

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

IN THE MATTER OF THE HEARING CALLED BY)
THE OIL CONSERVATION DIVISION FOR THE)
PURPOSE OF CONSIDERING:)
)
APPLICATION OF LANCE OIL AND GAS) CASE NOS. 13,537
COMPANY, INC., FOR COMPULSORY POOLING)
INCLUDING OPTIONAL INFILL WELL)
PROVISIONS, SAN JUAN COUNTY, NEW MEXICO)
)
SYNERGY OPERATING, L.L.C., FOR) and 13,539
COMPULSORY POOLING, SAN JUAN COUNTY,)
NEW MEXICO)
) (Consolidated)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: RICHARD EZEANYIM, Hearing Examiner

August 25th, 2005

Santa Fe, New Mexico

This matter came on for hearing before the New Mexico Oil Conservation Division, RICHARD EZEANYIM, Hearing Examiner, on Thursday, August 25th, 2005, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South Saint Francis Drive, Room 102, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

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A P P E A R A N C E S

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* * *

1 WHEREUPON, the following proceedings were had at
2 11:02 a.m.:

3 EXAMINER EZEANYIM: At this point, I will call
4 Case Number 13,537 and 13,539 and combine the two cases.
5 Is there any objection to that?

6 MR. BRUCE: No, sir.

7 EXAMINER EZEANYIM: 13,537 and 13,539 will be
8 combined and heard at the same time.

9 First, I will call Case 13,537. This is the
10 Application of Lance Oil and Gas Company, Inc., for
11 compulsory pooling including optional infill well
12 provisions, San Juan County.

13 And the other case is on page 3 -- actually on
14 page 4 -- Case Number 13,539. This is the Application of
15 Synergy Operating, L.L.C., for compulsory pooling, San Juan
16 County, New Mexico.

17 Call for appearances on both cases.

18 MR. BRUCE: Mr. Examiner, Jim Bruce of Santa Fe,
19 representing Synergy Operating, L.L.C. I have one witness.

20 MR. CARR: May it please --

21 EXAMINER EZEANYIM: Are there any other
22 appearances?

23 MR. CARR: May it please the Examiner, my name is
24 William F. Carr with Holland and Hart, Santa Fe office.
25 I'm also appearing with W. Thomas Kellahin of Kellahin and

1 Kellahin, and we represent Lance Oil and Gas Company, Inc.,
2 and we also have one witness.

3 EXAMINER EZEANYIM: One witness. Okay before I
4 continue with this case, I don't know, how do I tell who is
5 the Applicant and who is -- ? I mean, this an interesting
6 case. Are you the Applicant, everybody? The two of you
7 are Applicants, but --

8 MR. BRUCE: Yeah, they're counter-Applications,
9 they both seek to force pool the same acreage.

10 EXAMINER EZEANYIM: Okay, yeah, and what you are
11 asking me now to do is to decide, you know, between them --
12 Well, that's good, I can do that. But I expected prudent
13 operators to have reached an agreement there, whether there
14 is any joint operating agreement that will guide this
15 procedure. But if not, you know, we will go ahead and then
16 I will have to make a decision on who is going to be the
17 operator.

18 May the witnesses stand up to be sworn?

19 (Thereupon, the witnesses were sworn.)

20 EXAMINER EZEANYIM: Mr. Bruce?

21 (Off the record)

22 EXAMINER EZEANYIM: You may proceed, Mr. Bruce.

23 This is -- You are representing Synergy, right?

24 MR. BRUCE: Yes, sir.

25 EXAMINER EZEANYIM: Okay.

1 MR. BRUCE: Mr. Examiner, we're representing a
2 thick pile of exhibits, and probably Mr. Carr will also.
3 The thickness of the exhibits is related mainly to the
4 notice, so -- there are many, many, many interest owners in
5 this property, so...

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

9 DIRECT EXAMINATION

10 BY MR. BRUCE:

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

12 A. My name is Patrick Hegarty.

13 EXAMINER EZEANYIM: I believe the witnesses have
14 been sworn, right?

15 MR. BRUCE: Yes.

16 EXAMINER EZEANYIM: Okay. What's your name?

17 THE WITNESS: Patrick Hegarty.

18 Q. (By Mr. Bruce) Please spell your last name, Mr.
19 Hegarty.

20 A. H-e-g-a-r-t-y.

21 Q. And who do you work for?

22 A. I am a principal with Synergy Operating, L.L.C.

23 Q. And by profession what are you?

24 A. A landman.

25 Q. Have you previously testified before the Division

1 as a petroleum landman?

2 A. Yes, I have.

3 Q. And were your credentials as an expert accepted
4 as a matter of record?

5 A. Yes, they were.

6 Q. And are you familiar with the land matters
7 involved in this Application?

8 A. Yes, I am.

9 MR. BRUCE: Mr. Examiner, I'd tender Mr. Hegarty
10 as an expert petroleum landman.

11 EXAMINER EZEANYIM: Mr. Hegarty is so qualified.

12 Q. (By Mr. Bruce) Mr. Hegarty, could you refer to
13 Synergy's Exhibit 1 and identify the land you seek to force
14 pool?

15 A. The land Synergy Operating seeks to force pool is
16 the west half of Section 22 of 29 North, Range 13 West, in
17 San Juan County, New Mexico.

18 Q. Is this land in or near Farmington?

19 A. Yes, it is.

20 Q. And what does Exhibit 1 depict with respect to
21 that property?

22 A. Predominantly what this plat depicts is the
23 complexity of title associated with the 320-acre proration
24 unit. You will note that there's a half a dozen or so
25 subdivisions associated with the proration unit.

1 Q. And what is depicted in yellow?

2 A. The acreage depicted in yellow are those lands
3 that Synergy currently has under lease.

4 Q. Okay.

5 A. Further, the acreage outlined in blue on the
6 bottom is that of which is currently owned by BP.

7 Q. Being the south half of the southwest quarter?

8 A. That's correct.

9 Q. With respect to this Application and Lance's
10 Application, do both parties seek to drill two wells on
11 this half section?

12 A. That's correct.

13 Q. And are these wells planned to be Fruitland Coal
14 and Pictured Cliffs tests?

15 A. That's correct.

16 Q. Okay. So there will be one well in the northwest
17 quarter and one well in the southwest quarter?

18 A. That's correct.

19 Q. Because of the residential nature of this area,
20 is it somewhat difficult to obtain a good well location?

21 A. Yes, there has been some difficulties picking
22 locations to drill.

23 Q. And are there also City of Farmington
24 requirements to comply with on certain of this land?

25 A. Yes, there is.

1 Q. Okay. What is Exhibit 2?

2 A. Exhibit 2 is the breakout of ownership, and we
3 checked the county records yesterday, and they were -- the
4 leases were recorded as of August 21st, '05, in terms of
5 lands. But as of August 21st, '05, we showed Lance to own
6 105.7455 acres. As previously mentioned, BP owns 80 acres.
7 We own 72.5625 acres, and we show the unleased acreage as
8 being 61.6920 acres, for the total of 320 acres.

9 Q. And there are some pages attached to Exhibit 2.
10 What does that represent?

11 A. Those are the parties that had either been
12 written to or have been identified as unidentified -- or
13 unlocatable parties. So those are the parties of which we
14 wish to force pool.

15 Q. Has this land been force pooled before?

16 A. Yes, it has.

17 Q. And when and what for?

18 A. Pan American Petroleum Corporation force pooled
19 this property under Case Number 2972 on November 25th,
20 1963, for the purposes of drilling two Dakota wells.

21 Q. Okay, and so that force pooling was for the
22 Dakota?

23 A. That's correct.

24 EXAMINER EZEANYIM: What is the R-order number?
25 Do you have the R number?

1 THE WITNESS: Yes, the case number is 2972.

2 EXAMINER EZEANYIM: That's not the number --

3 MR. BRUCE: Order number?

4 THE WITNESS: Oh --

5 EXAMINER EZEANYIM: Do you have it handy?

6 THE WITNESS: You know, I don't have that order
7 number.

8 EXAMINER EZEANYIM: Okay, that's okay. And it
9 was 1963?

10 THE WITNESS: It was November 25th of 1963. Yes,
11 I do have the order number.

12 EXAMINER EZEANYIM: What is it?

13 THE WITNESS: It is R-2643.

14 EXAMINER EZEANYIM: Thank you.

15 Q. (By Mr. Bruce) These many, many people who own
16 interests, unleased acreage, what are the tract sizes or
17 lot sizes that these people own?

18 A. They range in size from a tenth of an acre to
19 three-quarters of an acre.

20 Q. Looking at Exhibit 1, it would appear that most
21 of them are on the smaller end of that scale; is that
22 right?

23 A. That's correct.

24 Q. What does Exhibit 3 represent?

25 A. Exhibit 3 represents a copy of the mineral deed

1 and the oil and gas leases that Synergy has acquired to
2 comprise the acreage that we represent in the yellow. I
3 will say that there were some top leases that were
4 acquired, a top lease being a lease that Richardson had
5 acquired a number of years ago, Lance being the predecessor
6 in interest, and those leases were not included in this
7 pile or stack.

8 Q. And this simply to exhibit that Synergy does have
9 oil and gas leasehold title in this half section of land?

10 A. That's correct.

11 Q. Now initially, several months ago, did you
12 attempt to obtain leases from unleased mineral owners?

13 A. Yes, we did.

14 Q. And you obtained some leases?

15 A. Yes, we did.

16 Q. But once -- If they didn't lease, did you then
17 send out proposal letters to the unleased mineral owners?

18 A. Yes, we first attempted to lease them, and then
19 at the point in time that that effort seemed to be futile,
20 we went ahead and submitted to them on July 1st a letter
21 that advised them of our plans to drill, gave them a copy
22 of an AFE, and then we gave them a number of options. You
23 know, they could sell their minerals, they could farm out,
24 they could participate. And earlier, they had the lease
25 option, so that was still one that was a viable option.

1 But we tried to comply with every, you know, form
2 of possible participation or sale. Whatever would
3 accommodate their individual needs, we certainly tried to
4 accommodate each individual mineral owner, as well as
5 leasehold owner. We extend the same courtesy and notified
6 Lance and gave them the same option.

7 Q. And some of the people actually did sell their
8 minerals?

9 A. Yes, they did.

10 Q. Now, Exhibit 4 is only four letters but was -- I
11 see that you mailed one letter to the City of Farmington,
12 one to Lance, and one to BP Production; is that correct?

13 A. That's correct.

14 Q. And then you have a generic letter. Was this the
15 letter that was sent to all of the remaining interest
16 owners?

17 A. Yes, it was.

18 Q. Okay. And this proposal letter again proposed
19 the well, and did it enclose -- or inform people of the
20 proposed cost of the two wells?

21 A. Yes, we included an authority for expenditure,
22 referred to in the industry as an AFE, for both of the two
23 proposed wells. And if you want to look at the AFE, just
24 look for orange.

25 EXAMINER EZEANYIM: This one?

1 MR. BRUCE: We'll get to that --

2 EXAMINER EZEANYIM: We'll get to that.

3 THE WITNESS: Okay.

4 MR. BRUCE: -- Mr. Examiner.

5 Q. (By Mr. Bruce) In your opinion, did Synergy make
6 a good-faith effort to obtain the voluntary joinder of
7 people in this well unit?

8 A. Yes. One thing I did want to also state is that
9 we did send out a notice, and we published a notice in the
10 *Farmington Daily Times* as well --

11 Q. Okay.

12 A. -- so in answer to your question, yes, we made
13 every concerted effort to notify and give available options
14 to the mineral interest owners and leasehold owners to
15 participate in the drilling of these well, sell or lease.

16 Q. Okay. And was notice of this Application mailed
17 to the people who did not join in your proposal?

18 A. Yes.

19 Q. And is that submitted as Exhibit 5?

20 A. Yes, it is.

21 Q. Now, behind Exhibit 5 there are some multi-
22 colored sections or packets. Could you go through and
23 identify what these pertain to?

24 A. Okay. The -- Due to the complexity of the number
25 of tracts and whatnot, what we tried to do was simplify

1 this in a color-code, so basically the pink colors are
2 those receipts representing the individuals that we --
3 letters that were sent out and mailed on July 1st. And
4 what you're looking at there are the postal receipts and
5 the return receipts for the July 1st letters.

6 The orange are the postal receipts and return
7 receipts mailed July 7th, and then the July 13th was the
8 last letter that we sent, and that was to Lance, inviting
9 them to participate with us in the drilling of this well.

10 EXAMINER EZEANYIM: Which one is this? This one?

11 THE WITNESS: Yes.

12 EXAMINER EZEANYIM: To Lance.

13 THE WITNESS: And basically, I didn't include the
14 postal receipt for Lance because -- what I did include was
15 the letter that they wrote July 29th, and in that letter
16 you will note that Lance acknowledged our letter dated July
17 13th.

18 So that in and of itself acts a receipt, and it
19 does give you an idea that, you know, we tried to negotiate
20 with Lance and work out, you know, some middle ground in
21 which we both could, you know, operate the respective
22 wells, they could operate the northwest, we could operate
23 the southwest. We attempted to split the baby, and they
24 elected to not agree to that settlement offer.

25 But the point I want to make here is that we did

1 attempt to work out a solution with Lance to avoid this
2 hearing.

3 And then the green is the unclaimed certified
4 letters. These were the letters that were sent out and the
5 people just failed to pick them up at the post office.

6 Q. Do you know for a fact that many of these people
7 were available, they simply did not claim that?

8 A. That's right. And the way you can tell that is,
9 on each envelope it, you know, basically -- you know, they
10 have certain dates like July 13th, July 2nd, July 22nd.
11 And basically what they did was, you know, periodically
12 check the box -- or not check the box, but went through,
13 checked the letters were there and verified that they had
14 been unclaimed.

15 And apparently they get -- the post office has a
16 process and they go through, you know, a series of these
17 checks, they write the dates on the letter and then, you
18 know, ultimately they'll return them to sender if they're
19 unclaimed.

20 EXAMINER EZEANYIM: The unclaimed letters, is it
21 your opinion that they don't live there anymore, or they
22 refused -- just to simply refused to claim them?

23 THE WITNESS: No, it is our opinion that they
24 just refused to pick these up.

25 EXAMINER EZEANYIM: The notice letters, they

1 refused to pick it up?

2 THE WITNESS: Yeah, these are good addresses.

3 Q. (By Mr. Bruce) And what does the --

4 A. And then the last were the undeliverable
5 certified letters, and these are the letters where these
6 are bad addresses.

7 EXAMINER EZEANYIM: Undeliverable means the
8 address doesn't exist anymore?

9 THE WITNESS: Right. And you know that because,
10 you know, it says it's unable to forward -- you know,
11 attempted, not known. That's the difference between the
12 two.

13 And you know, one point I would like to make and
14 hope that you all appreciate is, we took the philosophy of
15 being an inclusive philosophy. That means that any party
16 -- we started with the last force pool hearing as a base,
17 and every party that was identified at that point as being
18 an interest owner, we started there, we contacted all of
19 those parties, we contacted all of the parties that owned
20 surface, being that there was a -- you know, a possibility
21 that they owned interest.

22 So we took this inclusive philosophy, and we felt
23 that, you know, in order to comply with the state statutes
24 and regulations, that to be overly abundant in notifying
25 people was certainly a prudent and proper thing to do. So

1 this inclusive approach was something we felt allowed for a
2 better adherence to the state laws and regulations.

3 Q. What is Exhibit 6?

4 A. Exhibit 6 is the AFEs.

5 Q. And what is the cost for each of the proposed
6 wells?

7 A. Roughly it is \$400,000.

8 Q. And are these costs in line with the costs of
9 other Fruitland Coal/Pictured Cliffs tests drilled in this
10 area of San Juan County?

11 A. Well, my reservoir engineer informs me that since
12 this has been put together, that costs in the San Juan
13 Basin have been increasing, service companies are taking
14 advantage of the high gas prices, and in our guesstimation
15 it may be slightly more expensive due to these cost
16 increases that are being passed on to operators. But he
17 informed me of that yesterday, because we're drilling some
18 other wells, and some of these guesstimations. But they're
19 within a 10-percent -- 10 to 15 percent, so in my opinion
20 they are an accurate representation of what it will cost to
21 drill these two wells.

22 EXAMINER EZEANYIM: Is this the dryhole --

23 THE WITNESS: We are not anticipating a dry hole
24 because of the offset, so we did not include that --

25 EXAMINER EZEANYIM: Okay.

1 THE WITNESS: -- the dryhole cost.

2 Q. (By Mr. Bruce) Would updated AFEs be provided to
3 the parties under a pooling order?

4 A. Sure, they will. As a matter of fact, we're --
5 begun that process.

6 Q. And what is Exhibit 7?

7 A. Exhibit 7 is the newspaper publication, the
8 notice that was filed in *The Farmington Daily Times*.

9 Q. And this was for unlocatable people?

10 A. That's correct.

11 Q. Do you propose, since there were a lot of
12 returned -- even though -- there were a number of unclaimed
13 letters, and even though you believe there are -- those are
14 good addresses, do you propose to publish another notice as
15 to all unclaimed or unavailable addressees?

16 A. Yes, we do.

17 Q. As a result, we think that -- would you request
18 that after this the hearing be continued just to provide
19 publication notice?

20 A. Yes, I would.

21 Q. Proof of publication, I should say?

22 A. (Nods)

23 Q. What overhead rates do you propose?

24 A. \$5000 for the drilling, \$500 for the monthly
25 operation.

1 Q. And are those rates fair and reasonable and in
2 line with the rates of other operators in this area?

3 A. Yes, they are.

4 Q. And what is Exhibit 8, Mr. Hegarty?

5 A. Exhibit 8 is basically the résumés of the two
6 engineers that would be managing this project, and -- Glen
7 Papp and Thomas Mullins. Both are petroleum engineers.
8 One, Tom Mullins, is a graduate of Colorado School of
9 Mines. Glen Papp is a graduate of the University of Texas,
10 both in petroleum engineering. They're both, like I said,
11 certified.

12 They have probably, between the two of them, been
13 responsible for the drilling of more Fruitland Coal wells
14 than any other engineers in the San Juan Basin. And the
15 reason why I say that is, early in Synergy's career we did
16 consulting work, engineering consulting work, and these two
17 engineers managed the drilling of ConocoPhillips' Fruitland
18 Coal wells for a period of -- I think it was five or six
19 years, as well as other companies. And so between the two
20 of them, they have drilled and completed hundreds and
21 hundreds, possibly even a thousand -- you know, if needed I
22 can get an exact figure. But the point is, they're, you
23 know, as qualified as any engineer in the San Juan Basin to
24 drill and complete and produce these two wells.

25 Q. Does Synergy request that it be designated

1 operator of the well unit?

2 A. Yes, it does.

3 Q. Now, you mentioned earlier that Synergy had
4 proposed that Lance operate the well to be drilled in the
5 northwest quarter and Synergy operate the well to be
6 drilled in the southwest quarter; is that correct?

7 A. That's correct.

8 Q. And that is permissible under the -- in the
9 Fruitland Coal under the Division's current rules; is that
10 correct?

11 A. As I understand it, yes, it is.

12 Q. And is that result still acceptable to Synergy
13 Operating?

14 A. Yes, it is.

15 Q. Were Exhibits 1 through 8 prepared by you, under
16 your supervisions, or compiled from company business
17 records?

18 A. Yes, they were.

19 Q. And in your opinion is the granting of Synergy's
20 Application in the interests of conservation and the
21 prevention of waste?

22 A. Yes, it is.

23 MR. BRUCE: Mr. Examiner, I'd move the admission
24 of Synergy Exhibits 1 through 8.

25 MR. CARR: No objection.

1 EXAMINER EZEANYIM: No objection? Okay, Exhibits
2 1 through 8 will be admitted into evidence.

3 Mr. Carr --

4 MR. CARR: Thank you.

5 EXAMINER EZEANYIM: -- your witness.

6 CROSS-EXAMINATION

7 BY MR. CARR:

8 Q. Mr. Hegarty, if I understand it correctly, you're
9 the person at Synergy in charge of the effort to combine
10 these lands for the drilling of this well; is that right?

11 A. Yes, I am.

12 Q. When did you start your effort to try and combine
13 the lands in the west half of Section 22?

14 A. In May.

15 Q. And did you have a title opinion prepared as part
16 of your effort to identify who actually was involved in
17 this spacing unit?

18 A. No, we did not.

19 Q. Was it based on your land work? Who did the land
20 work?

21 A. There were three individuals that basically we
22 put on this task, and anyway those three individuals did a
23 compilation, and in order to speed the process we began
24 with the British Petroleum -- or Pan American, as they were
25 called earlier in 1963, and we began with that -- with the

1 work that they did at that point in time, and we carried
2 the title forward from that point.

3 Q. Why did you want to speed this process?

4 A. Well, we want to drill wells before the end of
5 the year in order to avoid paying taxes, so it's important
6 that, you know, we get these wells drilled before year end.

7 Q. And were you aware in May that Lance was already
8 proposing a well on this acreage?

9 A. No, I was not. You have offered as your Exhibit
10 4 letters to the mineral interest owners, these are copies
11 of letters --

12 A. Yes.

13 Q. -- similar letters were sent to a number of
14 people?

15 A. Yes.

16 Q. In fact, you sent earlier letters to
17 individuals --

18 A. Yes, we did

19 Q. -- is that right?

20 Let me show you what I'm going to mark as our
21 Exhibit 14 and just ask if you recognize this letter. Do
22 you recognize this?

23 A. Yes.

24 Q. In fact, this is a letter that was part of your
25 land effort to combine the lands for this spacing unit;

1 isn't that correct?

2 A. That's correct.

3 Q. And you stated you started working on this in May
4 and in June, you were already contacting interest owners,
5 trying to acquire these properties?

6 A. Yes, we were.

7 Q. And it's fair to say that the first sentence in
8 this says that you started contacting interest owners based
9 only on a cursory title check of county records; is that
10 correct?

11 A. That's correct.

12 Q. Have you confirmed, based on the lease that you
13 now have, in fact, that they are valid leases and that the
14 lessor owns the mineral interest that they have conveyed to
15 you?

16 A. Yes, we have.

17 Q. In terms of these people you've been unable to
18 reach -- and we have people we've been unable to reach --
19 what do you intend to do with the share of the proceeds
20 that are going to be allocated to those interest owners?

21 A. We will force pool those proceeds.

22 Q. And how will you hold their share of the
23 revenues?

24 A. Basically, we will hold their -- is my
25 understanding of the process, is that you basically apply

1 their proportionate share of those proceeds to the cost.

2 At the point in time that those proceeds reach --
3 or we reach a payout plus 200-percent penalty, then at that
4 point in time you continue -- throughout this whole process
5 periodically, we're going to continue to try and contact
6 these people to acquire or whatever, whatever they want to
7 do, because it's in our best interest to do that.

8 But basically under state law there's a certain
9 point in time of which you have to surrender those funds to
10 the State of New Mexico, and then that's held in account,
11 and then at some point in time it goes into the State's
12 general fund.

13 Q. You obtained an APD for your well in the
14 southwest quarter; is that correct?

15 A. That's correct.

16 Q. And that was on July 25th?

17 A. Yes.

18 Q. Were you aware at that time that Lance already
19 had an APD for a well in the northwest quarter?

20 A. No, I was not.

21 Q. And you were not aware that they already had an
22 APD that dedicated the entire west half in the Fruitland
23 Coal to the well in the northwest quarter?

24 A. Yeah, I think, if I'm not mistaken, when we
25 researched that, their efforts were a direct relationship

1 to our letter that we sent to them. So in our opinion, we
2 felt that they were trying to undermine our efforts to
3 drill that tract and kind of do an end around us, so
4 they -- you know, because their actions occurred as a
5 result of our letter to them, requesting their
6 participation in our well.

7 So I would suspect -- although, you know, they
8 can answer this question -- that that filing of their
9 paperwork is a result of our letter.

10 Q. You wouldn't think that leasing properties in
11 2001 in this acreage by Richardson and then after that by
12 Lance would have been in response to your efforts that
13 commenced in May, would you?

14 A. You know, if they were truly interested in
15 drilling, I think that would be a point that would be more
16 of a detriment, because those leases are soon to expire,
17 and if they were intending to drill those wells, and
18 they've been attempting to do this since 2001 and it didn't
19 happen, I think our efforts are more indicative of an
20 entity trying to get wells drilled than theirs.

21 Q. Would you think an operator who's trying to do it
22 right would get a title opinion?

23 A. I think that under the nature of this tract, the
24 title opinion would certainly help identify the proper
25 ownership, but I think the process in which we did it --

1 you know, we do it all the time. And as matter of fact,
2 I've been before this board, this organization here, and we
3 have not had title opinions, and it's never been a problem.
4 We will -- before production is distributed, we'll
5 certainly have, you know, a title opinion.

6 Q. And the quality of the leases you've obtained
7 would speak to the quality of your effort?

8 A. I think we've got good title to those leases, and
9 I will stand to defend them.

10 Q. And if a title opinion was obtained in 2002 on
11 the west half, that couldn't have been in response to
12 Synergy's plans, correct?

13 A. No.

14 Q. And if it was revised the first part of this
15 year, that also wouldn't have been a response to your
16 plans, would it?

17 A. No, it wouldn't seem so.

18 Q. Where do you plan to locate your well?

19 A. We are in negotiations with Tommy Bolack.

20 Q. Is the location, in fact, going to be 830 from
21 the south and 790 from the west line?

22 A. You know, I don't have that APD in front of me.
23 But if you're looking at our APD --

24 Q. I can find that for you, if you'd like to look at
25 it.

1 A. Sure.

2 Q. Mr. Hegarty, that's a copy of a document that I
3 got off the OCD web page. Does that look familiar to you
4 or --

5 A. Yes, it does.

6 Q. And what is the location of the well you're
7 proposing to drill?

8 A. 830 feet from the south line, 790 from the west
9 line. It is in letter M of Section 22 of 29 North, Range
10 13 West.

11 Q. If we look at your Exhibit 1, could you tell me
12 where approximately on this exhibit that well would be
13 located?

14 A. We picked this location based upon a conversation
15 with Tommy Bolack, and basically what he wanted was this
16 well to be located near the Dakota well that was plugged.
17 So we put this as close to the existing -- or to the Dakota
18 well that Pan American plugged -- I think it was back in
19 the late 1980s -- and we did so based upon Tommy Bolack's
20 request, number one.

21 Number two, it reduces the costs because the
22 infrastructure, the pipeline -- there's already a pipeline
23 there, so that is what dictated the location of that well
24 at that spot.

25 Q. Is that well located on the bottom portion of

1 your exhibit that says Bolack Mineral Company?

2 A. That's correct.

3 Q. At this time do you have a surface-use agreement
4 with Mr. Bolack?

5 A. No, we do not.

6 Q. Do you own any of the minerals under the tract on
7 which you're actually going to locate the well?

8 A. No, we do not.

9 Q. So you don't have the surface and you don't have
10 the minerals?

11 A. We've got -- we are in negotiations with Mr.
12 Bolack.

13 Q. When did you commence your negotiations with Mr.
14 Bolack?

15 A. We commenced them soon after we -- I think we
16 started discussions -- if I'm not mistaken, it was shortly
17 after we submitted the letters to drill the well. So it
18 was, I think, early July.

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

20 THE WITNESS: You're welcome.

21 EXAMINER EZEANYIM: Gail?

22 MS. MacQUESTEN: My questions are rendered moot
23 by your offer to publish the --

24 MR. BRUCE: Yeah, we do plan on republishing.

25 MS. MacQUESTEN: -- unclaimed -- I just -- to

1 satisfy my own curiosity, because these notice questions
2 come up so often, I wanted to make sure I understood your
3 understanding of the returned envelopes.

4 EXAMINATION

5 BY MS. MacQUESTEN:

6 Q. Some of these show attempts to give notice or
7 attempts to deliver with dates --

8 A. Right.

9 Q. -- and eventually it's been marked unclaimed --

10 A. Right.

11 Q. -- and then -- before it comes back. From that
12 you're assuming -- I'm looking at one on the second page
13 here for Mark Anderson at an apartment in Minneapolis.

14 A. Uh-huh.

15 Q. From that you're assuming that there really is a
16 Mark Anderson at that apartment number, that they attempted
17 it, he wouldn't accept it?

18 A. Well, if -- you may be able to refer to, you
19 know, times when you've gotten a certified letter. They
20 give you those little orange slips, and it's my
21 understanding that if they can deliver that orange slip,
22 then it's a good address.

23 It's only when they attempt to deliver that
24 orange slip and that person is not at that location, that
25 is then the undeliverable, and that's a different

1 designation by the post office.

2 Q. Do they deliver the orange slip in person, or do
3 they drop it off at that mail address and expect the person
4 to respond?

5 A. That's correct, the drop it off in your mailbox.

6 Q. So if Mark Anderson had moved --

7 A. Okay, that's --

8 Q. -- we don't know?

9 A. That's true, that's true.

10 Q. And some of these are marked -- have different
11 notations. The one right under that, it looks like it
12 says, "return to sender, unclaimed, unable to forward".

13 A. Yeah. Well, the point is, you know, in terms of
14 -- we've already -- you know, in our philosophy of --
15 really, we have gone, tried to notify everybody that
16 potentially could be notified. But we plan to, on both
17 these packets, send out notices. And that's -- You know,
18 in answer to your question, I very much agree with your
19 position, and that's our intention.

20 Q. Okay, and I'm satisfied because I'm happy to hear
21 that you intend to go ahead and publish to those
22 individuals who have the unclaimed letters. I was just
23 concerned because this comes up again and again as to what
24 constitutes knowing that you have a good address --

25 A. Yeah.

1 Q. -- and I am not sure the extent to which I can
2 trust the notations --

3 A. Right --

4 Q. -- by the post office --

5 A. -- yeah.

6 Q. -- so...

7 A. Well, we'd rather err on the side of caution and
8 would certainly agree to do that.

9 MS. MacQUESTEN: Thank you.

10 MR. CARR: Mr. Examiner, could I ask one more
11 question?

12 EXAMINER EZEANYIM: Go ahead.

13 FURTHER EXAMINATION

14 BY MR. CARR:

15 Q. Mr. Hegarty, when you started this effort to
16 lease interest in the west half of 22 in May, at that time
17 did Synergy own any property interests in the west half of
18 22?

19 A. We did. Actually, Tom Dugan basically is the
20 reason why we're drilling this well, or wells. He
21 approached me -- Dorothy Weiner works for Synergy and used
22 to be the vice president of Dugan Production. Anyway, he
23 approached me and asked if we'd drill this well, and
24 committed his acreage to that drilling venture. And --

25 Q. And when was that?

1 MR. BRUCE: Mr. Hegarty, the Bolack family owns
2 extensive surface and mineral interests; is that right?

3 THE WITNESS: That's correct. I think their
4 ranch is 13,000 acres. And they're the only -- I might
5 add, they're the only -- to my knowledge, the only entity
6 or only ranch that can call their own hunts, so it's almost
7 like a modern-day fiefdom, if one could exist. But it's a
8 very interesting experience, the negotiations.

9 Q. (By Examiner Ezeanyim) So in this unit in
10 question, does he own any mineral interests in that, or
11 surface -- just surface? In this unit?

12 A. Yes, he owns no minerals.

13 Q. Just surface?

14 A. He's just a sur- -- Yes, that's correct.

15 Q. I think -- I know you must have said something, I
16 just -- Let me first of all ask a couple of questions on
17 that. You say you have inclusive philosophy. What do you
18 mean by that?

19 A. Basically, we contacted everybody that
20 potentially could own an interest in this tract. That
21 means we contacted the surface owners as well as the
22 mineral interest owners. And the reasons why we contacted
23 the surface owners, back in 1961 a number of these
24 subdivisions -- because these subdivisions were basically
25 created back in the 1950s, and I've got a map of that, the

1 map that Pan America produced back in 1963.

2 But anyway, a lot of the surface owners owned
3 minerals. And the only reason why they owned minerals, if
4 you go back and you check the chain of title, they just
5 never reserved the minerals, you know, the original person
6 that put these subdivisions together.

7 So basically what we decided to do was -- and
8 also as a courtesy to those surface owners, to let them
9 know that a well was in the process of being drilled in
10 their neighborhood. We took -- sort of killed two birds
11 with one stone, being a good neighbor, number one, but also
12 providing notification, just in case there was a
13 possibility that -- because, you know, a title this
14 complex, there is a possibility -- a potential that a
15 mistake could be made, as far as the recognition of
16 ownership. So it's better to be prudent, extrally prudent
17 and cautious, and therefore we notified.

18 Q. Okay. I thought in your testimony that you said
19 some mineral interests -- or not some -- sold their
20 interests. Is this to you?

21 A. Yes.

22 Q. Okay. How many of these have sold their
23 interests to you, do you know?

24 A. I'm sorry?

25 Q. How many of these interests have sold their

1 interests to you?

2 A. Let's see, we've got -- there are three
3 individuals that we're negotiating with, and it looks like
4 just one --

5 Q. Just one --

6 A. -- one person. Yeah.

7 Q. Just one has sold?

8 A. Right. And this is just one city lot, so it's
9 basically -- I'd have to check the legal on it, but I think
10 it's like maybe, you know, a tenth to three-quarters of an
11 acre.

12 Q. Well, maybe this question will be -- Is there any
13 joint operating agreement in this unit at all, or --

14 A. No, we provided Lance with an operating agreement
15 for their consideration, and that's the only party that --
16 and also, now, BP has not made a decision as to whether
17 they want to participate or farm out, but with BP we have
18 farmed out acreage from them before, and we know the
19 agreement, we know the process, we know the procedure and
20 the people.

21 But until they make an election as to whether
22 they want to participate or not, it was inappropriate to
23 send them an operating agreement. But really, Lance or BP
24 were the only people appropriate to send an operating
25 agreement.

1 Q. And the one you sent to Lance, you haven't gotten
2 any answer from them?

3 A. Oh, yes, we did. As a matter of fact, I included
4 that in this packet of letters. Let's see, that's in the
5 orange --

6 Q. Orange.

7 A. -- and the response to their letter is the last
8 page. But in that letter they make reference to our letter
9 dated July 13th, and the fact that we did send them a joint
10 operating agreement for their consideration.

11 Q. Okay. Okay now, also there was some testimony by
12 you that this unit had been force pooled somewhere in 1963
13 by -- what company was that?

14 A. Pan American Petroleum, which is now BP.

15 Q. Okay, and that unit has -- that force pooling has
16 expired?

17 A. It has. The two Dakota wells were plugged back
18 in the 1980s.

19 Q. They were plugged, okay.

20 A. Yes.

21 Q. Plugged and abandoned?

22 A. Yes.

23 Q. So this is a fresh unit?

24 A. That's right.

25 Q. What is the depth of that target? I mean, what

1 depth are you looking at?

2 A. Basically, it's around 1400 feet.

3 EXAMINER EZEANYIM: That's very shallow.

4 Okay, at this time I have no more questions for
5 this witness.

6 REDIRECT EXAMINATION

7 BY MR. BRUCE:

8 Q. I just have one question, Mr. Hegarty. Another
9 reason for drilling soon, aren't there optimum gas prices
10 at this time?

11 A. Very definitely. Now's the time to be drilling.

12 MR. BRUCE: Thank you.

13 EXAMINER EZEANYIM: Are we done now?

14 Mr. Carr?

15 MR. CARR: Does that conclude your direct
16 examination?

17 MR. BRUCE: That concludes my --

18 MR. CARR: Then at this time --

19 MR. BRUCE: -- direct.

20 MR. CARR: -- Mr. Examiner, we would call Lance's
21 first witness, Mr. Paul Lehrman.

22 EXAMINER EZEANYIM: You have been sworn, right?

23 MR. LEHRMAN: Yes, sir.

24 EXAMINER EZEANYIM: You may proceed, Mr. Carr.

25 MR. CARR: Mr. Examiner, at the outset I would

1 like to respond to Ms. MacQuesten's questioning of Mr.
2 Hegarty concerning notice. We too are also going to
3 republish the notice, so that you don't spend the hearing
4 trying to put the pieces together again. Title is
5 complicated, and we think to be certain that we have this
6 entirely -- all the bases covered when the case is taken
7 under advisement, we also need to readvertise.

8 PAUL LEHRMAN,

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

11 DIRECT EXAMINATION

12 BY MR. CARR:

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

14 A. Paul Lehrman.

15 Q. Mr. Lehrman, where do you reside?

16 A. Farmington, New Mexico.

17 Q. By whom are you employed?

18 A. Lance Oil and Gas Company.

19 Q. Have you previously testified before the New
20 Mexico Oil Conservation Division?

21 A. Yes, I have.

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

25 A. Yes.

1 Q. Are you familiar with the Applications filed in
2 these cases?

3 A. Yes.

4 Q. And are you familiar with the status of the lands
5 in the west half of Section 22?

6 A. Yes, I am.

7 MR. CARR: May it please the Examiner, we tender
8 Mr. Lehrman as an expert witness in petroleum land matters.

9 EXAMINER EZEANYIM: Mr. Lehrman is so qualified.

10 Q. (By Mr. Carr) Mr. Lehrman, would you briefly
11 summarize for Mr. Ezeanyim what it is that Lance Oil and
12 Gas Company is seeking with this Application?

13 A. Lance desires to pool all unleased and all
14 uncommitted mineral interests in the west half of Section
15 22, Township 29 North, Range 13 West, for the drilling of
16 two -- or actually one Fruitland Coal well with the desired
17 infill, and two Pictured Cliffs wells.

18 Q. The Fruitland Coal spacing unit will be comprised
19 of the west half of Section 22; is that correct?

20 A. That's correct.

21 Q. And you're proposing to drill the FRPC 22 Well
22 Number 2 in the northwest quarter?

23 A. That's correct.

24 Q. Do you have an APD for that well?

25 A. Yes.

1 Q. You're also proposing to drill the FRPC Well
2 Number -- 22 Well Number 3, in the southwest quarter; is
3 that right?

4 A. That's our intent, yes.

5 Q. And you intend to drill both of these wells to
6 both the Fruitland Coal and the Pictured Cliffs formations?

7 A. (Nods)

8 Q. You're also seeking provisions for subsequent
9 operations for the infill well in the Fruitland Coal; is
10 that right?

11 A. That's correct.

12 Q. And what you're basically asking for there is an
13 opportunity to drill both wells?

14 A. Yes.

15 Q. You've provided the OCD with a footage location
16 for the well in the northwest quarter, you have not yet for
17 a well in the southwest quarter. Do you know at this time
18 if you're going to have to -- going to be able to drill a
19 straight hole and directionally drill that well?

20 A. Lance's preference would be to drill a vertical
21 hole in the southwest quarter, but we had looked at an
22 option of a directional well. It's not done a lot, it's
23 done sometimes. It's fairly shallow, the Fruitland Coal.
24 It would not be our preference.

25 Q. That depends on your negotiations with Mr.

1 Bolack?

2 A. That's correct.

3 Q. But in any event, the well you're proposing in
4 the southwest quarter would be located at a standard
5 bottomhole location?

6 A. Yes.

7 Q. Now, the primary objectives in these two wells
8 are what?

9 A. Fruitland Coal and Pictured Cliffs.

10 Q. And it's -- what pool are you going to be in, in
11 the Pictured Cliffs?

12 A. Fulcher Kutz.

13 Q. And then in the Basin-Dakota?

14 A. It will be Basin-Fruitland Coal.

15 Q. What rules govern the Basin-Fruitland Coal?

16 A. The pool rules for that particular pool, and the
17 Pictured Cliffs too, as far as setback requirements, how
18 far you need to be back from the section lines --

19 Q. Do both --

20 A. -- and the interior quarters.

21 Q. Do both pools require 660 setback from the outer
22 boundary?

23 A. Yes.

24 Q. You've got 160 spacing in the Pictured Cliffs,
25 correct?

1 A. Correct.

2 Q. And 320 in the Fruitland Coal with an optional
3 infill?

4 A. That's correct.

5 Q. Let's go to what has been marked as Lance Exhibit
6 Number 1. Would you identify this exhibit and review it
7 for Mr. Ezeanyim?

8 A. Exhibit Number 1 depicts the proposed spacing
9 unit, being the west half of Section 22, and it shows our
10 location in the northwest quarter, it says "Lance" with a
11 little arrow and a well, and then it shows the Synergy --
12 what is proposed to be the Synergy location in the
13 southwest quarter.

14 Q. Do you have an approved APD for the well that you
15 show as the Lance well in the northwest quarter?

16 A. That's correct, we do.

17 Q. And Synergy's APD is for the well as spotted down
18 in the southwest?

19 A. Yes.

20 Q. Let's go to Exhibit 2. These are two plats --

21 EXAMINER EZEANYIM: Let me get this right.

22 MR. CARR: Yeah.

23 EXAMINER EZEANYIM: The Synergy well, has that
24 been spotted or proposed?

25 THE WITNESS: That's their proposed --

1 EXAMINER EZEANYIM: It's proposed --

2 THE WITNESS: -- location.

3 EXAMINER EZEANYIM: -- it has not been drilled?

4 THE WITNESS: No, neither location has been
5 drilled.

6 EXAMINER EZEANYIM: Why do you mark it "Synergy",
7 and then the other one "Lance"? I'm just confused. Why.

8 THE WITNESS: I think we only marked it "Synergy"
9 because they have already filed and have this approved APD,
10 even though we feel it's in error. We want to depict where
11 their location is.

12 EXAMINER EZEANYIM: Okay.

13 MR. HEGARTY: And that -- Oh.

14 MR. BRUCE: No.

15 EXAMINER EZEANYIM: We'll come back to you,
16 Mr. --

17 THE WITNESS: Does that make sense?

18 EXAMINER EZEANYIM: Yes, yes. Okay, go ahead.

19 Q. (By Mr. Carr) All right. Let's go to what's
20 been marked Lance Exhibit Number 2. It consists of two
21 plats. What are these?

22 A. Exhibit Number 2, there's two pages. They're
23 color-coded and they depict leases currently held by Lance,
24 currently held by Synergy and currently held by BP America,
25 or Amoco on the second page, it's colored in orange. The

1 first page is the northwest quarter of Section 22, the
2 second page is the southwest quarter of Section 22.

3 Q. And on this the acreage shown in yellow is leased
4 to Lance?

5 A. That's correct.

6 Q. And blue -- ?

7 A. Blue is Synergy, and again, orange is BP America,
8 or whatever -- I don't know what their actual title is now.
9 It still may be held in Amoco.

10 Q. What is Exhibit Number 3?

11 A. Oh, is this Exhibit 3?

12 Q. Yes.

13 A. Mine is not marked.

14 Q. It's marked on the back.

15 A. Okay, I'm sorry. Exhibit 3 is a spreadsheet that
16 Lance has put together showing all the unleased and
17 uncommitted mineral owners in the west half of Section 2,
18 and it's fairly extensive. And if you'll look down on page
19 number 5, it will give you a breakdown of each quarter
20 section as to the Pictured Cliffs, the southwest as to the
21 PC, and the total as to the Fruitland Coal. It has all the
22 unleased mineral interests, their percentages, uncommitted
23 working interest owners.

24 And there was one small working interest owner --
25 we consider them a working interest owner; they actually

1 decided to participate in our location.

2 Q. And that's Jim and Chon Black?

3 A. Yes, Jim Mack and Chon Black. But this will show
4 you all the percentages in each quarter section with all
5 the percentage breakdowns and the net mineral acres that we
6 currently have under lease.

7 Q. The people listed, actually, on the first four
8 pages, extending onto page 5, those are the parties whose
9 interests are going to be subject to pooling; is that
10 right?

11 A. That's correct.

12 Q. They're very small interest owners?

13 A. That's correct.

14 Q. If we look at page 5 toward the bottom, we see
15 the current breakdown of those interests who are committed
16 to the well?

17 A. That's correct.

18 Q. Synergy at this time, based on your estimates,
19 has what percent of the working interest committed to
20 their --

21 A. In the Fruitland coal our percentage interest
22 shown for Synergy is 15.54 percent.

23 Q. And what percentage of the working interest does
24 Lance now have under lease or represent?

25 A. Lance would own 26.36 percent -- No, I'm sorry,

1 that's the unleased. Lance has 33.16 percent.

2 Q. And these are based on your review of the lease
3 records and the best information you have on the ownership
4 in the acreage at this time?

5 A. Yes, that's based on all of our title work, our
6 title opinions, and all the work that's gone forth.

7 Q. And your numbers and your land work do not
8 necessarily agree with the land work and the numbers
9 presented by Synergy; is that fair to say?

10 A. That is correct.

11 Q. Let's go to what has been marked Exhibit Number
12 4, the time line. I'd ask you to refer to this exhibit and
13 review for Mr. Ezeanyim the efforts made by Lance to
14 combine the interests in the west half of Section 22.

15 A. Yes, it's a pretty straightforward time line of
16 all the events that's taken place. If you'll look at the
17 very top, back even as early as late 2001 and early 2002,
18 Richardson Operating Company, who owned all these assets
19 before Lance bought all of Richardson's assets in October
20 of 2004, they were working on this project then.

21 In April of 2005, we obtained what we consider
22 our title opinion. There was a previous title opinion that
23 was done in 2002 that we updated to current ownership, and
24 then if you read through the time line it will show you all
25 the stuff that's taken place as far as our trying to

1 finalize all the mineral interests, negotiations with
2 Synergy, et cetera.

3 Q. If we look at this, on May the 5th is the date
4 that Lance sent out the first round of letters to unleased
5 mineral owners; is that right?

6 A. Yes.

7 Q. And that's about the time that Mr. Hegarty
8 testified they started working on the prospect; is that
9 correct?

10 A. That's what he --

11 Q. And prior to --

12 A. -- testified to.

13 Q. -- that time, you had already been identifying
14 the interest owners and having the title opinion revised to
15 make it current?

16 A. That's correct.

17 Q. And June 2nd, you send out letters with an AFE to
18 interest owners; is that right?

19 A. That's correct.

20 Q. On the 17th of June, you applied and obtained an
21 APD from the OCD for a west-half Fruitland Coal unit?

22 A. That's correct.

23 Q. There was no other APD on that property at that
24 time?

25 A. No.

1 Q. On June the 5th, is the date, or perhaps June the
2 2nd, that Synergy first sent out the letters, as best you
3 can tell from the records; is that correct?

4 A. Yes.

5 Q. Synergy obtained an APD for the Fruitland Coal,
6 the same acreage you had under an APD, on July the 25th; is
7 that correct?

8 A. Yes.

9 Q. You've got down here a July 27th meeting with
10 Tommy Bolack and Mr. Hegarty. Was that your first meeting
11 with Mr. Bolack?

12 A. Yes, it was.

13 Q. Had you talked to him before that time about the
14 surface-use agreement?

15 A. Yes, we had.

16 Q. Had he been provided with a copy of the surface-
17 use agreement?

18 A. Yes.

19 Q. And then after that time you were moving toward
20 hearing, and so was Synergy, basically each trying to lease
21 an --

22 A. That's correct.

23 Q. -- acreage in the area?

24 Would you identify what's been marked as your
25 Exhibit 5, please?

1 A. Exhibit 5 is the approved C-101 and C-102,
2 obtained from the OCD on the Lance-proposed well in the
3 northwest quarter of Section 22, which covers the west-half
4 Fruitland Coal dedication and the northwest Pictured Cliffs
5 dedication.

6 Q. What is the status of the southwest quarter at
7 this time?

8 A. As far as -- ?

9 Q. As your plans for development?

10 A. We've approached Mr. Bolack with a surface-use
11 agreement, of course Synergy has applied and received their
12 APD, again what we believe to be in error, and we're
13 waiting to see what the outcome of this hearing is going to
14 be in our negotiations with Mr. Bolack for a surface-use
15 agreement for a well location.

16 Q. When you filed this APD, you didn't also file an
17 APD for a well in the southwest quarter, did you?

18 A. No, we did not.

19 Q. Did you know, or do you know today, where on the
20 southwest quarter you'll be able to drill that well?

21 A. We had preliminarily identified a spot similar to
22 what Mr. Hegarty had said. Part of the trouble in the San
23 Juan Basin is, there's such a number of wells. We will try
24 to locate a well near an existing well if possible. That
25 was also something that Mr. Bolack had indicated that he

1 would like to see.

2 Q. Now, you need two wells on this acreage, do you
3 agree on that?

4 A. Yes.

5 Q. But you need a surface-use agreement with Mr.
6 Bolack before you can drill a well where you would like in
7 the southwest quarter of the Section?

8 A. Yes, that's Lance's policy, we try to obtain a
9 surface-use agreement with the landowner before we commence
10 operations on a well.

11 Q. Mr. Bolack was contacted approximately a year ago
12 about a surface-use agreement?

13 A. We contacted him, to his recollection -- I talked
14 to him yesterday morning -- about a year ago. We had
15 talked to him about a location there, had never really
16 pursued it. We had some other -- Part of it was the
17 transition to Lance from Richardson, and then he actually
18 obtained, or we gave him a surface-use agreement -- I think
19 it was in the middle of July of this year -- for this
20 proposed location.

21 Q. Until you're able to work out a surface-use
22 agreement with Mr. Bolack, you won't know whether you can
23 vertically or directionally drill this well; isn't that
24 correct?

25 A. Yes.

1 Q. And until you know that, it's premature to get an
2 APD approved?

3 A. That's the way we operate, yes.

4 Q. At all times you've planned to develop the
5 Fruitland Coal with two wells?

6 A. Yes.

7 Q. Would you identify what is marked Lance Exhibit
8 Number 6?

9 A. Number 6 is the C-101 and C-102 approved by the
10 OCD for the proposed Synergy location in the southwest
11 quarter of Section 22.

12 Q. And that was approved on July 25th?

13 A. Yes.

14 Q. And it dedicates the west half to a Fruitland
15 Coal well?

16 A. Yes, it dedicates the west half Fruitland Coal
17 and the southwest Pictured Cliffs.

18 Q. At that time there was already an approved APD in
19 the name of Lance dedicating the west half of that unit in
20 the Fruitland Coal to Lance's well; is that correct?

21 A. Yes, our APD was dated in June.

22 Q. Synergy has talked about splitting the baby,
23 having two wells in the west half, you operate one and they
24 operate the other. Does Lance object to having a second
25 operator on this spacing unit?

1 A. Yes.

2 Q. Did you first propose the development of this
3 acreage?

4 A. Yes.

5 Q. You're seeking subsequent infill provisions to
6 allow you to drill the second well here today, are you not?

7 A. Yes.

8 Q. And in fact, you have been working on a prospect
9 with an approved APD and had both of those in hand before
10 Synergy actually acquired its APD?

11 A. Yes.

12 Q. At this point in time, what is the current status
13 of your negotiations with Synergy?

14 A. There are no negotiations with Synergy. We're
15 here at this hearing basically because we've not been able
16 to, you know, come to any kind of conclusion as to who is
17 going to do what.

18 Q. Would you identify what's been marked Lance
19 Exhibit Number 7?

20 A. Number 7 is the Lance Oil and Gas Company offer
21 letters, first offer letter and second offer letter mailed,
22 with a copy of the letter and the certifications and the
23 AFE that was mailed to the --

24 Q. And then behind -- first you have a -- these are
25 copies -- These are not letters to each individual, this is

1 the generic letter that went out May the 12th, and the
2 second one June the 10th; is that right?

3 A. Yes.

4 Q. And then behind that you have a huge pile of
5 return receipts and envelopes, correct?

6 A. Yes, certified -- what would be copies of
7 certified green cards and return receipts from the
8 mailings.

9 Q. And they're stapled together basically by letter,
10 and on the front of each we've written which letter they
11 relate to, but Lance is going to refile these and refile an
12 affidavit of publication and request that the case be
13 continued for four weeks to allow that; is that correct?

14 A. Yes.

15 EXAMINER EZEANYIM: Could you repeat that, Mr.
16 Carr?

17 MR. CARR: We're going to --

18 EXAMINER EZEANYIM: Could you repeat what you
19 said?

20 MR. CARR: Yes, we are going to ask -- Mr. Bruce
21 asked -- we want to readvertise the case.

22 EXAMINER EZEANYIM: Okay.

23 MR. CARR: We will request for a four-week
24 continuance to allow that time to run, and we will resubmit
25 a notice affidavit at that time.

1 EXAMINER EZEANYIM: Okay.

2 Q. (By Mr. Carr) Let's go, Mr. Lehrman, to what's
3 been marked as Lance Exhibit Number 8.

4 A. Exhibit Number 8 is Lance's internal
5 authorization for expenditure for the costs associated with
6 drilling our well in the northwest quarter.

7 Q. And what are the costs as reflected on this AFE?

8 A. The dryhole costs are \$89,000, completion costs
9 are \$320,000 for a total AFE cost of \$409,000.

10 Q. Are these costs in line with what's charged by
11 other operators for similar wells in the area?

12 A. Yes, they are.

13 Q. Are you preparing a joint operating agreement for
14 this well?

15 A. I believe we have one prepared, yes.

16 Q. And will that -- or does that operating agreement
17 include the COPAS accounting procedures for joint
18 operations?

19 A. Yes.

20 Q. And do these procedures provide for the periodic
21 adjustment of overhead and administrative while drilling
22 the well and -- the costs for drilling and operating the
23 well?

24 A. Yes, they do.

25 Q. And does Lance request these costs, or these --

1 that the order that results from this hearing contain
2 provisions that will adjust these costs in accordance with
3 the --

4 A. With the COPAS, yes.

5 Q. -- with the COPAS?

6 What is the estimate, your estimate, of overhead
7 and administrative costs while drilling the well and also
8 while producing it, if it is successful?

9 A. I believe our drilling well rate was \$3500 and
10 our producing well monthly rate was \$350.

11 Q. And how do these compare with the 2004-2005 Ernst
12 and Young survey figures?

13 A. That's what we go by, we go by the Ernst and
14 Young survey.

15 Q. Do you recommend these figures be incorporated
16 into the order that results from this hearing?

17 A. Yes.

18 Q. Does Lance request that a 200-percent charge for
19 risk be assessed against any cost-bearing interests not
20 voluntarily committed to the well?

21 A. Yes.

22 Q. And would you, after the penalty is paid out,
23 escrow funds that are attributable to any unlocatable
24 interest?

25 A. Yes, we do.

1 Q. Lance Oil and Gas Company, Inc., seeks to be
2 designated operator of the wells?

3 A. Yes.

4 Q. Why?

5 A. Well, we feel like we were the first one in the
6 area, we have the first approved APD, and --

7 Q. Do you represent the largest committed share --

8 A. Yes.

9 Q. -- working interest?

10 Mr. Hegarty testified about the efforts they had
11 made to identify the interest owners and obtain leases in
12 this area. You have testified as to the procedures
13 followed by you. Do you believe that it is wise to start
14 your title work using that 30-year-old compulsory pooling
15 order?

16 A. No, I do not.

17 Q. And why not?

18 A. That compulsory pooling order is only good as the
19 people who did the title work. The only way to accurately
20 reflect the mineral ownership is to go back to the original
21 patent or whatever the property, you know, would have, and
22 run all the records for it to the current date, look for
23 mineral reservations, conveyances, et cetera, and come to
24 your conclusion, render a title opinion and go forth.

25 Q. And is that what you have done?

1 A. Yes.

2 Q. Mr. Hegarty said the quality of their land work
3 is reflected in their leases. Have you looked at that
4 lease?

5 A. Some of them, yes.

6 Q. Do you have concerns about those?

7 A. Yes, we do.

8 Q. Would you refer to what's been marked as Lance
9 Exhibit Number 9?

10 A. Exhibit Number 9 reflects what Lance feels are
11 invalid leases taken by Synergy Operating. Lance already
12 had leases that we felt were valid, and Lance -- or I mean
13 Synergy basically took leases -- in the business we refer
14 to them as "top leases". It happens in an area where you
15 have expiring leasehold. Unfortunately Synergy doesn't,
16 what we feel, put the proper language in their lease to
17 notify any party that would go to the county records to say
18 that this was a top lease. We feel like it's a cloud on
19 our title, and we feel like it's improper.

20 Q. You've put blue tags on the Lance leases, and
21 then behind them yellow-green tags on the Synergy leases,
22 correct?

23 A. That's correct.

24 Q. But they're in order, and even without the tags
25 what you have is first a Lance lease and then a Synergy

1 lease?

2 A. Yes, if you'll look at -- just a tagging example,
3 the first one was a lease that was taken January 8th of
4 2002 by Richardson Production Company, which has been
5 subsequently sold to Lance for a primary term of five
6 years, which would basically put the expiration in January
7 of '07.

8 If you look to the second -- or the first yellow
9 tab, Synergy is taking the same -- what they I guess feel
10 like a lease on this acreage, dated June 5th. You know,
11 our lease won't expire for several years, and here they are
12 basically leasing, which is perfectly acceptable should the
13 language in their lease, like I said, be proper, and we
14 don't feel like it is. They're basically clouding our
15 title.

16 Q. Would you refer to what has been marked as Lance
17 Exhibit 10?

18 A. Yes, 10 is a tabulation of what we feel are
19 invalid leases taken by Synergy from people who only own
20 the surface but do not own mineral interests.

21 Q. And these are leases from the county record?

22 A. Yes. And if you'll notice that about halfway
23 down there's five references to Lance's leases. So we feel
24 like Synergy's title work is somewhat questionable in
25 several area.

1 Q. These leases don't cover the mineral interests?

2 A. No.

3 Q. What is Exhibit Number 11?

4 A. Number 11 is an oil and gas lease for the Dorothy
5 Isbell Living Trust, and a copy of the Synergy Operating,
6 LLC, Oil and Gas for Troy Strickland. Each have an
7 undivided 50-percent interest in that tract.

8 Q. Okay, and what is Exhibit 12?

9 A. Exhibit 12 is the documentation for the mineral
10 interest I believe Synergy purchased from Dolores
11 Beardsley, which is subject to a Lance lease.

12 Q. So this acreage was acquired by Synergy, but the
13 minerals were previously leased?

14 A. Yes.

15 Q. What do these last four exhibits tell you, Mr.
16 Lehrman?

17 A. It appears from Lance's viewpoint that Synergy
18 basically found out about our lease play and jumped in, you
19 know, did questionable title work and has taken some, you
20 know, probably valid leases, but obviously some that are
21 invalid, some that are clouding our title. And it just
22 appears to be a ploy to get into a lease play, which is
23 perfectly acceptable, but it -- you know, it just seems
24 like it happened pretty quick. They just didn't do their
25 homework.

1 Q. The well you're proposing in the northwest
2 quarter, do you have the surface rights to go out and drill
3 that well?

4 A. Yes, we have the --

5 Q. And you have the mineral rights under the drill
6 site?

7 A. We have -- Yes, we have the leasehold under that
8 tract.

9 Q. Now, Exhibit 13, Lance Exhibit 13, is an
10 affidavit with attached letters giving notice of today's
11 hearing --

12 A. Yes.

13 Q. -- prepared by -- the letters and the affidavit,
14 by Mr. Kellahin; is that correct?

15 A. That's correct.

16 MR. CARR: Again, Mr. Examiner, we will re-do the
17 notice. We're going to republish, and we will submit a new
18 affidavit.

19 EXAMINER EZEANYIM: Okay.

20 Q. (By Mr. Carr) How soon would Lance like to spud
21 the wells?

22 A. As soon as possible, really. Definitely before
23 the end of '05.

24 Q. Were Exhibits 1 through 13 either prepared by you
25 or compiled under your direction and supervision?

1 A. Yes.

2 MR. CARR: May it please the Examiner, at this
3 time we would move the admission into evidence of Lance
4 Exhibits 1 through 13.

5 EXAMINER EZEANYIM: Any objections?

6 MR. BRUCE: No objection.

7 MR. CARR: And I would also like to have admitted
8 into evidence what I will mark as our Exhibit 14, which is
9 the letter I used in cross-examination with --

10 MR. BRUCE: No objection.

11 MR. CARR: -- Mr. Hegarty.

12 And that concludes my direct examination of Mr.
13 Lehrman.

14 EXAMINER EZEANYIM: At this time Exhibits 1
15 through 14 will be admitted into evidence.

16 Mr. Bruce?

17 MR. BRUCE: Yeah, just a few questions.

18 CROSS-EXAMINATION

19 BY MR. BRUCE:

20 Q. Regarding your well in the northwest quarter,
21 have you obtained City of Farmington approval yet?

22 A. No, we have not. We have submitted a surface-use
23 agreement to the City, and they're reviewing it.

24 Q. Okay. What is the normal approval process for
25 the City of Farmington? I just don't know.

1 A. That's a good question. It really varies. We've
2 permitted a well in the city limits here recently that went
3 -- it was several months. I've had right-of-ways that I've
4 acquired from the City on, you know, dissimilar projects
5 that would take me up to a year. They have a direct
6 interest in this, so I think it'll go fairly quickly.

7 Q. Looking at your AFE, the costs proposed by you
8 and Synergy for wells are approximately the same, are they
9 not?

10 A. Yes, they're generally the same.

11 Q. Looking at your -- just a couple more questions,
12 Mr. Lehrman. Looking at your Exhibit 10 --

13 A. Okay.

14 Q. -- I don't think I've ever done such a short case
15 with so many tonnage of exhibits. Let me understand, Mr.
16 Lehrman, there's five columns. In the fourth column, I
17 believe, is what you say is the leases taken by Synergy; is
18 that correct?

19 A. I believe so, yes.

20 Q. Okay. And then the final column is Exhibit 5.
21 So Lance took leases from those same people, some of the
22 same people?

23 A. It appears so.

24 Q. And it looks like, from the recording data, most
25 of those leases were taken after the Synergy lease; is that

1 correct?

2 A. I'll be honest with you, I'd have to look through
3 this exhibit beyond the tabulation to really answer that
4 question. Can I do that?

5 Q. Oh, sure.

6 A. I believe what is trying to happen here is, if
7 you look at the first one, the date the minerals were
8 severed, book and page, Synergy took a lease -- Well, that
9 wouldn't make sense, though, would it?

10 Q. Well, let's just look at one of them. Look at
11 Lance lease at Book 1414, page 69, if you could find that
12 for us.

13 A. I'm looking for that one.

14 Q. Did you find that, Mr. Lehrman?

15 A. I don't have it.

16 Q. You do or do not?

17 A. No, I haven't found it yet. That covers Roger
18 Martinez, Cecilia Stover and Don Herrera. Have you found
19 it?

20 Q. Page 14- -- I mean, excuse me, Book 1414, page
21 69.

22 A. Did you find it?

23 Q. Yes. Here, I'll --

24 A. I'm sorry, I just can't find it. There's just so
25 much stuff in here.

1 Q. I understand. What is the date of that lease?

2 A. July 20th.

3 Q. And what are the dates of the Synergy leases?

4 A. June 20th.

5 Q. Thank you, that's sufficient, Mr. Lehrman.

6 A. Well, I think it's confusing here. I think -- I
7 just don't think this thing is right.

8 Q. But obviously this shows that title is
9 complicated, apparently both companies are taking leases on
10 acreage that they think somebody might own, just to make
11 sure everything is covered?

12 A. Well, I think possibly the tabulation here is
13 incorrect and the severed owner is --

14 Q. I mean, you're still saying severed, but
15 obviously Lance was also taking leases on this same
16 property?

17 A. Well, I don't really like to look at the exhibits
18 longer than you're going to give me, but I think what's
19 happening is, the Synergy leases were covering owners
20 different than the Lance leases.

21 Q. And really just one final question. Are you
22 aware that Oil Conservation Division Rules currently allow
23 two operators on a 320-acre gas well unit?

24 A. Yes, if it's approved by a vote.

25 MR. BRUCE: Thank you, that's all I have.

1 EXAMINER EZEANYIM: No questions, thank you.

2 EXAMINATION

3 BY EXAMINER EZEANYIM:

4 Q. Since we are on that Exhibit Number 9 and 10, I
5 have a couple of questions before I go ahead here. Go to
6 that Exhibit Number 9. It's titled, "Invalid Leases Taken
7 by Synergy". I can see on your left column there -- What
8 are you trying to show there? Can you --

9 A. Well, what we're trying to depict here, Mr.
10 Examiner, is the fact that, you know, we feel like we had a
11 valid lease prior to when Synergy took their lease.

12 Q. Okay, now -- Okay, let's take for example Dugan
13 Uekert and Dugan Uekert, the second one there. You said
14 you bought the lease on 11-01, 11-19-01?

15 A. That's correct.

16 Q. And then Synergy bought this on 6-14-05.

17 A. Right.

18 Q. Okay. How is it possible, after that lease was
19 given to you and, you know, they give it -- I mean, can
20 somebody lease it twice?

21 A. No.

22 Q. Now what happened here?

23 A. I would direct that question towards them. Not
24 to put you off but, you know, our feeling is, it's already
25 leased once, so the land owner can't lease again. But they

1 did and they leased to Synergy, and Synergy has taken the
2 lease and recorded it in what we feel an improper manner.
3 We've already got a valid lease, they took another lease.

4 Q. Yeah. Well, what I'm trying to get at is, is it
5 possible for me to lease my interest to somebody and then
6 later lease it to somebody else?

7 A. Well, at some point in time this interest was
8 leased to Lance.

9 Q. Did it expire before they got it leased, or the
10 lease was in effect before -- I mean -- Okay, you got yours
11 in '02 [sic], and this was in '05. Did that lease expire
12 before this one was given? Because I can't understand
13 somebody selling --

14 A. No, the lease --

15 Q. -- the lease twice.

16 A. No, the lease is still in its primary term, and
17 it's still in effect.

18 Q. I'm trying to find out why, you know, is that why
19 it's called an invalid lease, because the other one is
20 still in effect?

21 A. That's correct.

22 MR. CARR: Yes.

23 Q. (By Examiner Ezeanyim) What are you trying to
24 show on Exhibit Number 10? The same as Exhibit Number 9?

25 A. Well, that's what we just went through there with

1 Mr. Bruce, we --

2 Q. Yeah.

3 A. -- we were trying to show that some of these
4 leases were taken incorrectly from people who only own
5 surface and do not own minerals.

6 Q. Okay. Are you -- There are two wells to be
7 drilled in this unit, one is on the southwest, and I have
8 got information on the southwest, the well that is on the
9 southwest, if you want to drill on the southwest.

10 Let's go to the northwest, the well in the
11 northwest. Have you got an APD for that?

12 A. Yes.

13 Q. And what about Synergy? Do you have an APD?

14 MR. HEGARTY: Yes.

15 Q. (By Examiner Ezeanyim) When did you get the APD
16 for that northwest well?

17 A. Our APD was approved on June 16th of 2005.

18 Q. And yours?

19 A. Their APD was approved on July 25th.

20 Q. The one in the southwest, both of them?

21 A. Yes.

22 Q. And your overhead rates are \$3500 and \$350,
23 right? That's your overhead rates? Your drilling and
24 producing overhead rates is \$3500 and \$350?

25 A. I believe it was \$350 and \$3500.

1 Q. What is the status of your negotiation with
2 Synergy right now? Is it stalled or is it ongoing?

3 A. No, it's basically come to a conclusion as a
4 result of this hearing.

5 Q. When Synergy proposed that you operate a well in
6 one of those quarters, what was your answer? What did you
7 last say?

8 A. We just don't feel like that's, you know, the
9 best scenario for Lance. You know, our APD predates
10 theirs. We applied first, and we don't want both op- --
11 two operators in that drill block, we just want to be the
12 only operator.

13 Q. I understand that both of you obtained your APD
14 because the first locations are standard, right?

15 A. Yes.

16 Q. -- other locations.

17 This question must be directed to both people
18 here, because that -- you are trying put me on the spot
19 here, but I want what it should be according to you. I'm
20 going to ask this question to both parties now. What I
21 want to do is decide on who to direct it, but I'll direct
22 it to both Lance and Synergy.

23 I want you to tell you why you should be the
24 person who will be the operator for this unit. And I want
25 to remind you, you know, that we have removed the

1 restriction that two operators could operate in a 320-unit,
2 this area too, you know. So before you tell me, I want to
3 know from each of you why you think you should be the
4 operator of a unit. Anybody can go first.

5 THE WITNESS: Go ahead.

6 MR. HEGARTY: Okay, we feel it best that Lance
7 operate the northwest and Synergy --

8 EXAMINER EZEANYIM: You feel what?

9 MR. HEGARTY: We think it best that Lance operate
10 the northwest and we operate the southwest. We feel that's
11 an acceptable compromise.

12 The reason why we feel we would be better able to
13 operate the southwest is, number one, we've got a larger
14 interest than Lance does in the southwest as it relates to
15 the PC.

16 Number two, we have already entered into
17 negotiations with BP, and there's a whole gamut of
18 requirements that they expect of an operator. We've
19 already been down that road with them and have complied
20 with every single one of them, and we've got a working
21 relationship.

22 The other thing is, we've got an approved APD,
23 we've got a well staked, and we've got ongoing negotiations
24 with Mr. Bolack, all of which, you know, would, in your
25 opinion -- plus we started this whole process and procedure

1 in terms of filing our force-pool proceeding before Lance
2 did.

3 And I think we sped up the drilling of this
4 project by virtue of the fact that they've been working on
5 it since 2001, you know, is an indication that this thing
6 has lagged. And we got right after it. We're a small
7 company. A drilling of a well of this nature is something
8 that we get right after, and we don't let leases sit very
9 long before we get them drilled. And guaranteed, we'll get
10 this thing drilled and producing, and we'll get money going
11 into the state coffers in short order.

12 EXAMINER EZEANYIM: Okay. Lance?

13 THE WITNESS: Let me make some general comments
14 on Mr. Hegarty's comments.

15 First of all, Richardson Operating Company,
16 predecessor in interest to Lance, was also a small company,
17 operated by one individual, and he basically directed
18 traffic.

19 The fact that, you know, lease expirations may go
20 down to the very last day are really irrelevant. It
21 happens all the time, you see them at these cases. Leases
22 are extended, APDs are extended, so that really has no
23 merit.

24 Lance desires to be operator of both wells, from
25 the standpoint of we filed our APD and approved it first.

1 We feel like the APD that was acquired by Synergy in the
2 southwest was incorrectly obtained.

3 We have also spoken with BP/Amoco. They have
4 indicated that they would like to deal with Lance.

5 That's basically it. We have a generally bigger
6 interest in the west half, Fruitland Coal, and northwest
7 PC. I won't dispute the fact that Synergy does probably
8 have a larger interest in the PC in the southwest, but
9 other than that, Lance desires to operate both locations.

10 EXAMINER EZEANYIM: Ms. MacQuesten?

11 MS. MacQUESTEN: This is directed to the
12 attorneys. I'd like each of you to tell us what legal
13 standard you feel we should apply in a case with dueling
14 applications and which factors we should weigh more
15 heavily.

16 MR. BRUCE: Ms. MacQuesten, I think there's a
17 Commission order and an internal Division memo from some
18 years back listing the things you should consider in
19 counter-applications. First and foremost was geology, but
20 I don't think geology really pertains out here. Drilling
21 Fruitland Coal wells out here is more a matter of making
22 sure you've got a drillable location, rather than moving it
23 600 feet one way or the other. And since they're going
24 down to the Fruitland Coal, it's very cheap to test the
25 Pictured Cliffs. So geology isn't really a factor.

1 Another factor is interest ownership, according
2 to those -- the prior memo. And Synergy believes it has
3 good title to, you know, approximately -- in the low 20-
4 percentage, 22, 23 percent. In the west half Lance does
5 have a slightly larger interest, 33 1/2 percent. We don't
6 think that is really significant overall. A lot of times
7 you'll see where someone comes in with 20 percent, but then
8 there's another 80 percent outstanding, or the opposing
9 party has 50 or 60 percent. We think that's a lot more
10 substantial difference, and so we discount that.

11 Another factor is who got the ball rolling. And
12 Lance and its predecessor-in-title Richardson did start
13 leasing out there, according to their own records, in 2001,
14 but this appears to have languished until now, and Synergy
15 -- and they're working on it, no doubt about it. We don't
16 mean to disparage Lance, but -- they are a qualified
17 operator. But Synergy got in there and really started the
18 ball rolling. And we think that is a very important
19 factor.

20 And as Mr. Hegarty just said, in a case like
21 this, at least where in the southwest quarter Synergy has a
22 greater interest, splitting the baby and allowing two
23 operators seems a logical way to go with this. Both
24 operators have operations in this area of San Juan County,
25 and so there is no particular operational need to have one

1 operator for both wells.

2 Thank you.

3 MR. CARR: As to the ownership issue, I think
4 that is one of the critical things you have to look at. At
5 the present time everyone agrees that Lance has the largest
6 ownership position in the west half.

7 Synergy says, Well, we have a larger ownership in
8 the southwest quarter. But that's today, because much of
9 the southwest quarter is held by BP, and both parties are
10 negotiating with BP, both parties stand before you with an
11 acreage position. But if you look at who comes before you
12 representing the largest part of the working interest,
13 you'd have to rule for Lance.

14 Willingness to negotiate is another point. You
15 know, Mr. Ezeanyim, we changed Rule 104 recently, so you
16 can have two operators. But Rule 104 as amended shouldn't
17 become a tool where somebody can run in after you've been
18 working on a project for several years and try and take
19 half of it away and then say, when you won't just
20 voluntarily hand over half of what you've been working on,
21 that you're not negotiating.

22 The negotiation aspect of this goes far beyond
23 just between these parties. It goes to doing the job
24 right. It goes to instead of grabbing an old title opinion
25 and running around trying to lease up interest based on

1 what they say are cursory title checks of the county
2 records, to negotiate fairly, to be sure correlative rights
3 are protected, to be sure everyone else is in, you take the
4 old title opinion, and when you take over the business at
5 the end of last year, you do what you should do: You get
6 that revised so you know who you're dealing with at the
7 outset, and then you start talking to those people. And
8 then you can see that we were talking to those people long
9 before Synergy.

10 And you go talk to the surface owner and you talk
11 to Mr. Bolack. And a year ago we had made contact with
12 him, and we have a surface-use agreement sitting before him
13 now. We talked to him yesterday, and he's standing back
14 waiting to see, in fact, what you do.

15 But the negotiating aspect of this is important,
16 but it isn't just between the parties. This is if you go
17 out and honestly and fairly negotiate with all owners to
18 try and bring them into this prospect.

19 Who proposed it first? You know, you can always
20 play silly games, who rushed to the OCD with a compulsory
21 pooling application. But the fact of the matter is, the
22 letters that proposed the wells to the interest owners were
23 filed first by Lance and later by Synergy. There's no way
24 you can look at the facts of this case and say Richardson
25 wasn't working on this in 2001.

1 And while Synergy would like to say they got the
2 ball rolling, you know, Lance only got this property the
3 end of last year. And to do it right isn't to run around
4 and get bits and pieces of title and just start leasing up
5 everything you can to beat somebody else. You go establish
6 who owns what and then you systematically and correctly go
7 after it. That's the only way you do it right, that you
8 don't create false expectations leasing minerals from
9 people who don't own them and things like that.

10 And the ball was rolling in May, letters were
11 out, title opinions have been obtained and examined, and
12 that's when Synergy wants you to think they started this
13 project moving forward. And I think the facts simply don't
14 support that.

15 We stand before you having been here first.
16 Those are the factual things I think you look at.

17 But there's another thing I think you have to
18 look at that also is an important thing for you to
19 consider, and that is that when we come before you, you
20 know, it's because negotiations failed and we have to ask
21 you to make a decision who should operate. And it's not
22 good for you and it's not good for us. But that's where it
23 goes when you're saying one party wants half of what you
24 think is yours and you're not willing to give it, so here
25 we are.

1 But when we get here, you don't have to just, you
2 know, weigh these abstract things. You look at the things
3 we just talked about, that Jim talked about.

4 But you also realize there are rules and there's
5 precedent here before this Commission. And on the 16th of
6 June, Lance got an APD for the west half.

7 You know, all of these cases, competing
8 operators, lately, have had this "who got the APD first?"
9 question. Yates-Pride, that was one, the TMBR/Sharp case.
10 And if you look at Yates-Pride, what it said was -- and
11 this is what the Commission said -- it says an APD confers
12 rights that shouldn't be revoked arbitrarily.

13 When we got our APD for the west half, we had
14 rights to develop the west half. And the Commission says,
15 well, it shouldn't be revoked arbitrarily.

16 Then the Pride case went on and it said, what
17 happens if one operator has an approved APD and another
18 operator doesn't agree with that proposed development of
19 the lands? It says, an aggrieved owner -- that here would
20 be Synergy -- can file an application with the Division to
21 cancel the approved APD, our APD, and the Division can do
22 that after notice and hearing.

23 Nobody has asked or said that our APD isn't
24 proper, it isn't valid. We have a good APD that gives a
25 right for a year to go onto that property and develop those

1 lands. And unless you want to forget Pride and now take
2 another direction, I would submit to you there is only one
3 party properly before the Division because there's only one
4 party who has a right to drill a Fruitland Coal well for
5 one year, and that's the party who got the APD first.

6 It's just like these leases. An invalid lease --
7 it might be valid someday, but today those leases in
8 Synergy aren't effective because somebody already gave
9 those interests to Lance.

10 And with the APD -- their APD might be valid
11 someday, but for a year, running from June the 16th, only
12 one party, Lance, has a right to drill the west half, and I
13 think that's what you also have to consider when you decide
14 this case.

15 EXAMINER EZEANYIM: The Pride-Yates case, are you
16 talking about R Order Number R-12,108-C?

17 MR. CARR: Yes, sir, I am. And I'm talking in
18 particular about findings 8.F and 8.I.

19 EXAMINER EZEANYIM: Okay.

20 Gail, questions?

21 MS. MacQUESTEN: Thank you both.

22 EXAMINER EZEANYIM: Any more comments?

23 MR. CARR: No, sir.

24 EXAMINER EZEANYIM: Okay, I have a final --

25 MS. MacQUESTEN: Wait a minute, Jim didn't --

1 MR. BRUCE: I was just going to say, Mr.
2 Examiner, with respect to the APD issue, the Division
3 ordered -- issued both permits; they're for difference.
4 And Lance has not either applied to cancel --

5 EXAMINER EZEANYIM: Yeah, I understand.

6 MR. BRUCE: -- Synergy's APD.

7 EXAMINER EZEANYIM: Well, essentially you had
8 notice -- almost the same location, almost, you know, the
9 location is almost, you know --

10 MR. BRUCE: Pride versus Yates involved the same
11 well and same location.

12 EXAMINER EZEANYIM: Oh, okay. Okay, I'll take
13 notice of that too.

14 I'd like all of you to know you're putting me on
15 the spot on making that decision, just like me asking to
16 child to choose between their mom and their dad, and it's a
17 very difficult thing to do.

18 As you all know, I always say this, I always say
19 this, you know, it's better that operators negotiate. But
20 I have seen from the testimony today that the negotiation
21 has broken down irreparably. And that's okay, I'm going to
22 make a decision.

23 But I want to remind you that if you have reached
24 an agreement among yourselves, you have removed an
25 impediment that could have been, you know, a requirement

1 there that you could have used, if you have a joint
2 operating agreement and then using whatever interests you
3 have in the northwest or the southwest to come up with
4 something that might be beneficial to both of you. Since
5 you can't reach that agreement, I have to make that
6 determination myself.

7 And when I issue an order for a compulsory
8 pooling order, I can't name two operators. It has to be
9 one. Because as you know, in Rule 104, which says it
10 doesn't apply to a compulsory pooled unit. So here now, I
11 mean, one person has to be designated the operator of both
12 wells.

13 But if both of you have, you know, negotiated
14 among yourselves, maybe something better could have come
15 out of it. If I have to throw up a coin -- Maybe I do
16 that, I don't know. But I'm going to review all the
17 evidence that was presented today and make a decision on
18 that.

19 Meanwhile, the case will not be taken under
20 advisement because there are some public notice issues that
21 needs to be addressed here, that both of you have to -- in
22 fact, both of you have to address in the respective case
23 numbers, so that reflects -- and to reflect that that unit
24 is also included in the public notice.

25 So I'm going to take administrative notice of

1 this case and defer this case to September 22nd, to give
2 you the necessary time to do the public --

3 MR. BRUCE: Bill, were you presenting another
4 witness?

5 MR. CARR: No.

6 MR. BRUCE: Okay.

7 EXAMINER EZEANYIM: So September 22nd is okay?

8 MR. BRUCE: Yeah. Could I ask a couple of
9 rebuttal questions of Mr. Hegarty?

10 EXAMINER EZEANYIM: Okay, you may.

11 PATRICK HEGARTY (Recalled),
12 the witness herein, having been previously duly sworn upon
13 his oath, was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. BRUCE:

16 Q. Mr. Hegarty, regarding Lance's Exhibit 9
17 regarding the top leases, first of all, you had included in
18 your package of leases Exhibit 3, a number of leases. Did
19 that include any of those top leases?

20 A. No, it did not.

21 Q. Okay. And could you state why you -- why Synergy
22 took the top leases, even there was a year or two left on
23 some of the primary terms of the Lance leases?

24 A. The City of Farmington has to approve the
25 location, and they have to go through the permitting

1 process, anybody in the northwest quarter, because it's
2 right off -- it's, matter of fact, located on City of
3 Farmington property, the most ideal location.

4 But the problem with that location -- and Lance
5 was going to have to move the location, and that's the
6 reason why we didn't stake it, because it's in a pit that
7 the City is going to fill up with water, and I think Mr.
8 Lehrman can attest to this.

9 But anyway, so they went out and staked a
10 location that they're not going to be able to drill,
11 according to Mike Sullivan, because it's in a pit that's
12 going to be filled up with water.

13 So anyway, that's the reason why we didn't stake
14 that location.

15 But another reason why we top-leased was because
16 the permitting process for the City is in a state of flux.

17 EXAMINER EZEANYIM: What do you mean by "top
18 lease", what do you mean by that?

19 THE WITNESS: Oh, top lease, that's what you were
20 referring to. We leased on top of their -- the already --
21 previously existing lease.

22 EXAMINER EZEANYIM: Okay, that's Exhibits 9 and
23 10, okay.

24 THE WITNESS: Yeah. So there was a possibility
25 -- when we contacted these people and they offered to lease

1 us and we said, well, they're already leased. And then
2 because of our conversations with the City and because
3 there was some question as how long it would take the
4 permitting process, we figured, well, it's a gamble; their
5 lease might expire before our lease does, so --

6 EXAMINER EZEANYIM: That was what -- the reason I
7 was asking about that.

8 THE WITNESS: Right, exactly. So by virtue of
9 that fact, because their leases were nearing their term --
10 and it's a practice that happens all the time. As a matter
11 of fact, their own evidence shows that they top-leased some
12 of our leases.

13 And so anyway the point was, the location that
14 Lance has with the City is not an acceptable location, it's
15 going to have to be moved. And earlier, if I'm not
16 understanding -- if I'm not mistaken, I thought you said,
17 Paul, that you didn't, you know, regularly go out and file
18 an APD until you had a surface-damage agreement, you know,
19 signed up. And I thought that's what -- you know, you can
20 check the testimony. Why would you go ahead and --

21 MR. CARR: I'm going to object to witnesses
22 examining one another.

23 THE WITNESS: Okay, well anyway -- Well, my point
24 is, though, that to go out and file an APD on a location
25 that necessarily can't be drilled, I think, puts that APD

1 in somewhat of -- you know, suspect.

2 Q. (By Mr. Bruce) One final question, Mr. Hegarty.
3 If a well is drilled, Lance's leases are preserved into
4 their secondary term by production, will Synergy re-lease
5 this top lease?

6 A. Yes, very definitely.

7 MR. BRUCE: Thank you.

8 EXAMINATION

9 BY EXAMINER EZEANYIM:

10 Q. So where you staked your well, that did not
11 approve by the City of Farmington -- where you --

12 A. No, where Lance staked their well cannot be
13 drilled because it's in a pit that's going to be filled up
14 with water.

15 MR. LEHRMAN: Can I comment on that?

16 EXAMINER EZEANYIM: (Nods)

17 MR. LEHRMAN: I don't know what conversations Mr.
18 Hegarty had with Mr. Sullivan of the City. I have met with
19 Mr. Sullivan and an engineer with the City, Jeff Smacka, on
20 this very issue, and Lance takes exceptions to the comments
21 that the well will not be drilled in the pit. I believe
22 that those are Mr. Hegarty's beliefs and not necessarily
23 valid comments, but he can say whatever he wants.

24 But I met with the City and we discussed this
25 issue, and the fact remains that, you know, we are on our

1 leasehold, we have a valid APD and we're negotiating with
2 the City of Farmington to drill a location at that spot,
3 so...

4 EXAMINER EZEANYIM: Anything further?

5 MR. BRUCE: I have nothing further in this
6 matter.

7 MR. CARR: We have nothing further.

8 EXAMINER EZEANYIM: Okay, what will happen in
9 this -- Anything further?

10 MS. MacQUESTEN: No.

11 EXAMINER EZEANYIM: Okay, what will happen in
12 this case is that I will not take it under advisement. It
13 will be taken under advisement when you meet all the public
14 notification requirements.

15 However, I heard this case, I'm going to make a
16 decision on this. So on maybe September 22nd, after you do
17 that, I'll see how to write this order, because I heard the
18 case, so it's not going to be -- you know, I'm not going to
19 hear the case again, because it takes too much time.

20 We will have everything, all the evidence we will
21 have, we will have all the exhibits from each party, so I
22 think we can make a decision on this after we have the
23 public notice done, right?

24 MS. MacQUESTEN: Assuming public notice doesn't
25 change --

1 MR. BRUCE: Mr. Carr and I will submit new
2 publication notices.

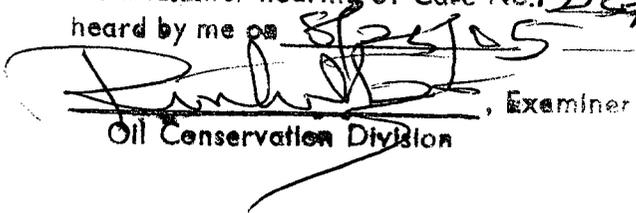
3 EXAMINER EZEANYIM: Yeah, that's true, assuming
4 it doesn't generate any other interests. If it generates
5 any other interests, maybe the case will have to go back
6 again under hearing, and at that point I will present
7 myself to continue it, you know, in case we have any other
8 interests, because I want to carry this case to the end.

9 So with nothing further, today's hearing is
10 adjourned.

11 (Thereupon, these proceedings were concluded at
12 12:48 p.m.)

13 * * *

14
15
16 I do hereby certify that the foregoing is
17 a complete record of the proceedings in
18 the Examiner hearing of Case No. 13527 & 13539
heard by me on 8/25/05

19  , Examiner
20 Oil Conservation Division

