

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 BOLD ENERGY, LP, FOR )  
APPROVAL OF AN APPLICATION FOR PERMIT )  
TO DRILL AND TO ALLOW TWO OPERATORS ON )  
A WELL UNIT, EDDY COUNTY, NEW MEXICO )

CASE NO. 13,877

ORIGINAL

2007 MAY 24 AM 11 35

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: DAVID R. CATANACH, Hearing Examiner

May 10th, 2007

Santa Fe, New Mexico

This matter came on for hearing before the New Mexico Oil Conservation Division, DAVID R. CATANACH, Hearing Examiner, on Thursday, May 10th, 2007, 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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 Examiner Hearing  
 CASE NO. 13,877

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\* \* \*

Additional submission by OXY, not offered or admitted:

	Identified
Rule 104	56

\* \* \*

## A P P E A R A N C E S

## FOR THE DIVISION:

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## FOR OXY USA WTP LIMITED PARTNERSHIP:

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By: WILLIAM F. CARR

\* \* \*

1           WHEREUPON, the following proceedings were had at  
2 11:17 a.m.:

3           EXAMINER CATANACH: Call Case 13,877, the  
4 Application of Bold Energy, LP, for approval of an  
5 application for permit to drill and to allow two operators  
6 on a well unit, Eddy County, New Mexico.

7           Call for appearances.

8           MR. BRUCE: Mr. Examiner, Jim Bruce of Santa Fe,  
9 representing the Applicant. I have one witness.

10          EXAMINER CATANACH: Additional appearances?

11          MR. CARR: May it please the Examiner, William F.  
12 Carr with the Santa Fe office of Holland and Hart, L.L.P.  
13 We represent OXY USA WTP Limited Partnership in this matter  
14 in opposition to the application, and I also have one  
15 witness.

16          EXAMINER CATANACH: Okay, will the witnesses  
17 please stand to be sworn in?

18          (Thereupon, the witnesses were sworn.)

19          MR. BRUCE: Mr. Examiner, I have just a short  
20 opening.

21          EXAMINER CATANACH: Okay.

22          MR. BRUCE: This case involves the west half of  
23 Section 8, Township 19 South, 29 East. There is a JOA  
24 covering this acreage. OXY is the operator under the JOA,  
25 and it drilled a well in 1997. That well is now a -- I

1 believe a Wolfcamp and Cisco/Canyon producer.

2 As you know, Mr. Examiner, there were some issues  
3 coming up before this case was filed in January or  
4 February, and there were some contractual disputes between  
5 the parties. We believe those have now been resolved. We  
6 can discuss them if necessary, although we weren't going to  
7 go into them.

8 Bold wants to drill a well. Under the JOA, a  
9 nonoperator can propose a well. And then as the operator,  
10 OXY doesn't drill it, they have the right to drill the  
11 well. Bold would like to drill another Wolfcamp and  
12 Cisco/Canyon test, and needs an APD to drill that well.  
13 OXY has not yet committed to drilling the well, and  
14 therefore we believe that Bold should be issued an APD.

15 I would note one further thing, that under the  
16 JOA, although Bold would have the right to drill the well  
17 if OXY goes nonconsent, I believe that after completion the  
18 well has to be turned over to OXY. So it is not the  
19 situation where there would be two different operators  
20 long-term, it would only be for drilling the well.

21 Thank you.

22 EXAMINER CATANACH: Okay.

23 Mr. Carr, do you have anything?

24 MR. CARR: May it please the Examiner, I think  
25 this is an important case, because it really is the first

1 case when the Division has been called upon to interpret  
2 the provisions of Rule 104 that govern multiple operators  
3 on spacing units. This has been bumping around over here  
4 for several months, this case, and during that period of  
5 time we've had meetings with Mr. Ezeanyim and Mr. Brooks  
6 and a motion hearing. And we're basically told to resolve  
7 the issues.

8           And I can tell you, I agree with Mr. Bruce, I  
9 think an agreement has been reached which, when the  
10 documents are signed, will resolve the contract issue that  
11 seemed to be the initial argument that was a -- creating  
12 the real difference between the parties.

13           But I would suggest to you that if you grant the  
14 Application of Bold, I guess in -- you'd be, in Governor  
15 King's words, opening a box of Pandoras, because you're  
16 going to see a number of applications similar to this  
17 coming before the Division. And the rule will be, if you  
18 grant the application used, not to permit multiple  
19 operators where more than -- where the operators agree that  
20 there could be more than one operator on a spacing unit,  
21 but it will actually be used as a tool to try and take  
22 operation of the second well away from the operator who has  
23 drilled the first well on the spacing unit.

24           I do believe we've resolved the contract issue,  
25 but the documents have not yet been signed, and so we sort

1 of wonder why we're here today. Because once the documents  
2 are signed, we will be, as Mr. Bruce indicates, under the  
3 JOA. There are procedures there that govern how a well is  
4 proposed and drilled. They don't involve the OCD. And  
5 once we get out from under some very burdensome terms in an  
6 old farmout agreement that are unacceptable to both sides,  
7 then we believe the well can be proposed, and we're  
8 prepared to go forward and develop the property in  
9 accordance with the joint operating agreement.

10 We're going to call one witness. The purpose of  
11 our witness is just to show you that we have been -- OXY  
12 has been consistent and clearly expressed its objection to  
13 Bold drilling the well. We're also going to show you that  
14 the Bold proposal, we believe, violates the letter and  
15 spirit of Rule 104, will cause waste and impair correlative  
16 rights.

17 EXAMINER CATANACH: Thank you, Mr. Carr.

18 PEGGY WORTHINGTON,

19 the witness herein, after having been first duly sworn upon  
20 her oath, was examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. BRUCE:

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

25 A. Peggy Worthington, Midland, Texas.

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

2 A. I work for Bold Energy, and I am a land manager.

3 Q. Okay. Are you also an officer of the company?

4 A. I am a principal in the company.

5 Q. Have you previously testified before the Division  
6 as a landman?

7 A. I have.

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

10 A. They were.

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

13 A. I am.

14 MR. BRUCE: Mr. Examiner, I'd tender Ms.  
15 Worthington as an expert petroleum landman.

16 EXAMINER CATANACH: Any objection?

17 MR. CARR: No objection.

18 EXAMINER CATANACH: Ms. Worthington is so  
19 qualified.

20 Q. (By Mr. Bruce) Ms. Worthington, you have a few  
21 exhibits in front of you. Just briefly, what is Exhibit 1?

22 A. Exhibit 1 is the application for a permit to  
23 drill, re-enter, deepen, plug back or add a zone, C-101.

24 Q. And this is the APD that Bold requests be  
25 approved by the Division?

1 A. Yes.

2 Q. If you turn to the final page, it's the acreage  
3 dedication plat. The first well, the OXY Checker State  
4 Number 1 is the well that was drilled in the southwest  
5 quarter in 1997; is that correct?

6 A. Yes.

7 Q. And that is a Wolfcamp-Cisco/Canyon producer?

8 A. Yes.

9 Q. And the second well, which is in the northwest  
10 quarter, is the well that OXY seeks to drill at this point?

11 A. Bold seeks to drill.

12 Q. I mean Bold seeks to drill at this point.

13 A. Yes.

14 Q. Okay. Now pursuant to Division Rules, let's move  
15 on to your Exhibit 2. First, who is Gray Surface  
16 Specialties?

17 A. Gray Surface Specialties is a contract service  
18 that I use for handing many of my Railroad Commis- -- or  
19 many of my OCD filings.

20 Q. Okay. For permitting wells, et cetera?

21 A. Yes.

22 Q. And pursuant to Division Rule 104, did Gray on  
23 behalf of Bold give OXY notice of Bold's proposed well?

24 A. Yes.

25 Q. And then attached as the final page of Exhibit 2,

1 did OXY write back to Gray Surface Specialties objecting to  
2 Bold drilling the well?

3 A. Yes.

4 Q. Okay. Let's move on to Exhibit 3, which is part  
5 of a JOA. Is this the JOA that has -- a portion of the JOA  
6 which covers the west half of Section 8?

7 A. Yes.

8 Q. And OXY USA WTP Limited Partnership is the  
9 current operator under this JOA?

10 A. Yes.

11 Q. Now under Article 6 of the JOA, does a  
12 nonoperator have the right to propose a well?

13 A. Yes.

14 Q. And what happens if the operator goes nonconsent  
15 under this provision?

16 A. Then the nonoperator has the option to drill and  
17 complete the well, and after completion the well would be  
18 turned over to the official operator.

19 Q. Okay. So even if Bold is issued this APD, it  
20 would only be for drilling and completing the well, and  
21 long-term during production operations OXY would be  
22 operator of the well unit?

23 A. Yes.

24 Q. And of the second well on the well unit?

25 A. Yes.

1 Q. Now the other thing is, if Bold proposes a well  
2 -- or a nonoperator proposes a well under this JOA, and OXY  
3 as operator consents to the well, what happens then?

4 A. OXY drills the well.

5 Q. Does it have -- and what are the time frames in  
6 the JOA for drilling the well? First of all, you have to  
7 make a proposal, and what type of time frame is there for  
8 an election?

9 A. Notice period of 30 days.

10 Q. And if OXY did agree to drill the well, how long  
11 does it have to commence the well?

12 A. Ninety days.

13 Q. So that's approximately four months' time. Would  
14 OXY necessarily be obligated to drill the well?

15 A. No, sir.

16 Q. So if OXY -- even if OXY consented to the well,  
17 it would have another 90 days to drill the well. But if it  
18 chose not to drill the well, then that election would  
19 lapse?

20 A. It would elapse, need to be re-proposed.

21 Q. Okay. Did Bold propose the well to OXY last  
22 year?

23 A. Yes.

24 Q. And is that reflected in Exhibit 4?

25 A. Yes.

1 Q. And there's several pages there. Could you just  
2 briefly go through the three pages of the Exhibit 4 and  
3 tell what happened?

4 A. In November 27th the letter was written, hand-  
5 delivered to OXY on the 28th, with a discussion about our  
6 proposal, AFE proposal, to drill this well.

7 Within the 30-day time frame, a fax was received  
8 from OXY, from Mr. Evans, who stated that -- at the bottom  
9 with a handwritten note that said there was an objection,  
10 that Bold had the contractual rights to propose the well.

11 Q. Okay. But you made the election -- Bold sent the  
12 election letter to OXY, and OXY did not elect to join in  
13 the well?

14 A. They did not make an election to join in the well  
15 within the 30-day time frame.

16 Q. Okay. So under the operating agreement, they  
17 would be deemed a nonconsenting party?

18 A. Yes.

19 Q. Okay. Now, Mr. Evans in his handwritten note  
20 refers to the letter agreement dated March, 1997, and that  
21 has been addressed, and that is in the file of the -- the  
22 Division's file in this matter. There was a dispute over  
23 the terms of that letter, correct? OXY claimed that under  
24 that letter, only it had the right to drill a well?

25 A. That's correct.

1 Q. And the parties after several months'  
2 negotiations agreed to terminate that 1997 letter  
3 agreement?

4 A. That's correct.

5 Q. And have all of the interest owners in the west  
6 half of Section 8, the working interest owners in the west  
7 half of Section 8, either signed an agreement terminating  
8 that letter, or have agreed to sign it?

9 A. Correct.

10 Q. And so at this point, in your opinion, is the  
11 only pertinent document regarding drilling of the well the  
12 1997 JOA?

13 A. Yes.

14 Q. Now just a couple of final matters. Bold was not  
15 one of the original signatories back in 1997; it didn't  
16 even exist back then, did it?

17 A. Correct.

18 Q. Bold is a fairly recently formed company?

19 A. Two-year company.

20 Q. And it went out and bought interest in this well  
21 unit?

22 A. Correct.

23 Q. And how does Bold operate? Is it in the business  
24 of just holding property, or does it want to go out and  
25 develop property?

1           A.    We have to go out and develop property, we have  
2 to be aggressive. We've got loans, we've got objectives to  
3 be met. So we have to be aggressive with any property we  
4 buy.

5           Q.    Okay. So you want to go out and when you buy  
6 property, then develop it?

7           A.    Yes.

8           Q.    Now in this one the proposal to OXY was in  
9 November of 2006, so at this point you're closing in on six  
10 months, and the well hasn't been drilled?

11          A.    Correct.

12          Q.    Or even been commenced?

13          A.    That is correct.

14          Q.    For purposes of the company's investment and to  
15 protect its rights, does it need to go out and drill wells?

16          A.    Yes.

17          Q.    And it believes that this is a good prospect?

18          A.    Yes.

19          Q.    And it should be drilled as soon as possible?

20          A.    Yes.

21          Q.    Now I believe you had discussions with Mr. Evans,  
22 who's here, and is it your thought that OXY would like Bold  
23 to re-propose the well under the JOA?

24          A.    Yes.

25          Q.    Because of the recent doing away with the other

1 contractual issues?

2 A. Correct.

3 Q. Is Bold willing to re-propose the well to OXY?

4 A. Yes.

5 Q. But you also still want to ask for an approval of  
6 the APD in Bold's name?

7 A. Yes.

8 Q. And why is that?

9 A. We want OXY to participate in this well. But in  
10 the event that -- if OXY decides they do want to  
11 participate in this well, okay, you know, they can -- we  
12 have an APD, we'll be glad to transfer that APD and let OXY  
13 drill the well. If OXY goes nonconsent in drilling this,  
14 we will be able to move quickly and drill this well.

15 At the date of the last hearing, we had a rig  
16 ready to move on this within three weeks. That rig has now  
17 moved to another location. So I am hoping to get some  
18 relief to be able to move on this location shortly.

19 Q. Okay. So if OXY did consent -- The reason you  
20 would like -- Bold would like the APD approved in its name  
21 is that if OXY goes nonconsent when you re-propose the well  
22 to them, you'll be ready to move forward?

23 A. That's correct.

24 Q. And if OXY does consent to the well, at the time  
25 they're ready to commence the well, Bold would gladly --

1 and commit on the record, to signing the appropriate  
2 Division form to either release its APD or to turn this APD  
3 over to OXY?

4 A. That's correct. I mean, they contractually under  
5 the JOA have the right to drill the well if they  
6 participate.

7 Q. Okay. And under Division Regulations we had to  
8 notify OXY of this Application, and this is also -- these  
9 are state leases in the west half of Section 8?

10 A. That's correct.

11 Q. And so under the Division regulations, we also  
12 had to notify the Commissioner of Public Lands?

13 A. That is correct.

14 Q. And that notice was given, as reflected by  
15 Exhibit 5, was it not?

16 A. Yes.

17 Q. Were Exhibits 1 through 5 prepared by you or  
18 under your supervision or compiled from company business  
19 records?

20 A. Well, Exhibits 1 and 2 were prepared under my  
21 supervision. Exhibit 3 was prior to the time Bold had  
22 ownership, and it was prepared by our previous -- the  
23 previous owner we bought it from. Items 4 obviously were,  
24 and then Items 5 you prepared for us, yes.

25 Q. And they come from your business records?

1 A. That's correct.

2 Q. And in your opinion, is the granting of this  
3 Application in the interest of conservation and the  
4 prevention of waste?

5 A. Yes.

6 MR. BRUCE: Mr. Examiner, I'd move the admission  
7 of Bold Exhibits 1 through 5.

8 EXAMINER CATANACH: Any objection?

9 MR. CARR: No objection.

10 EXAMINER CATANACH: Exhibits 1 through 5 will be  
11 admitted.

12 Mr. Carr?

13 CROSS-EXAMINATION

14 BY MR. CARR:

15 Q. Ms. Worthington, you are a landman by profession;  
16 is that correct?

17 A. Yes, sir.

18 Q. Are you also an attorney?

19 A. No, sir.

20 Q. I had heard you were. I was going to --

21 A. Oh.

22 Q. -- extend my condolences.

23 A. I think my previous life was a teacher.

24 (Laughter)

25 Q. (By Mr. Carr) In your work as a land person, are

1 you called upon to draft agreements?

2 A. Yes, sir.

3 Q. And interpret agreements?

4 A. Yes.

5 Q. And negotiate with other parties as it relates to  
6 these agreements?

7 A. Yes.

8 Q. And all of that has been involved here, has it  
9 not?

10 A. Yes.

11 Q. Are you also familiar with the Rules of the Oil  
12 Conservation Division?

13 A. Yes, sir.

14 Q. Could you tell me what is the ownership breakdown  
15 in the spacing unit we're talking about?

16 A. Bold has a 40-percent -- I believe OXY has 46  
17 percent, and you have other co-owners that have the  
18 remaining amount.

19 Q. Is there any question in this case about a lease  
20 expiration?

21 A. No, sir.

22 Q. When we were working on this two weeks ago, there  
23 were issues concerning rig availability, but you have been  
24 able to move your rig to another location; is that correct?

25 A. Yes, sir, we loaned the rig out to a third party

1 and -- with hopes we'll have this rig back.

2 Q. Do you have a -- other prospects that Bold plans  
3 to drill with this rig, or is this the last well that  
4 you're going to be using this rig for?

5 A. It seems like I would like to have a whole gamut  
6 of wells that I could say we could move them to. It seems  
7 one at a time. But this one is a very high-value well for  
8 us.

9 Q. You're not planning, then, to release this rig  
10 after you drill this well; you would have other plans for  
11 it?

12 A. After we drill this well?

13 Q. Yes.

14 A. No, sir, I'll have other plans for additional  
15 locations.

16 Q. And I'm not going to get into interpreting these  
17 agreements. I just want to identify what they are.

18 Are you familiar with the letter agreement, the  
19 farmout, dated back in 1997?

20 A. Yes, sir.

21 Q. And what is the status, as you understand it, of  
22 that agreement at this time?

23 A. Mr. Evans and I have worked on trying to get an  
24 agreement suitable for the parties involved for a number of  
25 months. Monday of this week Mr. Evans called and had this

1 document signed by OXY. Monday afternoon Bold signed the  
2 document.

3 The document was faxed to another co-owner in  
4 Dallas, the name of Monarch, who signed it and faxed back a  
5 copy. And there was another gentleman by the name of Mr.  
6 Boles and his wife; they've signed it. And the third party  
7 is a Mr. Tom Beall who has -- we've had verbal discussions  
8 with. And Bold's counsel has had discussions that he is  
9 willing to sign this document. I do not have it signed at  
10 this time.

11 Q. Okay. And that termination agreement was dated  
12 May 8th, this week --

13 A. Yes, sir.

14 Q. -- finally got that worked out?

15 A. Yes, sir.

16 Q. If I understood your testimony, are you prepared  
17 to re-propose the well to OXY?

18 A. Yes, sir.

19 Q. And when you re-propose the well, are you going  
20 to -- will it be proposed exactly as it was initially  
21 proposed?

22 A. No, sir, the AFE has gone down slightly, so it  
23 will be re-proposed --

24 Q. Will it be --

25 A. -- to all the parties.

1 Q. Will it be proposed as a Canyon completion?

2 A. Canyon-Wolfcamp completion?

3 Q. Yes.

4 A. Yes, sir.

5 Q. Are you willing to take that well down to the  
6 Morrow, to test the Morrow?

7 A. Geologically, we do not feel that that is the  
8 best or optimum location for a Morrow well.

9 Q. And so you're not going to propose it to the  
10 Morrow; is that your answer?

11 A. No, sir, this -- We're not opposed to another  
12 Morrow well in this northwest quarter, but this would not  
13 be the location that we would put a Morrow well.

14 Q. Are those things subjects that could be  
15 negotiated with OXY?

16 A. Everything is subject to negotiation, but we want  
17 to move forward with this well. I feel like that this is  
18 the -- you know, this is a good location.

19 Q. I'm just trying to find out if it would be  
20 possible when we enter negotiations with you to discuss the  
21 Morrow or perhaps an alternative location in the northwest  
22 quarter of this section.

23 A. We are hoping after this hearing that Mr. Evans  
24 and the OXY and Bold team can get together and have a great  
25 deal of discussion about moving forward with opportunities

1 in the -- what we call our Turkey Tract area. But for our  
2 purposes today, we're just trying to seek an APD to get  
3 this well drilled.

4 Q. And my question really is, are you willing to  
5 drill a Morrow, or consider a Morrow well in the northwest  
6 quarter?

7 A. Yes, sir, I believe that both companies would  
8 consider a Morrow well in the northwest quarter. But this  
9 well we would not take to the Morrow. It adds a great deal  
10 of additional cost, and the geologic merits do not, in our  
11 opinion, warrant that.

12 Q. Now, if you -- We've talked about two wells on  
13 this spacing unit. Bold operates other wells in the area,  
14 does it not?

15 A. Yes, sir.

16 Q. It operates a direct offset to the west, to the  
17 proposed location, isn't that correct?

18 A. Not for a Canyon-Wolfcamp well.

19 Q. But for a Morrow well?

20 A. There's a Morrow well on the adjacent section to  
21 the west.

22 Q. It's an immediate offset to this location, is it  
23 not?

24 A. Immediate offset? No, sir, I believe it's  
25 located in the northeast of the northeast of Section 7, and

1 this one would be in the -- a different formation, located  
2 in the southwest of the northeast.

3 Q. Of the northwest.

4 A. I'm sorry, of the northwest. Southwest of the  
5 northwest.

6 Q. You're proposing this well in the northwest of 8,  
7 correct?

8 A. Yes, sir.

9 Q. And you have a Morrow well in the northeast of 7?

10 A. Yes, sir.

11 Q. And that's the quarter section directly west of  
12 the subject well?

13 A. Yes, sir.

14 Q. And it's a very good Morrow well?

15 A. Yes, sir, it's a good --

16 Q. It IP'd at 4 million a day, did it not?

17 A. It did. It's not that now.

18 Q. And so with that well you have at least shown  
19 that there is a potential for Morrow production in the  
20 area?

21 A. Yes, sir, absolutely.

22 Q. Now, have you looked at what it would cost to  
23 drill two wells on this spacing unit to test the Morrow, as  
24 opposed to drilling one that would test all of those wells  
25 -- all those zone?

1           A.    I think we have looked at that, and I'm not  
2           opposed to presenting a Morrow proposal, or maybe OXY wants  
3           to present a Morrow proposal in the upcoming future.

4           Q.    Do you think it would be wiser to drill a second  
5           well to the Morrow as to incurring a cost to drill an extra  
6           thousand feet to test the Morrow in one well?

7           A.    No, sir, I believe if you found a Morrow well,  
8           that you would -- that this would be behind-pipe pay, and  
9           you might never get to it for a long time.

10          Q.    When you drill a Morrow well, it's a risky  
11          formation; you would agree with me on that, would you not?

12          A.    Oh, I think everything in southeast New Mexico  
13          has risk to it at this point.

14          Q.    And when you're drilling a well with risk, isn't  
15          it important to have uphole potential to make a -- to  
16          assure that the well is an economically viable --

17          A.    That's why we like a lot of things in southeast  
18          New Mexico, yes, sir, we do.

19          Q.    And if you had already developed the Cisco and  
20          the shallower horizons in the well you're proposing, it  
21          would mean when you drill a Morrow well you'd have to  
22          justify the economics on the Morrow alone; isn't that  
23          right?

24          A.    If I'm going to drill for a Morrow well, I --

25          Q.    A second --

1           A.    Yes, sir, I have to run economics on a Morrow  
2 well, four million bucks.

3           Q.    And if you already had all the other zones  
4 committed to and being produced in this well, you wouldn't  
5 have the potential to go uphole in your Morrow -- single  
6 Morrow --

7           A.    That's correct. But you know, that would not --  
8 where a Morrow well would be placed would not be the  
9 optimum location for the type of well we're trying to ask  
10 for an Application for today.

11          Q.    I'm concerned that when you testify that you  
12 would like an APD, but if you can work it out you're  
13 willing to transfer that to OXY, if they are willing to  
14 drill the well under the JOA; was that your testimony?

15          A.    Yes, sir, if OXY participates in this well, then  
16 contractually they have the right to operate the well.  
17 We'll have an APD out there, and I'll be glad to transfer  
18 that over.

19          Q.    But when you have an APD that only goes to the  
20 Cisco, doesn't that sort of put sideboards on what you're  
21 really going to be negotiating?

22          A.    I think if you have an APD for the Cisco and you  
23 ask for an APD for the Morrow, that's two different deals.

24          Q.    If you have one person who wanted to have an APD  
25 that went to the Morrow and then would go uphole and test

1 everything else because the economics dictated that, that  
2 would be different than what you're proposing with your  
3 initial APD; isn't that right?

4 A. You know, I guess I'm kind of wondering why OXY  
5 hasn't proposed a well.

6 Q. You have been in discussions with Mr. Evans,  
7 haven't you, about what OXY's interpretation is about all  
8 the contracts that have been stacked on this property, are  
9 you not?

10 A. Yes, sir, we have talked about the termination  
11 agreement.

12 Q. And didn't Mr. Evans, in the letter that has been  
13 marked your Exhibit Number 4, indicate to you that they  
14 didn't think you had the right to drill the well?

15 A. Yes, sir. We disagree with that interpretation.

16 Q. Right, and we're not going to argue with --

17 A. No, sir.

18 Q. -- you; we each have our difference of opinion?

19 A. Right.

20 Q. You're familiar with that farmout agreement, are  
21 you not?

22 A. Yes, sir.

23 Q. Wouldn't you agree that there terms that were  
24 very burdensome if that agreement was in effect, to OXY as  
25 well as to Bold?

1 A. Yes, sir.

2 Q. If a well was drilled in the northwest quarter  
3 that went to the Morrow, it could compete, conceivably,  
4 with your offsetting well in the Morrow; isn't that right?

5 A. I think we have a legal location, sir. I  
6 couldn't say that.

7 Q. It would be another well on the adjoining spacing  
8 unit in the same formation, would it not?

9 A. Yes, sir, it would be a legal -- I'm assuming a  
10 legal location in the offsetting northwest quarter.

11 Q. If you get an APD that goes just to the Canyon  
12 and you stand on that, and there's no Morrow well, then  
13 there's no competing well in that horizon unless you go out  
14 and drill a stand-alone Morrow well; isn't that right?

15 A. I don't know that a Morrow well will be  
16 competing.

17 Q. Are you -- I guess my question is, are you  
18 limiting just to the Canyon so that you don't have a well  
19 competing with your Morrow well on the adjoining section?

20 A. Oh, no, sir. We're asking for a Wolfcamp Canyon  
21 well because of a great deal less cost, and we believe that  
22 there is a field there that has not been developed. We  
23 certainly have shown that there is a reservoir there with  
24 the well that's drilled in the southwest quarter.

25 Q. You said you could drill to the Canyon, a lot

1 less cost than you could drill if you went to the Morrow,  
2 correct?

3 A. Yes, sir.

4 Q. That would be what, an extra thousand feet?

5 A. I'm not sure of the depth.

6 Q. But there would be just the difference from the  
7 Canyon down to the Morrow, that's the --

8 A. Yes, sir, I would say probably a million-dollar  
9 difference.

10 Q. And you just told me that to drill a stand-alone  
11 Morrow would be a \$4-million well; isn't that right?

12 A. I'm saying probably in today's market, if you  
13 took an average of the wells to this depth and our other  
14 wells, it was around \$4 million.

15 Q. So if we're looking at developing the Morrow, we  
16 could get to the Morrow for a million if we took this well  
17 down, but you're asking OXY to propose a \$4 million well to  
18 test the Morrow on a stand-alone basis; is that correct?

19 A. I'm happy to have discussions with OXY later on.  
20 We just want to drill this one well.

21 Q. If you go under the operating agreement and you  
22 re-propose the well, the time frames and all the procedures  
23 that you have talked about govern how the well is proposed  
24 and drilled; isn't that correct?

25 A. Yes.

1 Q. And other than --

2 A. Yes, sir.

3 Q. -- just issuing an APD to the operator when you  
4 conclude your negotiations, that's the only thing the OCD  
5 would have to do; isn't that right?

6 A. I'm sorry, just repeat that again. I lost my --

7 Q. If you proceed under the --

8 A. -- train of thought.

9 Q. -- operating agreement --

10 A. Yes.

11 Q. -- and do what's outlined there --

12 A. Yes.

13 Q. -- you don't have to ask the OCD to do anything  
14 except at the end of your negotiations approve an APD;  
15 isn't that --

16 A. Yes if the operator --

17 Q. -- right?

18 Q. -- makes an application for an APD, there's no  
19 protest or anything. I mean, absolutely it is issued,  
20 unless non- --

21 Q. And you're actually suggesting that under the APD  
22 you have these discussions and try and work through that  
23 process?

24 A. Yes, sir.

25 Q. And aren't you premature seeking your APD?

1           A.    I don't think so.  I mean, I believe we've been  
2   at this now for -- since November 28th trying to drill a  
3   well.  We're happy, we want OXY to participate in the well.  
4   I have no problem with that at all.  We're not trying to  
5   get a nonconsent.  You've got over 50 percent of the  
6   working interest owners who say they want to drill the  
7   well.

8                    You know, we don't want to delay it for another  
9   six months, we just want an APD.  And if OXY can make up  
10  their mind in the next 30 days what they want to do, and  
11  then if it's such that they go nonconsent, we've already  
12  got approval for it and we can move forward.  We don't want  
13  to be back up here going through this again.

14           Q.    You're not going to operate the well; that's my  
15  understanding of your testimony?

16           A.    No, sir, we will drill and complete, which is  
17  where I feel like our expertise with our company has been,  
18  is in the drilling and completion.

19           Q.    Are you planning to even own the well?

20           A.    Do I plan to own the well?

21           Q.    Yeah.  I mean, I know you're going to turn  
22  operations over to OXY under --

23           A.    Yes, sir.

24           Q.    -- the JOA.

25           A.    That's right.

1 Q. Are you planning to sell this property?

2 A. In the future we will sell this property,  
3 probably all of our properties.

4 Q. And isn't what you're doing is just trying to  
5 enhance the value of your property so you can sell it to  
6 someone else?

7 A. I'm trying to make money.

8 Q. If in the process of doing this you make it more  
9 difficult to develop, say, the Morrow horizon, it wouldn't  
10 make any difference to you if you'd sold the property and  
11 moved on, would it?

12 A. Mr. Carr, repeat that one more time, let me --

13 Q. Yeah, I'm --

14 A. -- see if I can try to get this --

15 Q. My question is, aren't you just trying to enhance  
16 the value of the property so you can sell it to someone  
17 else?

18 A. I am trying to enhance the value of the property  
19 so that at some day when Bold sells properties, as with a  
20 lot of companies, that we get the most for the property --

21 Q. And when Bold --

22 A. -- but, you know, the one thing about this is,  
23 OXY will be operating it so. So the selling of a  
24 nonoperating interest shouldn't have an impact upon OXY.

25 Q. Even if the well is not where they think it

1 should be drilled?

2 A. I don't know what OXY's geologists have decided  
3 about where the well needs -- where a Morrow well needs to  
4 be drilled.

5 Q. Even if they think the well is being drilled to  
6 the wrong horizon, it wouldn't have an impact on them?

7 A. I think that OXY has the option to propose a  
8 Morrow well in the northwest quarter if they so choose. We  
9 would like, and have the right by virtue of the operating  
10 agreement, to propose a well that we feel is economically  
11 viable and benefit the state with royalties and our own  
12 pocketbook.

13 Q. The termination agreement that you prepared is  
14 dated May the 8th, is it not?

15 A. Yes, sir.

16 Q. And so as of that date the contract issue went  
17 away?

18 A. Yes, sir. I think everyone agrees that that  
19 termination agreement signed by everybody is -- resolves  
20 our previous problems with our conflict of whether it was  
21 valid or not valid.

22 Q. And you don't think it would, now that that  
23 contract issue has been resolved, to simply propose a well  
24 and proceed under the operating agreement?

25 A. Yes, sir, I'm happy to propose the well, and will

1 do so when I get back on Monday.

2 MR. CARR: That's all I have. Thank you.

3 MR. BRUCE: Yeah, a couple of follow-up  
4 questions, Mr. Examiner.

5 REDIRECT EXAMINATION

6 BY MR. BRUCE:

7 Q. Certainly OXY has the right to propose a Morrow  
8 well in the west half of Section 8, do they not?

9 A. Yes, sir.

10 Q. Have they?

11 A. No, sir.

12 Q. And I take it from what you said -- Well, and by  
13 the same token, Bold has the right to propose a  
14 Cisco/Canyon test in the west half of Section 8?

15 A. That's correct.

16 Q. And I take it from what you've said, is that at  
17 this location Bold's geologist doesn't think the Morrow is  
18 a good shot?

19 A. It would not be an optimum location for the  
20 Morrow.

21 Q. And again, you'd seek the APD solely for the  
22 purposes of drilling and completing the well and then  
23 turning it over to OXY?

24 A. Yes.

25 Q. So operations would revert to OXY?

1 A. Upon completion of the well, yes, sir.

2 Q. And maybe you don't know this, but I think it's  
3 reflected in the well file. The Number 1 well currently  
4 operated by OXY was a Morrow test?

5 A. Yes, sir.

6 Q. And it's no longer producing in the Morrow?

7 A. It was no longer producing, and I don't believe  
8 -- I think they immediately pulled it up and made it a  
9 Wolfcamp-Canyon well.

10 Q. Okay. So if it was tested in the Morrow, it was  
11 not successful and --

12 A. It was not economic.

13 MR. BRUCE: Not economic. Thank you.

14 RE CROSS-EXAMINATION

15 BY MR. CARR:

16 Q. Two things we can agree on, I believe: that there  
17 is a JOA, and that under that OXY will operate. Is that  
18 fair to say?

19 A. Yes, sir.

20 MR. CARR: Okay, thank you.

21 EXAMINATION

22 BY EXAMINER CATANACH:

23 Q. The farmout letter agreement, the 1997 agreement,  
24 is it your opinion that that's no longer in effect?

25 A. Yes, sir.

1 Q. Okay. It hasn't been signed by one party?

2 A. One party has verbally given consent that he'll  
3 sign it when we get back.

4 Q. Okay, so the only thing we're dealing with now is  
5 the JOA?

6 A. Yes, sir. Just the APD.

7 Q. Just the APD.

8 Now did you submit this APD to the OCD?

9 A. Under the supervision of my contractor, they --  
10 with Gray Surface Specialties, they did.

11 Q. And what was the result of that?

12 A. The opposition by OXY to the APD.

13 Q. Did they file something with the Hobbs office?

14 A. Yes, sir.

15 Q. Or, I'm sorry, the Artesia office?

16 A. Yes, sir, that would be their letter that's dated  
17 January the 8th.

18 Q. And as a result of that letter, did the Artesia  
19 office inform you that they could not approve the permit?

20 A. That's correct.

21 Q. Okay.

22 A. The permit is pending.

23 Q. Now is there a Morrow location in the northwest  
24 quarter of the section that you guys would drill?

25 A. I think so.

1 Q. But it's just not this location?

2 A. That's right.

3 Q. And that's based on geology?

4 A. Yes, sir.

5 Q. Now the Morrow location, would that not be  
6 suitable for Cisco/Canyon-Wolfcamp, in your opinion?

7 A. It would not be the optimum location that we  
8 would feel like. It might have Cisco/Canyon in it. But  
9 again, if you've got a Morrow well, you're not going to  
10 utilize that Cisco/Canyon for a period of time till it  
11 depleted and probably pull it up and use that wellbore for  
12 a Cisco well. I call it Wolfcamp-Canyon well.

13 Q. So collectively between Bold and OXY, you own  
14 approximately 86 percent of the unit?

15 A. Yes, sir.

16 Q. Who are the other interest owners?

17 A. There is an interest owner out of Fort Worth, Mr.  
18 Hodges, Leland Hodges, under the company of Monarch, owns  
19 like 6.25 percent. There's a Herbert Boles and his wife  
20 out of Midland, who have a very small percentage, less than  
21 one percent. And there is a gentleman by the name of Tom  
22 Beall who has around six percent.

23 Q. Okay, so those are the only other three interest  
24 owners?

25 A. Yes, sir. And the parties to the agreement were

1 OXY, Threshold, who is our predecessor-in-title, Monarch  
2 and Mr. Boles.

3 EXAMINER CATANACH: Do you want to ask some  
4 questions?

5 EXAMINATION

6 BY MR. BROOKS:

7 Q. Well, it sounds to me like the primary difference  
8 of opinion at this point between OXY and Bold is whether  
9 this well should be drilled as a Wolfcamp-only well or as a  
10 Morrow test; is that correct?

11 A. That's what I'm hearing today.

12 Q. Okay, so you -- There really hasn't been  
13 negotiations about this previously?

14 A. Mr. Evans said that OXY would like to have a well  
15 in the future in the northwest quarter, some -- in the  
16 discussion when it was delivered, the application for the  
17 permit was delivered in November.

18 Q. Yeah. But you're not prepared to present to the  
19 OCD any geologic evidence at this time?

20 A. I do not have my geologist with me today.

21 MR. BROOKS: I believe that's really all the  
22 questions I can think of.

23 EXAMINER CATANACH: Okay.

24 MR. BRUCE: Mr. Examiner, the only other thing I  
25 have is, just since you were asking about the interest

1 ownership, I've marked as Exhibit 6 a stipulation of  
2 interest --

3 FURTHER EXAMINATION

4 BY MR. BRUCE:

5 Q. -- And if Ms. Worthington could just identify  
6 that.

7 A. This is the stipulation of interest that has been  
8 signed by all the parties, with the exception of Tom Beall.  
9 And Tom also owns the company named Fuel Properties, so he  
10 has agreed upon my return to execute this document and has  
11 communicated that with our counsel, Mr. Montgomery.

12 Q. And this does indicate on Section -- on page 2,  
13 the interest ownership of the various parties in Section 8;  
14 is that correct?

15 A. That's correct, Counsel.

16 MR. BRUCE: Mr. Examiner, I'd just move the  
17 admission of Exhibit 6, just so you can see the interest  
18 ownership.

19 MR. CARR: No objection.

20 EXAMINER CATANACH: Exhibit 6 will be admitted.

21 Anything further of this witness, Mr. Bruce?

22 MR. BRUCE: No, sir.

23 EXAMINER CATANACH: Anything further in your  
24 presentation?

25 MR. BRUCE: No.

1 EXAMINER CATANACH: Mr. Carr?

2 MR. CARR: At this time we'd call David Evans.  
3 We're not going through this, I promise, I give  
4 you my word.

5 MR. BROOKS: There's a massive amount of material  
6 here.

7 MR. CARR: May it please the Examiner, I have  
8 presented to you our exhibit packet. Before everyone runs  
9 me out of here, what it consists of are copies of the  
10 various agreements that have been back and forth between  
11 the party and Mr. Evans' file. And the reason we included  
12 that is, in some earlier discussions and earlier hearings  
13 there had been some question about the extent to which the  
14 parties have been negotiating. So the bulk of this is a  
15 correspondence file. We do not intend to go through that.

16 And the others are just the agreements that I'll  
17 ask Mr. Evans to just simply identify, and we're not really  
18 going to go beyond that, so this is not the kind of  
19 presentation that this might suggest.

20 DAVID RAY EVANS,  
21 the witness herein, after having been first duly sworn upon  
22 his oath, was examined and testified as follows:

23 DIRECT EXAMINATION

24 BY MR. CARR:

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

1 A. David Ray Evans.

2 Q. Where do you reside?

3 A. Midland, Texas.

4 Q. By whom are you employed?

5 A. OXY USA --

6 Q. And what is your current --

7 A. -- WTP.

8 Q. -- position with OXY --

9 A. Land negotiator.

10 Q. -- USA?

11 Have you previously testified before the New  
12 Mexico Oil Conservation Division?

13 A. I have.

14 Q. Could you summarize your educational background  
15 for the Examiner?

16 A. University of Tulsa, BS degree, and employed by  
17 OXY in numerous oil and gas courses.

18 Q. How many years' experience do you have working as  
19 a landman?

20 A. Twenty-six.

21 Q. And has your work been throughout the Rockies?

22 A. It's been throughout the Rockies, Permian Basin,  
23 offshore.

24 Q. Are you familiar with the Application that was  
25 filed in this case by Bold?

1 A. I am.

2 Q. Are you familiar with the status of the lands?

3 A. I am.

4 MR. CARR: We tender Mr. Evans as an expert in  
5 petroleum land matters.

6 EXAMINER CATANACH: Any objection?

7 MR. BRUCE: No objection.

8 EXAMINER CATANACH: Mr. Evans is so qualified.

9 Q. (By Mr. Carr) Would you briefly state OXY's  
10 reason for appearing in this case?

11 A. We're opposed to any filing on operated property  
12 by a nonoperator.

13 Q. What is OXY's interest in the property?

14 A. Roughly 46 percent.

15 Q. And are you also the designated operator?

16 A. Yes, we are.

17 Q. And that is confirmed by the joint operating  
18 agreement for the property?

19 A. Yes, it is.

20 Q. In terms of the issues concerning the prior  
21 farmout agreement, has OXY signed a termination letter?

22 A. Yes, it has.

23 Q. And is a copy of that farmout agreement what is  
24 marked OXY Exhibit 1?

25 A. Yes.

1 Q. And the termination agreement is marked OXY  
2 Exhibit Number 2?

3 A. Yes.

4 Q. When that termination agreement is signed, at  
5 that point in time it will no longer burden the property or  
6 the people who are trying to develop it; is that fair to  
7 say?

8 A. That's correct.

9 Q. Whether or not the agreement is signed, does OXY  
10 object to Bold being designated at this time operator of  
11 the well?

12 A. Yes, it does.

13 Q. When the termination agreement is signed, would  
14 you agree with Ms. Worthington that we are under the JOA?

15 A. Yes, we are.

16 Q. And that well will be operated under that JOA; is  
17 that correct?

18 A. Yes, it will be.

19 Q. And OXY is designated as operator under that  
20 agreement?

21 A. Yes, it is.

22 Q. Is the JOA what has been marked OXY Exhibit  
23 Number 3?

24 A. Yes, it is.

25 Q. What is OXY's concern about the location and the

1 formations that are covered by the original proposal from  
2 Bold?

3 A. Over-capitalization of the property with two  
4 wells that test the same zones.

5 Q. Is OXY interested in drilling a single well to  
6 the Morrow?

7 A. OXY is interested in drilling a well to the  
8 Morrow.

9 Q. If there have to be two wells in this quarter  
10 section to develop the Morrow, would OXY be willing to  
11 spend the \$3 million to test -- or the \$4 million to test  
12 the Morrow formation?

13 A. I'm not sure of that. That would be a decision  
14 made by our senior management.

15 Q. What does it do to the cost?

16 A. It over-capitalizes the property.

17 Q. What do you mean by over-capitalizes?

18 A. You're spending twice the amount of money to  
19 capture the same reserves.

20 Q. Now what does OXY propose be done with this  
21 property?

22 A. To be developed under the terms of the joint  
23 operating agreement.

24 Q. Is OXY opposed to an APD being approved prior to  
25 the time that negotiations are conducted under the JOA?

1 A. Yes, we do.

2 Q. And when -- is OXY prepared to drill a well  
3 pursuant to the JOA and pursuant to the provisions of that  
4 agreement?

5 A. Once an AFE is received, we will go under the  
6 terms of the JOA.

7 Q. And also sort out the interests in this spacing  
8 unit. You prepared a stipulation of interest, did you not?

9 A. Yes, I did.

10 Q. Is a copy of that stipulation of interest marked  
11 Exhibit Number 4?

12 A. Yes, it is.

13 Q. Is it your understanding that this stipulation of  
14 interest is agreeable to the other interest owners in this  
15 west-half spacing unit?

16 A. Yes, it is.

17 Q. The termination -- or, I'm sorry, the stipulation  
18 of interest, was actually the route you had to follow  
19 because Tom Beall wanted that -- preferred that, as opposed  
20 to some assignments; is that --

21 A. That's correct.

22 Q. Did you actually personally prepare that  
23 document, the stipulation of interest?

24 A. The final document was prepared by OXY, yes.

25 Q. Exhibit Number 5 is simply a copy of your file,

1 is it not?

2 A. Yes, it is.

3 Q. And it shows the kind of effort that's been made  
4 both ways to try and resolve this issue?

5 A. That's correct.

6 Q. In terms of this proposal, how might it affect  
7 the rights of the interest owners in this section to  
8 develop the Morrow?

9 A. It will probably dissuade the other owners from  
10 drilling a Morrow test if the Cisco/Canyon-Wolfcamp well is  
11 drilled first.

12 Q. So just to assume that a Morrow well can be  
13 drilled later is not necessarily a proper assumption?

14 A. By no means.

15 Q. And that would be dependent on what? That  
16 decision will be based on what?

17 A. Economics.

18 Q. What is the reason you think a Morrow well needs  
19 to be drilled in the northwest quarter of this section?

20 A. We feel that the Morrow has not been condemned,  
21 and the offset proves that fact.

22 Q. If it becomes uneconomic to drill a well to the  
23 Morrow in the northwest quarter of Section 8, will those  
24 reserves that could be recovered by that well be left in  
25 the ground?

1 A. Yes, it will be.

2 Q. Would that deny you an economic opportunity to  
3 access those reserves, an opportunity that now exists?

4 A. It would.

5 Q. Were Exhibits 1 through 5 prepared by you?

6 A. Yes.

7 Q. Or compiled under your direction?

8 A. Compiled under my direction.

9 MR. CARR: At this time we'd move the admission  
10 into evidence of Exhibits 1 through 5.

11 MR. BRUCE: No objection.

12 EXAMINER CATANACH: Exhibits 1 through 5 will be  
13 admitted.

14 MR. CARR: That concludes my direct examination  
15 of Mr. Evans.

16 CROSS-EXAMINATION

17 BY MR. BRUCE:

18 Q. Mr. Evans, I know this is repetitive, but has OXY  
19 proposed a Morrow well in the west half of Section 8 to  
20 Bold and the other working interest owners?

21 A. No, it has not.

22 Q. Does it intend to?

23 A. I am not -- It's not my decision, it's not...

24 Q. So you don't know if it's going to be done?

25 A. That's a management decision, yes.

1 Q. Okay. And so you can't give the Division any  
2 anticipated time of a well proposal or anticipated time of  
3 a well commencement for a Morrow well in the northwest  
4 quarter of Section 8?

5 A. We felt that this matter first needed to be  
6 reviewed and finalized before we went further with the  
7 drilling.

8 Q. Does -- When Bold re-proposes its Cisco/Canyon  
9 test, does OXY intend to join in that well?

10 A. I do not know.

11 Q. If Bold proposed it as a Morrow test at that same  
12 location, does OXY intend to join in that well?

13 A. I do not know.

14 Q. Does OXY have the budget to join in Bold's well?

15 A. OXY always has the budget.

16 Q. Does -- And you do agree under the JOA that if a  
17 well proposal is made 30 days from now, or whenever the  
18 time frame is --

19 A. Ninety days after the 30-day period.

20 Q. Ninety days after the 30-day period, it's  
21 supposed to drill?

22 A. Yes, sir.

23 Q. But that time can lapse without drilling of a  
24 well?

25 A. It can.

1 Q. And if that's the case, then the well would need  
2 to be proposed a second time?

3 A. I don't know that that's what the JOA says. I  
4 think that's a historical misnomer. It actually just says  
5 that time expires, and it could be that the proposing party  
6 may be able to drill the well. But I'm not clear on that.

7 Q. At this point, is OXY drilling any Morrow wells  
8 in Eddy County?

9 A. Yes, we are.

10 MR. BRUCE: I think that's all I have, Mr.  
11 Examiner.

12 MR. CARR: Mr. Examiner, a couple follow-ups.

13 EXAMINER CATANACH: Uh-huh.

14 REDIRECT EXAMINATION

15 BY MR. CARR.

16 Q. Mr. Evans, you're not the person who decides or  
17 makes the final decision on what OXY is going to do on a  
18 new well proposal --

19 A. No, I'm not.

20 Q. -- isn't that right?

21 You are able to advise the Division that if a  
22 well is proposed under the JOA, that OXY would fully comply  
23 with the contractual provisions you have with the other  
24 operators we have in the spacing unit?

25 A. Yes, we would, and that's been our goal in this

1 matter.

2 Q. And you would not be dilatory in responding to  
3 these parties, as you have not been in the past?

4 A. We will respond quickly.

5 Q. And that at that time, whether or not the well  
6 goes to the Morrow would be an appropriate topic for  
7 discussion?

8 A. We hope so.

9 Q. And the location of the well would also be  
10 something you would discuss?

11 A. Yes.

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

13 EXAMINATION

14 BY EXAMINER CATANACH:

15 Q. So if Bold proposes the well again to OXY, then  
16 the procedure is, OXY has 30 days to --

17 A. -- make an election, yes, sir.

18 Q. -- to participate?

19 A. Oh --

20 Q. And who would drill the well? If you went  
21 consent, OXY would drill the well?

22 A. That would be negotiated by the parties,  
23 generally. I mean, I've never seen it happen, but we would  
24 negotiate whether we would drill it for them or, you know,  
25 turn it over to them to be drilled.

1 Q. Okay, and if OXY decided to go nonconsent, then  
2 Bold would have the right to drill; is that --

3 A. Well, that would be a decision made by our  
4 management to whether or not they wanted to drill it for --  
5 on behalf of Bold, since we'd be the ones accounting for  
6 the expenses and revenue.

7 Q. A dispute between parties under a JOA as to well  
8 locations and well -- you know, things like where -- how  
9 deep you want the well drilled, is that -- to you, is that  
10 all contractual?

11 A. So you would have to work that out, if you  
12 couldn't agree, at a courthouse somewhere; is that your  
13 opinion?

14 A. It is our opinion that under the JOA a party can  
15 propose, and then we have an election to make, and we would  
16 negotiate to who would drill, and most of the time we  
17 discuss prior to the drilling the depth. And this is  
18 highly unusual.

19 Q. Okay, but if parties can't agree on something  
20 under a JOA, where do you take it to be settled? I mean --

21 A. The court.

22 Q. Because it's a contract?

23 A. In the end it's a contract, uh-huh.

24 Q. But OXY doesn't have any plans at this point to  
25 propose a well?

1           A.    It was not on our drilling schedule for this  
2 year.

3           Q.    Okay.  So you don't know when --

4           A.    No, sir --

5           Q.    -- OXY proposed --

6           A.    -- I do not know.

7                   EXAMINER CATANACH:  Okay.

8                                   EXAMINATION

9           BY MR. BROOKS:

10           Q.    You did not testify as to what OXY's thinking was  
11 with regard to the location of either a Cisco well or a  
12 Morrow well, so that fits with your expertise being in  
13 land.  But is that correct, you have not testified as to  
14 what OXY's thinking is as -- whether or not this is an  
15 optimal location for either formation?

16           A.    I've not reviewed the geology, but my geologist  
17 feels -- which I work very closely with, Bob Doty -- feels  
18 very strongly that if you're going to drill a well here, it  
19 probably needs to test the Morrow at much lower cost.

20           Q.    Do you believe -- Do you know if OXY likes this  
21 location or if they prefer some other location?

22           A.    No, sir, I don't.  We were hoping to get with  
23 Bold to review their geology prior to the well being  
24 drilled, but...

25           Q.    Under the terms of the operating agreement as you

1 would read it, would this be kind of a rush to proposal,  
2 that whoever proposes first, then the other party has to  
3 respond to the proposal?

4 A. Yes, sir.

5 Q. So if Bold were to propose a well to the Wolfcamp  
6 only, then OXY would have to decide whether or not to join  
7 in that well, and they would in effect be locked out of  
8 this location so far as drilling a Morrow test; would that  
9 be correct?

10 A. Well, we would hope that we could discuss with  
11 the working interest owners the development plan that would  
12 cost less and test both zones --

13 Q. Yeah, and of course any --

14 A. -- as a duty, as operator.

15 Q. -- contractual issues can always be changed by  
16 negotiations?

17 A. Correct, correct.

18 Q. But assuming that the parties did not reach an  
19 agreement, it's -- the access to the location is a rush to  
20 get --

21 A. Yes, sir.

22 Q. -- the proposal to the other --

23 A. Yes, sir.

24 Q. -- party, if you -- the joint operating  
25 agreement.

1           Now if this well were drilled the way it is  
2 proposed here, which is, as I read it, with 7-7/8  
3 production casing set at 10,100 -- this may be outside your  
4 expertise, but would it be feasible to deepen that well to  
5 test a deeper zone if it were drilled in that manner, or do  
6 you know --

7           A.    That's out of my expertise.

8           Q.    I thought it might be.

9           Okay, I think that's all the questions I have.

10          A.    There would be working interest owners' problems,  
11 depending upon the consent and nonconsent issues of the  
12 parties in the Canyon.

13          Q.    Yeah.

14          A.    To take it deeper would require a different set  
15 of owners.

16          Q.    Okay, so there's a depth severance there?

17          A.    That would cause a depth problem, yes, as far  
18 as -- Say you had two owners that nonconsented the  
19 Wolfcamp, but they want to be in the Morrow --

20          Q.    So --

21          A.    -- and then so they propose to deepen. Who are  
22 the owners going to be?

23          Q.    This would create a depth severance under the  
24 operating agreement?

25          A.    Possibility.

1 Q. You're not saying that there is a depth --

2 A. No, sir --

3 Q. -- severance --

4 A. -- no, sir --

5 Q. -- in this --

6 A. -- no --

7 Q. -- title?

8 A. -- no.

9 MR. BROOKS: Okay, thank you.

10 EXAMINER CATANACH: Okay, anything further?

11 MR. CARR: I have a statement.

12 MR. BRUCE: Do you have questions.

13 MR. CARR: Just a statement.

14 MR. BRUCE: I just have a couple of questions.

15 EXAMINER CATANACH: Go for it.

16 FURTHER EXAMINATION

17 BY MR. BRUCE:

18 Q. Mr. Evans, are you aware that all of the other  
19 working interest owners in the west half, other than OXY,  
20 have agreed to drill the Number 2 well to the Cisco/Canyon?

21 A. I have not seen that, no.

22 Q. Does OXY have a rig available in the next 120  
23 days to drill the well?

24 A. I don't know.

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

## FURTHER EXAMINATION

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BY EXAMINER CATANACH:

Q. Just one more. Mr. Evans, does OXY plan on continuing to negotiate with Bold on this issue?

A. We plan to hopefully see some work right after this hearing, like next week, to discuss what next. We have no objections to the well being drilled.

EXAMINER CATANACH: All right.

MR. CARR: I want to hand to you a copy of Rule 104. I know you're excited about that. And I have a -- I hope -- fairly brief closing.

But Mr. Examiner, I think that we've got a case before you today that shouldn't be here. I think it's premature at best, and probably should never come before you. And I think that the Division is being used in this matter in what I think is an inappropriate way.

Since last fall there have been efforts to develop this acreage, and as we know there were contract questions that we believe have been resolved and that a termination agreement is going to be signed, and that will take that out of the picture. That's been the first stumbling block.

And now the parties have a joint operating agreement, and it sets procedures that govern the development of this property. And frankly, these

1 procedures don't involve the OCD, other than just issuing  
2 an APD when the negotiations are concluded. OXY is  
3 prepared to proceed under the JOA.

4 And the fact of the matter is, is that it is sort  
5 of a race, who proposes first. If that proposal will force  
6 negotiations, if one party is dilatory, because it sets the  
7 time frames in that agreement in place, and we start moving  
8 forward.

9 But I also would suggest to you that the  
10 Application isn't even properly before you.

11 If you look at Rule 104.E -- it's the last page  
12 of what I handed you -- and it -- these are the Rules that  
13 allow special operators. And it's interesting because the  
14 Rule doesn't anyplace say, You may have more than one  
15 operator. It talks about, first, what you do with  
16 allowables, and then it tells how you deal with it when  
17 someone other than the original operator wants to develop a  
18 property by putting a second well on.

19 And it says, Any operator who intends to operate  
20 a well in a spacing or proration unit containing an  
21 existing well or wells operated by another shall do the  
22 following: Give notice.

23 It doesn't say that you use this Rule to go out  
24 and drill a well under an operating agreement that  
25 designates someone else. One thing we all agree is,

1 they're not going to operate the well. I don't think they  
2 fall within the purview of this Rule.

3 And I think it's being inappropriately used. I  
4 think if you go back and remember the cases that led to the  
5 revision of the Rules to allow multiple operators, it was  
6 where people agreed that they should have another operator  
7 on a spacing unit. And I think what is permissive in the  
8 Rule is being used as a sword, and you're going to see it  
9 over and over again.

10 Even people in this room are telling other  
11 operators that they should come in here because they can  
12 use this procedure to take operations away from the person  
13 who has the first well, who in many cases has proven up the  
14 resource. And it's going to be a terrible problem, and it  
15 is not, in my judgment, authorized by this Rule because  
16 they don't propose to operate.

17 And they say, Yes, well, we may sell someday.  
18 But if you look -- or -- yeah, we believe, actually, that  
19 this is an effort to inflate the value of the property. I  
20 mean, that's clear from our questions. But if you look at  
21 their Exhibit Number 4 and you even see their proposed --  
22 the letter that's attached thereto dated December 9 [sic],  
23 Bold says in the -- at the bottom of the, really, next-to-  
24 the-last paragraph, it says, "Bold hopes to resolve this  
25 matter through an open exchange with OXY's management" and

1 it says, "as it is only our intent to maximize the value of  
2 our assets."

3 You know, we're interested in drilling a well in  
4 an economic way to test all horizons at the best possible  
5 location and not lock in an extra \$4 million -- or, after  
6 you subtract the additional cost, \$3 million -- to take a  
7 look at the Morrow on a property that immediately offsets a  
8 good Morrow well that is drilled and operated by Bold.

9 And we think that what you should do is dismiss  
10 or deny the Application and tell the parties to do what  
11 they're supposed to do. Negotiate between themselves, and  
12 not use you. Not ask you to issue an APD that will limit  
13 and lock the parties' when positions when they try and  
14 negotiate one another. Because we believe, in fact, that's  
15 what's going on.

16 And we also believe that they're going to make  
17 development of the Morrow uneconomic for the remaining  
18 owners in that northwest quarter. And I don't care who  
19 else has signed off on a well that has been proposed; if  
20 they were also given the option of looking at the Morrow,  
21 maybe they would go that way.

22 But the truth is, if those reserves aren't  
23 developed, this could cause waste. If they're denied a  
24 right to economically develop those reserves, it impairs  
25 correlative rights.

1           We think you should deny the Application, not  
2 open up this issue for repeated hearings of this nature.  
3 Tell the parties to go back and talk to each other, and  
4 when they have done that, let them operate under the  
5 contract that governs their activities without bringing  
6 this agency in, in an inappropriate way.

7           EXAMINER CATANACH: Thank you, Mr. Carr.

8           Mr. Bruce?

9           MR. BRUCE: First off, Mr. Examiner, is there  
10 something wrong with increasing the value of the property?  
11 I think that's why the oil and gas people are in business,  
12 is to increase the value of the property.

13           Secondly, the way Mr. Carr -- if what Mr. Carr  
14 states about Rule 104.E.(2) is correct, then drilling and  
15 completing a well isn't operating it. I think while you're  
16 drilling and completing, you're operating the well in that  
17 interim while you are doing so.

18           But if that's not the case, then sure, Rule 104  
19 doesn't apply, and in that case you ought to just approve  
20 the APD, because we don't need an exception to the Rule.  
21 Just tell the Division officer down in Artesia to approve  
22 the APD, because we're not operating the well, we're not  
23 operating the second well. Just go ahead and approve it  
24 right now.

25           But I do believe that while Bold would be

1 drilling and completing the well, it would be deemed to be  
2 operating that well.

3           The second thing is, the only application you  
4 have before you is the Cisco/Canyon APD presented by Bold.  
5 OXY talks about a Morrow test, it's known about this for  
6 almost six months now, has never once proposed a Morrow  
7 test or any other test in the northwest quarter, and it  
8 doesn't say it's going to. It doesn't know if it's going  
9 to. And so the only proposal you have right now is Bold's  
10 Cisco/Canyon APD.

11           Certainly Rule 104.E does not prohibit Bold's  
12 request. Instead, I think it addresses precisely this  
13 situation, because if a nonoperator under a JOA can't get  
14 an APD to drill that infill well that an operator  
15 nonconsents, then it can never get that well drilled. It  
16 can never get that well drilled, because the operator will  
17 come in and say, Rule 104.E doesn't apply, you can't use  
18 the Rule, and therefore under every single JOA in this  
19 state the nonoperator will be unable to get an infill well  
20 drilled if the operator nonconsents a well. And that's not  
21 what's envisioned by the JOA, and I don't think that's  
22 envisioned by the Rule.

23           OXY -- like I said, for six months now, it's  
24 talked -- the parties have talked numerous times. Bold  
25 wants OXY to join in the well. But the fact of the matter

1 is, the only APD out there is Bold's, and they are willing  
2 to re-propose the well to OXY. But if OXY joins in the  
3 well, that's fine, we are perfectly content, if they drill  
4 it.

5 But again, there's a question. If they consent  
6 the well under the JOA and they don't drill it within 90  
7 days, then the proposal lapses and then we'll be back here  
8 again. And that's what Bold seeks to avoid.

9 We think you ought to go ahead, approve Bold's  
10 APD with the stipulation which we have agreed to, is that  
11 if OXY consents and wants to drill the well, we will turn  
12 it over to them, we will sign the necessary papers to turn  
13 operations over to OXY at such time as they want to  
14 commence the well. But if not, Bold needs to be in control  
15 so it can go drill that well.

16 Thank you.

17 EXAMINER CATANACH: Thank you, Mr. Bruce.

18 Anything further?

19 MR. BROOKS: There is a case in Texas, a long  
20 time ago. I don't remember the date, and that's why I have  
21 trouble finding it, but it's either Mobil or Magnolia. I'm  
22 not sure how far back it is, but the case said essentially  
23 that the Railroad Commission should deny an APD if a party  
24 has no title; but if a party has an arguable claim of  
25 title, that it's appropriate for the Railroad Commission to

1 grant the APD because the Railroad Commission isn't  
2 determining the title issues.

3 Is either of you familiar with that case? Think  
4 you could find it? I would like to be able to locate it.  
5 I'm sure I could eventually, it's just a question of how  
6 much time I want to spend on it.

7 MR. BRUCE: I'll volunteer, Mr. Carr --

8 MR. BROOKS: Okay, if you would --

9 MR. CARR: And what I'll do, I'll volunteer  
10 Ocean.

11 (Laughter)

12 MR. BROOKS: There are many cases styled Magnolia  
13 Petroleum Company against the Railroad Commission, but  
14 anyway, that issue seems to be somewhat involved.

15 I did mention -- I did premise some of the advice  
16 I gave in the Yates-Pride case on that case, and of course  
17 you know we all got in trouble on the Yates-Pride case.

18 MR. CARR: Don't use past tense.

19 (Laughter)

20 MR. BROOKS: Yeah, maybe we're all still in  
21 trouble.

22 MR. CARR: We will look for that and send it to  
23 all of you.

24 MR. BROOKS: Okay, I appreciate it.

25 EXAMINER CATANACH: Okay, anything further?

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MR. BRUCE: No, sir.

EXAMINER CATANACH: There being nothing further,  
Case 13,877 will be taken under advisement.

And this hearing is adjourned.

(Thereupon, these proceedings were concluded at  
12:25 p.m.)

\* \* \*

I do hereby certify that the foregoing is  
a complete record of the proceedings in  
the Examiner hearing of Case No. 13877  
heard by me on May 16, 2007.  
Daniel M. Catnach, Examiner  
Oil Conservation Division

## CERTIFICATE OF REPORTER

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

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

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

WITNESS MY HAND AND SEAL May 16th, 2007.



STEVEN T. BRENNER  
 CCR No. 7

My commission expires: October 16th, 2010