

1 Q. Do you know the water-column level?

2 A. No, sir, I don't.

3 Q. Do you know how that particular water-column
4 level or water level would correlate with the other
5 wells that would be on the Ross Ranch property?

6 A. No, sir, I don't.

7 Q. Would you agree, then, sir, that simply because
8 you ran one sample on a windmill well and you do not
9 know the depth of the well and you do not know the level
10 of water column, that that may or may not have any
11 relevance to what's happening with the other wells on
12 the Ross Ranch that are freshwater wells?

13 MR. BRUCE: I'd object to the fact that he
14 never testified to that. He simply said this was a well
15 that the water sample was taken from.

16 EXAMINER BROOKS: Yeah. The question
17 was -- I don't think that would be, also, within this
18 witness' area of expertise. He's a land person. I
19 would advise the Examiner to sustain the objection.

20 EXAMINER EZEANYIM: Objection sustained.

21 Q. (BY MR. MARTIN) Let me ask it this way, if I
22 may, then.

23 EXAMINER BROOKS: Oh, you may. You may
24 rephrase.

25 Q. (BY MR. MARTIN) Mr. Dowdle, you really don't

1 have the information and the knowledge to tell us
2 whether the water from this particular well and the
3 sample that was taken would necessarily be reflective of
4 the condition of the water in the other wells that are
5 near or adjacent to the proposed disposal well?

6 A. I can't say that because I'm not an engineer.

7 Q. Turn, if you would, sir, to Exhibit 6.

8 A. Yes, sir.

9 Q. Now, if I understood your testimony correctly,
10 you indicated -- if I've not phrased it correctly,
11 please tell me. But you indicated this would reflect
12 some kind of agreement between then George -- J. G.
13 Ross surface owner and Worth Petroleum Company?

14 A. Yes, sir.

15 Q. I do not see anywhere on this document that
16 J. G. Ross signed off on this approving it.

17 A. Correct.

18 Q. So we have no signed agreement from J. G. Ross,
19 do we?

20 A. We do not.

21 Q. You don't know whether he agreed to this or did
22 not agree to it, do you?

23 A. I do not. Correct.

24 Q. Further, this pertains to the original oil
25 well, does it not, and does not pertain to this

1 particular disposal well?

2 A. Yes, sir. Correct.

3 Q. So this really has no relevance to the issue,
4 does it?

5 A. No, sir.

6 MR. MARTIN: That's all. Pass the witness.

7 Thank you.

8 EXAMINER EZEANYIM: Thank you, Mr. Martin.

9 Redirect?

10 REDIRECT EXAMINATION

11 BY MR. BRUCE:

12 Q. Just one question regarding Exhibit 6,
13 Mr. Dowdle. Have you found anywhere in the files
14 where -- until just recently, where Mr. Ross or the
15 prior owners ever filed any objection to the use of this
16 water as a saltwater disposal?

17 A. I have not. Correct.

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

19 Mr. Examiner.

20 MR. MARTIN: I have one question on

21 recross, if I may.

22 EXAMINER EZEANYIM: Yeah, go ahead.

23 MR. MARTIN: Thank you.

24

25

RECROSS EXAMINATION

2 BY MR. MARTIN:

3 Q. In relation to the question that was just asked
4 you, you don't know whom had knowledge of the existence
5 of this saltwater disposal well, do you?

6 A. No, I do not.

7 Can I say one thing?

8 MR. BRUCE: That's it.

9 EXAMINER EZEANYIM: Do you have any
10 questions?

11 EXAMINER BROOKS: Yes.

12 CROSS-EXAMINATION

13 BY EXAMINER BROOKS:

14 Q. When you said that all of the water injected
15 into this well within the years that you've been
16 familiar with it -- and how long is that?

17 A. Three years with Cimarex.

18 Q. When you said that all the water that was
19 injected into it was from Cimarex, I assume that --
20 would it be correct for me to assume that you could have
21 reviewed some records that tend to indicate that? What
22 is the basis of your knowledge?

23 A. No, sir. That's from what I've been told.
24 It's basically hearsay from our engineers.

25 Q. Okay. So it is hearsay?

1 A. Yes, sir. That's what I understand.

2 Q. And when you're talking about being from
3 Cimarex, Cimarex has a lot of wells in a lot of places.

4 A. Yes, sir.

5 Q. Is it all from -- does the information that you
6 have indicate it's all from this particular lease?

7 A. Correct.

8 Q. Okay. Thank you. That's all I have.

9 EXAMINER EZEANYIM: I know we have a
10 geologist who can answer some questions. I think the
11 geologist would know about this well.

12 EXAMINER BROOKS: Well, as far as the water
13 quality is concerned, I would not assume this witness
14 knows anything about it.

15 CROSS-EXAMINATION

16 BY EXAMINER EZEANYIM:

17 Q. One thing I want to qualify. Let's start with
18 Exhibit Number 6. I mean, Mr. Martin asked you whether
19 Ross Ranch signed off on this. But there is a time
20 here. One of the things I saw is that, you know, Ross
21 Ranch didn't own this surface until some time, and
22 Cimarex didn't own this well until some time. For my
23 consumption [sic], I would like to know the following
24 facts. When did Cimarex become successor of this well
25 from -- is it Mallon? Does Mallon Oil own Honda?

1 A. I'm sorry?

2 Q. Mallon Oil?

3 A. Yes.

4 Q. Is it the same as Honda?

5 A. No. It was -- it was a separate company.

6 Q. Okay. But I see you writing "Mallon
7 Oil/Honda," so I don't know whether they are the same
8 company.

9 MR. BRUCE: If I could, just to clarify,
10 Mr. Examiner.

11 REDIRECT EXAMINATION

12 BY MR. BRUCE:

13 Q. The original operator of the SWD well was
14 Mallon Oil Company, correct?

15 A. (Indicating.)

16 EXAMINER BROOKS: Please answer audibly.

17 Q. (BY MR. BRUCE) And Mallon sold to Magnum
18 Hunter?

19 A. Yes. They sold to Magnum Hunter in 2001.

20 CONTINUED CROSS-EXAMINATION

21 BY EXAMINER EZEANYIM:

22 Q. Okay. So you became the successor operator of
23 this Amoco #1 in 2001?

24 A. No, sir.

25 MR. BRUCE: Mr. Examiner, let me clarify

1 again.

2 EXAMINER EZEANYIM: Okay. I want to have
3 the information.

4 REDIRECT EXAMINATION .

5 BY MR. BRUCE:

6 Q. Magnum Hunter was not associated with Cimarex
7 in 2001?

8 A. Correct.

9 Q. Cimarex didn't exist until when?

10 A. 2002.

11 Q. When did Cimarex buy Magnum Hunter?

12 A. 2005.

13 Q. So Cimarex didn't operate these wells until
14 2005; is that correct?

15 A. Yes, sir.

16 EXAMINER EZEANYIM: That's what I want to
17 hear.

18 CONTINUED CROSS-EXAMINATION

19 BY EXAMINER EZEANYIM:

20 Q. So you started operating this well in 2005,
21 right?

22 A. Yes, sir.

23 Q. But the well up to that point was operated by
24 Mallon Oil?

25 A. No, Magnum Hunter.

1 MR. BRUCE: And Mallon Oil.

2 Q. (BY EXAMINER EZEANYIM) Oh, okay. See why I'm
3 confused? Okay.

4 A. I'm sorry. I'm sorry.

5 Q. Magnum Hunter and Mallon Oil or whatever they
6 are. Okay. Keeping that in mind, go back to Exhibit
7 Number 6. You started operating this well in 2005.
8 Exhibit Number 6 was done March 31, 1983. Mr. Martin
9 asked you -- I can't ask Ross Ranch because they are not
10 on the stand, but I would like to know when Ross Ranch
11 became the surface owner of this surface, because I
12 don't think they were here in 1989 when this well was
13 approved to be notified. I know that during the opening
14 statement, the counselor said that Mallon failed to give
15 the previous surface owner -- who is the previous
16 surface owner? Does anybody know? And then when did
17 Ross Ranch become the surface owner of this, because
18 there are timelines I'm trying to mark out here that
19 will be very, very important, which I can --

20 EXAMINER BROOKS: Yeah. I think it would
21 be appropriate for counsel to respond. I do not expect
22 that this will be a disputed issue.

23 EXAMINER EZEANYIM: Yeah, it wouldn't.

24 MR. MARTIN: If I may, I will give you the
25 answer, but also I will refer you to the stipulated set

1 of facts in Case 14888, which gives that history.

2 EXAMINER BROOKS: Yeah, I remember you went
3 into it briefly. I don't remember the --

4 MR. MARTIN: That's correct.

5 This land -- the surface of this land was
6 originally acquired by J. G. Ross.

7 EXAMINER EZEANYIM: In?

8 MR. MARTIN: 1961.

9 EXAMINER EZEANYIM: Oh, 1961.

10 MR. MARTIN: Yes. And Mr. Ross died, and
11 this has gone through a series of heirs and is now in
12 the name of the Ross Ranch, the LLC. That is a very
13 quick summary of that.

14 EXAMINER EZEANYIM: Okay. 1961. That
15 would indicate that Cimarex or Mallon gave notice to
16 George Ross in 1989 --

17 MR. MARTIN: Correct.

18 EXAMINER EZEANYIM: -- because there is
19 no -- there is no two surface owners. It's still George
20 Ross, who didn't get notice in 1989; is that correct?
21 Everybody knows that.

22 MR. MARTIN: That's correct.

23 EXAMINER EZEANYIM: That's what I want to
24 know.

25 MR. BRUCE: It was either Mr. Ross or his

1 heirs.

2 EXAMINER EZEANYIM: Okay. I was thinking
3 that XYZ owned that before George Ross bought it after
4 1989. So in 1989, George Ross failed to get notice of
5 this application from whoever initiated the saltwater
6 disposal application, right?

7 MR. MARTIN: That is correct.

8 EXAMINER EZEANYIM: Okay. I want to make
9 sure this is undisputed.

10 MR. MARTIN: It is.

11 Again, without getting too redundant here,
12 that whole history is a set of stipulated facts, and the
13 case is 14888.

14 MR. BRUCE: Either Mr. Martin or I will
15 provide a copy of that to you after the hearing.

16 MR. MARTIN: Yes, if you need a copy.

17 EXAMINER EZEANYIM: A copy of what?

18 MR. BRUCE: It was a stipulation of facts
19 among the parties regarding surface ownership.

20 EXAMINER EZEANYIM: Okay. I'm not going to
21 press it.

22 MR. BRUCE: It's all set forth in there.

23 EXAMINER EZEANYIM: That's all I need to
24 know. I think I've got all the information. Let me go
25 back to the land person. I'm sorry I had to go through

1 that, because it's really important for me. I thought
2 somebody else owned the surface before Ross Ranch.

3 EXAMINER BROOKS: It's another legal entity
4 but the same family.

5 EXAMINER EZEANYIM: Yeah. Okay.

6 I need to ask Mr. Dowdle this question, but
7 you do have a geologist.

8 Q. (BY EXAMINER EZEANYIM) When you testified that
9 George Ross Ranch denied access to you of taking samples
10 from their water wells, did you ask appropriately? What
11 did you ask? Did you ever try to do that, or is the
12 geologist going to answer that question?

13 A. No, sir. I did not personally ask. It was my
14 supervisor; my boss asked.

15 Q. So maybe the geologist will talk about it,
16 because if you're entitled to do that -- I don't know,
17 legally, whether you are entitled to do that or not. If
18 you are trying to do work and you're not allowed access
19 to do that, I don't know how it affects you here.

20 But let's leave that. I don't want to go
21 there now because I don't want to waste more time?

22 Let's go to Exhibit Number 7. Number 7
23 here is -- the only surface owner is George Ross, who
24 acquired that ranch in 1961. It's very important to me.
25 Then the rest -- I mean a working interest, right? All

1 these are operators within a half mile of that injection
2 well, right?

3 A. I'm sorry, I'm trying to find the exhibit.

4 Q. Exhibit Number 7.

5 You gave notice to this operators, right?

6 A. Yes, sir, we did.

7 Q. Now, what -- apart from BLM, who is objecting
8 besides George Ross Ranch, the surface owner? How many
9 of these operators are within a half mile to your
10 injection into this well?

11 A. I believe they all are.

12 MR. BRUCE: No.

13 A. I'm sorry. I didn't understand the question.

14 MR. BRUCE: No. There has been no
15 objections received from the offset operators.

16 THE WITNESS: I'm sorry.

17 Q. (BY EXAMINER EZEANYIM) You answered in the
18 negative.

19 So -- one, two, three, four, five, all of
20 them. There is no objection, right?

21 MR. BRUCE: No objection.

22 EXAMINER EZEANYIM: Except from the surface
23 owner?

24 MR. BRUCE: That's correct.

25 EXAMINER EZEANYIM: We are here because --

1 by Mallon Oil in 1989?

2 MR. BRUCE: (Indicating.)

3 EXAMINER EZEANYIM: Okay. Good. See, it's
4 coming back to me now. So when you guys start arguing,
5 then I know where I'm coming from.

6 So I'm not going to ask you other questions
7 because I know you can't give me the depth of those
8 water wells. You can't give me -- you know, the
9 geologist can give me the depth of those wells and the
10 interval and all kinds of things, because I don't
11 think -- it would be something for me to be asking a
12 geologist, since you have a geologist. That's his work.
13 He has to earn his money.

14 So anyway, let me see if I have anything
15 else here for you. Most of them are engineering.

16 You may be excused.

17 THE WITNESS: Thank you.

18 EXAMINER EZEANYIM: Call your next witness.

19 MR. BRUCE: Call Mr. Percy.

20 DAVID PEARCY,
21 after having been previously sworn under oath, was
22 questioned and testified as follows:

23 EXAMINER EZEANYIM: Mr. Percy, you are
24 still under oath.

25 THE WITNESS: Okay. I'm David Percy,

1 geologist.

2 DIRECT EXAMINATION

3 BY MR. BRUCE:

4 Q. Mr. Pearcy, where do you reside?

5 A. Midland, Texas.

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

7 A. I work for Cimarex as a geologist.

8 Q. Have you previously testified before the
9 Division?

10 A. Yes, I have.

11 Q. And have your credentials as an expert
12 petroleum geologist been accepted as a matter of record?

13 A. Yes, they were.

14 Q. And does your area of responsibility at Cimarex
15 include this portion of southeast New Mexico?

16 A. Yes, I'm involved in southeast New Mexico.

17 Q. Are you familiar with the geology involved in
18 this case?

19 A. Yes, I am.

20 MR. BRUCE: I tender Mr. Pearcy as an
21 expert petroleum geologist, Mr. Examiner.

22 MR. MARTIN: No objection.

23 EXAMINER EZEANYIM: Mr. Pearcy, spell your
24 last name.

25 THE WITNESS: Pearcy, P-E-A-R-C-Y.

1 EXAMINER EZEANYIM: Mr. Percy is so
2 qualified.

3 Q. (BY MR. BRUCE) Mr. Percy, let's run through
4 your exhibits quickly. What is Exhibit 9?

5 A. Exhibit 9 is a structure map on the top of the
6 Cherry Canyon. Cherry Canyon is a submember of the
7 Delaware Formation, and that is the injection interval
8 that we -- Cherry Canyon is the interval that we are
9 injecting into.

10 Q. Is the Cherry Canyon also the zone from which
11 Cimarex's wells produce -- is producing from?

12 A. From a different horizon within the Cherry
13 Canyon, yes, sir. That's correct.

14 Q. Since you have two of them, Exhibits 10 and 11,
15 if we can run through those exhibits, Mr. Percy.

16 A. Okay. The cross section in through here is
17 including three offset wells showing the interval that
18 we're calling the Ross Sand, an informal name for the
19 injection interval. You can see in the Amoco Federal #1
20 our SWD, the second well from the left-hand side, and
21 tracing that well, it's gone into three offsets in the
22 southwest and southeast and eastern direction and
23 showing the continuity of that sand.

24 Q. What is the approximate depth of the injection
25 interval in the SWD well?

1 A. As shown there on that second well, 4,022 is
2 the top perforation, and approximately 4,208 is the
3 bottom perforation in the Amoco Federal #1.

4 Q. And you said the -- Cimarex's producing wells
5 are completed in the Delaware but at a different zone?

6 A. That's correct.

7 Q. And Exhibit 11 shows more or less similar
8 information?

9 A. Excuse me, sir?

10 Q. Exhibit 11 --

11 A. That's another cross section of the same sand,
12 the other four offset wells, and again showing the
13 continuity of the Ross Sand. And those wells and other
14 wells that are direct offsets to the Amoco Fed are
15 producing or injecting into this Ross interval.

16 Q. Now, from a geological standpoint, is there
17 sufficient closure in these zones -- from escaping --

18 A. I'm sorry. I do have a hearing disorder, and
19 the rattling of paper is a bit distracting, sir.

20 Q. I understand.

21 Is the injection zone segregated, or does
22 it have overlying strata that would prevent -- from a
23 geologic standpoint, prevent the movement of injected
24 fluids to other zones?

25 A. That's correct. There are numerous other

1 zones, as shown on the logs there, which are anhydrites
2 and shales, which will isolate the injection water into
3 the Ross interval.

4 Q. And based on the geologic data that you have
5 examined, is there any evidence of open faults in this
6 area?

7 A. As we go back to Exhibit Number 9 and look at
8 the relatively uniform monoclinial structure, there is no
9 indication of any faults in the area.

10 Q. And is there any evidence of a hydrologic
11 connection between the disposal zone and any source of
12 fresh water?

13 A. There is no indication of any kind of
14 connection of this interval in Cherry Canyon with the
15 overlying Rustler, which is the source of the water.

16 Q. What is the approximate depth of the Rustler
17 source of water?

18 A. Approximately 100 feet down is the top of the
19 Rustler, and from what I have seen from a report that
20 was done for Ross Ranch back in the '60s and the '70s,
21 it looks like approximately 70 feet down was where the
22 water would usually be found. So this is or at least
23 was, in the '60s and '70s, an artesian water source that
24 would bring the water up above the top of the Rustler
25 Formation.

1 CROSS-EXAMINATION

2 BY EXAMINER EZEANYIM:

3 Q. When you say 70 feet down, what do you mean?
4 Seventy feet down, is that subsurface you're talking
5 about?

6 A. Subsurface, not subsea. Yes, sir. Seventy
7 feet down is where the static water level had been in
8 the wells, which are cited in the Read reports.

9 Q. So the Rustler, can some of them outcrop to the
10 surface, you know, 70 feet, 50 feet? You might start
11 seeing some of those wells some time at the surface.
12 Have you seen something like that?

13 A. Yes. Can't see any connection. Is that what
14 you mean, sir?

15 Q. Yeah, no, whether you can see those wells
16 outcrop to the surface. Some of the water is seeping to
17 the surface. It's straight up. You said 70 or 100 feet
18 down. They have outcropped to the surface, to surface
19 water. Have you seen something like in that the
20 artesian caused by the area?

21 A. It appears like any kind of surface water.
22 It's still not in connection with the Rustler water,
23 which is the main source of the stock tanks in the area.

24 Q. You are very ambitious, but I know I'm asking
25 these questions.

1 Okay. Go ahead.

2 CONTINUED DIRECT EXAMINATION

3 BY MR. BRUCE:

4 Q. I think what the Examiner is getting at,
5 Mr. Pearcy, you said these -- at times, at least 50
6 years ago, there might have been artesian flow from the
7 Rustler Formation to the surface. Is that what you
8 said?

9 A. No, sir. By artesian, I mean there is a charge
10 to the zone but not all the way to the surface.

11 EXAMINER EZEANYIM: Mr. Pearcy, since we're
12 here, can you give me --

13 EXAMINER BROOKS: Excuse me. We need to go
14 one at a time.

15 Had you finished your answer? Could you
16 finish your answer to Mr. Bruce's question?

17 A. Yes.

18 Q. (BY MR. BRUCE) From the -- there was an
19 artesian flow to the Rustler? Is what you're saying?

20 A. There is an artesian charge in the Rustler
21 Formation. Again, just west -- on the west side of our
22 section, the Pecos River flows, and there are places
23 where this Rustler Formation outcrops there. And it is
24 believed, from the information I have from the Read
25 report, that the recharge to the Rustler Formation would

1 occur from the river and then be transferred over to
2 wells that will be completed on the Ross Ranch or nearby
3 for this water. Am I answering the question?

4 Q. Yes. But, again, there is no hydrologic
5 connection between the injection zone and the Rustler
6 Formation?

7 A. There is no indication of any kind of
8 connection of the injection zone with the Rustler.

9 EXAMINER EZEANYIM: Counselor, thank you
10 very much. I understand what he's saying now.

11 CONTINUED CROSS-EXAMINATION

12 BY EXAMINER EZEANYIM:

13 Q. Since we are here -- I hate to deal with all
14 the maps. That's why I wanted to ask this question.
15 What is the vertical extent of this Cherry Canyon? Does
16 it include the Upper Abbey? Does it include the Ross
17 Sand and the Upper Abbey? What is the vertical extent
18 of this Cherry Canyon, do you know, so that I don't have
19 to ask it at the end of the -- I can get that squared
20 out [sic]. What is the vertical extent of the Cherry
21 Canyon?

22 CONTINUED DIRECT EXAMINATION

23 BY MR. BRUCE:

24 Q. What is the top of the Cherry Canyon, and what
25 is the bottom?

1 EXAMINER EZEANYIM: Exactly.

2 A. Yeah. The top of the Cherry Canyon is what I'm
3 showing on the cross section, which is approximately
4 3,800 feet. That's the upper line.

5 CONTINUED CROSS-EXAMINATION

6 BY EXAMINER EZEANYIM:

7 Q. And then the bottom is what?

8 A. And the bottom of the Cherry Canyon would be
9 approximately 200 feet below the bottom of the cross
10 section where the Brushy Canyon Formation would be.

11 Q. Does the Cherry Canyon include the Upper Abbey,
12 according to your --

13 A. Yes, sir. It includes the Ross and these Abbey
14 sands and the Cherry Canyon interval. Again, the Abbey
15 is not productive in the immediate area. It's a deeper
16 Williamson sand, which is the productive zone.

17 Q. So the bottom of this Cherry Canyon would be up
18 to 4,360; is that correct? What would be the bottom of
19 the Cherry Canyon before we have the Brushy Canyon.

20 A. I need to consult some additional information,
21 but the approximate base of the Cherry Canyon would be
22 around 45- to 4,800 feet.

23 Q. Okay. It's nothing against you, Mr. Pearcy. I
24 just want to get the information, like I told you.

25 A. Okay. Please speak up, sir.

1 EXAMINER EZEANYIM: Okay. So I don't have
2 to ask you questions again. Go ahead, Mr. Bruce.

3 MR. BRUCE: Mr. Examiner, I'm finished with
4 this witness --

5 CONTINUED DIRECT EXAMINATION

6 BY MR. BRUCE:

7 Q. But were Exhibits 9, 10 and 11 prepared by you?

8 A. Yes, they were.

9 Q. In your opinion, is the granting of this
10 application in the interest of conservation and the
11 prevention of waste?

12 A. Yes, sir.

13 MR. BRUCE: Mr. Examiner, I move the
14 admission of Exhibits 9, 10 and 11.

15 EXAMINER EZEANYIM: Any objection?

16 MR. MARTIN: No objection.

17 EXAMINER EZEANYIM: Exhibits 9, 10 and 11
18 will be admitted.

19 (Cimarex Energy Company of Colorado Exhibit
20 Numbers 9, 10 and 11 were offered and
21 admitted into evidence.)

22 EXAMINER EZEANYIM: Mr. Martin?

23 CROSS-EXAMINATION

24 BY MR. MARTIN:

25 Q. Mr. Percy, in your testimony, you testified

1 about the zones and that the density or the closure of
2 the zones -- to where it was your opinion that would not
3 get flow from the injection well into other zones. I
4 think that's a fair characterization of your testimony.
5 That opinion has nothing to do with what would be the
6 integrity of the casing under cement in this well,
7 SWD-380, does it?

8 A. That's correct.

9 Q. And so you're not giving any opinion as to the
10 integrity of the well as far as its casing, the
11 condition of the cement or anything else in relation to
12 the well, are you?

13 A. No, sir, I've not commented on that.

14 Q. Now, let me ask you -- I'm a little confused by
15 your testimony regarding Rustler Hills Formation, so
16 help me out here, if you would. Rustler Hills is a
17 formation that we refer to that water flows -- it's
18 groundwater flowing underground from west to east, isn't
19 it?

20 A. In this area, yes, sir.

21 Q. It comes out of the Capitan -- I'm sorry. It
22 comes out of the Guadalupe Mountain region and flows
23 underground toward the Pecos River; is that correct,
24 sir?

25 A. In this area, I would say that the recharge

1 from the Pecos River is also significant.

2 Q. Isn't it true that -- you said this, but let me
3 explore it a little more. Isn't it true that there are
4 numerous locations where the groundwater flow out of
5 Rustler Hills Formation actually feeds the Pecos River?

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

7 Q. And that is -- that feeding of the Pecos River
8 is a major source of the volume of flow at the state
9 line to meet -- to help meet the compact requirements,
10 isn't it?

11 A. That's what I have read, sir.

12 Q. Now, if I understood your testimony correctly,
13 you're saying that the river volume itself would cause
14 water to flow into the Rustler Hills Formation? Did I
15 understand you correctly?

16 A. That's what the report that was done for Ross
17 Ranch by Dr. Read says, sir.

18 Q. You're talking about the old Read & Stevens
19 report in the '60s?

20 A. I'm talking about the Ed Read report in '66 and
21 '73.

22 Q. Are you aware of any later studies by the State
23 Engineer regarding the impact of wells on the river and
24 the ratio of pumping to impact on the river done in the
25 1990s? Have you seen any of those?

1 A. No, sir, I've not.

2 Q. Are you familiar with the models that the State
3 Engineer uses to determine impact on the river and flow
4 office? Have you ever seen any of those models, or did
5 you refer to those?

6 A. I have not seen them, and I've not referred to
7 them.

8 Q. So you're basing your opinion on the volume,
9 and the river somehow feeds back into Rustler Hills
10 based on the report? We all call it the Read-Stevens
11 report, but that report in the 1960s. That's your
12 basis?

13 A. I'm saying there's an effect on the river,
14 that's correct.

15 Q. Do you know whether that is, in fact, true
16 today because of lower volumes in the river?

17 A. I do not know if that's a fact today.

18 Q. So you can't tell us that what was an opinion
19 in 1960 -- in the 1960s is a valid opinion today, can
20 you?

21 A. I can tell you, sir, that the salinities that
22 were found in the 1960s and that are found today in the
23 report that you'll see are very similar, and I don't
24 believe there's any argument for a strong change of the
25 hydrologic situation.

1 Q. Are you familiar with Well C-2713, which is a
2 brine well pumping -- that pumps water out of the
3 Rustler Hills Formation? Are you familiar with that
4 well?

5 A. I am not, sir.

6 Q. Are you aware of the -- you know what Red Bluff
7 Power and Water [sic] is; do you not?

8 A. Red Bluff Water, yes, sir.

9 Q. Are you aware of Red Bluff Power and Water
10 [sic] District's efforts to desalinize the river at the
11 state line?

12 MR. BRUCE: Mr. Examiner, I object to this
13 line of questioning. I don't know what it has to do
14 with this application. He's asking the witness to
15 speculate on studies he's never reviewed. If he wants
16 to put on evidence of this matter, he's free to do so,
17 but it's questioning a witness about matters he said he
18 hasn't reviewed.

19 EXAMINER BROOKS: He just asked -- at this
20 point, he just asked the witness if he was familiar with
21 it. So I would over that -- advise the Examiner to
22 overrule that objection.

23 EXAMINER EZEANYIM: Objection overruled.

24 Q. (BY MR. MARTIN) Do I need to rephrase the
25 question? I'll restate the question, Mr. Percy.

1 A. I'm not familiar with any issues on that.

2 Q. So, again, the basis of your testimony and
3 opinion that was elicited on direct is based upon the
4 1960 Read -- I call it the Read-Stevens study?

5 A. Yes, sir, that report that you provided to us.

6 Q. And you have not done any independent studies
7 for the current impact or status for purposes of
8 preparation of this -- your testimony on this
9 application?

10 A. I am very satisfied that there is no impact or
11 injection zone into the Rustler.

12 Q. But you've not made those studies, have you, as
13 of today? You have not made those studies of impact as
14 of today, have you?

15 A. I have not made any studies as to the impact
16 today.

17 Q. Thank you. That's all.

18 REDIRECT EXAMINATION

19 BY MR. BRUCE:

20 Q. Mr. Percy, the question to you is: Is there
21 any geologic connection? You studied the geology in
22 this area.

23 A. There is none whatsoever. There is no
24 indication of any connection of the Rustler Formation
25 with the Cherry Canyon.

1 Q. Thank you.

2 MR. MARTIN: No additional questions.

3 EXAMINER EZEANYIM: Anything further?

4 MR. BRUCE: Nothing further, Mr. Examiner.

5 EXAMINER EZEANYIM: Mr. Brooks?

6 EXAMINER BROOKS: I have no questions.

7 RECROSS-EXAMINATION

8 BY EXAMINER EZEANYIM:

9 Q. How deep is the Rustler in this area? The
10 Rustler Formation, how deep is it in this area?

11 A. I'm sorry, sir?

12 Q. How deep is the Rustler Formation in this area?

13 A. Where did I get the information?

14 MR. BRUCE: The depth of the Rustler.

15 A. The depth of the Rustler, 100 feet is what is
16 cited in the report. The top of the Rustler is a very
17 common geologic top, which can be mapped across the
18 area. Understand, the dip on that formation is from the
19 north to the south.

20 Q. (BY EXAMINER EZEANYIM) I understand the Rustler
21 provides most of the underground drinking water. And
22 your testimony is that there is no geologic connection
23 between the Cherry Canyon and the Rustler? Is that what
24 you said?

25 A. Exactly, sir, no connection.

1 Q. Is that from a geological study or from
2 personal opinion? Is that from a study or from your
3 opinion?

4 A. Based on the evidence, yes, sir.

5 Q. In this Cherry Canyon, is it a particular pool
6 into which you are injecting this water into the Cherry
7 Canyon Formation? Is there a particular pool?

8 A. The field in this area is, I believe, called
9 the Brushy Canyon field.

10 Q. You know it's part of the Delaware group, and
11 they have a bunch of pools, you know, and then the
12 extent -- the vertical extent, I asked you, is from that
13 800 to maybe 4,208 or 4,500. So I was wondering if
14 there is an actual pool into which these waters have
15 been injected in.

16 MR. BRUCE: Mr. Examiner, I believe it's
17 the Brushy Draw-Delaware.

18 EXAMINER EZEANYIM: Brushy Draw?

19 THE WITNESS: Brushy Draw. Thank you.

20 EXAMINER EZEANYIM: That's what I was
21 asking.

22 THE WITNESS: Okay. Appreciate that.

23 EXAMINER EZEANYIM: Because when you go to
24 the Cherry Canyon, there are a lot of places you can put
25 your water in the Cherry Canyon.

1 MR. BRUCE: And I believe that
2 encompasses -- the Brushy Draw pool encompasses the
3 entire Delaware.

4 EXAMINER EZEANYIM: Thank you very much.

5 Q. (BY EXAMINER EZEANYIM) And then I think the
6 land person testified there is adequate -- overlying
7 the -- underlying the injection interval.

8 A. Overlying?

9 Q. There is no way this injected water will
10 migrate? Assuming we have all our wells appropriately
11 constructed, there is no way this injected well will
12 migrate upwards and contaminate the drinking water --
13 Rustler?

14 A. No, sir. As shown from this stratigraphy here,
15 everything is quite consistent that there are plenty of
16 overlying and underlying zones above and below the Ross
17 Sand to isolate that injection. Is that the answer?

18 Q. No. You described the geology as the overlying
19 and underlying -- I mean underlying formation of this
20 Cherry Canyon. You described the geology. What type of
21 rock overlies or underlies --

22 A. Immediately overlying the injection interval?

23 Q. Yes. Yes.

24 A. Okay. As shown on the log here, the density
25 neutron is a very convenient way to identify

1 the lithologies.

2 Q. So what do you have here?

3 A. And on our injection well, we have a density
4 neutron, and on the cross section, at least the one I'm
5 looking at here, which is Exhibit Number 11, all but one
6 of the logs are density neutrons. And those are showing
7 where the porosity is high, that those are sandstones,
8 or other sandstones in the area that are water-bearing,
9 but there is enough other hard limes and dolomites and
10 anhydrites, primarily limestones, in this area which
11 consistently isolate the Ross Sand from the overlying
12 wet sands.

13 And I've shown about 100 feet or so of
14 underlying interval, which is the -- called here the
15 Upper Abbey zone. And at the top of the Abbey, you can
16 see that there is a 10- to 15-foot shale or limestone
17 which is isolating the injection interval from the
18 underlying zones, and there are plenty of other
19 low-porosity limestones within the Abbey and down below,
20 again, to keep all the injection water in the Ross Sand.

21 Q. Okay. Very good.

22 While we're talking about it, what is the
23 deepest water well in the area? Do you know that --
24 that answer?

25 A. I know that the water wells in the area we've

1 been talking about are all from the Rustler.

2 Q. What is the deep -- depth of the deepest well?

3 A. Approximately 100 to 120 feet. I understand
4 that there have been some other studies which perhaps
5 the other party may want to share with you about that.

6 Q. Yeah. Okay. Let me finish up.

7 I don't know who is going to answer this
8 question. This application was approved four years ago.
9 You know, do you have -- are you going to answer this
10 question, or maybe the engineer will answer this
11 question? I want to see the water analysis then and now
12 and see how they changed or if they're different. Do
13 you have that information?

14 MR. BRUCE: Our engineer will testify to
15 that.

16 EXAMINER EZEANYIM: Will testify to that.
17 I wanted to know whether it was the geologist or the
18 engineer. So that is a question for the engineer.
19 Okay. Very good.

20 Nothing further. You may step down.

21 MR. MARTIN: May I ask one additional
22 question?

23 EXAMINER EZEANYIM: Okay. You may.

24 MR. MARTIN: Thank you.

25

RECROSS EXAMINATION

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BY MR. MARTIN:

Q. Mr. Pearcy, I want to go back to this 1960s study that you have made reference to. As I understood your testimony, you said that it established this particular relationship, if I may use the term, of the river -- Pecos River feeding into the Rustler Hills Formation. Let me quote, if I may, a sentence out of that study.

"The test appears to have established that there is a hydraulic continuity from the surface water in the Pecos River to the Rustler Aquifer under the Ross Ranch." He uses the term "appears." Does that, in your mind, establish that it's a fact, that's that for that, or he was just simply stating that it appears that may be the case?

A. Your ranch had commissioned Dr. Read to do this study, and in Dr. Read's estimation, that was what was happening.

Q. He uses the term "appears." Does that, in your mind, establish that it was an absolute fact that is what's taking place?

A. I am simply citing the authorities, and I would say I have not investigated, sir.

Q. I'm not sure you've answered my question. Let

1 me ask it again, please. He uses the term "appears."

2 He doesn't say it establishes this as an absolute fact.

3 A. Would you like me to read from the study?

4 Q. I have the study. I'm looking at that
5 particular language.

6 A. Okay.

7 THE WITNESS: Well, for the Examiners,
8 would they like to hear?

9 EXAMINER EZEANYIM: I don't have the study.
10 I don't know what you're talking about.

11 Q. (BY MR. MARTIN) He uses the term "appears,"
12 doesn't he?

13 A. (No response.)

14 EXAMINER EZEANYIM: We may have to get a
15 dictionary and see what "appears" means.

16 (Laughter.)

17 EXAMINER EZEANYIM: It appears to me nobody
18 knows what "appears" means. Can we answer the question
19 and proceed.

20 THE WITNESS: I would like to quote exactly
21 from the study, if he's pinning me down to this. If
22 you'll let me examine the study and perhaps give me ten
23 minutes or so, I can find the wording in here, but --

24 MR. BRUCE: We can start with our next
25 witness.

1 THE WITNESS: -- I think it's irrelevant,
2 sir.

3 EXAMINER EZEANYIM: It's very relevant, but
4 I want somebody to define "appears."

5 MR. BRUCE: Rather than have the witness
6 study it on the stand, if we could temporarily dismiss
7 the witness and move on with the case, Mr. Examiner?

8 Q. (BY MR. MARTIN) We are looking at a study -- I
9 kept saying "in the 1960s," which is the old
10 Read-Stevens, but this is actually -- our docket says
11 "1975 study." Is that the one you're looking at?

12 A. I have two studies.

13 Q. You do? You have one in the '60s?

14 A. 1966.

15 Q. That's the old Read-Stevens study?

16 A. The other one is 1973.

17 Q. There is one in '75, done for Ross Ranch;
18 Mr. Read. Do you have that one?

19 A. If it was done for Ross Ranch, that would not
20 be public information, and Ross Ranch has it, and we
21 don't.

22 Q. So I'm referring to something you've not seen;
23 is that correct (laughter)?

24 A. You must be, sir.

25 Q. Okay. That's it. No more questions.

1 EXAMINER EZEANYIM: For the sake of
2 argument, Mr. Percy -- I mean, don't clue me out now.
3 What study are you talking about? I don't have the
4 study, and I don't know what we're trying to get at
5 here. "Appears" what? Can somebody answer that
6 question?

7 THE WITNESS: (Indicating.)

8 EXAMINER EZEANYIM: Because I don't want to
9 be blind to what's going on. I don't have the study
10 that was done in 1973 or 1966. It might be a very
11 important study that should be something I should
12 consider, but I don't have it. Do we have it? Does
13 somebody have it?

14 MR. MARTIN: You should have that. The one
15 I'm referring to is in exhibits that I submitted. I
16 have submitted it in exhibits.

17 If I may help out here, there's been a
18 number of studies on the Pecos River, its flow and its
19 sources of water. And you can go back into the late
20 '50s and early '60s; there are what we call the
21 Read-Stevens reports. There's been a whole series of
22 studies over the years relating to the Pecos River, its
23 flow, the water quality at the state line, issues in
24 relation to the compact. There have been studies as
25 late as the 1990s, when the Carlsbad Basin was being

1 adjudicated, as to the relationship between the wells
2 pumping and the river. And as you get below the
3 Delaware, below the gauging station, you get to a
4 one-to-one ratio. So there are a whole series of
5 studies out there.

6 And he was looking at the '60s report, and
7 we've been looking at the '75 report. So I asked him a
8 question on something he had not seen, to clarify this.

9 EXAMINER EZEANYIM: Mr. Martin, what I
10 would like to do is, when you call your witness, maybe
11 he will be able to explain that report to us, if it's
12 very important for you. I would like to hear about the
13 report. Your witness can tell me about the report. If
14 Mr. Percy doesn't have it, then he can't answer the
15 question on what he doesn't have.

16 MR. MARTIN: I understand.

17 EXAMINER EZEANYIM: But maybe it's
18 confidential information, because such a report may be
19 confidential to the Ross Ranch, and that's why the OCD
20 don't [sic] have any such report. And that's why I have
21 confusion. I don't know what else to do.

22 THE WITNESS: Yes, sir. Again, the
23 hydrology of the Rustler Hills, or the Rustler
24 Formation, is not the issue today. It's a matter of
25 injection into the Cherry Canyon interval at

1 approximately 4,000 feet, which has no communication
2 with any other kind of problem that's happening in the
3 Rustler.

4 MR. MARTIN: For point of clarification, we
5 sent in our exhibits sometime back, and the Ed Read
6 report is in Exhibit Number 4.

7 EXAMINER BROOKS: Yes. I believe that Ross
8 Ranch did file -- pre-file exhibits, which is required
9 for Commission hearings. It isn't actually required for
10 Division hearings, but that's the subtlety of
11 distinction of the rules if someone doesn't practice
12 here every day, as Mr. Bruce does, might not be aware
13 of.

14 MR. MARTIN: In an abundance of caution, we
15 sent them in.

16 EXAMINER EZEANYIM: You did a good job,
17 Mr. Martin, but like I said, I don't look at everything
18 before I come to hearing, because that's our -- that's
19 just the nature, according to the Legal Examiner. I
20 have your exhibits. I didn't look at it, you know,
21 because I didn't understand the relevance. So since it
22 is here, I'm going to read it. Maybe I'll begin to
23 gather what you're talking about. So that is very
24 important.

25 You know, does anyone have anything further

1 for this witness?

2 MR. BRUCE: I would like -- since
3 Mr. Martin asked that question, I just want to clarify.

4 REDIRECT EXAMINATION

5 BY MR. BRUCE:

6 Q. Mr. Percy, what you're saying is simply that
7 there is no communication between the injection zone and
8 the Rustler?

9 A. Yes, sir.

10 Q. What might happen in the Rustler due to
11 excessive pumping or anything else is beyond the scope
12 of your testimony?

13 A. Yes, sir.

14 Q. And it's really beyond the scope of this
15 hearing, isn't it?

16 A. That's correct.

17 Q. We are not here to determine water flow in the
18 Pecos or -- as long as we can show that there is no
19 contamination from the injection zone into freshwater
20 wells in this area?

21 A. Precisely.

22 Q. Thank you.

23 EXAMINER EZEANYIM: Mr. Martin?

24 MR. MARTIN: No additional questions.

25 EXAMINER EZEANYIM: Okay. At this point,

1 let's take a ten-minute break and come back at quarter
2 to 11:00.

3 (Break taken, 10:33 a.m. to 10:54 a.m.)

4 EXAMINER EZEANYIM: Continue with Case
5 Number 14994, and at this point, Counselor, you have to
6 call your last witness.

7 MR. BRUCE: Yes, sir.

8 SCOTT GENGLER,
9 after having been previously sworn under oath, was
10 questioned and testified as follows:

11 DIRECT EXAMINATION

12 BY MR. BRUCE:

13 Q. Would you please state your full name and city
14 of residency?

15 A. Scott Gengler, Midland, Texas.

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

17 A. I work for Cimarex Energy, and I'm a petroleum
18 engineer.

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

21 A. Yes, I have.

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

24 A. Yes, they were.

25 Q. Are you familiar with this application?

1 A. Yes, I am.

2 Q. And does your area of responsibility --
3 engineering responsibility include this portion of
4 southeast New Mexico?

5 A. Yes, it does.

6 MR. BRUCE: Mr. Examiner, I tender
7 Mr. Gengler as an expert petroleum engineer.

8 EXAMINER EZEANYIM: So qualified.

9 MR. MARTIN: No objection.

10 EXAMINER EZEANYIM: Thanks.

11 Q. (BY MR. BRUCE) Mr. Gengler, let's start with --
12 get a few things out of the way. During the course of
13 the prior hearing and this hearing, have you reviewed
14 the exhibits and statements submitted by Ross Ranch
15 regarding Cimarex's SWD well?

16 A. Yes, I have.

17 Q. Now, one of them, if you'll recall, is
18 regarding volumes injected into the well. Let's start
19 with that. First of all, the Mallon permit, what was
20 the allowed injection volumes under that permit; do you
21 recall?

22 A. 1,600 barrels a day.

23 Q. Maximum?

24 A. Correct.

25 Q. So that would be, if I'm doing my math right,

1 about 48,000 barrels a month?

2 A. Sounds about right.

3 Q. Let's start with Exhibit 12. What is Exhibit
4 12?

5 A. It is a printout from the OCD Web site of the
6 volumes reported as injected into that well historically
7 back to 1994.

8 Q. And except for the two items we're going to
9 mention in a second, have the injection volumes been
10 consistent with the original SWD permit, SWD-380?

11 A. That's correct.

12 Q. Does this Exhibit 12 show two anomalous
13 figures?

14 A. Yes, it does.

15 Q. And what are they? And specify a date and year
16 for the Examiner.

17 A. The first one shows 323,265 barrels in August
18 of 1999.

19 MR. BRUCE: So August of 1999, which is on
20 the top of the third page, Mr. Examiner.

21 A. I'd also like to note that at that point in
22 time, Mallon was the operator.

23 Q. (BY MR. BRUCE) And what is the other anomaly?

24 A. The other anomaly is in March of 2002, for
25 63,996 barrels, in March of 2002, and I'd also like to

1 note that Magnum Hunter was the operator at that point
2 in time.

3 Q. Now, if you can, how can you explain those
4 large numbers -- those two larger numbers?

5 A. You know, we do not have records from those two
6 companies on what was filed, but looking at what was
7 injected right before and right after and also on both
8 dates and then looking at what the capacity of the
9 system was, in particular the injection pump that has
10 been out there during that time and is still out there,
11 those volumes would not be possible.

12 MR. MARTIN: Objection. Calls for
13 speculation. He doesn't have any firsthand knowledge.

14 EXAMINER BROOKS: I'm not even sure what
15 the question was. I missed the question, so perhaps --

16 Q. (BY MR. BRUCE) Well, let's move on to -- you
17 mentioned the pump that is on the injection well.

18 A. Correct.

19 Q. The purpose that is out there now, was that --
20 has that pump always been on the injection well?

21 A. Yes.

22 Q. What is Exhibit 13?

23 A. Exhibit 13 is a data sheet from the
24 manufacturer of that pump. The actual pump -- which I
25 got from the records of when it was installed, and when

1 it was currently out there, I had a third party check
2 it. It was 60T-3M, with a 1.75-inch plunger diameter.

3 Q. And what is the maximum amount -- maximum
4 volume of water that that pump can inject into a well?

5 A. The maximum rate --

6 Q. Maximum rate.

7 A. -- that that -- that that pump can put out at
8 maximum RPMs, which is 500 RPMs, is 1,607 barrels a day.

9 Q. Which is seven barrels a day more than was
10 allowed in the SWD-380?

11 A. If it's running at maximum RPMs.

12 Q. And so 1,607 barrels a day.

13 Would it be possible, just based on the
14 capacity of the pump, to inject 323,000 -- let's take a
15 step back. The August 1999 figure of 323,000, that
16 would be roughly 11,000 barrels a day, 10,000 barrels a
17 day?

18 A. It is not possible with that pump.

19 Q. This pump cannot inject 10- or 11,000 barrels a
20 day?

21 A. No, it cannot.

22 Q. And then if you look at March of 2002, the
23 reported volume was about 64,000, which is over -- well
24 over 2,000 barrels a day of water injected. Is this
25 pump capable of injecting that volume at that rate?

1 A. No, it is not.

2 EXAMINER EZEANYIM: Mr. Counselor, excuse
3 me, please. On Exhibit 12, on your line of questioning,
4 I just looked at SWD-380. There was no limit on
5 injection rate. Why are we examining this injection
6 rate? I know you said it was supplied or there was a
7 question from Ross Ranch about the amount of water
8 injected. You are limited by the injection pressure,
9 and I haven't seen where it increased. Even if I can
10 see 1 million gallons a day with 804, which is
11 impossible, I can do that, but you are limited by
12 injection rate. So why would -- what is this line of
13 questioning? Where is it going to?

14 MR. BRUCE: Mr. Examiner, Ross Ranch has
15 indicated we're not complying with the injection permit.
16 The original SWD application requested a maximum of
17 1,600 barrels a day to be injected into the well, and
18 Mr. Gengler is saying that the pump on that well cannot
19 inject at a rate greater than 1,607 barrels a day.

20 EXAMINER BROOKS: You're saying the
21 application, not the OCD's order?

22 THE WITNESS: That's correct.

23 MR. BRUCE: Not the OCD's order.

24 EXAMINER EZEANYIM: Here is the order. I
25 don't see any order here that you have to limit it to

1 1,600. You are limited by the injection pressure.

2 MR. BRUCE: But, Mr. Examiner, what we're
3 saying is that for 23 years, the pump on the well could
4 not inject more than 1,600 barrels.

5 EXAMINER EZEANYIM: Right. It's only 500
6 RPM.

7 Go ahead.

8 Q. (BY MR. BRUCE) Mr. Gengler, were there also
9 some questions raised about pressures -- injection
10 pressures?

11 A. Yes, there was.

12 Q. What is Exhibit 14?

13 A. Exhibit 14 is a graph of the production volumes
14 and injection pressure as recorded by the pump.

15 Q. And what does that show?

16 A. It shows that we were below -- we being
17 Cimarex, below 1,000 barrels per day of injection rate.
18 On almost all occasions, with a couple of exceptions, we
19 were below the pressure. Those couple of exceptions
20 were a contract pumper who was out there. This field is
21 remote for us. It's the only thing we have out there,
22 and he is required to turn the pump on and turn it off.
23 And so in his haste, he turned it on and sped the thing
24 up to increase the rate, got a little bit higher
25 pressure than what we had told him he was allowed to do.

1 When we saw that, we got that corrected. A different
2 contract pumper, again, did it, and we shut that down
3 again, too.

4 Q. So during 2012 and 2013, when this well was
5 injecting, it was below the allowed injection pressure,
6 correct?

7 A. That is correct. And those pressures were
8 within -- less than ten percent above what our -- but he
9 made a mistake.

10 Q. Now, let's move on to the C-108. Just very
11 briefly, is Exhibit 15 the C-108 for the well prepared
12 by you?

13 A. It was prepared by me and people that I direct.

14 Q. Now, did you hear Mr. Martin, in his opening
15 statement, talk about this is based on old data?

16 A. Yes, I heard that.

17 Q. Now, as part of this, you have to look at wells
18 within the one-half area mile of review; is that
19 correct?

20 A. That is correct.

21 Q. Have any new wells been drilled within one-half
22 mile of the SWD well since the SWD permit was approved
23 in 1989?

24 A. No, there have not.

25 Q. So there is no new well information out there

1 to add to the C-108?

2 A. That is correct.

3 Q. Let us run through this just briefly, and there
4 is some supplemental data that we will get to in Exhibit
5 16. But first of all, are you proposing the same
6 maximum injection pressure and maximum injection rates
7 that Mallon Oil requested in 1989?

8 A. That is correct.

9 Q. And turning to page 5, I've marked the C-108,
10 the pages in the lower, right-hand corner. Could you
11 describe how the injection well -- the status of the
12 injection well and how it's being completed?

13 A. Where are you referring to as the status?

14 Q. Page 5.

15 A. I got that.

16 Q. Okay. The injection well --

17 A. It's completed in the Cherry Canyon portion of
18 the Delaware from 4,022 to 4,208. There is a packer
19 that is set at 3,994. The surface casing is set at 450
20 feet with cement circulated. The long string was set at
21 5,820, 450 sacks of cement, with the top of the cement,
22 by a cement bond log, at 2,720.

23 Q. Is this well properly completed so as to
24 prevent the movement of the fluid between zones and to
25 prevent the contamination of any freshwater sources?

1 A. Yes, it is.

2 Q. This well was in operation for 23 years,
3 correct?

4 A. That is correct.

5 Q. And in your review of data on the well, was
6 there any indication of any escape of fluids into a
7 producing formation or into a freshwater zone?

8 A. No, there is no indication.

9 Q. So the well has been injecting for 23 years
10 without any adverse effect on any offset or the surface
11 owner?

12 A. To my knowledge, that is correct.

13 Q. Do pages 9 through 13 of the C-108 contain
14 information on wells in the area of review?

15 A. It does.

16 Q. And do we have an exhibit that supplements this
17 information somewhat?

18 A. Yes, we do.

19 Q. And will we get into that in a little while?

20 A. (Indicating.)

21 Q. Now, pursuant to OCD -- the Form C-108, have
22 you contained information on PA'd wells on the area of
23 review?

24 A. Yes, I have.

25 Q. And are those -- there is one misnumbered page,

1 but pages 14 and 15, does that contain wellbore sketches
2 of those wells?

3 A. It does.

4 Q. And have those wells been properly plugged and
5 abandoned in order to --

6 A. Yes. That was approved by the BLM.

7 Q. Let's move on to page 18, Mr. Gengler. Again,
8 18 is the exhibit showing water wells in the area,
9 correct?

10 A. Correct.

11 Q. And we'll get to that in a minute.

12 Page 19. Is this a recent water analysis
13 of produced water that was being injected into the SWD
14 well?

15 A. It is.

16 Q. And in your opinion, are there any
17 compatibility problems between the injected water and
18 the formation water in the Cherry Canyon?

19 A. No, there is not.

20 Q. Let's move on to page 20, which is something
21 that Mr. Ezeanyim asked about. What is page 20?

22 A. 20 is the water analysis from that BLM Sample
23 Well that Mallon submitted in their 1989 application.

24 Q. Actually, it shows several wells; does it not?

25 A. Yes.

1 Q. The first one is a Williamson freshwater well.

2 And I believe that is the --

3 A. A BLM well.

4 Q. That is the BLM well?

5 A. Correct.

6 Q. And then there is injection water, is the
7 middle column, correct?

8 A. That is correct.

9 Q. And then there's another well. I don't know
10 which well that is, but that is a freshwater well,
11 correct?

12 A. That is correct.

13 Q. What are the chloride levels in these three
14 wells?

15 A. The chloride -- well, the middle well is the
16 produced water from the lease. It's 189,000. The
17 Williamson freshwater well on the BLM surface, in 1988,
18 when this was sampled, was 4,000 chlorides, and the
19 other well was 1,600.

20 Q. Now, just looking at the produced water, the
21 Amoco production, 189,000, that's pretty similar to the
22 chloride content on page 19 for the recent produced well
23 sample, correct?

24 A. Correct.

25 Q. Then what is called the Williamson fresh water,

1 that is the BLM well that Cimarex obtained a sample
2 from?

3 A. That is correct.

4 Q. Please describe how that sample was -- first of
5 all, did Cimarex itself take that sample?

6 A. No, we did not.

7 Q. What did you do to obtain a sample from the BLM
8 well?

9 A. We obtained a third party that is experienced
10 in sampling water wells and asked them to go out there
11 and obtain a sample out of this well, with a company
12 that pulls equipment, because the well wasn't running at
13 the time.

14 Q. And is that sample attached as pages 21 through
15 32 of the C-108?

16 A. Yes. They --

17 Q. Go ahead.

18 A. They took that sample and sent it to the lab.
19 Their lab then forwarded it on, without touching it, to
20 this Xenco Laboratories, which is an EPA water certified
21 testing lab.

22 Q. And, again, Cimarex had nothing to do with the
23 taking or measuring of this water?

24 A. We had a person on location to observe it but
25 never took that sample in our possession.

1 Q. And what chloride levels were in the sample
2 level?

3 MR. MARTIN: May I interpose an objection
4 at this point?

5 EXAMINER BROOKS: Yes, sir.

6 MR. MARTIN: I would object to any
7 testimony about this sample or admission of this sample.
8 This gentleman did not take the sample. He did not run
9 the test. He did not maintain possession, custody or
10 control. It was done by a third party, and we have no
11 witness here to say exactly what they did, how they
12 maintained quality -- I'm sorry -- how they maintained
13 possession, control and integrity of the sample and how
14 they took the test. He is not qualified to testify as
15 to this, and an improper foundation has been laid for
16 the admission of this particular report. And we'd ask
17 that it be stricken.

18 MR. BRUCE: Mr. Examiner, I'd simply say,
19 this is typical of what is done. The companies don't
20 sample the water. The old samples were taken by
21 Halliburton, another party. Furthermore, the Division
22 does not strictly follow the rules of evidence, as you
23 well know; it's in the regulations. And our opponents
24 were complaining early on that there was no freshwater
25 sample. They have not allowed us to take samples from

1 their wells. And this is simply -- Mr. Gengler is
2 simply saying that to avoid any appearance of
3 impropriety, they had a third party take the sample. I
4 think this is admissible.

5 EXAMINER BROOKS: I think if we were to
6 follow the rigorous requirements that are followed in
7 court -- I really don't have in mind -- I know there is
8 a very rigorous requirement that's followed in criminal
9 cases and a somewhat less rigorous requirement that's
10 followed in civil cases. I haven't dealt with those
11 things in the last 15 years, so I'm a little unclear on
12 it at this point. But I think if we were to follow
13 either the criminal district court rule or even the
14 civil district court rule, at this point it would
15 operate as a surprise. It's not customarily applied in
16 OCD proceedings. So I would advice the Examiner to
17 overrule the objection and treat these matters going to
18 the weight rather than to admissibility.

19 EXAMINER EZEANYIM: Objection overruled.

20 Rephrase your question.

21 Q. (BY MR. BRUCE) Mr. Gengler, what chloride level
22 was shown in this test?

23 A. Chloride level was 1,780.

24 EXAMINER EZEANYIM: Which well are you
25 talking about?

1 THE WITNESS: On the Halliburton report, it
2 was referred to as the Williamson well.

3 EXAMINER EZEANYIM: The Williamson well on
4 the old report or the new report?

5 THE WITNESS: On my report, I'm calling it
6 the BLM freshwater well.

7 MR. BRUCE: Mr. Examiner, if you would turn
8 to page 18, you see the green dot for the SWD well? Off
9 to the east is the BLM Sample Well.

10 EXAMINER EZEANYIM: Okay. Oh, "BLM Sample
11 Well." Is that where you got the sample?

12 MR. BRUCE: And if you turn to page 20.

13 EXAMINER EZEANYIM: Okay.

14 MR. BRUCE: Page 20, the "Williamson Fresh"
15 sample is that BLM sample well.

16 EXAMINER EZEANYIM: Okay. The chlorides --
17 that's the -- I mean, the Williamson, that is BLM,
18 right?

19 MR. BRUCE: That is BLM. Williamson is
20 BLM.

21 EXAMINER EZEANYIM: And then the "Amoco
22 Production" is the current well?

23 MR. BRUCE: Produced water.

24 EXAMINER EZEANYIM: Produced water from
25 the --

1 THE WITNESS: From one of the wells within
2 the field.

3 Q. (BY MR. BRUCE) And the Williamson Fresh,
4 Mr. Gengler, is the BLM sample well, correct?

5 A. That is correct.

6 Q. And 23 years ago, 24, 25 years ago, it showed
7 what level of chlorides?

8 A. 4,000.

9 Q. And what does it currently show based on the
10 Xenco Laboratories test?

11 A. 1,780.

12 Q. So the level of chlorides in the well is
13 substantially lower than it was 25 years ago?

14 A. That is correct.

15 Q. And looking at page --

16 EXAMINER EZEANYIM: Where is that 1,780?
17 I'm looking for it.

18 Q. (BY MR. BRUCE) What page is that 1,780 shown
19 on, Mr. Gengler?

20 A. Page 25.

21 EXAMINER EZEANYIM: Oh, okay. You are
22 trying to address some of the questions I have. Okay.
23 Page 25 is the same well -- the other well was 4,000,
24 you said. 1,780. Okay. That's the chloride. Okay.
25 That will answer some of the questions I have.

1 Q. (BY MR. BRUCE) And it appears, Mr. Gengler,
2 from page 18, the BLM well, the one that you got the
3 fresh -- the new sample from, is the closest freshwater
4 well to the injection well?

5 A. Based upon the data we got from the State
6 Engineer's Web site, that is correct.

7 Q. So there has been -- based on this, there has
8 been no adverse effects on fresh water from injection
9 for 23 years?

10 A. That is correct.

11 Q. And based on this data, do you have any reason
12 to suspect the mechanical integrity of the injection
13 well?

14 A. No, I do not.

15 Q. Now, as part of your review, did you see a
16 letter from the BLM raising certain objections to the --

17 A. Yes. Yes, I did.

18 Q. What is Exhibit 16?

19 A. Exhibit 16 is a map with the circle of the
20 half-mile area of review. It also has, above the
21 injection well, an SWD. Then above each well, there is
22 a number corresponding to the numbers in the application
23 of the offset wells. This was requested by the BLM.

24 Q. They asked if there were cement bond logs on
25 the well, correct?

1 A. I visited with Wesley Ingram. He asked if
2 there were cement bond logs or temperature surveys.
3 Myself, or someone that I was directing, contacted both
4 of the operators that operated the wells that did not
5 have that information supplied, and they replied to us
6 that that information was never run and was not
7 available. I gave that information to the BLM, and they
8 requested this map so that they could update the
9 information to include DV tools, which are not normally
10 put in there. But this is the information I supplied to
11 the BLM.

12 Q. Were there bond logs on any of the wells within
13 the area of review?

14 A. Yes.

15 Q. How many of these wells?

16 A. I didn't have that written down.

17 I show four.

18 Q. And how many DV tools used on them?

19 A. Of the ones that had cement bond logs or --

20 Q. Others.

21 A. Others? All but one.

22 Q. All but one.

23 And what good are the DV tools? What is
24 that showing?

25 A. The DV tools showed where they pumped the

1 second stage of the cement. On every one of those, the
2 first stage was pumped, and they circulated cement off
3 of them. And the second stage is just from that point
4 up as to where that cement is going. In fact, the wells
5 all had cement circulated on the first stage. It shows
6 that there wasn't any fall-back from anything pumped
7 down below that DV tool.

8 Q. What is Exhibit 17?

9 A. Exhibit 17 is a summation of the calculated top
10 of the cement on the wells that did have a cement bond
11 log, and so there was comparison of the two methods to
12 correlate how those compared.

13 Q. Are all of the measured tops of cement well in
14 excess of the -- higher than the injection interval of
15 this well?

16 A. Yes.

17 Q. And would they show that the offset wells are
18 properly drilled and completed and properly cemented, so
19 there wouldn't be any movement of fluids up those
20 wellbores?

21 A. Yes.

22 Q. In preparing C-108s, is it common to use
23 calculated tops of cement?

24 A. If there is no cement bond or temperature
25 surveys, that has been a common practice in the

1 industry.

2 Q. As part of your job at Cimarex, do you review
3 saltwater disposal applications filed by other operators
4 when Cimarex is notified of an application?

5 A. Yes, I do.

6 Q. Do other operators use calculated tops of
7 cement?

8 A. Yes, they do.

9 Q. And in your opinion, is that a proper way to
10 determine the top of cement in wells offsetting an
11 injection well?

12 A. If no other information is available, yes.

13 Q. Now, you reviewed the original file on Mallon's
14 SWD application, didn't you?

15 A. Yes, I did.

16 Q. And did any offset operators object to the SWD
17 well?

18 A. No, they did not.

19 Q. Have any offset operators objected to this
20 application to reinstate injection authority?

21 A. No, they have not.

22 Q. If there was a problem, would -- suppose
23 Cimarex was an offset to a proposed injection well like
24 this. Would it object if there was a problem with the
25 well construction of the wells in the area of review?

1 A. Yes, they would. When I review those
2 applications, one of the things I do look at is, where
3 is the top of the cement, where is the injection
4 interval, and would it have any effect on our well,
5 because we would see it before any contamination would
6 happen.

7 Q. Couple of other things, and this is a question
8 asked of the landman. But was this SWD well taking
9 water only from Cimarex wells in this area?

10 A. Yes.

11 Q. And only from on this specific lease?

12 A. That is correct.

13 Q. Mr. Dowdle referred to this. Did Cimarex shut
14 in the well at one point -- shut in its producing wells
15 at one point to see if any other water was being
16 injected into the SWD?

17 A. We shut in all wells, and there was no entry of
18 fluid into our system, once we shut all the wells in.

19 Q. So no third party -- no third-party operator --
20 no third-party operator's water was taken into this SWD
21 well?

22 A. That is correct.

23 Q. And to the best of your knowledge, are there
24 any agreements between Cimarex and a third-party
25 operator to take their water?

1 A. I saw no agreements by Cimarex or any of the
2 other operators in the files agreeing to take any other
3 water from any other company.

4 Q. Just a couple more things, Mr. Gengler.
5 Cimarex is not injecting into this water since the
6 issuance of the prior order, correct?

7 A. That is correct.

8 Q. What is being done with Cimarex's produced
9 water from its several wells in the area?

10 A. It's being hauled to commercial disposals.

11 Q. Is that more expensive than injecting it into
12 Cimarex's facility?

13 A. Yes, it is.

14 Q. What will happen to Cimarex's producing wells
15 if the injection authority is not granted?

16 A. It will cause the premature plug and
17 abandonment of those wells based on economics and loss
18 of reserves.

19 Q. Trucking it out to third-party disposal
20 facilities is more expensive?

21 A. Significantly more.

22 Q. Significantly more.

23 And if you do not get injection authority
24 at some point earlier than using your own injection
25 well, will operating costs exceed production values?

1 A. Yes.

2 Q. Will that cause waste?

3 A. Yes.

4 Q. Will that impair Cimarex's correlative rights?

5 A. Yes.

6 Q. Going back to one thing, you said Cimarex's
7 wells in this area were shut in and injection ceased
8 into the saltwater disposal well. You also indicated
9 that this was an isolated area for Cimarex?

10 A. Yes.

11 Q. So you don't have any -- does Cimarex have any
12 nearby offsetting producing wells?

13 A. No.

14 Q. Just the wells on this particular lease?

15 A. Correct.

16 Q. What is Exhibit 18, Mr. Gengler?

17 A. 18 is an approval from the BLM of our sundry
18 notice -- not ours. Excuse me. Mallon Oil's sundry
19 notice on their recompletion of this well into a
20 saltwater disposal well.

21 Q. In your review of the well files, have you ever
22 seen where this sundry notice has been revoked by the
23 BLM?

24 A. I have not seen anything.

25 Q. In its operation of the Amoco SWD #1, has

1 Cimarex ever received a notice of violation indicating
2 it has violated federal regulations?

3 A. No, we have not received any.

4 Q. Has Cimarex ever received a notice of violation
5 indicating that it has not complied with Onshore Order
6 Number 7?

7 A. I have not seen any in the files.

8 Q. In your opinion, is it proper to grant
9 injection authority for this well?

10 A. Yes.

11 Q. Were Exhibits 12 through 18 either prepared by
12 you or under your supervision or compiled from company
13 business records?

14 A. They were.

15 Q. And in your opinion, is the granting of this
16 application in the interest of conservation and the
17 prevention of waste?

18 A. Yes, it is.

19 MR. BRUCE: Mr. Examiner, I'd move the
20 admission of Exhibits 12 through 18.

21 EXAMINER EZEANYIM: Any objection?

22 MR. MARTIN: No objection.

23 EXAMINER EZEANYIM: Exhibits 12 through 18
24 will be admitted.

25 (Cimarex Energy Company of Colorado Exhibit

1 Numbers 12 through 18 were offered and
2 admitted into evidence.)

3 MR. BRUCE: And I have no further questions
4 of the witness.

5 EXAMINER EZEANYIM: Thank you,
6 Mr. Counselor.

7 Mr. Martin?

8 MR. MARTIN: Thank you.

9 CROSS-EXAMINATION

10 BY MR. MARTIN:

11 Q. Mr. Gengler, I'll try not to jump around too
12 much, but there are a number of topics I'd like to
13 explore with you.

14 You just rendered an opinion that if
15 Cimarex is not allowed to start injecting into this
16 particular well, that the cost of disposal of this water
17 at commercial locations would cause -- would have such
18 an impact on production proceeds that you would have
19 premature shutting of the wells. Did I understand that
20 correctly?

21 A. That is correct.

22 Q. Did you personally sit down and look at costs
23 and revenue streams to arrive at that conclusion?

24 A. Yes, I have.

25 Q. You did not bring any of that data with you

1 today, did you?

2 A. No, I did not bring it with me today.

3 Q. So all we have is your opinion, without any
4 supporting documents, as to your statement that that
5 would be the effect?

6 A. Yes.

7 Q. And that would, of course, be very dependent
8 upon what the oil price is -- the conclusion would be
9 very dependent on what the oil price is?

10 A. That is correct, but I will say that we've got
11 at least a couple of wells that right now are either
12 breaking even or just barely below. So they are really
13 severely impacted, and we'd probably be prematurely
14 plugging [sic] into the very near future if this isn't
15 reinstated.

16 Q. But, again, you haven't presented any actual
17 data to reflect that opinion, have you?

18 A. No, I have not.

19 Q. You also testified that only water from Cimarex
20 wells was being injected into this well. You have not
21 personally stayed out on that site and observed sources
22 of injection into that well, have you?

23 A. No, I have not.

24 Q. So your opinion is just relied upon by you
25 looking at records in a file? Did I understand that

1 correctly?

2 A. My opinion is based upon looking at the volumes
3 that were measured off of the wells that are currently
4 Cimarex operated and comparing that data to the actual
5 volumes that were actually injected into the well. And
6 absent any discrepancies of measurement, they appear to
7 be fairly close.

8 Q. So that is your source of opinion?

9 A. That is correct.

10 Q. But you can't sit in this room today and
11 testify under oath that you're sure there hasn't been
12 injection of water into that well from third parties,
13 can you?

14 A. Like you said, I have not sat on location.

15 Q. Let me ask you, if I may, about volumes. Let
16 me find one of the exhibits here. One of my bad habits,
17 Mr. Gengler, is that I make the biggest mess in the
18 world when I'm moving paperwork around.

19 Exhibit 13.

20 A. 13, okay.

21 Q. As I understand this, this is data on the pump
22 that is currently on the injection well; is that
23 correct, sir?

24 A. That is correct.

25 Q. Do you know how long that pump's been on that

1 injection well?

2 A. It shows in the records that that is the pump
3 that Mallon Oil put out there.

4 Q. So from what you've looked at, this is the
5 original pump?

6 A. That's correct.

7 Q. In your years of experience, is it somewhat
8 unusual to have a pump last that length of time, 23, 24
9 years?

10 A. If properly maintained, yes [sic].

11 Q. That leads me -- you testified that this pump
12 had the capacity of putting certain volumes into the
13 well, as I understand it.

14 A. That's correct.

15 Q. Let me go to your Exhibit 12 for a minute.
16 This creates a great deal of puzzlement for me, and I
17 want to go through this, if I may. Recognize -- I'm
18 talking places -- periods of time that Cimarex did not
19 own this particular -- wasn't operating out there, would
20 be a better way to say it. But let's look at 1994, for
21 instance.

22 A. Okay.

23 Q. I am seeing amounts of 16,145, 16,980 in that
24 particular year. That exceeds the 1,600 BPW [sic] that
25 was in the original application, doesn't it?

1 A. No.

2 Q. Why does it not?

3 A. That's a monthly volume; 30 days in a month.

4 Q. You're saying that 1,600 -- what is the 1,600
5 figure in the original application?

6 A. That's the barrels per day.

7 Q. Per day. Okay.

8 So you don't see anything on page 1 that
9 would exceed the per day?

10 A. That is correct.

11 Q. On page 2, do you see anything that would
12 exceed that?

13 A. No, I do not.

14 Q. And then we finally get to page 3. Do you see
15 anything on that page that would exceed that?

16 A. Yes, the August 1999 that I previously talked
17 about.

18 Q. And your testimony is that that is physically
19 impossible?

20 A. With that pump, yes.

21 Q. Do you have any explanation of why the OCD
22 records would reflect that level of injection?

23 A. I could only speculate.

24 Q. So you don't know?

25 A. No.

1 Q. And then we go to page 4 -- we go to page 4,
2 and I think you've got at least -- or you've got March,
3 I believe. You talked about it; did you not?

4 A. That's correct.

5 Q. And, again, I assume your testimony is the
6 same. That's physically impossible?

7 A. That's correct.

8 Q. But you have no explanation as to why the OCD
9 records would reflect that level of injection?

10 A. All I can do is speculate it was a
11 typographical error.

12 Q. And would that be your testimony all the way
13 through these particular OCD records that are your
14 Exhibit 12?

15 A. With the exception of the time that Cimarex was
16 the operator, I have no records.

17 Q. And you gave some explanation for that issue,
18 if I understood you correctly?

19 A. Which issue are you speaking about?

20 Q. Well, I thought we were talking about -- that
21 was pressure. I'm sorry. You gave an explanation on
22 pressure.

23 Let's go on through here just a moment, if
24 we may. By the time Cimarex became operator, do we have
25 any months where we have the production exceeding the

1 1,600 figure?

2 A. No, we do not.

3 Q. Just a moment, please.

4 As I understand the pressure issue, we have
5 had instances where there has been -- pressure has
6 been -- 640 psi has been -- there have been times when
7 the pressure on that well has exceeded the 640 psi; is
8 that correct?

9 A. Where are you coming up with the 640 psi?

10 Q. Isn't that part of what's in the original
11 application? Am I not correct on that?

12 A. I don't have that in front of me, but the order
13 granted 8 -- I don't have the order in front of me.

14 EXAMINER EZEANYIM: 804.

15 A. 804.

16 Q. (BY MR. MARTIN) Have there been periods when
17 the 804 has been exceeded?

18 A. Just a very few. Again, I addressed those.

19 Q. And your explanation that I heard covers all of
20 those instances; is that correct?

21 A. That is correct.

22 Q. Let's jump to another topic. You gave
23 explanation about the BLM letter. I want to make sure
24 that we all understand. The BLM, to your knowledge, has
25 not withdrawn its objection to the granting of this

1 application, has it?

2 A. To my knowledge, no.

3 Q. And the BLM also -- let me get to the BLM
4 letter here. The BLM has objected to the use of
5 calculated cement -- let me find that letter. I'm not
6 saying it exactly correctly. Let me find the letter.
7 Just a moment, please.

8 The BLM has not withdrawn its objection to
9 the use of the calculated number for the cement tops,
10 has it?

11 A. Not that I'm aware of.

12 Q. And since this is federal mineral right and
13 federal lease, while you testified about what was
14 customary in practice on this issue, isn't, in fact,
15 what is critical here is what the BLM is requiring since
16 this is federal minerals and they've got control?

17 A. Yes. I spoke to Wesley Ingram last week. I
18 updated him on all the information I received from the
19 offset operators, informed him that that information was
20 not available. I gave him the DV tool depths, and he
21 asked me to send all that to him so he could document it
22 in his file.

23 Q. To this date, the BLM has not changed its
24 position on the calculated issue, has it?

25 A. As far as I know, no.

1 MR. MARTIN: May I have just one minute?

2 Q. (BY MR. MARTIN) The BLM has also objected to
3 the permit for this injection well on the basis that
4 Cimarex needs to do further research on freshwater wells
5 in the area. Are you aware of that objection?

6 A. Yes. I discussed that with Wesley.

7 Q. And the only one that there's been any sampling
8 on is this windmill well on the BLM property?

9 A. That is correct. I asked our land department
10 to get permission to sample. That is the only well that
11 we received permission to sample.

12 Q. Are you aware that the reason there was an
13 objection to Cimarex coming on Ross Ranch property and
14 sampling any of the others is because there has not been
15 any type of surface owners -- any agreement under the
16 Surface Owners Protection Act worked out?

17 A. No. That's beyond my expertise.

18 Q. You don't have any of that knowledge?

19 A. That's beyond my expertise. I rely on our land
20 department for that.

21 Q. So the key thing, from your testimony, that
22 Cimarex needs is, they need to have this application
23 approved so they can start in again -- or start in using
24 this injection well? That's the critical need, from
25 your testimony; is that right?

1 A. Correct.

2 Q. So retroactive is immaterial to you, isn't it?
3 It's getting the authority to go forward from this day
4 forward? Isn't that what you're really seeking here?

5 A. I can't answer that question. I can only
6 answer the part that affects my job, which is production
7 and expenses on oil and gas wells. The other part, I
8 can't answer.

9 Q. You also testified about this well, and if I
10 understood -- I'm talking about the injection well. You
11 talked about how to complete it. Have you -- to your
12 knowledge, has there been any studies or tests done to
13 check the current integrity of the well, its casing and
14 its cement? It's been there for a long time.

15 A. The OCD is in charge of doing that. They
16 regularly schedule mechanical integrity tests, and this
17 well has passed every mechanical integrity test that was
18 done.

19 Q. To your knowledge, when was the last time that
20 was done?

21 A. I don't have that information with me.

22 Q. So Cimarex has not on its own attempted to do
23 any type of integrity test in support of this
24 application, have you?

25 A. We monitor the pressures on the casing and on

1 the annulus for our own information, and that
2 information is looked at on a regular basis. And any
3 changes within the pressure would indicate a leak, would
4 throw up a red flag, and we would investigate further.

5 Q. But other than that, Cimarex has done no
6 independent tests or analysis regarding integrity for
7 purposes of supporting this application. That is
8 correct; isn't it?

9 A. I would say monitoring the annulus and the
10 casings are exactly that.

11 Q. That's all. Thank you.

12 EXAMINER EZEANYIM: Any redirect?

13 REDIRECT EXAMINATION

14 BY MR. BRUCE:

15 Q. Just one question. Mr. Gengler, you said the
16 OCD periodically requires mechanical integrity tests.
17 The OCD doesn't do those tests itself, correct?

18 A. No. They witness the test.

19 Q. They witness the test. The test is arranged by
20 the operator, who hires a contractor to do that test?

21 A. That is correct.

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

24 EXAMINER EZEANYIM: Any cross?

25 MR. MARTIN: No.

1 EXAMINER BROOKS: No questions.

2 CROSS-EXAMINATION

3 BY EXAMINER EZEANYIM:

4 Q. Mr. Gengler, how often do you maintain this --
5 since you acquired the property from Mallon Oil, how
6 often do you maintain this --

7 A. We do yearly maintenance, and we do checks on
8 it every month, and we have people that maintain that
9 pump. And that's part of what they do; they're a third
10 party.

11 Q. Let's go back to that information sheet,
12 Exhibit 14. That is the pump-out, you know -- the
13 pump-out is close to what? You know, as -- as an
14 engineer, I like to level the access. I don't know.
15 This access is not level.

16 A. Yes, it is.

17 Q. Can you tell me what is going on? What is
18 your --

19 A. On the right-hand side of the graph is the
20 accesses for the tubing pressure.

21 Q. On the right hand?

22 A. Yeah. You can see tubing pressure -- on the
23 right-hand is the water injection. It says "MCF." That
24 was a mistake. It should be barrels per day.

25 Q. I was confused with MCF. Are you talking about

1 gas or --

2 A. No. It's barrels. That was a typo.

3 Q. Are you talking about 1,000 barrels per day?

4 A. 1,000?

5 Q. Do I consider MCFs?

6 A. Yeah, that should be barrels, not MCFs.

7 Q. Okay. So that would be barrels per day, not --
8 not 1,000 barrels per day, right?

9 A. That's correct, barrels per day.

10 Q. That's a thousand difference from --

11 A. No. It's barrels per day.

12 Q. On the left-hand side is the quantity of water
13 injected?

14 A. Correct.

15 Q. And then on the right-hand side is your tubing
16 pressure, which I'm interested in. Okay.

17 Does this indicate (indicating) the amount
18 of red [sic] that is injected?

19 A. Correct.

20 Q. And this is your tubing pressure?

21 A. No. The black is the tubing pressure.

22 Q. Okay. Oh, okay. I was looking at -- okay.

23 A. And the blue is the right.

24 Q. Is the what?

25 A. Blue is the right barrels per day.

1 Q. That's why you should have some symbols, to
2 tell me which one is which, so I can --

3 A. I apologize.

4 Q. I like to level the access, so I know what I'm
5 doing.

6 You said it's consistently below 1,000
7 pounds -- 1,000 pounds. Okay.

8 And then the injection rate -- the
9 injection rate doesn't really have a meaning because
10 it's not in the order. It might be in the application,
11 but it's not in the order.

12 Okay. Let's go back to work. Normally I
13 start with the construction of the injection well,
14 because that's what's most important to me. Let me see
15 if I can find it. Let me look at Form C-108. Okay.
16 Let's get the -- okay. Do you have that, on page 5?

17 A. Yes.

18 Q. Okay. Now, that's -- this well is currently
19 shut in, right?

20 A. That's correct.

21 Q. Currently shut in, but this is the way it has
22 been injecting all the time?

23 A. That's correct. There's been no work done to
24 this well.

25 Q. As your testimony indicates, this well has

1 passed mechanical integrity every five years as required
2 by the regulations?

3 A. That's correct.

4 Q. Now, the top of cement, 720, is that the
5 calculated maximum bond log?

6 A. Maximum bond log.

7 Q. Do you have logs here that demonstrate that
8 information?

9 A. No, I did not bring them with me. They were
10 filed with the OCD.

11 Q. They were filed with the OCD?

12 A. (Indicating.)

13 Q. This well -- cement bond logs?

14 A. Yes.

15 Q. And it is 720?

16 A. 2,720.

17 Q. 2,720 is the top of the -- there is a cement
18 bond log, not calculated?

19 A. That's correct.

20 Q. Now, let's examine -- based on the calculated
21 and measured, let's go back to your area of review. One
22 of the questions I wanted to ask of you on the area of
23 review: How many wells are in the area of review? How
24 many wells do you have in the area of review?

25 A. 13.

1 Q. 14 wells?

2 A. 13.

3 Q. I thought I saw ten.

4 How many are plugged and abandoned?

5 A. Two.

6 Q. What?

7 A. Two.

8 Q. Okay. Two PA'd.

9 How many are producing?

10 A. 11.

11 Q. So that makes 13. Okay.

12 Let's go back to Exhibit Number 17. Of the
13 four wells -- what is the status of those four wells,
14 Amoco Federal #3, 4; 1Y Pecos Federal; EP-USA #6? What
15 is the status?

16 A. Producing.

17 Q. They are producing?

18 A. Correct.

19 Q. Okay. Now, the way top of cement is
20 calculated. Measure top of cement by CBL?

21 A. CBL.

22 Q. And these are producing wells?

23 A. That's correct.

24 Q. Why did you choose those four out of 11
25 producing wells?

1 A. Those are the only four that had cement bond
2 logs for me to compare to -- to measure to the
3 calculated.

4 Q. Okay. Good.

5 Now, the rest, seven, are calculated,
6 right?

7 A. That is correct.

8 Q. So out of 11 producing wells, 4 have cement
9 bond logs?

10 A. (Indicating.)

11 Q. And you can see the difference between the
12 calculated and the cement bond log. Okay. Good. So
13 let me write that four have cement bond logs, and seven
14 calculated, right?

15 A. Yes.

16 Q. But they are all producing wells?

17 A. Correct.

18 Q. So your testimony today is that since 1989, no
19 well has come into focus in the area of review?

20 A. That's correct.

21 Q. Between these wells, no new wells have been
22 drilled?

23 A. There is a slight difference between the
24 original application and the current application.

25 Q. What is the slight difference?

1 A. They had 12 wells. They considered one well
2 outside of the area of review, and we considered it in.

3 Q. I'm sorry. Can you repeat that? They have
4 what?

5 A. They had one well that they considered just
6 barely outside of the half-mile radius area of review.

7 Q. "They considered." Who is that "they"?

8 A. Mallon.

9 Q. Oh, okay.

10 A. And we considered it just in. It's right on
11 the line, so that's where the extra well came from, 13
12 instead of the 12 that were in the original application.

13 Q. So in 1989, Mallon may have submitted 12, but
14 now you have submitted 13, and there has been no change?

15 A. Correct. All those wells were drilled before
16 Mallon's application.

17 Q. And all this area of review has penetrated the
18 injection interval?

19 A. Yes.

20 Q. All of them?

21 A. Yes.

22 Q. Including the producing and the plugged and
23 abandoned. And here are we going to see the two plugged
24 and abandoned wells to see if they are properly plugged
25 and abandoned, on the C-108?

1 A. I misunderstood what you said.

2 Q. I said your plugged and abandoned wells --

3 A. Okay.

4 Q. -- and the applications --

5 A. Yeah. 14 and 15.

6 Q. So you chose to demonstrate your calculation on

7 the cement bond log and measure cement bond log -- I

8 mean, measure the top of cement bond log and just

9 forward that available [sic]?

10 A. (Indicating.)

11 Q. Okay. That's what you said, right?

12 A. Yes.

13 Q. The data is not available?

14 A. Correct.

15 Q. Because they are producing wells?

16 A. Correct, and they weren't running --

17 Q. Do you know the majority of the operators on

18 those producing wells?

19 A. There are two operators.

20 Q. How many? Two operators?

21 A. Two.

22 Q. Okay. You being one?

23 A. No. Two other operators in addition to

24 Cimarex.

25 Q. So there are about three operators. Okay.

1 A. Six of those wells that I calculated came from
2 one operator and one from another.

3 Q. Sometime during the testimony, your counselor
4 asked you what are the pressures requested of the
5 original operator. I didn't want to cut in. What are
6 the pressures requested by the original operator? Do
7 you know what pressure they requested, apart from .2
8 psi --

9 A. From best of my memory, I don't think I have
10 the original application.

11 Q. Yeah. But what would you be requiring? What
12 would you be requesting?

13 A. We are requesting .2 psi.

14 Q. You're not requesting an increase in pressure?

15 A. We're not asking for an increase in pressure.

16 Q. So the -- will do the work?

17 A. That's correct. We've taken steps to make sure
18 that the pressure doesn't -- that they speed the pump up
19 so that won't be exceeded anymore.

20 Q. Now, when we talked about the injection water
21 and the formation water, what is the concentration of
22 the formation water?

23 A. The concentration?

24 Q. I mean, what is the chloride content. Let's
25 start there.

1 A. That is Exhibit 19.

2 MR. BRUCE: Page 19.

3 A. Page 19 of that exhibit. It's 175,000 for that
4 well.

5 Q. (BY EXAMINER EZEANYIM) For injecting water from
6 the chloride content into the 175?

7 A. Maybe I misunderstood the original question.

8 Q. Okay. The original question -- okay. Let me
9 go -- I think you're on page 19, right?

10 A. Page 19 of the C-108.

11 Q. Like Mr. Martin, I can be confused.

12 A. The C-108 application, Exhibit Number 15, page
13 19.

14 Q. Okay. Yeah. Okay. Page 19. Okay. The
15 chloride content in this well is 175,000. Is that the
16 chloride content in the Cherry Canyon Formation?

17 A. In that particular zone that they are producing
18 from, yes.

19 Q. Okay. Now, this well was done in 2013. And
20 then in 1988, prior to the issuance of this order, it
21 was 189.

22 A. That was -- my best guess is, that was from a
23 different well that has slightly different chloride
24 concentrations.

25 Q. Now, you just said that you wanted to determine

1 whether there was other water to be injected into this
2 well, so you shut in all of your wells, right?

3 A. Correct.

4 Q. Did you shut in all the wells primarily
5 because of that purpose? Did you just shut it in to see
6 if there is any water going into the injection well,
7 just because of that?

8 A. No. We had other things going on. We needed
9 to shut all the wells in.

10 Q. I'm glad you said that, because you can't shut
11 in those wells just to know whether -- you should know
12 whether you have bad water from any other operators.

13 A. No. We had other issues that we needed to shut
14 all the wells in temporarily.

15 Q. Temporarily, because I don't want you to induce
16 waste.

17 A. That's correct.

18 Q. These are oil wells, right?

19 A. Yes.

20 Q. You can't just shut in the well without having
21 a reason.

22 A. No.

23 Q. When you said that, you know, my head got red.
24 You can't just shut in your well to determine whether
25 you are doing -- from any other operators. You should

1 know whether -- what type of water is being injected in
2 there, right?

3 A. Right. And we had all the wells shut in for
4 another reason, and that was just -- we got no
5 additional water pumped into our tanks.

6 Q. Very good. When you said that -- operator put
7 water into your well. We are not there. You should
8 know, whether from me or not, you should not shut in the
9 well. Okay. Very good.

10 Because this case is contested, you
11 decided -- you have an economic analysis that you did
12 that shows if we didn't approve this SWD, you would run
13 into economic melee [sic] or something. Did you
14 actually do a calculation to demonstrate that? Did you
15 actually do some calculation to say: If we continue to
16 truck water, these wells will not be economic again
17 because of the amount we spend in trucking?

18 A. Yes. What I did was, I looked at what the --
19 since the newest order come [sic] out and we had to shut
20 the saltwater disposal in, I'm looking at the economics
21 after that as compared to the economics before that, and
22 looking at the cost numbers and saying, you know,
23 without a huge change in product pricing, there would be
24 several wells that are on the bubble.

25 Q. How many complaints have you gotten since you

1 started in 2005, because you don't know what happened
2 before 2005? How many complaints have you received from
3 anybody about injecting to this well? How many
4 complaints?

5 A. None that I'm aware of.

6 Q. Except from BLM?

7 A. First thing that I know of a complaint about
8 this well was when Ross Ranch brought up the point that
9 they weren't notified. There was no complaints from the
10 BLM about how we were operating that well that I'm aware
11 of.

12 Q. At least Ross Ranch is a complaint?

13 A. Right.

14 Q. They complained to you that they didn't get
15 notice, right?

16 A. Right. That's all I'm aware of.

17 Q. What did they tell you?

18 A. It was secondhand knowledge to me, but they
19 were -- I found out that they were asking that the
20 permit be revoked because they weren't notified, and
21 that's when I was pulled into this.

22 Q. Okay. Nothing further. You may step down.

23 MR. MARTIN: I have an additional question,
24 if I may, maybe two or three here.

25

RECROSS EXAMINATION

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BY MR. MARTIN:

Q. Mr. Gengler, I realized I failed to ask you a question or two in relation to this letter from the BLM. I'm looking at that letter now, and there is a sentence in here that says: "The well will be required to have an annulus monitoring system that is open to atmosphere since the cement behind the proposed injection casing does not tie back into the previous casing string." Are you aware of that requirement?

A. I saw that on the letter.

Q. Does Cimarex have an intent of putting in an annulus monitoring system?

A. If the BLM would require that, yes, we would do that.

Q. What is your understanding of why one would be necessary? Is it because there is a question of the integrity of the cement because it does not tie back into the previous casing string?

A. No. I think that -- you know, it's my opinion that the BLM has felt like some operators, not all, obviously, have not monitored their casings on a regular basis like Cimarex does, and they have started asking that operators do this. I'm not sure it's an actual rule that they've come out with, but it's a voluntary

1 thing that they've asked to be done.

2 Q. Isn't the reason for this requirement because
3 the BLM has a concern about the integrity of the cement
4 in the casing in this well?

5 A. That's a question for the BLM.

6 Q. I think that's all.

7 EXAMINER EZEANYIM: Thank you, Mr. Martin.
8 Mr. Bruce?

9 MR. BRUCE: I have nothing further of this
10 witness.

11 EXAMINER BROOKS: I have nothing.

12 EXAMINER EZEANYIM: Okay. You may be
13 excused.

14 Mr. Martin, how long is your case going to
15 be?

16 MR. MARTIN: If you can give me about four
17 minutes to talk to my client, and I need to talk to
18 Mr. Bruce, I can tell you exactly what we're going to
19 need. I may be able to short circuit this whole thing.

20 EXAMINER EZEANYIM: Very good. Let's take
21 five minutes.

22 (Break taken, 12:10 p.m. to 12:15 p.m.)

23 MR. MARTIN: Mr. Hearing Examiner, we are
24 not going to put any testimony on. We're going to move
25 introduction of our exhibits. I believe they are 1

1 through -- let me look at my numbers.

2 MR. BRUCE: 6.

3 MR. MARTIN: 6. You already have those.

4 Mr. Bruce has indicated he has no objection.

5 EXAMINER EZEANYIM: Okay. Good.

6 MR. BRUCE: I have no objection.

7 MR. MARTIN: And my only other comment is,
8 rather than us spending time doing a bunch of oral
9 argument at the end, I would suggest that we be given an
10 opportunity to either submit written argument or a
11 proposed order.

12 MR. BRUCE: And I'd agree to that. I think
13 both parties can summarize a lot more concisely if we do
14 that.

15 The only thing I would ask is, the timing
16 on the submission -- I'd ask until September 6th --

17 MR. MARTIN: That's fine with me.

18 MR. BRUCE: -- just because I have -- and I
19 think the court reporter said she wouldn't be ready for
20 about a week or so with the transcript, and I have a
21 bunch of junk I've got to do over the next couple of
22 weeks. So I would prefer a September 6th date for the
23 submission of the proposed order or oral argument -- I
24 mean written argument.

25 EXAMINER EZEANYIM: I'm going to extend it

1 more than that, if there is no objection, because I'm
2 just buried. I won't get to this by September 6th.
3 There are a lot more -- there are some hearings from the
4 beginning of this year that I haven't even gotten to.
5 So I don't have time. So if you could take -- if there
6 is no urgency or no environmental impediments, I would
7 even say to, you know, mid-September or end of September
8 so that you guys can get on with it. Submit --

9 MR. BRUCE: To work with your schedule, I
10 would suggest it would be probably Friday the 13th.

11 MR. MARTIN: That's a good day (laughter).

12 MR. BRUCE: If we have an issue or if you
13 (indicating) have an issue, we could ask for more time.

14 MR. MARTIN: That's fine.

15 EXAMINER EZEANYIM: Let me -- let me get a
16 consensus. September 13th, you are going to submit a
17 closing statement and a draft order from each party?

18 MR. BRUCE: That is correct.

19 EXAMINER EZEANYIM: This will also help me
20 know what's going on, too. So submit your closing
21 statements so we don't have to deal with it today and a
22 proposed order on September -- let me write it down.

23 MR. BRUCE: Friday, the 13th.

24 MR. MARTIN: Friday, the 13th.

25 EXAMINER EZEANYIM: As you said, it's a

1 good day.

2 EXAMINER BROOKS: Well, I remember
3 remarking one time in a particular case, when counsel
4 suggested that we set it for trial on October 31st, that
5 that was appropriate because there were a lot of things
6 in that case that seemed a lot like Halloween.

7 (Laughter.)

8 EXAMINER EZEANYIM: So we submit closing
9 statements and draft order on September 13. That's a
10 Friday, right?

11 MR. MARTIN: Yes.

12 EXAMINER EZEANYIM: Is that okay with the
13 parties?

14 MR. BRUCE: Yes.

15 MR. MARTIN: (Indicating.)

16 EXAMINER EZEANYIM: That's wonderful.

17 Are there any other proceedings the
18 Examiner should know?

19 MR. BRUCE: No, sir.

20 EXAMINER EZEANYIM: Okay. Very good.

21 EXAMINER BROOKS: Well, I would remark that
22 parties may want to address in their briefs the
23 question -- from Cimarex's point of view, what
24 difference does it make whether or not we make this
25 order retroactive or whether we make it effective from

1 the day of its issuance other than, of course, the
2 possibility that the Division might bring an enforcement
3 action, which I think you and I have been around here
4 long enough to know that's probably very unlikely.

5 MR. BRUCE: I was going to address that,
6 and I'm sure Mr. Martin was going to address it.

7 MR. MARTIN: (Indicating.)

8 EXAMINER BROOKS: The other one question
9 being -- Mr. Martin touched on this. For common-law
10 reasons, judicial reasons, he's urging that we don't
11 have the authority to make a retroactive -- to issue a
12 retroactive -- I know that we have statutory authority
13 to make compulsory pooling orders retroactive. In fact,
14 we're directed to do so, but I don't know anything about
15 whether there is any issue of -- other than compulsory
16 pooling orders.

17 MR. BRUCE: I was actually ready to address
18 that at closing, but I can do that in a brief.

19 EXAMINER BROOKS: Very good. Appreciate
20 that.

21 EXAMINER EZEANYIM: I don't want briefs.
22 Briefs is a -- I want closing statements. When they say
23 they want to submit briefs, man, you are going to give
24 me a one-foot thing.

25 (Laughter.)

1 EXAMINER BROOKS: I would suggest --

2 MR. BRUCE: That's a minimum, Mr. Examiner.

3 EXAMINER EZEANYIM: Yeah, it's as minimum,
4 but I want to read only about two or three pages. What
5 is a brief, a written brief? I mean, I couldn't read it
6 in a year. I don't want briefs.

7 MR. BRUCE: I think Mr. Martin and I both
8 in the past have been ready to be brief in our briefs
9 and cite copies of cases that we rely on.

10 MR. MARTIN: That's fine.

11 EXAMINER EZEANYIM: That would be
12 wonderful. So I appreciate what you guys -- instead of
13 doing this -- we are going to do whatever we can to
14 accommodate everybody. That's our job here, but not
15 going forward with all this testimony that takes a lot
16 of time, we can use it for something else.

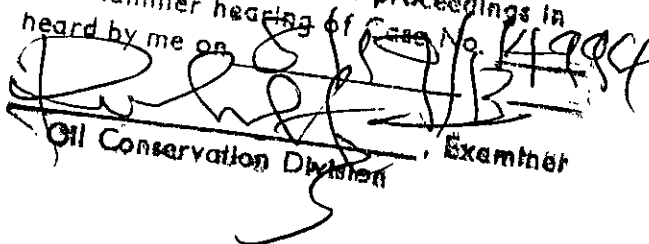
17 I really appreciate, Mr. Martin, for you
18 guys reaching this agreement and Mr. Bruce for reaching
19 the agreement of suspending this hearing and then having
20 to deal with the submission -- not briefs, but closing
21 statements and your draft order. If that is okay with
22 everybody, that is what we are going to do.

23 With that being said, we get our briefs --
24 not briefs -- closing statements and draft order on
25 Friday, September 13th.

1 With that being said and everybody knowing
2 that, Case Number 14994 will be taken under advisement.

3 Thank you very much.

4 (Case Number 14994 concludes, 12:22 p.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. 14994
heard by me on 8/5/13

Oil Conservation Division, Examiner

1 STATE OF NEW MEXICO
2 COUNTY OF BERNALILLO
3

4 CERTIFICATE OF COURT REPORTER

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

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

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

19 
20

21 MARY C. HANKINS, CCR, RPR
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